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FREEDOM OF SPEECH IN SOUTH EAST EUROPE: MEDIA INDEPENDENCE AND SELF-REGULATION

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**MEDIA
SELF-REGULATION
PRACTICES AND
DECRIMINALIZATION
OF DEFAMATION
IN THE COUNTRIES
OF
SOUTH EAST EUROPE
IN 2006**

Summary of the Country Reports and Discussion of Defamation

By Alexander Kashumov

General overview

Although we have entered the age of Internet and digital television, classical restrictions on freedom of expression and information such as defamation laws still exist in Europe. In the countries covered by this research, defamation legislation has been used, frequently with the intent to freeze public debates over issues of public concern. Graver penalties imposed on journalists or media outlets for libel against public officials by virtue of laws or developed court practice strongly contribute to that chilling effect. At the same time, in all of the countries studied, there are efforts to change the situation. Regarding the protection of journalists' sources, in practice there have been only a few exceptional cases of unacceptable interference. However, the scope of protection provided by different national laws varies. Still, in many of the countries criminal law prescribes severe sanctions for everyone who disseminates state or other secrets, regardless of their professional obligation to protect them. This creates both the possibilities for cover-ups of government wrongdoings and narrows the media debate

over such issues. The proliferation of laws regulating access to governmental information in the region, as well as across the globe, combined with their use by journalists, is a promising step ahead for investigations and for better professionalism.

Despite the countries' different levels of development, population, GDP, incomes, etc., what they have in common is a tradition of undemocratic government left over from the communist era, which brings elements of secrecy, unaccountability, and intolerance to public debates, limiting pluralism and criticism. This makes the newly-established democracies vulnerable to undue prosecution of free speech, especially in the media field. Hence, the related laws and practices take on an even greater importance than in Western democracies.

There are some differences in the countries' legislative frameworks regulating freedom of expression and information and media. Most of them have laws regulating both broadcast and print media (there are Press laws in Moldova, Albania, Hungary, media laws in Slovenia and Macedonia, and a law on public information in Serbia), while in the others the latter are deduced from specific rules. In some countries there are rules for the registration of print media, whereas in other countries they are subject to a simple registration procedure in the country's commercial register. After all the years of transition, problems with registration of media outlets arise only in exceptional cases (e.g. the single case in Moldova). Depending on the context, broadcast laws, mass media laws, press laws and laws on public information prescribe rights and duties for media and journalists. Broadcasting, radio and television laws exist everywhere, forming not only the legal basis for the

operation of electronic media, but also the rights and liabilities of journalists working there.

The role of the courts in cases involving media freedom is sometimes assessed equivocally in the country reports. While in some countries (Hungary, Bulgaria) there are landmark constitutional court rulings on freedom of expression and information that interpret the constitutions and related statutes in the light of standards stemming from the European Convention on Human Rights, the operation of ordinary courts in criminal and civil defamation cases often is regarded with criticism. Some reports mention the courts' lack of independence, but obviously it is more a matter of a lack of training and knowledge on the part of the judiciary, combined with compassion for public officials, bad attitudes toward journalists and, in exceptional cases, corruption (in a broader sense), rather than a formal dependence on the executive branch. Often court decisions awarding exceptionally large fines or damages for libel can be explained by a lack of sufficient knowledge and training in European standards. Indeed, courts that impose excessive sanctions commonly appear to disregard of the proportionality principle.

Attempts by politicians and businesses closely related to politics to influence media are reported in all the country studies. In some countries political figures or future politicians are themselves media owners. Furthermore, the lack of transparency of media ownership in most countries raises suspicions that hidden political, business or even mafia interests may be behind certain outlets. On another hand, journalists in some countries are often underpaid and poorly protected by labour conditions and contracts, which makes them more vulnerable to legal action for defamation. Moreover, in lawsuits

they face opponents who are high-ranking civil servants and politicians with considerable influence and resources. Legal help for journalists in such cases by media associations is still not a well-established practice.

Despite the ongoing problems summarized above, there is nevertheless room for optimism. Laws and practices are unanimously changing for the better. However, it is important to keep following these issues, since it is frequently the case that many changes in different countries' media sectors undertaken in the course of transition to democracy are done without adequate planning and leave many inconsistencies. The deregulation of defamation should go on, while defamation laws should be replaced to the highest degree possible by active self-regulation mechanisms.

Defamation

Generally, the defamation laws in the region have tended toward improvement. *Ex officio* prosecution in criminal cases has been replaced by private claims almost everywhere. In most cases fines were introduced instead of imprisonment (some exceptions still exist). However, total decriminalization of defamation has been completed in only a couple of countries. In Bosnia and Herzegovina, and Romania libel and insult are no longer criminal offences anymore, while in other countries they still are. The issue of decriminalization has been discussed in the remaining countries and even put on the legislative agenda. One problem that should be pointed here is rooted in the fact that decriminalization of defamation is not a legal standard. Such an obligation is not found in the European Convention on Human Rights and is not recognized by the European Court of

Human Rights. This provides a good excuse for politicians not to be active supporters of complete abrogation of criminal defamation.

An interesting observation that can be made about the reports is that criminal defamation is not particularly problematic, compared with the excessive compensation for damages adjudicated in civil cases. Except in Bosnia and Herzegovina and Romania, where criminal defamation does not exist anymore, all the other nine countries have such laws. In many of them prison sentences were replaced completely by fines after the recent amendments of criminal codes (this was the case in Bulgaria, Serbia, Croatia and Montenegro; in Moldova defamation is almost completely decriminalized, while in Macedonia prison is exceptional). Prison for defamation still exists in Albania, Hungary and Slovenia. However, it is interesting that in those three countries civil cases are predominant. Preferential recourse to civil law is also reported for Albania and Moldova. The amounts of compensation claimed and adjudicated in such cases in practice range from 40,000 to 50,000 EUR (Albania, Croatia). Explanation for this phenomenon is provided in some of the reports, which pointed out that the burden of proof in civil cases is shifted to the respondent, unlike in criminal law, where the prosecutor usually must prove every element of the alleged offence, including malicious intent, knowledge of falsity or reckless disregard. In addition, civil courts are less educated in human rights standards than criminal ones. It is likely that criminal judges have been frequently trained on the application of some articles under the European Convention on Human Rights of particular reference to their field (for example Art.2, 3 and 5), while civil ones have not been. Also, the amount of compensation for defamation is usually several times larger than criminal fines

and is determined with less caution by courts. The public interest defense is also more readily accepted by courts applying public law (to which criminal law belongs) than those applying private (civil) law. Even in some countries with a preferred recourse to criminal law, it is not the type of law itself, but the possible combination of a claim for damages with criminal charges, that attracts petitioners to legal action (Bulgaria).

Another feature that must be taken into account is the level of precision with which the law regulates civil claims. A precise and detailed civil defamation law, such as the one in Bosnia and Herzegovina, does not offer possibilities for abusive application, stating clearly the applicable defenses and burden of proof. On another hand, from the "classical" civil law perspective existing in most of the countries, libel is a mere tort against someone's peaceful presence in the society, thus malicious intent is presumed until it is proved otherwise. Consequently, any reference to the position of public figures and their duties to accept criticism is lacking in this concept, thus opening the door for an abusive resort to civil law.

A main concern reflected in all the reports is the predominant use of defamation laws by high-ranking public servants and politicians. Either by virtue of law or by court practice, imposing graver penalties or determining larger compensation for publications affecting public officials has a chilling effect on healthy criticism and restricts media from implementing their watchdog role. In most cases the law is consistent with European law in this respect (with some exceptions such as Bulgaria), but in practice very often there is a presumption that public officials must be honored more than private individuals and should subsequently receive bigger

compensation for interference. More precise formulation of defamation laws would contribute to discouraging public officials from recourse to their repressive function.

Traditionally the national legislation in the countries studied differentiates between insult and libel. Thus, they differ from common law countries, where insult "is not generally found."¹ In some of the countries, insult is a matter of neither criminal nor civil responsibility anymore (in Bosnia and Herzegovina by virtue of the law on defamation; in Hungary the constitutional court excluded value judgments from the definition of insult consisting of offensive language). In the majority of countries studied, however, insult is still subject to legal regulation, but as a rule is regarded as less offensive than libel. The differentiation is found in criminal law, while in civil cases any form of diminishing someone's dignity is subject to compensation.

Alongside positive changes in defamation statutes, there have been a few negative developments (bigger fines instituted in Bulgaria as an alternative to prison; the unlimited amount of civil compensation in Moldova replacing the previous limits). They are usually the result of different lines of ongoing reforms in different sectors that are not always coordinated.

Disclosure of state or other secrets. Protection of sources. Access to information.

While defamation laws are designed to protect an individual's reputation, state secrets are generally protected for the sake of national security. Traditionally, most countries have

¹ See Toby Mendel's statement in Ending the Chilling Effect, published by OSCE, Vienna 2004, p. 25.

laws passed a long time ago that provide penalties for undue disclosure of such secrets. It is understandably that they were not considered outrageous during the time of the Cold War; however, using them in the present day causes problems with regard to media freedom. The penalty prescribed is usually lengthy incarceration. Cases of application of such laws against journalists have been reported in Hungary, Slovenia, Croatia and Romania. One part of the problem is that media and journalists are discouraged from implementing their professional watchdog role in the society, being entrusted with duties more appropriate for civil servants, such as keeping state and even official (or professional and administrative) secrets.

The other side of the coin is that it is not always sufficiently clear what data should be considered as a state or other kind of secret. Although most of the countries have passed laws for the protection of classified information in the last decade, some (Serbia, Montenegro) still have no such statutes. Of the laws that regulate classification of information, some provide for more detailed lists of information categories subject to classification, while others describe classification categories more broadly. Combined with sanctions for unauthorized disclosure and lack of good practices, the latter model often raises threats to journalists reporting. Another important element for striking the right balance between freedom of expression and information on one hand, and national security on another, is the adherence to the "harm principle" in classifying information as state secret (the Bulgarian law) and the possibility for applying the overriding public interest test (Bosnia and Herzegovina, Hungary, Moldova, Serbia and Slovenia). A number of laws deny classification of information related to human rights abuses as a secret, which is an important step to be followed. Of course,

the best solution is narrowing the scope of responsibility to the ones having duties to keep the secrets (Bosnia and Herzegovina, Romania). Application of the public interest test has not been reported from the countries with recent cases of prosecution of journalists for disclosure of state or military secrets, which raises concern.

Regarding protection of sources, this question is regulated by different pieces of legislation varying in the different countries and covering different scopes. What should be noted is that according to the reported, cases of forcing journalists to disclose sources appear to be very rare and exceptional. In practice, courts everywhere are aware of this defense and exercise their powers with caution. Potential problems could arise from bad formulation of the laws.

Access to information is not a right afforded only to media or journalists. In most cases they are treated equally to other citizens, with slight privileges in exceptional cases (such as the shorter response times in Romania and Slovenia; free of charge access in Serbia). This means that the general standard of information seekers' equality is observed in all the countries. It is true that access to information laws are not just for journalists, but for all citizens. However, they help create a better media freedom environment by introducing the principle that all government-held information should be available to the public on principle. This contributes to a practical change for public officials and civil servants in terms of accountability and openness to criticism. Also, the use of access to information laws by journalists in their investigations equips them with a legal tool that supplements the general right to seek, impart and receive information. Legal actions by journalists against public authorities' refusals to provide information change their

position, making them plaintiffs, rather than defendants, as in defamation cases. Broad media coverage of such cases encourages the exercise of the right to information and contributes to a narrower interpretation of secrets in practice (Bulgaria).

Conclusions

In general the problems that are usually noted about defamation are: criminal liability, prison sentences, more severe sanctions in public officials' cases and the failure to take into account the knowledge of falsity or reckless disregard of the allegations made. In the eleven reports there are some findings that highlight other aspects of the issue. It is quite interesting that alongside the positive trend of decriminalization of defamation, it is not the penal laws that most endanger journalists; freedoms, nor it is the threat of imprisonment, to the extent that it still exist and applies. In the counties that still have such penalties; the most severe punishments for libel or insult are applied by civil courts. Excessive pecuniary damages sometimes turn out to be much more oppressive than fines or suspended prison sentences. Also, in criminal cases the intent or disregard of the perpetrator is entertained with more precaution, while the burden of proof is more often on the prosecutor rather than on the defendant.

In light of the fact that high-ranking officials and other civil servants still often resort to the recourse of defamation laws, the efforts for decriminalization should go on. It should be kept in mind, however, that changes in laws that make them better-formulated, with more emphasis on the burden of proof, the principle of proportionality and the overriding public interest

will be of crucial importance for establishing better practices. Of course, progress should be assessed not by the mere wording of legal texts, but by their application in reality. Therefore, training sessions for criminal and civil judges should be undertaken extensively, while the issue of defamation should remain a topic in ongoing public debate. The appropriate course of action is to move from regulation to self-regulation in such matters. Ethical norms should take the place of laws, while in-house committees should consider defamation cases instead of state courts.

The criminal responsibility of journalists for imparting state secrets should be completely removed in democracies. At the very least, any reporting of such matters should be subject to the harm test and the public interest test. This includes taking appropriate measures to put laws on classified information in line with access to public information laws and freedom of expression standards.

Access to information laws should be used frequently by journalists and media in their operations, because they are a tool for changing the media freedom environment and for the better promotion of public debate and democracy.

Albania

By Ilda Londo

Executive summary

Albania has at the moment a vibrant media scene, which has seen significant development since its early stages. Despite undeniable progress, however, ethical violations still exist. Some journalists appear to, interpret freedom of expression as a “hunting license.” Although many journalists seem to be aware of this situation, they lack both the incentive and the initiative to amend the situation.

Given the unstable nature of the labor market and working conditions for journalists, this problem ranks very low on the Albanian media’s agenda. Similarly, media owners, with a few exceptions, do not seem to be particularly interested in improving the ethical record of their media.

However, despite this situation, Albanian courts are not flooded with defamation lawsuits against media and journalists. The lack of unified practice and case law, coupled with the absence of systematic research and monitoring of defamation cases by civil society, does not allow for accurate analyses of and conclusions regarding the situation.

On a more positive note, there are continuous attempts to decriminalize defamation and to bring this area of legislation in line with international standards. Along the same lines,

several stakeholders have been involved in discussions about the possibility of establishing an effective practice for self-regulation. Although these struggles have recently been of a constant and concerted nature, their outcome will depend on many other factors.

Context

Albania has been a parliamentary republic since the overthrow of the Communist regime in 1990 and has been trying to consolidate democracy ever since. Politically, the country has made constant progress after two major crises in the late 1990s, with the latest parliamentary elections in 2005 considered as the best held to date. These elections resulted in a parliament where a coalition of right-leaning parties holds 80 seats out of 140.¹

As of January 1, 2005, Albania's population was 3.135 million.² According to the most recent data (from 2004), the country's GDP per capita was €1,892,³ and the average monthly wage in 2003 was ALL 19,123 (€159).⁴ The economy has

¹ Parliament of Albania, data available at <http://www.parlament.al/dokumenti.asp?id=529&kujam=Zgjedhjet%20e%20fundit%20të%20kuvendit> (accessed on September 1, 2006).

² Institute of Statistics (INSTAT), data available on <http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Popullsia?POP%202004/pop1.xls> (accessed on September 1, 2006).

³ Institute of Statistics (INSTAT), data available at <http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Ekonomik/Llogarite%20Kombetare/Korrik2006/Tab1.xls> (accessed on September 1, 2006).

⁴ Institute of Statistics (INSTAT), data available at <http://www.instat.gov.al/graphics/doc/tabelat/Treguesit%20Sociale/Pagat/PAG%202004/Tab1.xls> (accessed on September 1, 2006).

progressed recently at a steady pace, while most state enterprises have been privatized, except for the large utility companies, such as those providing water, electricity, etc. In 2001, for example, only 18 percent of registered employees worked in state-owned enterprises.⁵ However, the transition to a free market economy has not been a smooth process: especially in the case of large enterprises, such as the public phone company, or the largest savings bank in the country, the privatization process has always provoked contestations and discussions regarding the government's stance and involvement in this process.

The situation is quite different regarding the privatization of media outlets, which began in the early 1990s; almost all publications that were issued before 1990 have ceased, except for the daily newspaper of the Socialist Party and some niche publications that continue to be published by the Academy of Sciences and other institutions of this nature. In fact, the current picture of the media market in Albania differs dramatically compared to 1990, having undergone a remarkable evolution. Its numbers have experienced a continuous boom in the last 15 years, despite the extremely small market. Along with the variety of choices these numerous media offer, they also have raised questions about their business practices and sustainability, in light of the difficulties of surviving in such a small, competitive market. At the moment there are 25 daily newspapers published in a country of three million people. According to official data, Albania has 66 local television stations, two national television stations, two satellite television companies, and 40 local cable television stations. With regard

⁵ INSTAT, "Statistical Yearbook, 1993-2001," Tirana 2003, p.45.

to radio stations, there are 46 local radio stations and two national ones.⁶

Both print and electronic media have boomed, despite totally different regulatory regimes. Print media operates in an almost complete lack of legal regulation on the press. Instead, it is subject only to regulation by general competition and commercial laws. After the law on print media, which was considered too restrictive and wholly inadequate for the Albanian context, was repealed in 1997, the Press Act was passed. This act contains only two provisions that guarantee the freedom of press in a general and vague manner. As a result, newspapers or print publications in general do not need to be registered. This absolutely lax policy contributes to a greater difficulty in knowing the exact number of publications at any time.

On the other hand, the legal framework for broadcasting activity in Albania was established by the Public and Private Radio and Television in the Republic of Albania Act (hereafter, the Radio and Television Act). The act, which has been amended six times since its adoption in 1998, purports to regulate in detail the activity of the electronic media, including public broadcasting. The main body responsible for implementing the law is the regulatory authority: The National Council of Radio and Television (KKRT, www.kkrt.gov.al). This regulatory body has not had a history of smoothly fulfilling its mission: its decisions first on frequency distribution and then on several sanctions imposed upon broadcasters, especially regarding the implementation of anti-piracy provisions, have often been contested and have sometimes provoked protests.

⁶ KKRT, Department of Jurisdiction and Licenses, 16 May 2006.

In view of this situation, the last amendment on the law was an initiative by the government that sparked lively debates: the law had to be voted on twice, because it was returned to Parliament after the President refused to sign it. The amendment and the debates themselves centers on the performance and independence of the regulatory authority of electronic media and the governing body of public broadcasters. The amendment was intended to change the formula for appointing the members of these bodies, in response to claims that the election formula that sought a balanced representation in the KKRT of the main political forces in the Parliament so far had not produced the desired professional results. In fact, both the KKRT, the general regulatory authority of the electronic media, and the KDRTVSH (The Steering Council of Public Broadcasters) have not managed to be perceived as impartial and independent, in spite of some progress that they have made: "KKRT has not yet managed to remove concerns that most of its decisions are influenced by one political group or another, and by the government most of all."⁷

According to the new amendments,⁸ the KKRT is composed of five members that have a five-year mandate, eligible only for two terms. The Parliamentary Commission on Education and Means of Public Information selects two out of the four candidates that are proposed for each seat. Each of the following groups can propose these candidates:

- electronic media associations;
- print media associations;

⁷ Chapter on Albania in EUMAP, "TV Across Europe," 2005, p. 195.

⁸ Law no.9531, on Some Amendments to Law no.8410 On Public and Private Radio and Television.

- academia and associations of electric and electronic engineering;
- the Chamber of Lawyers and other lawyer associations;
- parliamentary groups themselves.

At the moment, the newly-elected regulatory body has just started working after being elected in the last July session of Parliament, during which the opposition refused to vote. It remains to be seen whether the new formulas will improve the effective regulation of the electronic media in a highly skeptical environment.

This lack of strong regulatory bodies in electronic media and the almost total lack of regulation in print media have influenced to some extent the media's editorial independence, or rather have contributed to a clear absence of its guaranteed independence. The Constitution states that freedom of the press, radio and television is guaranteed.⁹ In similarly general terms, the Radio and Television Act states that "editorial independence is guaranteed by law."¹⁰ In addition to this broad provision, the law seeks to guarantee the independence of broadcasting through a number of important provisions pertaining to regulatory authority, public broadcasting, content, sponsorship and other areas. As a matter of fact, the KKRT has never initiated any efforts to guarantee the implementation of these particular provisions so far.

The other paragraph of the same article in this law also guarantees what can be considered a sort of equal employment

⁹Constitution of the Republic of Albania, approved by Parliament on 21 October 1998, adopted by the Referendum of 22 November 1998, and in force since its promulgation by the President of the Republic on 28 November 1998, art. 22.

¹⁰ Law no. 8410, On Public and Private Radio and Television, art. 5.

opportunity policy: "Employment, promotion, duties and the rights of public and private radios and televisions are not determined by sex, ethnic [the law states simply "origin," but "ethnic" is assumed] origin, political convictions, religion, or membership in trade unions."¹¹ Again, this attempt to protect these two essential ingredients of independent media has many pitfalls when viewed from the legal angle, with no sanctions imposed in case of breaches, and with no clear method of defining these concepts or methods for identifying violations.¹² However, the regulatory authority has never attempted to implement this article, and neither have journalists, due to the extremely disorganized situation in which they find themselves vis-à-vis their employees.

There are several journalists' associations, all of which remain extremely weak. The two main associations, the League of Albanian Journalists and the Association of Albanian Journalists, have not made any notable attempts to raise awareness among journalists or to organize them for their common good. The International Research and Exchange Board (IREX), an international NGO involved in, among other things, the strengthening independent media, has recently supported the idea of establishing a trade union for journalists. According to the chairman of this trade union, the association is expected

¹¹ Ibid.

¹² I. Londo, Report on Albania, in Brankica Petkovic (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism*, Peace Institute and SEENPM, Ljubljana, June 2004, available at http://www.mirovni-institut.si/media_ownership/albania.htm (hereinafter, PI/SEENPM, *Media ownership – Albania*) p. 40.

to come up with a collective contract type soon, which should then be negotiated with media owners.¹³

Quality journalism is difficult to achieve when journalists themselves are very frequently deprived of their rights. The overwhelming majority of journalists work without contracts, given the weak implementation of Labour Code in the country and the lack of regular supervision of its implementation. It is not the case that they work as freelancers, but rather that they are simply not given any contracts to sign in most cases, because employment regulations are rarely enforced. In addition, there is no such a thing as collective bargaining yet. The country's Labour Code, which regulates employment relations and which also applies to media outlets, is not respected in practice. The recently established union describes the media labor market as not conforming to any norms or regulation, since the majority of journalists work without contracts and are not paid any social insurance.¹⁴ A 2005 study on the business practices of the main media outlets revealed that the contractual agreements that might guarantee the independence and protection of the editorial staff lack references to any ethical standards at all.¹⁵ As a result, journalists do not enjoy the freedom to stand up and fight for their opinion, especially if it is contrary to that of the owner.

In fact, the labour market within the sector is quite unstable. It is very easy to enter this market. As one report put

¹³ Aleksander Cipa, "Albanian Union of Journalists: Trade Union Organization in the Media Life in the Country," quoted in Albanian Media Monitoring Center, "Albanian Media Monitor," 2005, p. 66.

¹⁴ Ibid.

¹⁵ I. Londo, Report on Albania, in Manuela Preoteasa (ed.), *Media: The Business of Ethics, the Ethics of Business*, Center for Independent Journalism and SEENPM, Bucharest, 2005 (hereinafter, CPJ/SEENPM, *Business of ethics – Albania*) p. 29.

it: "You can finish your studies in agriculture and still immediately become a journalist in Albania."¹⁶ Access to journalism, in fact, is quite open. There was an attempt to change this situation with a draft law in 2001, which provided for the establishment of an Order of Journalists that would serve as a regulator of the media community and its activities; however, the bill was strongly rejected, since it was argued that such a structure must be established by the free will of journalists, rather than being engineered by Parliament or being legally obliged to report to Parliament. According to this provision, all journalists would be obliged to be members of this Order and to adhere to its regulations, a system modeled after Italian regulation in this area.¹⁷ The *laissez faire* trend in the field of journalism won over the other interest groups at the time, who preferred the self-regulation of the media instead of too much legal regulation.

Due to incomplete or poorly implemented legislation and because journalists tend to have an extremely insecure employment status, there is ample room for media owners to interfere with editorial policy in any manner and at any moment. In this context, media owners seem to be the driving force behind the developments in the media scene for many years now. Media proprietors often have a background in other businesses, such as construction and trade, and there are also cases in which owners have political affiliations, or even governmental posts, before or after owning a media business. Media ownership became a controversial issue in 2003, due to persistent allegations that media owners have traded favorable coverage to politicians in return for patronage of their other

¹⁶ IREX, Media Sustainability Index 2005, available at <http://www.irex.org/msi/2005/MSI-2005-Albania.pdf>

¹⁷ Draft Law on Press, 2001.

businesses.¹⁸ In fact, this is an area that seems to need greater transparency. As with many other economic sectors in Albania, the media industry lacks transparency, a basic condition for ethical behaviour, yet neither the state, nor the media owners seem keen to change the situation.¹⁹

In light of all the above circumstances, establishing an efficient self-regulating system is not at all an easy task. In fact, self-regulation so far has been almost inexistent. Journalists' lack of rights poses serious difficulties for the facilitation of the self-regulation process. Furthermore, low ethical standards and the existence of criminal law on defamation coupled with inconsistent court practices in this area point to a clear need for establishing such a practice. Consequently, in order to assess the possibilities for improving ethical media conduct it would be useful to examine whether there is a balance of freedom of expression and the right to reputation in legislation and how this is applied in practice by media and courts alike. The following section describes the current state of self-regulation in the media and reviews the laws particularly relevant to freedom of expression, as well as their implementation.

Codes of ethics

Albania has had a code of ethics for journalists since 1996, which was drafted through the initiative of the Albanian Media Institute, the main NGO in the country dealing with media training and policy, and the two main journalists' associations, the Association of Albanian Journalists and the League of Professional Journalists. However, ten years since its

¹⁸ Chapter on Albania in EUMAP, "TV Across Europe," 2005, p. 199.

¹⁹ Ibid.

creation, the implementation of this code has been left to the individual wills of journalists, since no implementing body has existed to enforce or supervise adherence to this code.

The Code of Ethics covers the usual areas intended to promote the responsibility of journalists in their everyday work, such as accuracy of information, protection of privacy, protection of minors, protection of victims of crime, and confidentiality of sources. The code also includes provisions guarding against conflict of interest between the journalists' personal and professional life and between the newspapers' commercial and editorial policy. For the purpose of the code, public interest is defined as:

- a) Finding out and exposing a crime or a scandal;
- b) Protecting public health and ensuring its security;

Protecting the public from distortion due to individual declarations or actions by an individual, organizations, or institutions etc.; finding or exposing a crime or scandal.²⁰

At the moment of the drafting of this code, the media outlets were predominantly print media, since the electronic media boom started after 1995. However, since the moment of the signing of this code by the two main journalists' associations, this code has been the main code of ethics recognized by the media community in general, until recently, when some media outlets have drafted their own codes of ethics.

²⁰ Code of Ethics of Albanian journalists, 1996, chapter XVII, available at www.media-accountability.org/library/Albania.doc (accessed on September 1, 2006).

As mentioned above, the main weakness in the code was not due to any provisions that were considered unsuitable or were not accepted by the community; rather, the lack of an implementing mechanism that would supervise journalists' conduct in relation to the code was the main flaw in this attempt at self-regulation. The absence of this mechanism relegated the code to a piece of paper that was at best not a determining factor in journalism conduct, and at worst a document whose existence journalists did not even know about.

The drafting of the code was a process that primarily involved the representatives of the two main journalists' organizations mentioned above, facilitated by the Albanian Media Institute. However, the passive role of these organizations and similar groups in the media community have affected journalists' awareness on the code to some extent and consequently its implementation. Both associations are members of the International Federation of Journalists, but there are no reliable statistics as to the number of members represented by each, and neither is regarded as active in defending journalists' rights.²¹ As an editor-in-chief of a daily mentioned in an interview conducted in the framework of a regional study on media self-regulation: "The journalists' associations should have a greater role in the self-regulation process. At the moment they are in a dormant state. The fault here is also of the journalists as well, who do not even pay the membership fee."²² Hence, for many reasons, the journalists' associations have not been able to take an active role in the self-regulation process or in any other area.

²¹ Chapter on Albania in Article 19/International Federation of Journalist, "Research on Development of Media Self-Regulation in South East Europe," 2004.

²² Interview with Alfred Peza, editor-in-chief of Korrieri, Tirana, 12 December 2004.

It is difficult to measure the degree of awareness of journalists to the code. This is mainly because the drafting of the code was not followed by the signing of this code by the media outlets at the time. Although the code was sent to the main media outlets and their feedback on the document was requested, there was no subsequent effort to encourage the collective signing of this code, along with the oath to abide by its provisions. There have been continuous attempts to raise awareness through training and roundtable discussions on the code and ethical aspects in general, organized mainly by the Albanian Media Institute, but there is no information on their outreach.

While the above-mentioned code has turned out to be little more than a formality, there have been some initiatives to establish internal codes of ethics in some media. The most popular and successful effort has been that of the Spekter Media Group, one of the main Albanian media groups, which publishes the daily newspapers Shekulli, Sporti Shqiptar, and Biznes, as well as weekly magazine Spekter. The code of this company outlines the way reporters should deal with their sources, cases in which anonymity is allowed, how to avoid libel, respect for privacy, how to report on minors and victims, and other professional issues.²³

This code is implemented by an ethics bureau composed only of one representative, who is employed by the company²⁴. In general this board works in a retrospective manner: content

²³ Spekter jsc. Code of Ethics, available at <http://www.shekulli.com.al/index.php?page=kodietikes&PHPSESSID=7c3a9d05419c2c2fb412638191d292c6>

²⁴ Interview with Mark Marku, Head of Board of Ethics, Tirana, 10 December 2004

is monitored by the staff and there is a meeting with journalists once a week, after the publication of articles.²⁵ The participants in these meetings analyse and discuss the content of the newspaper and can even impose sanctions, such as fines, in cases of violation of the code. These sanctions are not specified in the code, but rather determined on a case-by-case basis by the bureau in cooperation with the owner, after making the necessary verifications.²⁶ Although the case of the Spekter Code and journalist conduct seems to be a success story in the area of self-regulation, it remains unclear whether this conduct derives from fear of sanctions or from individual awareness and the willingness of journalists to abide by the code.

For example, in a case when a questionable “fact” was reported, the board and the reporter further investigated and determined that the reporter was wrong, and subsequently levied a fine of \$40 upon him.²⁷ This is an illustration of not only the functioning of the self-regulation within this company, but also of the educational role this process might have among journalists, who discuss a case together before reaching a conclusion. However, if not properly balanced, this system risks turning into a dictatorship controlled by the owner or the management of the newsroom. An example that testifies to this trend was mentioned in an interview with the head of the ethics bureau, who attributed a direct role to the owner in a decision to fire a journalist who was accused of violating the principle of checking a story with two sources.²⁸ This trend is even more apparent when a closer look at the code reveals that neither the code nor the board that supervises its implementation does

²⁵ Ibid

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

not in any way regulate the relationship between journalists and owners/editors.

Hence, in a context in which the code aims only to protect the public and yet journalists are bound to abide by it, it becomes imperative to balance the accountability of journalists with the proper editorial independence. Even more so when this area does not enjoy any specific legal or social protection and is often identified as a serious problem by journalists: "In general journalists comply with the political and ideological approach of the media in which they work. This happens primarily so that they can preserve their jobs, but also due to a kind of self-censorship that they develop."²⁹

A new code and implementation mechanism

In light of this situation, the Albanian Media Institute started a new process of revising the existing code, coupled with an attempt to facilitate discussions about the possibility of establishing a self-regulatory mechanism that would supervise its implementation. Apart from the relative lack of success of the first code and the need to adjust it to the changes that have taken place in the last decade, there was a third reason for this attempt to effectively self-regulate the media: Amendments aiming to decriminalize defamation and libel are currently before Parliament and will hopefully pass in the near future. Thus, this new code, and more importantly, an implementation mechanism, would provide the proper balance between greater freedom of expression and journalistic responsibility and accountability.

²⁹ Chapter on Albania in Media Center, "Ethics and Journalism," 2005, p.21.

This process started in November 2005 with a round table that involved the main stakeholders, including media owners, directors and managers, editors, journalists, civil society activists, members of parliament, media lawyers, etc. The participants in general expressed their agreement with the need to update the existing code and their willingness to discuss the establishment of a self-regulatory mechanism.³⁰ From this meeting two separate work groups were established, which would work in a parallel way: one on the revision of the Code of Ethics, and the other on the examination of possibilities for establishing a self-regulating mechanism.

In the period that followed (from November 2005 to July 2006), several meetings with different stakeholders took place. These meetings aimed at presenting the work done by the two work groups, receiving the feedback of stakeholders, and eventually incorporating it into a new draft. The objective of this process was to involve as many stakeholders as possible, in order to have ample feedback and a final product that would be as representative as possible. To this end, journalists, editors, media managers, owners, as well as columnists participated in these roundtable discussions. At the moment there is a final Code of Ethics and a statute for a self-regulation body that can be established. These will be presented at a final stakeholders' meeting, scheduled for September, at which the future of this new attempt at self-regulation will be determined.

³⁰ Comments from Roundtable Meeting with Stakeholders, November 4, 2005, Tirana.

The revised code

As expected, the revised code was not different in its core from the existing code: its main concern was still accuracy and fairness of information, right to reply, information sources, private life versus public interest, protection of minors, etc. However, the revision process involved the consultation of many codes of ethics in Europe and beyond, in order to have as broad a base of reference as possible in this area. What was new in this code was that it began as a code of conduct, rather than as a code that included the main deontological aspects of journalism. In other words, it started as an attempt to respond to as many of the potential dilemmas journalists face in their work as possible, rather than as an attempt to outline general principles, as the existing code did. More specifically, it introduced some new areas and concepts, such as the coverage of accidents and misfortunes, the separation of editorial content from advertising, coverage of elections, public relations and press, reporting on polls, criminal memoirs, letters to readers, etc. Also, three new chapters were added, such as plagiarism, the role of media in society, and relationships within the community of journalists.³¹

In general, the code was regarded as well-written and exhaustive, covering the main aspects of journalists' conduct. The final code reflects all the relevant suggestions and remarks made by the stakeholders. However, it must be noted that stakeholders, particularly journalists, often addressed the issue of their protection and their contracts as a parallel issue and a problem that should be solved in order for them to be able to

³¹ Revised Draft Code of Ethics of Albanian journalists, 2006, hereafter referred to as "Revised Draft Code."

respect the code without any problems. Another issue they raised was that of the necessity to establish a representative self-regulating body that would enjoy legitimacy vis-à-vis the media community; otherwise the new Code would be as doomed to failure as the first one.

A self-regulating mechanism

After reviewing several cases of self-regulation models in other countries, the work group drafted a statute that was closest to the Bulgarian model of self-regulation. It was proposed that this body, presently referred to as the Council of Ethics, should register as an association, since, from the legal point of view, this form guarantees the broadest representation.³² Members of the council can be natural or legal persons, media outlets, civil society organizations working on freedom of expression, journalists, freelancers, columnists, etc. While the general guiding principle is that membership is voluntary and unlimited, a broad range of membership is clearly preferred in order to provide the greatest legitimacy possible.

The highest body of the Council of Ethics would be the General Assembly, composed of all members. Similar to a parliament, this assembly would gather once a year, with legal entities being represented by one representative through a written authorization.³³ The meetings' quorum would be 50 percent of the assembly members, plus one.³⁴ A quorum of 2/3 of members would be necessary for decisions that modify the

³² Concept of the Council of Media Ethics, 2006.

³³ Ibid.

³⁴ Draft Statute of the Association "Council of Journalism Ethics," February 2006, article 12, hereafter referred to as "Draft Statute."

Statute of the association, exclusion of members, or the dissolution of the association.³⁵

Another body within the organizational structure is the Chairmanship of the Association, composed of seven members with four-year mandates and with an open voting process. Each member is entitled to propose candidates for chairmanship. Candidates are elected through a simple majority.³⁶ The chairmanship would act as the managing unit of the association, with some of its main duties being:

- implementation of the long-term strategies of the association;
- regulation and implementation of financial activities;
- drafting the annual report and budget for next year;
- determination of the membership fee and its mode of payment, etc.³⁷

The chairmanship should convene no less than four times a year, with a quorum of four members. Voting decisions are made by a simple majority.³⁸

In addition, two permanent commissions would be established within the Council of Ethics, one for print media and the other for electronic media.³⁹ These would be the bodies that examine complaints regarding possible ethical violations. Each body would be composed of 12 members, out of which four would represent the media owners (namely publishers for print media and TV/radio owners for electronic media), four

³⁵ Draft Statute, art. 13.

³⁶ Ibid, art. 15.

³⁷ Ibid, art. 16.

³⁸ Ibid, art. 17.

³⁹ Ibid, art. 23, 24, 25.

would represent journalists for print and electronic media respectively, and four would be independent representatives. This last category will be composed of persons that have special merit in the media area, such as representatives of civil society. According to the group to which they belong (i.e. owners, journalists, independents), members of the assembly can propose eight candidates, out of which four will be elected for each representational group within each commission.

This procedure rules out the right of the public or persons/media that are not members of the associations to propose their own candidates. However, members of these commissions do not necessarily need to be members of the association. Commission members have a three-year mandate and cannot have more than two successive terms. The mandate is revoked only in cases of resignation and if the chairmanship finds any incongruence.⁴⁰ However, the draft statute does not yet describe what could constitute incongruence.

Some of the duties of the ethics commissions include:⁴¹

- examining complaints submitted by media or the general public against those media outlets that are members of association;
- serving as a mediator between the grievant (the person bringing the complaint) and the media in question, aiming to result in a correction or confutation, satisfactory to both sides;
- if necessary, publicly criticizing those media that have violated the code;
- proposing amendments to the code;
- informing the public on its activity in a periodic manner.

⁴⁰ Ibid, art. 26.

⁴¹ Ibid, art. 28.

The public can also lodge complaints with the commissions of ethics, as long as the media they bring complaints against are members of the Council of Ethics. The commissions should gather at least monthly and decide by simple majority, with a quorum of seven members.⁴² The decisions of the commissions should be made public through the members of the association, namely the media outlets, signatories of the code and members of the Association.⁴³ The same media should offer free advertising time to the activities of the commissions, on a monthly basis.⁴⁴

One of the most hotly-debated issues regarding the Council of Ethics was its financial support. According to the draft statute, the financing sources would be the annual membership fees, subsidies, donations, and sponsorships, as well as any revenue generated from the sale of publications of the association's studies.⁴⁵ Although regarded as a fair way of supporting the association's activities, some stakeholders have expressed their doubts as to whether this was achievable, given the bad experience of associations of journalists in collecting membership fees. Also, the inability to gather many members would harm the legitimacy and representative nature of the association.⁴⁶

Unfortunately, at the moment this coordinated effort to revise the Code of Ethics and establish a press council seems to be the only attempt for media self-regulation in the country. As

⁴² Ibid, art. 29.

⁴³ Ibid, art. 30.

⁴⁴ Ibid, art. 31.

⁴⁵ Ibid, art. 40.

⁴⁶ Comments from roundtable with stakeholders, March 27, Tirana.

a result, other possible forms of self-regulation, such as in-house ombudsmen have yet to make their appearance. However, there are efforts to raise awareness about ethical behaviour and self-regulation: there is continuous training about ethical issues for journalists, offered as a course by the Faculty of Journalism, by the Albanian Media Institute as one of the endorsers of the Code, and by various other organizations.

However, in the absence of continuous monitoring of ethical conduct or a body that would cover this area, it is difficult to measure the impact of training and education on the everyday conduct of journalists. In addition, there is no specialized publication on media issues and development in the country, in which ethics would be a part of the public and professional debate. After the quarterly *Media Shqiptare* magazine ceased publication in 2004, no other publication or forum of a different kind has replaced it. In this context, the public debate on the ethical conduct of the media is very weak and sporadic, emerging only in flagrant cases or issues involving famous persons; however, such debates usually quickly die out after another issue comes up.

Defamation: legislation and implementation

In current Albanian legislation defamation is both a criminal and a civil law issue. However, a joint initiative by the Open Society Justice Initiative, New York, and the Albanian Media Institute seeks the support of members of parliament in order to pass amendments that aim at decriminalizing defamation, which are currently pending in Parliament. These amendments' objective is to repeal the criminal provisions regarding defamation and to amend the civil provisions.

Criminal Law provisions

The current Albanian Criminal Code contains two main articles that make up the bulk of defamation law: one of them is on insult and the other is on libel. The alleged victim is responsible for starting these lawsuits. When it comes to penalties, the ones for insult are slightly lower: a fine or up to six months of imprisonment,⁴⁷ as compared to a fine or up to one year of imprisonment for libel.⁴⁸ According to the same provisions, when these acts are committed publicly, which implies the media, the sanctions are the same for both contraventions: fine or up to two years' imprisonment. No distinctions are made as to whether the offender is a journalist or a common citizen; the law applies to all citizens, and therefore to all journalists, regardless of the kind of media they work in.

A note must be made on the legal approach to alleged defamation of public officials here. There are specific criminal provisions intended to prevent insulting or defaming public officials on duty, stating that intentional insult or defamation of an official in his official capacity each constitutes a criminal contravention and is punishable with a fine or up to one year of imprisonment.⁴⁹ The penalties are higher if the acts are committed publicly. Thus, these provisions raise the sanctions for public officials in cases of insult, whereas defamation sanctions are the same for public officials as for other individuals.

⁴⁷ Criminal Code of Albania, art. 119.

⁴⁸ Ibid, art. 120.

⁴⁹ Ibid, art. 239-240.

In addition to this increased protection, criminal law also favors public officials in another aspect: public officials who are defamed do not need to litigate their case themselves, because public prosecutors can do so for them.⁵⁰ Graver sanctions for defamation against public officials and ex officio prosecution are the most visible problems when it comes to examining legislation and court cases' impact on freedom of expression. This part of Albanian regulation clearly collides with the important principle articulated by European Court of Human Rights, according to which public officials should tolerate a greater degree of criticism than private persons.⁵¹ In fact, international organizations concerned with freedom of expression campaigns have strongly recommended that instead of providing extended protection for public officials, the standard for defamation in cases brought by public officials should be stricter than the standard for other individuals.⁵²

Finally, criminal law contains some articles intended to prevent defamation of the representatives of foreign countries, national symbols such the anthem and flag, the President of Republic, the Republic's symbols, and judges; recently, these articles have constituted a source of concern and debate for journalists, freedom of expression activists, and media lawyers: "Whereas journalists are increasingly aware of the limits imposed on journalistic freedom for the sake of protection of individuals, they question the appropriateness of having defamation provisions in place for the protection of objects

⁵⁰ Gent Ibrahim, "Defamation Law in Albania: On the Way to Reform," quoted in Mediaplan Institut,

"The Stumbling of Media in Times of Transition," 2005, p.159.

⁵¹ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.30.

⁵² Article 19, "Memorandum on Albanian Defamation Law," commissioned by OSCE, September 2004, p.11.

such as the national flag and other symbols.”⁵³ An international review of defamation legislation in Albania also posed the same doubts: “Defamation laws should not be used to protect the ‘reputation’ of objects, such as State or religious symbols, flags or national insignia; nor can they be used to protect the ‘reputation’ of the State, or nation, as such.”⁵⁴

Civil Law provisions

Albania’s Civil Code contains two articles that relate to defamation, one on libelous and inaccurate publications, and the other on liability concerning non-property damages. According to these provisions, the court can order the publication of a refutation when it has been proved that the information published was inaccurate or libelous, independently of whether there was reckless disregard of the truth or not.⁵⁵

In addition, a more general article provides for the right to sue if persons feel their honor or dignity has been harmed.⁵⁶ The greatest controversy in this article lies in the fact that it enables individuals to sue for damages on behalf of deceased people, provided they did not receive redress when alive: “The right to sue for the defamation of the reputation of deceased persons could easily be abused and might prevent free and

⁵³ Gent Ibrahimi, “Defamation Law in Albania: On the Way to Reform,” quoted in Mediaplan Institut, “The Stumbling of Media in Times of Transition,” 2005, p.157.

⁵⁴ Article 19, “Memorandum on Albanian Defamation Law,” commissioned by OSCE, September 2004, p.11.

⁵⁵ Civil Code of Albania, art. 617.

⁵⁶ Ibid, art. 625.

open debate about historical events.⁵⁷ Moreover, the law fails to set limits on the amount of damages that may be awarded in cases of non-property damage, which grants the courts a power that has to be used carefully.

Proposed amendments to legislation on defamation⁵⁸

The initiative to amend the current legislation on defamation has featured parallel attempts at amending both criminal and civil laws. These amendments propose to completely repeal insult and libel from the criminal law, along with a repeal of articles that feature enhanced protection for foreign dignitaries and national symbols. Instead, the amendments would provide protection only for public officials that suffer harsh insults in their official capacity, a contravention that is punishable only by fine, and no longer by imprisonment. In addition, the symbols of the Republic are still protected, but the sanction is changed to fine only, and can apply only if intention to contravene is proved.

In order to compensate the decriminalization of defamation, the working group also proposed amendments to the Civil Code. First, the amendment proposes to pose a statute of limitation of one year on the defamation action, seeking to improve the current article in the Civil Code, in which no

⁵⁷ Article 19, “Memorandum on Albanian Defamation Law,” commissioned by OSCE, September 2004, p.15.

⁵⁸ The information from this section is from the Relations for the amendments on Criminal and Civil Codes, drafted by the working group on amendment to defamation laws, and presented to the members of parliament in the series of lobbying for these amendments to pass.

limitation period is imposed at all: "Clearly, such regulation is problematic from the point of view of free speech because as time goes by it becomes increasingly difficult for the parties to a defamation proceeding to show with sufficient clarity the facts that prompted the contested statement."⁵⁹

In addition, the bill proposes to establish a casual link between the contested action or statement and the perceived damage to reputation. Moreover, liability is limited only to those cases when damage occurs as a result of inaccurate statement of facts. The abuse of tort claims for the desecration of memory of dead persons has also been limited. In order to attain these goals, the bill enumerates a list of circumstances to be considered by the court in determining the liability of the defendant for defamation. More specifically, opinions and minor factual inaccuracies are not considered offenses anymore. Also, for the first time, the court is expected to apply the public interest test; that is, the person accused of defamation in issues of public interest is liable only in those cases when he disseminates the information knowing that it is false.

Last, but not least, the bill seeks to introduce a mechanism that ensures proportionality of compensation to the damage suffered. The amendments aim to mitigate damage, mainly through publication of refutation, reconciliation of parties, consideration of whether there was personal gain involved in committing a defamation, and the impact of compensation for damages on the financial situation of the defendant.

⁵⁹ Gent Ibrahim, "Defamation Law in Albania: On the Way to Reform," quoted in Mediaplan Institut, "The Stumbling of Media in Times of Transition," 2005, p.169.

The process of amendment of the defamation law started in early 2004 and reached the present status through a series of roundtable discussions and lobbying activities by the initiators and the working group with MPs, media lawyers, journalists, editors, civil society representatives, etc. After receiving the written support of 23 MPs, the amendments proceeded to Parliament in May of 2005, but could not be voted due to lack of time, since the general elections took place soon afterwards. Presently, the Albanian Media Institute has resumed its lobbying efforts, since some of the MPs that showed support for the bill did not renew their mandates. This initiative found the support of several international organizations such as OSCE, Article 19, and the Committee to Protect Journalists: "The proposed amendments of Albania's Criminal and Civil Codes would bring Albania closer to striking a fair balance between the right to freedom of expression and the right to reputation."⁶⁰

Implementation of defamation law

Given the rarity of defamation cases in court,⁶¹ as well as the lack of a unified judicial practice in this area, it is difficult to determine its impact on freedom of expression. "The ad hoc

⁶⁰ Article 19 Open Letter to Servet Pellumbi, 28 April 2005.

⁶¹ There are no regular efforts to collect data and documentation on court cases involving media/journalists in the country. Only the most notorious cases are usually followed, involving high-profile politicians, journalists, or celebrities, thus creating a void regarding all other cases that might occur and making it impossible to have complete statistics in this area. Two of the most serious studies on documentation of defamation studies were completed by the Institute for Public and Legal Studies and a report of Human Rights Watch, dating back from 2003, and 2002 respectively. Unfortunately, these were also the most recent studies on this issue, leading to a lack of data/statistics on the trends in this area.

approach taken by the courts any time they are faced with a defamation case tends to put the emphasis on the accurate assessment of facts, with the protection of reputation usually upheld, at the expense of free speech.⁶²

It can be observed that in general civil protection is sought in almost all cases: persons affected have only recently begun to prefer economic compensation. Although this trend certainly marks progress in the context when imprisonment can also apply, proportionate fines should also be applied in order to secure a fair trial. If criminal law is applied, both defamation and insult are considered offences, and the fine/compensation for the offences ranges from ALL 50.000 to ALL 5.000.000 (approximately EUR 400⁶³ to EUR 40,000).⁶⁴ However, if civil law is applied, there is no established minimum or maximum for fines in these cases.

For example, in September 2003, Koco Kokedhima, a well-known entrepreneur and media owner, filed a claim for damages to his reputation against five daily newspaper companies, using civil law. The charge was related to articles that these newspapers had published about the plaintiff, which he claimed damaged his reputation. The newspaper companies did not delegate any representatives to appear in court to prove the falsity of the claims. In this context the court ordered each company to pay a compensation of EUR 800, in addition to court expenses.⁶⁵

⁶² Gent Ibrahim, "Defamation Law in Albania: On the Way to Reform," quoted in Mediaplan Institut,

"The Stumbling of Media in Times of Transition," 2005, p.161.

⁶³ Exchange rate used: 1 EUR = ALL 125

⁶⁴ Criminal Code of Albania, art. 34.

⁶⁵ Verdict of the Court of Tirana, civil case no.727, 04.09.2003, quoted in Albanian Media Monitoring Center, "Albanian Media Monitoring," 2003, p.371-373.

In another case, when one of the companies of the same entrepreneur initiated a lawsuit charging the daily newspaper of the Socialist Party with defamation, the court decision stated that the newspaper should pay damages to the amount of ALL 1,5 million, or EUR 12,000, in addition to a publication of refutation. The newspaper was accused of deliberately defaming the company in some articles that questioned the quality of the construction of roads by the company in question. According to the court ruling, this damage was caused deliberately, because calumnies and offenses have been disseminated through public means, thus endangering the functioning of society.⁶⁶ These two cases clearly show the lack of a model of how to apply proportionate fines and compensation determined by courts in civil cases, given the absence of a legal mechanism that would allow for proportionate fines: "Albanian civil defamation laws, which make harm to reputation a tort, suffer from even greater vagueness and lack of defined standards than the criminal laws."⁶⁷

Another thing to consider when examining the implementation of the defamation law is the burden of proof. According to Albanian legislation, the burden of proof lies with the plaintiff, which is, in theory, good news for journalists and the media. In the most recent period there seem to be no problems with respecting this procedure in court. However, there have been cases in which this procedure has been distorted in the not-so-distant past: "In three consecutive cases from 2000, which involved the then-Prime Minister's wife,

⁶⁶ "Court Indemnifies '2K Group' for the Articles in 'Zeri i Popullit,'" quoted in Albanian Media Monitoring Center, "Albanian Media Monitoring," 2005, p.115-116.

⁶⁷ Human Rights Watch, "The Cost of Speech," June 2002, p.23.

Monika Kryemadhi, who had filed criminal lawsuits against the main opposition party's daily newspaper, *Rilindja Demokratike*, the court distorted one of the basic tenets of the Albanian Criminal Code, as it shifted the burden of proof from the plaintiffs onto the accused journalists, who were invited to show the court the accuracy of the contested statements."⁶⁸

However, probably the most controversial articles on defamation law concern the enhanced protection of public officials vis-à-vis other individuals. In this context, and perhaps in the overall defamation practice, the most celebrated case is that of the lawsuit brought by the ex-Prime Minister Fatos Nano against Nikolle Lesi, an MP and well-known media owner. In March 2004, the then-Prime Minister and two of his aides sued the *Koha Jone* newspaper, owned by Lesi, for non-material damages, after the newspaper's publication of a government resolution. This resolution stated that following the privatization of the largest state bank in the country, the plaintiffs would receive five monthly salaries as a reward, which amounted to corruption, according to the newspaper. The court of first instance found the defendant guilty and ordered payment of damages amounting to ALL 2 million, or EUR 15,000. The ruling was then revoked by the Court of Appeals. However, in addition to the harsh financial penalty in the first ruling, a procedural violation was also noted: "the procedure in the lower court was completed in an unprecedented 15-day timeframe, compared to the usual 3-7 months."⁶⁹

⁶⁸ Gent Ibrahim, "Defamation Law in Albania: On the Way to Reform," quoted in Mediaplan Institut,

"The Stumbling of Media in Times of Transition," 2005, p.161.

⁶⁹ Article 19 Open Letter to Fatos Nano, May 27, 2004.

Without discussing the possibly politically-influenced court decision itself, among other things, this court case reveals the possibility of receiving preferential treatment when one is a high-ranking public official (in this case the second highest in the country): "The courts have failed to make the necessary differentiation between those defamation cases where the allegedly injured person is a private person and those other cases where the injured person is a public figure, thus failing to secure a broader margin of freedom of speech in the latter category of cases."⁷⁰ In fact, rather than adequate legislation, the implementation of legislation by the courts in a fair and independent manner has been one of the main concerns of the development of democracy in Albania for more than a decade now.

However, on a more positive note, the current Prime Minister Sali Berisha issued an order in October 2005 stating that public officials should refrain from taking journalists to court on civil or criminal charges of libel and insult; only official refutations should be made instead.⁷¹ This order, along with the ongoing initiative to pass the amendments on defamation, certainly bodes well for the future of freedom of expression. The present court proceedings for this year reveal only three cases of defamation against journalists, and in the first instance court has ruled that the journalists are innocent in these cases.⁷²

⁷⁰ Gent Ibrahim, "Defamation Law in Albania: On the Way to Reform," quoted in Mediaplan Institut,

"The Stumbling of Media in Times of Transition," 2005, p.162.

⁷¹ Albanian Media Institute, Albanian Media Newsletter, October 2005, available at www.institutemedia.org/newsletter

⁷² Gjykata e Tiranës, Archive of Court Cases, available at www.gjykatatirana.gov.al

Disclosure of classified information/protection of sources

The classification, possession, dissemination, and declassification of state secrets is regulated by the Information Classified as State Secret Act, approved in February 1999, amended in May 2006. When first passed, the law filled a void after the passing of the Criminal Code in 1995, which punished the dissemination of state secrets, but did not define what could be considered state secrets and what the procedures for classification of information would be.⁷³ This law defines a "state secret" as any classified information that, if revealed in an unauthorized manner, would endanger national security.⁷⁴ Depending on the kind of information, the amended law outlines four levels of importance of the information:⁷⁵

- limited: unauthorized disclosure can harm the activity or efficiency of state bodies in the area of national security;
- confidential: unauthorized disclosure can harm national security;
- secret: unauthorized disclosure can seriously harm national security;
- top secret: unauthorized disclosure can cause exceptionally serious harm to national security.

The amendment of the law, which added a fourth level of classification to the existing ones, provoked a reaction, especially from international organizations. "The bill's definition of 'restricted information' is so broad that it can render

⁷³ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.37.

⁷⁴ Law no. 8457 on Information Classified as State Secret, 11.02.1999, hereafter referred to as "Classified Information Act."

⁷⁵ Classified Information Act, art. 3.

meaningless the right to information,” said Darian Pavli, an expert on freedom of information law at the Justice Initiative, “This new classification creates a limitless loophole for denying legitimate requests for information.”⁷⁶ The Albanian government, which initiated the amendments, claimed that the only aim was to satisfy NATO requirements regarding the classification of information, and the law was finally passed in the Parliament. However, in general the amendment did not receive significant media coverage, due to the amendments proposed for the regulatory authorities for electronic media a few days later, which involved most of the media in a two-month debate.

Authorities entitled to classify information include the President, Prime Minister, directors of the State Register of Classified Information authorized by the Prime Minister, and high-ranking officials within these institutions to whom this authority has been delegated.⁷⁷ The law also gives any citizen the right to suggest the classification of information to the relevant institution, if there are valid reasons for doing so.⁷⁸ Although theoretically this article applies to all citizens, in practice the range of citizens who would be able or interested in applying this article is limited to those who are familiar with the law and to state employees, who can come across information that could be classified as state secret.⁷⁹

⁷⁶ Open Society Justice Initiative, “Albanian Secrecy Bill Threatens Freedom of Information,” February 10, 2006, available at: http://www.justiceinitiative.org/db/resource2?res_id=103097

⁷⁷ Ibid, art.4.

⁷⁸ Ibid, art. 5.

⁷⁹ Institute of Public and Legal Studies, “Freedom of Expression: Law and Jurisprudence,” 2003, p.39.

Content that can lead to classification of information includes information on:⁸⁰

- military plans, arms, operations;
- strengths or weaknesses, capability systems, installation, projects and plans related to national security;
- intelligence services' actions, forms, methods, and encryption systems;
- foreign governments' information, international relations, confidential sources;
- scientific, economic, technological issues related to national security;
- other categories of information classified as state secrets by authorized persons.

The legislation's author has also attempted to prevent any abuse of the law by determining that it is forbidden to classify information when this act is done with the aim of hiding violations of the law, administrative inefficiency or errors, hindering the right to information, or hindering or delaying the revelation of information that does not need to be classified as state secret.⁸¹

In addition, the law recognizes some exceptions that allow a person to access classified information, provided that⁸²:

- the person needs to know the information to fulfill legal interests and aims;
- the person has signed an agreement for the non-disclosure of the information;
- the person has credentials of information (clearance to work with it);

⁸⁰ Classified Information Act, art. 6.

⁸¹ Ibid, art. 11.

⁸² Ibid, art. 21.

- the person is mentally capable of acting.

Apart from this, this law does not set out any sanctions for people who violate it, and consequently not even for journalists. These violations are in fact criminalized by articles 294, 295, and 296 of the Criminal Code. These articles make a distinction between the offender's position: namely whether the person was somebody who was entrusted with state secrets because of his/her duty, or whether he/she came to know the information from somebody entrusted with this secret. This distinction is manifested by different sanctions: a state employee can be fined or sentenced to prison for up to five years, while if the crime is committed in a public manner (including through the media) the sentence can reach ten years.⁸³ On the other hand, if the offender is a citizen who does not have access to the information because of his or her duty, a fine or a sentence of three years is applicable; the sentence can be five years if the crime is committed publicly.⁸⁴ In cases of losing information classified as a state secret, the sanctions are more lenient: a fine or a maximum of three years in prison.⁸⁵

In this way, legal provisions regarding classified information are split on two levels: officials dealing with this issue and private citizens. No special provisions are made for journalists or their disclosure of restricted information. In fact, this is a law that has not been the focus of attention in the recent years, neither in cases involving journalists or media in general, nor in cases involving public officials or the public in general.

⁸³ Ibid, art. 294.

⁸⁴ Ibid, art. 295.

⁸⁵ Ibid, art. 296.

Other provisions related to the regulation of information classified as state secrets include article 160 of the Code of Criminal Procedures, which states that state and public employees are not allowed to testify in court on facts that are state secrets. The same is true for those persons who claim that certain information is a state secret, and in such cases the court demands a written confirmation from the classifying authority. Even in cases of confirmation of the secrecy status of information, if proof is essential to the court case, the court suspends the case until the highest state administration body can respond to this dilemma. If there is no answer yet after 30 days, the court forces the witness to testify.⁸⁶ This is the only form of legal provision that obliges the court to demand revelation of information classified as a state secret. Again, this provision was not made with media or journalists in mind, but rather applies to any Albanian citizen.

In light of the above information, it can be concluded that there is no national law protecting journalists from sanctions if they refuse to disclose their sources of information. However, there is a provision in the Code of Criminal Procedures regarding the confidentiality of professional secrets, which includes journalists in the protected group. Article 159 of this Code states that professional journalists cannot reveal information regarded as professional secrets, hence their sources. However, if the data is essential in proving a criminal offense and the source is the only way to prove this, the court can order the journalists to reveal their sources.⁸⁷ In addition, another paragraph of the same article enables the court to force witnesses to provide information, if the court deems that witnesses' claims to withhold information are not valid. The law

⁸⁶ Code of Criminal Procedures, Law no. 7905, 21.03.1995, art. 160.

⁸⁷ Ibid, art. 159.

does provide some sanctions and penalties in case of refusal, as laid out in article 307 of the Criminal Code: the offender can be fined or imprisoned for up to one year and if it is proven that the reason for refusing to testify is personal gain, the sentence of imprisonment can be up to three years.⁸⁸

From another perspective, there are no legal provisions regulating the relationship between journalists and their sources in such cases. Journalists can only appeal to the Code of Ethics or their conscious in deciding whether to reveal their sources or not. The revised Code of Ethics contains a provision stating that journalists should not reveal their sources, unless they have obtained the latter's clear consent to do so.⁸⁹ Whether this is an article journalists will respect remains yet to be seen.

In such potential cases at court, the law provides protection to "professional journalists," without specifying their position in the newsroom or media company, and with no distinction for the kind of media they work in. These cases have been extremely few in number (only a couple in the last ten years), making it difficult to draw a general picture about the practices of journalists and courts in this area. A survey carried out on the ethical behavior of media businesses in 2005 revealed that all ten main media outlets that participated offered legal assistance when it came to court cases.⁹⁰ However, only two of them indicated that the journalist is not involved in these cases, instead the editor-in-chief handles the

⁸⁸ Criminal Code of Albania, art. 307.

⁸⁹ Revised Draft Code.

⁹⁰ Interviews with general managers/directors of the selected media outlets, June 2005, in CPJ/SEENPM, Business of Ethics – Albania.

matter.⁹¹ In other words, there is no established legal route or internal media practice: the procedures are conducted on a case-by-case basis and depending on the issue at hand.

As can be seen, these provisions do not absolutely shield journalists from revealing information; however, they can always appeal to this article. In other words, the degree of protection journalists can claim in these cases is determined by the courts, and the jurisprudence in Albanian courts in this area so far is quite insufficient to allow for any conclusions. Although there have been some similar cases in the past, these cases have become quite rare in the last four years, if not absent altogether. Unfortunately, there is no regular monitoring and documentation of cases of this nature in the country that would help keep track of the development of these cases and their impact on free speech in general and more specifically on media behaviour.

Access to public sources

Journalists, and all citizens, in fact, are entitled to access public documents, unless they are classified information. This practice is regulated by the Access to Information on Official Documents Act, approved in June 1999. According to this law "everyone is entitled, upon his request, to get information on an official document without being obliged to explain the motives of such request."⁹² Excluded from availability are those documents that are classified based on other laws (such as the State Secrets Act or the Protection of Personal Data Act), but in

⁹¹ Interview with Milto Baka, sales manager of TV Klan and Korrieri, 23 June 2005.

⁹² Law no.8503 on the Right to Information over Official Documents, 30.06.1999, art. 3, hereafter referred to as Access to Information Act.

cases of denial, the public authority should provide a written explanation for the refusal.⁹³ The supply of information on official documents may be subjected to fees, if this supply causes expenses, but in any case the fees should not exceed the direct costs incurred for supplying the data.⁹⁴

A sensitive issue connected to this law has been that of time limits, especially concerning journalists, who are continually bound by deadlines. According to this law, the public authority decides whether to accept the request for information or not within 15 days' time,⁹⁵ and in case of admission, the request should be met in 30 (40) days from its admission.⁹⁶ When the bill was being discussed, journalists protested this particular provision, claiming that this delay in receiving information would harm good journalism.

This timeline has also been the focus of international organizations' analyses and recommendations. For example, an analysis of the law by Article 19, commissioned by OSCE, states that the 15-day decision-making period is in line with international standards, but "the 40-day deadline for supplying information represents an unacceptably lengthy delay to responding to applications for information and is hard to reconcile with the shorter decision-making period."⁹⁷

The Government's response when the bill was discussed was that the law was not aimed at journalists; rather, its main objective was to broaden citizens' access to official documents.

⁹³ Ibid, art. 4.

⁹⁴ Ibid, art. 13.

⁹⁵ Ibid, art. 10.

⁹⁶ Ibid, art. 11.

⁹⁷ Article 19, "Memorandum on the Albanian Law on the Right to Information on Official Documents," commissioned by OSCE, September 2004.

This indicates that the assumption is that journalists have their own sources and are able to speed up or obtain the information before the timelines, unlike a common citizen.⁹⁸

Overall, this law has been considered in line with international standards: "However, there exists a sheer discrepancy between the elevated standards of FOIA and its implementation."⁹⁹ The first factor to keep in mind is the lack of proper training of public administrators: "In 2003, 87% of the people surveyed working for public authorities did not even know that Albania had a freedom of information law."¹⁰⁰

Moreover, even when aware of the law, its implementation does not seem to be among the top priorities among authorities. For example, in a monitoring exercise of the law carried out in 22 institutions that were sent an information request, only five answered respecting the 40-day deadline; after lodging an administrative complaint to the other 17 institutions, only 8 of them provided an answer.¹⁰¹

In addition, the extremely low level of citizens' awareness of the law and the weak civic initiative adds to the problem. According to the same survey, only 23 percent of citizens surveyed seem to be aware of FOIA.¹⁰² In light of this

⁹⁸ Institute of Public and Legal Studies, "Freedom of Expression: Law and Jurisprudence," 2003, p.49.

⁹⁹ Chapter on Albania in ACCESS/SEENPM, "Media Landscape of South East Europe," 2002, p.171.

¹⁰⁰ Article 19, "Memorandum on the Albanian Law on the Right to Information on Official Documents," commissioned by OSCE, September 2004.

¹⁰¹ Citizens' Advocacy Office, "Survey on the Right for Information: Tirana, Korca, Shkodra," 2004, p.11.

¹⁰² Citizens' Advocacy Office, "Survey on the Right for Information: Tirana, Korca, Shkodra," 2004, p.13.

situation, major projects have been started to raise awareness of this law, coupled with further training of public administrations on the implementation of the law. The Albanian Media Institute has focused a significant part of its activities in the last two years on promoting awareness of the law among journalists in different areas of the country. However, due to the lack of monitoring and research in this area, there is no accurate information on the degree of awareness and implementation of the law.

On a more specific level, there is no media accreditation by the main public institutions and in general there is no problem in allowing media access to public meetings, unless the nature of the meetings forbids outside attendance. It is a fact that the media in Albania cover key events and issues with little restriction.¹⁰³ The only problem that comes to mind in this context is that of the main opposition party in 2004 denying access to News 24 TV. The spokesperson of the party at the time claimed that the television only broadcast news that was, in fact, fiction written by the government, while refusing to broadcast the confutations that the Democratic Party had sent them.¹⁰⁴ After a brief period of mutual censure from both sides, the media was allowed to follow the party's activities again. However, this can be regarded as an extreme and isolated case; the norm is usually that there are no problems with media access in public institutions.

¹⁰³ IREX, Media Sustainability Index 2005, available at <http://www.irex.org/msi/2005/MSI-2005-Albania.pdf>

¹⁰⁴ "Akuzat e PD," Gazeta Shqiptare, August 21, 2004.

Conclusions

Improving the ethical conduct of the Albanian media is a difficult task, but not necessarily an impossible one. The existence of the Code of Ethics has not affected the ethical record to date, given the lack of an implementing mechanism. Recent developments led to the revision of the code and its update, which has been generally accepted by stakeholders at the moment.

However, the true test of the code and its impact on the media scene will be the establishment of a self-regulating body. Even though the stakeholders have generally agreed on the need to establish such practices and have expressed willingness to abide by some ethical guidelines, there are other areas that still need to be considered. The feeble position of journalists vis-à-vis management and owners, combined with their lack of organization, does not favour the articulation and pursuit of their interests, thus impairing editorial independence and ethical standards. The lack of strong trade unions or associations of journalists and of implementation of labor provisions by the state have only worsened journalists' position, reducing their potential for ethical behaviour.

Despite recent developments, it will be a long time before journalists properly organize themselves. Amendments to legislation on defamation, however, may change in the near future. Although rarely used, Albanian provisions on defamation are out of synch with international standards and can have a chilling effect on media freedom, as case law in the past has proved. On a more positive note, the new government has showed good will in this regard recently, in spite of the many necessary steps this change has to go through before becoming

effective. In this context, it becomes increasingly important for Albanian media to respond to greater freedom with greater responsibility and accountability.

Recommendations

The Government should take specific steps to enforce the Labour Code in media organizations and regularly monitor its implementation.

Journalists' associations, with the assistance of other representatives of civil society, should demand enforcement of the Labour Code in media companies and eventually implement collective bargaining.

Civil organizations should support individual journalists whose rights are violated by media owners, state authorities or other parties.

The Government and civil society should regularly monitor and investigate allegations of violations of media freedom and independence.

Civil organizations and journalists' associations should raise awareness about the newly revised code of ethics and facilitate the process for the establishment of an effective body that would supervise its implementation.

Journalists' associations should significantly strengthen the capacities for public debate and awareness of media organizations and associations, particularly through improved cooperation and by promoting journalists' rights vis-à-vis media owners and the Government.

Parliament should repeal criminal insult and libel provisions as well as provisions on enhanced protection for public officials.

Parliament should amend the civil provisions on non-proprietary damage in order to provide for a proportional mechanism of compensation, after all efforts to mitigate damage of reputation have been considered.

The government should provide systematic training to judges on international human rights law, especially on the jurisprudence of the European Court of Human Rights.

Bosnia and Herzegovina

By Mehmed Halilovic

Executive summary

Bosnia and Herzegovina (BiH) has constitutional and legislative guarantees for freedom of expression and to a great extent a well-regulated legislative framework for media operation, which in many of its elements is based on the European Convention of Human Rights and the European Court of Human Rights.

Freedom of expression is guaranteed, but its protection in potential lawsuits is not precisely regulated.

Unlike in most European countries, in Bosnia and Herzegovina defamation and libel were completely decriminalized six years ago, allowing trials of this kind only in civil lawsuits. Sentences can only be pronounced requiring compensation to be paid to the injured party if harm is established.

In the last six years no journalist or editor has been tried in criminal proceedings for defamation.

Implementation of the Defamation Law has indirectly contributed to somewhat greater professionalization of the media.

The self-regulation system in the print press has been placed on a good foundation, but is still not widely accepted either by professional circles or the public at large.

Ethical norms contained in the Broadcast Code of Practice are observed to a greater degree than the Code for print journalism, because their application is controlled and, if needed, enforced by the Communications Regulatory Agency.

The Regulatory Agency has affirmed itself as an independent state body that protects both the independence and the professionalism of all television channels and radio stations; however, it has occasionally been attacked by the government and political parties that want to use it to control the media.

Protection of confidential sources is guaranteed by several laws, and to date there have been no lawsuits concerning the violation of this journalistic right.

Protection of classified information is regulated by the Classified Information Act, but this law partly contradicts the Freedom of Access to Information Act, which does not allow for automatic exceptions from disclosure of information in the possession of public authorities.

Context

Bosnia and Herzegovina has been an independent state since 1992, following the disintegration of the former Yugoslavia, and it suffered terribly during the war, which lasted from from April 1992 to the end of 1995. Apart from effectively stopping the war, the 1995 Dayton Peace Agreement, which provides a framework for the constitutional and territorial arrangements for Bosnia and Herzegovina, also laid out a complex political system. Bosnia and Herzegovina now consists of two entities: the BiH Federation (FBiH) dominated by Bosniak (Bosnian Muslims) and Croat (Bosnian Catholics) populations, and Republika Srpska (RS), which is dominated by Serbs (Bosnian Orthodox). Besides these two entities, there is also the Brcko District. Moreover, the FBiH is divided into ten cantons: four dominated by Croats, four by Bosniaks, and two mixed. Implementation of the Agreement's civil aspects is the responsibility of the Office of the High Representative (OHR), whose powers are affirmed by the United Nations Security Council and which also acts as the special representative of the European Union (EU) in the county. The High Representative has supreme legislative and administrative powers. The Bosnian political scene is still significantly shaped by three ethno-nationalist parties.

As a result of wartime devastation, the GNP today is \$1,845 per capita according to the Central Bank of BiH (www.cbbh.ba). The country is inhabited by 3.8 million people, as estimated by the Agency for Statistics of BiH (www.bhas.ba). Most of the economy has been privatised, with the exception of large and profitable companies (such as oil and telecommunications companies).

The development of the media sector is evident as part of the slow, but steady movement forward in almost all segments of Bosnian society. However, it has been hindered by the persistent influence of political parties, business groups, governments and religious organisations, as well as by the rather bleak economic prospects for the media market. Media outlets remain vulnerable to political pressure.

Media outlets in Bosnia and Herzegovina can be either public or private/commercial. All print outlets in Bosnia and Herzegovina (with the exception of one daily, namely *Glas Srpske*, which has the status of the state newspaper of the Republika Srpska) are private.

The majority of broadcasters are commercial. A number of municipal and cantonal radio stations and television channels (15 television channels and 63 radio stations) have the status of local public media outlets and to a great extent depend on funding from municipal and cantonal government budgets, while several radio stations and television channels in the two entities and at the state level (*Radio and Television of the BiH Federation*, *Radio and Television of Republika Srpska*, and *Radio and Television of Bosnia and Herzegovina*) have the status of public services. The public services of the two entities and the state public service are funded solely from a subscription fee/tax that all citizens who own a television or radio set have to pay, and also from commercial activities (especially advertising).

Constitutional and legislative guarantees

In Bosnia and Herzegovina freedom of expression is guaranteed under the constitution and the law. However, this country has a number of constitutions and laws: at the level of the state, at the level of the two entities that make up the country, and at the level of the ten cantons that make up one of the two entities (the BiH Federation). All constitutions and some laws guarantee freedom of expression.

The BiH Constitution, in article II, paragraph 3, guarantees the "right to freedom of expression."

The constitutions of the two entities also contain such guarantees. The BiH Federation Constitution, in the section on human rights and freedoms, in article 1, guarantees fundamental freedoms, including "freedom of speech and press, and freedom of conscience and conviction..." The constitution of the other entity, the Republika Srpska (RS), in section II (Human Rights and Freedoms), article 25, states that "freedom of thought and choice, conscience and conviction, as well as public expression of opinion, shall be guaranteed."

Bosnia and Herzegovina, like most member states of the Council of Europe, has accepted all international conventions on human rights and formally adopted them as an integral part of its constitutional system. This means that international conventions on the protection of freedom of expression are an integral part of domestic legislation.

The Constitution of Bosnia and Herzegovina, like the constitutions of the two entities, contains a provision according to which "the rights and freedoms specified by the European

Convention on the Protection of Human Rights and Fundamental Freedoms shall be directly applied” and “shall have precedence over all other laws” (BiH Constitution, article II, paragraph 2).

The BiH Federation Constitution, in an appendix entitled “Instruments for the Protection of Human Rights with the Legal Force of Constitutional Provisions,” lists a total of 21 international conventions and declarations, among them the Universal Declaration of Human Rights (by the United Nations), the European Convention on the Protection of Human Rights and Fundamental Freedoms, as well as the 1966 International Covenant on Civil and Political Rights.

Freedom of expression, as has already been mentioned, is also guaranteed by domestic laws. The Defamation Law, passed with almost identical texts in both entities, in article 2, paragraph b, states:

“the right to freedom of expression as it protects both the contents of an expression, as well as the manner in which it was made, and is not only applicable to expressions that are received as favourable or inoffensive, but also to those that might offend, shock or disturb.”

Article 3 adds that “this law shall be interpreted so as to ensure that the application of its provisions maximizes the principle of freedom of expression.”

Protection of freedom of expression formulated this way does not cover only journalists and media, but refers to everyone.

Protection of freedom of expression is also guaranteed by laws on public information (in the Republika Srpska) and by laws on media and public information in the BiH Federation cantons. They quote the basic principles from article 10 of the European Convention on the Protection of Human Rights and article 19 of the Universal Declaration of Human Rights, among other principles.

The Communications Law, in article 4, points out that:

"...the regulatory principles of broadcasting encompass protection of freedom of expression and diversity of opinion, observing the generally accepted standards of conduct, non-discrimination, fairness, accuracy and impartiality."

The existing legislative framework is in principle sufficient to guarantee freedom of speech and freedom of expression, but in practice the media are not entirely protected from occasional political pressure, especially at the local level. Courts have jurisdiction over cases of violation of freedom of expression. However, precise provisions with regard to this do not exist and there is no practical experience, since there have been no court cases of this kind so far.

An example of insufficient legislative regulation can be found in article 3 of the Sarajevo Canton Law on Media, which states that "disputes regarding violation of the freedom of public expression shall be decided by the responsible court."

There are no restrictions on registration and start-up of media outlets, except for a restriction on broadcasters, who must have an appropriate license issued by an independent regulatory agency. The print press in FBiH has to register only

with the Statistics Agency, and in the Republika Srpska with a Republika Srpska government office.

The Communications Regulatory Agency (CRA) is the sole agency in charge of licensing radio and television stations, both public and private/commercial ones. In keeping with the Communications Act, CRA operates as a functionally independent and non-profit agency that regulates the broadcasting sector, public telecommunications network and licensing, and defines requirements for the operation of common and international communication structures. At the same time, CRA oversees the application of licenses and in cases of violation – be it violations of technical requirements of licenses or editorial rules – it has the power to pass sanctions.

The licensing process for broadcasters is transparent, independent and competitive.

CRA's independence to a great extent ensures the independence of the broadcast media. Mechanisms that guarantee CRA's independence are built into the Communications Act and Financing of BiH Institutions Act, which specify that neither the Council of Ministers (BiH Government), nor the individual ministers, may interfere in CRA's decision-making process. In addition, according to article 40 of the Communications Act, officials of legislative and executive institutions at all levels of government, as well as members of political party bodies and persons with any financial ties to telecommunications operators or broadcasters, cannot be appointed to the positions of General Director, nor can they perform the duty of CRA council members.

Independence of public broadcasters in the framework of the BiH Public Broadcasting System is guaranteed by the Public Broadcasting System of Bosnia and Herzegovina Act. Article 4 of the Law clearly stipulates that public broadcasting services have editorial independence and institutional autonomy.

However, along with formal preconditions, a crucial basis for overall independence of public broadcasting services, as well as all other media outlets, is their financial independence. Public broadcasters have a lot of trouble collecting the compulsory monthly subscription fee/tax, which puts them in a difficult material situation. In addition, the present system of collection (the tax is paid together with the fixed telephone bill) has not proven ideal and is often used as a means of putting pressure on public broadcasters. Political and religious leaders from the different ethnic groups, when they disagree with the editorial policies of public broadcasters, often call on the population to boycott paying the subscription fee.

Presently, the greatest limitation to the operation of public services is the fact that a law on public services that is in line with European directives (European Commission requirements for Bosnia and Herzegovina to sign an association agreement) has not been passed in one of the two entities, namely the BiH Federation, as a result of a political conflict between ruling parties.

Nevertheless, we can say that the situation concerning media freedom in the country is generally positive and that considerable progress in comparison to earlier years is evident.

However, the media and journalists are also subjected to pressure exerted by the owners of the outlets that employ

them, due to the fact that BiH does not have collective contracts at the state or entity level between journalists' associations and media companies. Further, the very poor economic situation and the high unemployment rate make journalists vulnerable to pressure by media company owners. In BiH there are no legislative obstacles to working as a journalist, and journalists are not required to register or obtain a license.

Although there have been no cases of direct and systematic state censorship, a phenomenon of self-censorship is present and is practiced relatively often because journalists are afraid of losing their jobs, while editors and owners are afraid of losing advertising revenue.

Newspapers, unlike broadcasters, are not subject to legislative regulation of editorial policy and content. Furthermore, as of 2001, print outlets have not been obligated to request a formal permit and registration from the authorities.

In the initial versions of laws on public information in the two parts of Bosnia and Herzegovina, especially in laws on public information and laws on media at the level of cantons in the BiH Federation, which were in effect until 2001, and also in the Public Information Act in the Republika Srpska, media outlets were required to register in the media record kept by the responsible executive authorities (for example, ministries of culture, education, science and information, etc.). According to this obligation, newspaper publishers and founders of radio and television stations first had to register their media outlet and could start working only after receiving a permit. Authorities could deny the permit only if formal requirements were not met – i.e., if they did not submit all applications - but they could not judge and deny the permit as a result of potential disagreement

with the announced editorial policy of any newspaper or radio station and television channel.

These provisions were revoked in 2001 and 2002 after the ombudsmen intervened (the institution of ombudsmen in charge of the protection of human rights was set up in 1995 in the BiH Federation and is headed by three ombudsmen with a number of deputies and assistants, including a deputy in charge of media). They judged that “executive authorities cannot and should not have any power over registration and licensing of media outlets, including this formal power,” because it “may constitute a concealed form of media control.” In addition, broadcasters (i.e., radio stations and television channels) must request and obtain a license from the Communications Regulatory Agency in any case and therefore their registration with executive authorities is pointless.

Market conditions and tax burdens are generally equal for all media. If there is any inequality, it is reflected in the fact that in a certain sense, local media are on unequal footing with foreign media. This means that press imports are completely free in all of Bosnia and Herzegovina and you can buy press from all neighbouring countries. However, due to economic and partially political barriers put into place by the neighbouring countries (Serbia and Croatia), BiH press usually is not sold there, except during the tourist season.

Press distribution is regulated by local laws on public information and laws on media (in the RS at the entity level and in the BiH Federation at the cantonal level). The Law on Media of Sarajevo Canton (this is similar in other cantons) states that “distribution of press shall be free” (Article 49).

Press distribution may be restricted by the law. The Sarajevo Canton Law, for example, states that “distribution of press with pornographic content shall be carried out in accordance with a separate act passed by the responsible minister” (article 54), and that:

“...distribution of press that threatens the state security or territorial integrity of the country, instigates racial, ethnic or religious hatred or intolerance, urges the commission of crimes and propagates or supports an act against humanity, shall be prohibited” (article 55).

A separate regulation that prohibits “distribution of press with pornographic content” has never been passed, nor has any publication been banned for this reason.

A Regulatory Agency Rule on Media Concentration and Cross Ownership has been in effect in BiH since April 2004, clearly defining criteria for preventing ownership concentration within the media market. According to this rule, a physical or legal person cannot own two or more radio stations or two or more television channels covering the same population. The rule also restricts cross ownership over broadcast and print media by allowing the owner of a print outlet to own just one broadcaster (television channel or radio station) at a time.

Along with CRA rules, the issue of market concentration and competition is also regulated by the Competition Act of BiH, in effect since 2001. However, despite formal and legislative preconditions for preventing media concentration, the lack of transparency in company ownership is a considerable problem in the implementation of these laws and rules. BiH’s problem is that it does not have a central register of print outlets, nor a central register of commercial companies, while all existing

archives are mostly in hard copy rather than electronic format and are difficult to access. This situation seriously restricts real transparency of ownership in the media sector.

Still, according to available data on ownership in the most important media and CRA assessments, at the moment there are no cases of serious media concentration in BiH that would in any way pose a threat to fair and open market-driven competition.

The fact that one-third of television channels and almost one-half of radio stations depend on funding from state institutions and authorities at the local and regional levels certainly indicates a lot of room for political control over media, although it is hard to establish a direct link. It is even harder to establish direct political influence on the print media, which are funded solely in market-driven conditions, although it is usually clear from their reporting which political position they are aligned with. While some outlets consider themselves independent, others see themselves in a so-called nation-building role, typically taking on the representation of one of the BiH national groups as their mission, or giving open support to political parties, not just through commentaries, but also through the release or suppression of information (manipulation of information). This is especially true for the print media. A long-standing, politicized conflict between two groups of print press in the capital of Sarajevo, waged in the publications themselves and in court defamation suits, continues to undermine professional norms.

Ethical Codes

Ethics and professional standards in journalism are defined by the Press Code (in effect since 1999), a self-regulatory instrument that applies to press journalists. There is also a Broadcast Code of Practice, in effect since 1998, which regulates journalists and editors of radio and television programs. The Press Code is posted on the Press Council website (www.vzs.ba/default.asp), while the Broadcast Code of Practice can be found on the Communication Regulatory Agency website (www.rak.ba/index.aspx).

Representatives of six journalistic unions/associations and the Communications Regulatory Agency were involved in designing the Press Code. All six signed and accepted the Code.

Other civil organisations beyond the journalistic profession did not take part in this process, nor did media outlets directly through representatives.

The Broadcast Code of Practice was passed by the Regulatory Agency with the participation of representatives of radio stations and television channels.

The Press Code contains provisions protecting the public's right to information, setting down standards on editorial responsibility, emphasizing the importance of accuracy and fair reporting and of separating commentary from assumptions and facts, and committing journalists to specific professional conduct in various circumstances (manner of presentation, writing about persons accused of committing crimes, protection of children and minors, attitude to sponsors and advertisers, protecting confidential sources, observing copyrights, etc.). The

content of the Broadcast Code of Practice is similar, but it has additional specific characteristics (such as the obligation to keep audio and/or video recordings for 14 days after airing them).

The top self-regulatory body charged with applying the Press Code is the Press Council, an independent non-governmental organisation.

The Press Council was set up in late 2000 and started operating in 2001 as the first self-regulatory body in the region. In the Press Council's first configuration, each of the six associations that existed at the time had one journalist representing them; they each also named one representative of the general public (such as scholars, cultural and public officials). The Council Chairman until 2005 was the President of the Press Council in Great Britain. Today, the proposal is that the Council should consist of six representatives of journalist associations and publishers (four delegated by journalists' associations and two by publishers, according to the latest proposal) and four representatives of the public. The proposal has yet to be adopted by the founding assembly, composed of all the journalists' associations and representatives of newspaper publishers, which is supposed to meet by the end of 2006.

In April 2005 the BiH Press Council appointed the first local Chairman (a professor from the University of Banja Luka).

According to the latest proposal to be implemented by the end of 2006, the members of the Press Council will be newspaper publishers and four journalist organisations (three of the original six organisations integrated into one). The Council will have an assembly and steering board, a complaints

commission and a special emergency complaints commission. The complaints commission is supposed to be made up of three representatives of journalists, two representatives of publishers and four representatives of the public, while the emergency complaints commission will consist of three members of the complaints commission. The Council's professional body will be a secretariat consisting of an executive director, complaints official and technical/financial official.

The Press Council is charged with overseeing the implementation of the Press Code, settling public complaints regarding articles published in the press, promoting press freedom, and acting as an advisory body.

Implementation of the professional standards in the Broadcast Code of Practice is the responsibility of the Communications Regulatory Agency, which is empowered to pass appropriate measures, including fines and suspensions, or even to revoke licenses for radio stations and television channels in cases of major violations of the Code by any broadcaster.

Thanks to the Regulatory Agency's strong position, we can say that broadcasters generally observe the basic ethical and professional standards, such as adhering to "generally accepted civilized standards of decency," also to "respecting ethnic, cultural and religious diversity in Bosnia and Herzegovina," and to respecting "privacy, protection of children and minors, and clear separation of advertisements from other content."

The observance of ethical norms in the print press is poorer. According to a special report of the Press Council for

2004 and 2005 (the Press Council analysis on adherence to the Press Code in daily, weekly and periodical papers in Bosnia and Herzegovina is available only in hard copy in the local languages and is not available in English or on the website), dailies and periodicals considerably violate the Press Code. Further, some of the analysed articles contain not just one, but several possible violations of the Code.

The reason for such violations is fierce competition among a relatively large number of newspapers (eight dailies and dozens of periodical newspapers) on a very small, underdeveloped and poor market, resulting in reduced professional standards and a lower degree of respect for journalistic ethics.

Awareness of the Press Code's significance, as expected, is also relatively low among the general public, which can be seen from the fact that in almost six years (by May 2006) only 143 complaints were filed.

However, it is encouraging that courts have lately been referring to the Press Code in judging the professional conduct of journalists in defamation trials. This fact, as well as the large number of defamation trials and awarded compensation to be paid by press outlets, has indirectly started to boost the reputation of the Press Council and the public's trust in it.

The Press Council launched an awareness campaign several times to present itself to the public, but due to lack of funds it has discontinued this activity.

The Council basically operates by receiving complaints, examining them to see if they meet formal requirements and

then initiating investigative proceedings. Although it can act on its own initiative, there have been no examples of that. Over two years (2004 and 2005) the Council ordered expert analyses of observance of the Press Code in the print press, which it then published, as a kind of self-initiated action to draw attention to evident violations of ethical norms.

Any person or organisation who feels damaged by what newspapers have written about them has the right to file a complaint with the Council; furthermore, this right is not denied to anyone else who believes that a newspaper has violated the Code. The majority of complaints lodged so far were made by persons who considered themselves directly affected by certain articles.

The Council always insists, before examining a case, that the allegedly injured party request the publishing of a correction/apology. If this condition has been met, and the injured party insists that the Council react, then the Council assumes the role of mediator and, if mediation yields no result, ultimately passes a decision on violation or non-violation of the Code. The Council does not have any other measures or methods of punishment at its disposal. All Council decisions are delivered to the media and posted on the Council website (www.vzs.ba/default.asp). Daily papers carry all decisions in part, while periodicals only those referring to them.

Dnevni Avaz, the daily with the highest circulation, has not published Press Council decisions in most cases so far, not even those that refer to it. The paper had actually denied support to the Council ostensibly because it did not have a representative there, but probably also because a large number of complaints were directed at its articles. In mid-2006 the

paper's publisher and editor-in-chief pledged support to the Council.

Support by other newspaper publishers is not questionable in principle, but it has not materialized so far in the form of financial contributions to the Council's work.

Since its beginning the Council has been funded by foreign donations, which are diminishing, and a possibility is now being explored to secure financial support from publishers and the state. According to the proposal, publishers should provide at least ten percent of the budget in 2006 and 25 percent in 2007. The Press Council wants to 40 percent of funding to come from the state budget (talks are underway with the Government).

Dual financing – i.e., by the media industry and limited funding by the state – is considered the most realistic option to make the body self-sustainable in the near future. The Council is deliberately not requesting a higher percentage of funding from the state budget in order to preserve its independence as a self-regulatory body and not become a state-run body.

Press outlets do not have staff such as newsroom ombudspersons or readers' editors, nor do they have their own ethical norms. The country also does not have any professional publications for journalists to discuss these issues. The leading dailies give journalistic awards to their journalists who they elect as having contributed to the quality of the paper (*Dnevni Avaz*, *Oslobodjenje*, *Nezavisne Novine*), and only one newspaper (namely *Nezavisne Novine*) last year started giving an annual award for the best journalist in Bosnia and Herzegovina, whom they elect. The four professional

journalists' associations give joint traditional annual awards to the best journalists in the country.

Defamation

Defamation and libel are not part of the criminal code and do not constitute criminal acts in Bosnia and Herzegovina.

As of 2001/02 a new Protection Against Defamation Act has been in effect in both entities, allowing only civil proceedings to be conducted for defamation lawsuits. The two entities have separate laws, but they are basically identical.

For libel it is possible to conduct a trial according to a law covering obligations, but it is rarely used.

There have been approximately 400 defamation trials in less than four years (note: cases reported to the Press Council in this period number 143, while cases of violation of the Broadcast Code of Practice reported to the Regulatory Agency from 1999 to this day number 216). The number of new defamation lawsuits has lately been reduced.

Generally speaking, the law in Bosnia and Herzegovina establishes a good balance between the right to freedom of expression and the protection of reputation and dignity. Defamation is defined as willingly or negligently making or disseminating false fact (article 6, paragraph 3).

Responsibility for defamation in the media lies with the author, responsible editor and publisher; thus, a lawsuit may be filed against any one of them or against all three.

Responsibility for expression of opinion is excluded. The Protection Against Defamation Act specifically defines in article 7 that “there shall be no liability for defamation where [...] by the expression an opinion was made.” There is also no responsibility for an expression if it is “substantially true and only false in insignificant elements,” and also if what is disseminated was expressed in the course of legislative, judicial or administrative proceedings, and if the dissemination of the expression is “reasonable.”

Protection of the state, state symbols and state institutions existed only at the time when criminal codes foresaw criminal liability for defamation and libel. Today, these symbols are not protected by any law, including the Protection Against Defamation Act.

Politicians and public figures are not specially protected by this law. On the contrary, the degree of their protection is lower than that of ordinary citizens. The Sarajevo Canton Law on Media (article 5, paragraph 3) emphasizes that “public figures have the right to protection of privacy, except in cases related to their public life.”

In addition, public bodies (authorities such as governments, parliaments, courts, etc.) are barred by the Protection Against Defamation Act from filing a request (lawsuit) for compensation of harm for defamation. Public officials may file a request for compensation of harm for defamation privately and exclusively in their personal capacity (article 5 of the Law).

The Law prescribes that compensation awarded in defamation trials “shall be proportional to the harm caused” and shall not result in “severe financial distress or bankruptcy

for the outlet that allegedly caused the harm.” The amount of compensation is not determined in absolute figures. Compensations awarded so far can be considered moderate, ranging from 500 to no more than 10,000 Euros (in just a few cases).

The Law also obligates the court to:

"take into account all circumstances of the case particularly [...] good faith and adherence to generally-accepted professional standards by the person (media outlet) who allegedly caused the harm" (article 7, paragraph 2, item 3).

This is considered the greatest possible encouragement to journalistic freedom. In other words, similar to the legal stand of the European Court of Human Rights, journalists can defend themselves even in the case of having made untrue expressions, provided that they can prove in court that they acted in good faith, in the public interest, and in line with professional standards. Court practice in Bosnia and Herzegovina shows that this kind of defence is accepted.

The right to a correction is envisioned by the laws on public information at the level of the RS and by laws at the level of cantons in the BiH Federation, and also by laws on protection against defamation (in both entities).

In the Protection against Defamation Act (both entities), correction is mentioned in article 8:

"An allegedly injured person shall undertake all necessary measures to mitigate any harm caused by the expression of false fact and in particular requesting a correction of that expression from the person who allegedly

caused the harm (newspaper, radio station or television channel)."

This means that an injured person actually cannot file a lawsuit requesting compensation for defamation, unless previously requesting a correction.

Implementation of the Defamation Law has indirectly contributed to somewhat greater professionalism of the media, which may be included among its positive effects. This is evident especially in newspapers and television channels that started carrying articles and programmes that are of a more professional quality – probably to avoid potential defamation lawsuits – and especially providing regular corrections, reactions and even apologies, which they typically did not do before.

Implementation of the Law is also important for the courts themselves, which especially in these lawsuits have started to rely to a greater extent on the European Convention on Human Rights and Fundamental Freedoms and judgments of the European Court of Human Rights. In some judgments, especially in the section where courts determine whether journalists and media outlets acted professionally, one can even find references to the local Press Code.

But there are also opposite examples, such as four judgments passed by a cantonal court, which ruled in favour of the plaintiffs and against the journalists, after concluding that "the innocence of the plaintiff goes without saying," and judged that the "defendant [journalist] did not succeed in proving the truthfulness of the facts expressed." The court did not allow the journalist who was sued to prove his professional conduct, but rather asked him to prove the truthfulness of the allegations

made, which is in contravention of the Protection Against Defamation Act and European Court position. According to the defamation laws, both in the Republika Srpska and in the Federation of Bosnia and Herzegovina, the burden of proof lies with the plaintiff.

These judgments provoked a reaction from the human rights ombudsmen, who assessed this position as unacceptable because it considerably restricts the role of journalists and media in democratic society. The four judgments were overturned in appellate proceedings.

Protection of sources

Protection of sources of information is stipulated by laws on public information/laws on media and by the Protection against Defamation Act.

The Protection against Defamation Act in article 9 states:

"1. A journalist, and any other natural person regularly or professionally engaged in the journalistic activity of seeking, receiving or imparting information to the public, who has obtained information from a confidential source has the right not to disclose the identity of that source. This right includes the right not to disclose any document or fact which may reveal the identity of the source, particularly any oral, written, audio, visual or electronic material. Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law. 2. The right not to disclose the identity of a confidential source is extended to any other natural person involved in proceedings under this Law who, as a result of his or her professional relationship with a journalist or other

person referred to in paragraph 1 of this Article, acquires knowledge of the identity of a confidential source of information."

As we can see, the right to protection of confidential sources in defamation trials is absolute ("under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law"); this right does not cover only journalists, but is extended to all those involved in the process of receiving or imparting information; furthermore, it protects journalists' entire equipment and material (be it written, audio, visual or electronic material). This protection covers all journalists in the press, television and radio.

Protection of sources on the internet is not explicitly mentioned anywhere.

The Sarajevo Canton Law on Media in article 40 also emphasizes that "a journalist shall have the right to protect the confidentiality of sources of information reached through research" and adds that "disclosure of a source may only be ordered by the responsible court and only if it prevents a crime against life."

Other laws do not contain any provisions on protection of confidential sources or potential punishment for refusing a court order to reveal a source. There have been no court cases so far in which journalists were ordered to reveal their sources.

Protection of a confidential source is also mentioned in the Press Code (article 13). In this article, journalists are

requested “whenever possible, to rely on open, identified sources,” adding:

“journalists and their publications have the obligation to protect the identity of those who have given information in confidence, regardless of whether they explicitly requested confidentiality.”

Disclosure of classified information

Bosnia and Herzegovina has a Protection of Classified Information Act, whose implementation started in 2005. There are no other laws regulating this area, with the exception of the Freedom of Access to Information Act, which specifies that all information possessed by public authorities may be disclosed except that specifically listed in this law and if its release “is not in public interest” (article 5 of the Law).

These two laws are contradictory to a certain extent, since the Freedom of Access to Information Act proceeds from the assumption that all information possessed by public authorities may and should be disclosed (except for the exceptions listed by the Law) and that all requests for access to information should be solved on a case-by-case basis. Meanwhile, according to the Protection of Classified Information Act, every document and all information from areas listed in the Law may be marked as classified to a certain degree and automatically excluded from the possibility of disclosing their content to the public.

The Protection of Classified Information Act specifies which data, information and documents may be declared

classified, defines the procedure that state bodies need to take to declare their information and documents classified, and also states who has access to such information.

The law defines the different degrees to which a document may be classified (top secret, secret, confidential, and restricted) and the areas in which information and documents may be declared classified: public safety, defence, external affairs and interests, intelligence and security interests of the country, and scientific, research, technological, private and financial affairs of significance to the safe functioning of state institutions and security structures in Bosnia and Herzegovina.

The law obligates public authorities and employees to safeguard the secrecy of documents and specifies fines for their unauthorized disclosure (ranging from 500 to 2,500 Euros).

In no way does the law obligate persons who officially do not have the obligation to keep secrets and are not employed by state and security services. Not a single case of violation of the law or punishment of official persons, or instigation of court proceedings against journalists or media, has been reported so far.

The law specifically states (article 9) that information whose secrecy is established with the intention of covering up the commission of a criminal act, the overstepping or abuse of authority, or with the aim of covering up any illegality or administrative error, shall not be classified.

The law does not mention the criterion of public interest as a basis for disclosing government documents marked as

classified, but this criterion does exist in the Freedom of Access to Information Act, which may be crucial in lawsuits. That is, along with exceptions that protect confidential data about commercial interests on one hand, and data about privacy of third persons on the other, the Freedom of Access to Information Act also defines exceptions for information “whose dissemination may cause considerable harm to the legitimate aims” of government bodies at all levels, which regards defence and security interests, as well as protection of public safety, prevention of crime and exposure of crime, and also protection of decision-making procedures in public authorities.

As we can see, these areas match to a great extent the Protection of Classified Information Act. However, there is one difference: the Freedom of Access to Information Act specifies that public authorities must disclose even information that may be classified “if this is justified by public interest, bearing in mind all benefits and all harm that may result from doing so.” Under the Protection of Classified Information Act, however, information and documents labelled as classified are automatically excluded for possible public access.

Access to public sources

Availability of information possessed by state bodies is defined by the Freedom of Access to Information Act. Bosnia and Herzegovina has three such laws: one at the state level, and one each at the level of the two entities. There are no significant differences among them.

The main characteristic of all three laws is the rule on disclosure of all information possessed by public authorities and

the very limited exceptions specified by these laws. The laws do not differentiate between the various public authorities, which they define broadly. Thus, practically all bodies funded in any way from public revenue (budgets, subscriptions, contributions, voluntary local tax, etc.) have this obligation.

Exceptions from disclosing information can be applied only based on the Freedom of Access to Information Act (which makes it *lex specialis*), meaning that exceptions that existed before in other laws should no longer be applied, except – as is stated – in the law on court proceedings. In reality, however, there are other laws (in addition to the already mentioned Protection of Classified Information Act, there are also laws on tax administration, police, criminal proceedings, etc.) that restrict the public's right to access certain information, and this is actually an additional limitation of this law.

Laws on freedom of access to information do not mention journalists at all, which means that under this law they do not enjoy any special benefits over other citizens.

Conclusions

The constitutional and legislative guarantee of freedom of expression has been fully implemented in all constitutions and relevant laws in Bosnia and Herzegovina, but its application in practice is nowhere near its legislative regulation.

The legislative framework for media operation is well regulated and generally in line with European standards. There is, however, disharmony between some laws and the Freedom of Access to Information Act, one of them being the Protection

of Classified Information Act.

Unlike most European countries, Bosnia and Herzegovina has fully decriminalized defamation and libel. The number of defamation lawsuits is large (400), but has lately been dropping.

The self-regulation system in the print press has been placed on a good foundation, but is still not widely accepted either by professional circles or the public.

Ethical norms contained in the Broadcast Code of Practice are observed to a greater degree than the Code that applies to print journalists. Implementation of the former Code is controlled and, if needed, enforced by the Communications Regulatory Agency, which may be considered a very good example in the region. The Press Council has jurisdiction over violations of the Press Code, but neither the press, nor the public supports it.

Protection of confidential sources is regulated by several laws and there have been no cases of violation of this journalistic right.

Recommendations

The following activities are recommended:

- Harmonizing the Freedom of Access to Information Act with other laws, in particular it the Protection of Classified Information Act;
- Monitoring the independence of the regulatory body and the public broadcasters and, if needed, applying public pressure on local political forces that are trying to

establish control over the Regulatory Agency and public radio and television services;

- Strengthening self-regulation of the print press and insisting on financial support from the press industry and the state for the Press Council; the Press Council is attempting self-regulation of compliance with professional standards in the print press, but its role has not yet been solidified. The Council defined an ethical code built on European standards, but most journalists and editors are not ready to implement it fully.
- Launching joint industry initiatives through the development of professional associations (for broadcasters and print media). Low professional standards and the fragmentation of journalists into four professional associations weaken the position of all journalists and media in society. Initiatives have been made to merge the four journalists' organizations into a single one. Commercial owners of radio stations and television channels have had their own association (the Association of Electronic Media) for the past five years and as of this year public services are also members of the association.
- Supporting the unification of journalists' organizations and creating a single association to strengthen the role of journalists and protect their rights.

Bulgaria

By Ognian Zlatev and Alexander Kashumov

I. MEDIA SELF REGULATION IN BULGARIA

General context

The stable development of a market economy in Bulgaria, increased foreign investments and the growing stability in advertising budgets have led to a relatively well-developed media market in the country. According to financial analysts, the Bulgarian media market is quite dynamic and risky, involving a large number of stakeholders and serious competition.

Research on media consumption shows that TV, radio and magazines are the most preferred media sources. Newspapers are ranked first; however, the use of Internet editions of newspapers is growing. Print media has shown a trend of transformation of readership and a move from "serious" towards "yellow" press. In the last few years, press outlets with clear affiliations to political parties have gradually disappeared (at this moment there are only three clear "party publications": the dailies *DUMA* and *ATAKA* and the weekly *Demokratsia*), while the market has become dominated by tabloids and sensationalistic publications, leaving only a small market segment for serious newspapers (there is only one newspaper funded directly by the state: *Bulgarska armia* (*Bulgarian Army*)). In an attempt to boost circulation, a

significant number of publishers have started offering book collections or DVDs as supplements to the publications.

Booming advancement of light, entertaining, sensational and celebrity-oriented press coincided with similar programs on TV, thus creating grounds for debate among media experts and society at large. A popular public figure from show business even launched a legal campaign against the "yellow press" and took a number of publishers of such papers to court.

The annual circulation of newspapers in 2005 has decreased compared to 2004. The number of newspapers in 2005 was 423, of which 60 were dailies and 183 weekly. Their combined annual circulation generated 310,000,000. BGN in revenue, according to official data of the National Statistical Institute.

In the last year a significant number of new newspapers and especially magazines have entered the market; however, the lifespan of many of them was extremely short due to financial difficulties.

In 2005 a total of 346 broadcasters operated on the Bulgarian electronic media market, 144 of which were radio and 202 were TV. There are three radio broadcasters with nationwide coverage: both programs of the Bulgarian National Radio (Horizont and Hristo Botev) and Darik Radio. Also, three TV broadcasters have licenses for nationwide broadcasting: Channel 1 (Bulgarian National Television), bTV and Nova.

There is a clearly growing trend toward using Internet media; media consumption of newspapers and radio on the Internet has doubled in the last year. There is growth in

consumer-generated media, especially in the capital and the largest regional towns in the country. Blogs have multiplied, with more and more of them addressing social and political issues.

Media ownership in most cases is transparent; however, current legislation does not guarantee full access to shareholder information.

Almost all media in the country are funded on a commercial basis, with the exception of the state television company, the two state radio stations and the Bulgarian News Agency.

The relationship between editorial and business departments in a given media outlet generally depends on the financial results: the more profitable a media outlet is, the greater the separation is.

Although Bulgaria does not have properly functioning professional unions, several NGOs are working to protect media rights.

Regulations and licensing

Provisions concerning licensing and broadcast regulations are provided in the texts of the Act on Radio and Television, the Telecommunications Act, and the Act on Copyrights and Related Rights. The first one regulates all programming aspects of the public and commercial broadcasters and their supervisory body, the Council for Electronic Media (CEM). The Telecommunications Act regulates all telecommunications

activities, including the statute and functions of the Communications Regulation Commission (CRC) and telecommunications licensing. The Copyright Act establishes a separate Department at the Ministry of Culture intended to identify breaches of this law and impose sanctions.

In 2006 CEM started the new licensing process, but it was highly debated in terms of its procedure and criteria. The Association of Bulgarian Radio and Television Operators (ABBRO) objected to the procedure and requested a market audit, as well as amendments to the law. They proposed that 42 radio-operators with temporary licenses should receive the right to continue their operation without undertaking the new licensing procedure. These negotiations still have not led to any results. Meanwhile CEM started the procedure for the five competitions for TV frequencies in order to select new TV operators. At the same time, the CRC cancelled the whole TV licensing process in July 2006, arguing that Bulgaria should develop and adopt a TV digitalization strategy after 2012. CEM has repeatedly announced the competitions, an act which is legally questionable. The problems on the licensing front are further fueled by the competitive battles between the two major national commercial television operators (bTV and Nova) and the Association of Bulgarian Television Operators (ABTO), which unites major cable TV operators such as BBT, TV 7 and Diema Vision, who are struggling to obtain national licenses.

Media market entry in Bulgaria

Print media publishing in the country is not regulated by law. Basically all publishing houses or companies owning such

media operate under the rules of the Commercial Act. Market entry is comparable to other industries.

With respect to taxation policy, there are no specific tax concessions for media. Amendments of the VAT Act in 2005 allowed the tax base for newspapers and monthly magazines to be lower than the price of their acquisition with respect to their cost price, thus for the range of editions that could be sold at a loss has been widened to cover weekly magazines as well. The Union of Publishers in Bulgaria (UPB), the major association of print media owners, is constantly pressuring the relevant authorities to amend VAT legislation to decrease the taxation levels on newspapers publishing. Amendments of the same act in 2006 introduced 20% VAT on authors' honoraria, which copyright- protection organisations has objected to.

Media ownership

Media ownership still continuous to be a debatable issue in Bulgaria.

Bulgaria's print media market is dominated by foreign ownership – the German WAZ group holds approximately 70% of the market share, including the highest-circulating dailies *TRUD* and *24 Hours*, as well as other weekly and daily publications and the largest distribution companies in Sofia and Varna.

However, after WAZ's arrival in the mid-1990s, 2005 was the year that saw a major influx of foreign investments in print media: *Georg von Holtzbrink* of Germany (publisher of *Handelsblatt*) set up a 50/50 joint venture with the publishers

of *Dnevnik* daily and *Capital* weekly; the Scandinavian *Bonier Group* took over the financial daily *Pari*; Bulgarian editions of *Foreign Policy*, *Business Week*, *National Geographic*, *Maxim*, *Elle*, *Brava Casa*, *Grazia*, and *Don Balon* also appeared on the market.

Zemja daily, *Vestnik za doma* weekly and *7 Dni TV* united in a consortium of print and electronic media, the first of its kind in Bulgaria.

In 2006 APACE Media finalised the acquisition of 66% of Diema Vision, which owns the cable TV stations Diema +, Diema 2 and Diema Extra. The Scandinavian media company SBS Broadcasting Group bought radio and TV Vesselina.

Foreign investments in the Bulgarian media market sharpened the attention of CEM, which announced that the Council would implement special monitoring procedures on the acquisition of media shares.

Another major expansion was evident in bTV, the leading satellite station, which is held by News Bulgaria Inc, USA. The company has launched two new television programmes, GTV and Fox Life, and has also acquired N-JOY radio. The owners of bTV submitted a request to acquiring another two radio stations; if this is allowed by the broadcast regulator, it will be the first case of major broadcast concentration in Bulgaria.

Codes of Ethics

Special tribute should be paid to the efforts by the media community and especially by the Union of Publishers in

Bulgaria (UPB) in 2005 for their crucial input in the preparation and implementation of the Code of Ethics of the Bulgarian media and the establishment of the National Council for Journalism Ethics (NCJE), which includes two standing complaints commissions. Being the first country in South Eastern Europe with major media owners involved in the creation and implementation of a media self-regulatory mechanism and body, the Bulgarian professional media community and society at large has created great expectations for the improvement of the quality of journalistic materials and professional standards, as well as for the enhancement of freedom of expression. Last but not least, the existence of such a mechanism is also expected to prevent journalists and publishers from being taken to court on libel charges. Civil society actively participated in media-related debates and informed governing authorities and lawmakers about possible negative outcomes of their decisions. The document has been developed under an EU-PHARE funded project managed by a consortium led by the BBC World Service Trust. A draft of the document was submitted by team of Bulgarian and foreign experts. Media representatives and media-related NGOs mainly took part in drafting the document.

Originally 50 Bulgarian media representatives signed the Code, which was regarded as a historical event, witnessed by President Georgi Parvanov, then-Prime Minister Simeon Saxe-Coburg, and the Chairman of the Bulgarian Parliament, Professor Ognian Gerdjikov. Only one publishing group – *Monitor*, which owns two national dailies and one weekly – did not sign the Code, allegedly because of personal conflicts with the management of the Union of Publishers, rather than due to their opposition to self-regulation.

The Code of Ethics united owners and journalists, print media and electronic media, media outlets and media organisations, as well as metropolitan and regional media.

The Code was signed by a number of media organisations, such as the Association of Bulgarian Broadcasters, the Bulgarian Media Coalition, the Union of Bulgarian Journalists, the Union of Publishers in Bulgaria, and the Association for Regional Media. Immediately afterwards, some 45 media outlets also put their signature on the document, including the main national and a number of regional newspapers, the largest commercial radio and television stations, the Bulgarian national radio and television networks, and the national news agency.

The Code is open and additional signatures are accepted.

Content-wise, the Code of Ethics of Bulgarian Media is organised into five chapters, starting with guidelines for *supplying the public with reliable information*, as well as for fair and legal collection *and presentation of information* specifically discussing texts regarding children, discrimination, decency and suicide. The third chapter is dedicated to *editorial independence*, explicitly focusing on the need for media to not be susceptible to political or commercial pressure or influence and to maintain a clear distinction between editorial decision-making and the commercial policy of the media. The fourth chapter reviews the *relations between and within media*, which should develop in an environment of mutual respect and fair competition in order to preserve the integrity of the sector. The last chapter of the Code is related to *the public interest*. According to the adopted texts, infringement of the terms of

this Code may be justified only where it can be clearly and fully demonstrated that publication serves the best interests of the public. For the purposes of the Code, a publication is in the public interest only if it protects health, safety and security; helps the prevention and disclosure of serious crimes and abuse of power; or prevents the public from the danger of being seriously misled.

The NCJE was officially registered as a foundation at the relevant court in Sofia on August 5, 2005. It consists of a Foundation Board with seven members, representing the Union of Publishers in Bulgaria, the Association of Bulgarian Broadcasters, the Union of Bulgarian Journalists, the Bulgarian Media Coalition, and the Media Development Center Sofia.

The main aims of the Council, according to its Statutes, are as follows:

- to protect the right of the audience to be fully and correctly informed;
- to contribute to the establishment of journalistic standards;
- to contribute to the enhancement of the authority of the media;
- to set up a system for media self-regulation by ensuring the implementation of a Code of Ethics and by resolving arguments between the media and the audience;
- to encourage public debate on issues of journalistic ethics;
- to strengthen the freedom of speech, safeguard journalists' rights and protect editorial sources of information.

- to support training of Bulgarian journalists in the implementation of ethical rules and standards.

The Council oversaw the establishment of two “Complaints Commissions” – one for the print sector, and one for the electronic sector. These two Commissions have started to administer the agreed-upon Code of Ethics of the Bulgarian media.

The two Commissions each consist of four journalists’ representatives, four employers’ representatives, and four independent members who will be selected jointly by journalists and employers. They meet at least once every two months and deal with any complaints received from the public.

The journalists’ representatives are elected at the National Journalists Assembly. For the Committee on print media, the delegates for the General Assembly are elected on a representative basis of one representative for every 20 staff journalists in a print media that is a member or associate member of UPB and has signed the Code of Ethics. Each print media has at least one representative in the General Assembly of journalists, regardless of the number of its staff journalists.

For the Commission on broadcast media, the delegates for the General Assembly are elected on a representative basis of one representative for every 10 staff journalists from a broadcast media outlet that is a member or associated member of ABBRO and has signed the Code of Ethics.

Every broadcast media has at least one representative at the General Assembly, regardless of the number of its staff

journalists. Journalists from BNT and BNR have quotas equal to the quota of the biggest private broadcast media.

The Union of Bulgarian Journalists has a separate quota in both General Assemblies equal to the quota of the biggest print and biggest broadcast media respectively.

The Ethics Commissions should accept complaints; be the mediator between the plaintiff and the media; make decisions about complaints based on rules and regulations; reprimand media that have broke the Code of Ethics; analyze and comment on the trends in media; provide guidance concerning norms and suggest amendments to the Code of Ethics to the Board.

Each of the Commissions elects a chairperson who also serves as spokesperson with a two-thirds majority and at least one vote from each group.

Each of the Commissions makes decisions with a simple majority and with a minimum of six votes.

Joint sessions of both commissions could be called on the request of either of them in case there is a case between print and broadcast media, if a unified position on certain developments in the media needs to be prepared, or if amendments to the Code of Ethics need to be discussed.

Public awareness of the Code is very high – all media that signed the Code have published large articles and editorials on the event and have uploaded its full contents on their websites. In addition, the NCJE developed its own web-

site, www.mediatehics-bg.org, which was heavily promoted by all the print and broadcast media that signed the Code.

It is still difficult to estimate the extent to which the Code is respected by journalists, editors and media owners in their professional practice, but there is a clear trend of more and more public debate on ethics, media content and the quality of information. There is a growing understanding that respecting the Code and setting high professional standards is the ultimate road to success.

With respect to the right of complaint, the proceedings of the Committees allow every person to be entitled to file a complaint to the Ethics Commission of the Print Media, or the Ethics Commission of the Electronic Media, concerning publications in newspapers, magazines, information agencies, websites or other periodicals, or radio or television programs with editorial content, even if the Complainant is not personally affected.

All complaints must be in writing and are entered in a register.

At the end of July 2006, the Commissions announced the first rulings on admitted complaints. Four of them were related to print media and three to broadcast media (most influential TVs according to Members of the respected ethics' commission). Most of the initial complaints did not comply with the formal criteria; there were cases in which the people were not personally affected, while many other people seem to have just been sharing views and comments about Bulgarian journalism. So far no decisions have been announced.

Support of the Code of Ethics

Generally the Code of Ethics is supported by journalists and media owners. As it has just begun its implementation it is too premature to make assumptions about its support by general public and civil society. However, the first decisions of the Ethical Committees will be an important sign for the future acceptance and trust in self regulation. The Code needs further promotion among the judiciary system. Other stakeholders such as the advertising and PR industries are aware of the Code of Ethics, and it enjoys their support. More importantly, the PR industry in Bulgaria has adopted a united ethical code that has taken the media code into account.

The Government and authorities have supported the signing of the Code of Ethics; however, in practice the Government preserves a neutral position regarding media self regulation.

II. DEFAMATION

General overview

Both civil and criminal laws regulate defamation in Bulgaria.¹ The relevant laws are the Constitution (1991), the Penal Code (1968) and the Obligations and Contracts Act (1951). Two Constitutional court judgments also relate to the issue of defamation, i.e. Judgment No. 7 of 1996 on

¹ Bulgaria has a civil law legal system, which is divided into two main branches: private and public law. The main part of private law is civil law, which embraces contracts, torts, property, family and hereditary law. Hereafter, the expression “civil law” will be used in that sense.

constitutional case No. 1 of 1996 and Judgment No. 20 of 1998 on constitutional case No. 16 of 1998. According to the Constitution, the European Convention of Human Rights and the International Covenant on Civil and Political Rights and their Articles 10 and 19 respectively are directly applicable and take precedence over other laws. Whether civil or criminal proceedings will be started depends on the affected person's preference. According to the provisions of Art. 146 and Art. 147 of the Penal Code, there are two different offences: *insult* (which amounts more or less to an expression of value judgments) and *libel*, which is an allegation of untrue facts that defame someone's honour.²

Before April 2000 criminal proceedings for defamation were initiated *ex officio* if *public officials* were affected. Imprisonment was the heaviest sanction and in cases of public officials the sentence could be up to two years. Nowadays, despite the fact that the penalty has been changed to fine, it is still a higher amount in cases of public officials.

Another peculiarity for Bulgaria is that rural journalists are at a higher risk of being sued for defamation – and receive more severe penalties – than journalists in the capital city. In the capital, courts are more reluctant to decide in favour of officials, while they are also more familiar with human rights standards such as the European Convention on Human Rights. At the same time, the central media outlets that journalists in Sofia work for are stronger, richer and more influential. Public

² In the common law tradition there are specific meanings of the terms defamation, libel and slander (on that matter, see more in the speech of Toby Mendel in Ending the Chilling Effect, published by OSCE, Vienna 2004, p.25). In the current text defamation is understood as embracing both insult and allegation of untrue facts, while libel refers only to the latter.

officials also bear this in mind and are more cautious about initiating defamation cases. As a result of this gap between Sofia and the rest of the country, there is considerable fear that the actions of public figures outside Sofia are less transparent and less subject to the natural prevention of corruption that often accompanies a culture of openness.

Criminal defamation

Criminal defamation in Bulgaria dates from 1896.³ Unlike today, there was a public interest test prescribed in the original law and when the speech served the public interest, there was a complete acquisition. Nowadays the Penal Code (1968) contains two different provisions, one criminalizing insult⁴ (the expression of value judgments), while the other criminalizing the allegation of untrue facts. The amendments to the Penal code (PC) of April 2000 abandoned the sanction of imprisonment and *ex officio* prosecution, which was applicable in cases of defamation against public officials. However, the fines introduced are quite a burden. In fact, they are higher than the ones prescribed before 2000 in the law that were the alternative to prison. For allegation of untrue facts the fine may reach 7000 leva (approximately 3500 EUR), while the sanction for insult is up to 3000 leva (approximately 1500 EUR).

After the changes in the criminal law in 2000, some journalists in Bulgaria say they would prefer to risk

³ When the first Criminal Code after Bulgaria's liberation from the Ottoman Empire was passed.

⁴ The meaning of the Bulgarian word "obida" used in this context is insult, calumny. It includes, but is not limited to, expression of opinions. Both offensive words and gestures are meant.

imprisonment, because prior to the amendments the penalty was nearly always suspended. By contrast, when the penalty is a fine, it is never suspended. Thus, it seems preferable to be sentenced to a heavier penalty that is suspended, than to receive a lighter sanction that is always put into effect.

Sanctions and public officials

It is still problematic in Bulgaria that defamation against public officials is penalized more severely. In case of insult against a public official the penalty could be between 3,000 leva (1500 EURO) and 10,000 leva (5000 EURO), while in the case of libel it is between 5,000 leva (2500 EURO) and 15,000 leva (7500 EURO). The scope of the notion of "public official" is very broad and embraces not only civil servants and officials, but also managers of private companies (the expression actually used in the criminal code is "official person," not even "public official"). The minimum and maximum amounts of fines for defamation are too high in comparison with the average salary in Bulgaria.⁵ This is valid especially for the smaller towns and regions, where salaries are even lower. This disproportionality, however, is often not taken into consideration by courts.⁶

Penalizing the defamation of public officials with graver sanctions is clearly contrary to the standards of Article 10 of The European Convention on Human Rights, but it helps to explain the great number of such cases against journalists.

⁵ The average monthly salary in Bulgaria is approximately 120 EURO.

⁶ In 2003, only three journalists were sentenced to pay altogether fines and compensation of more than 5000 leva each. These are Katja Kassabova from Compass newspaper, Bojidar Bozhkov from Sega newspaper and Nelly Soukova from Borba newspaper.

Despite the Penal code amendments in 2000, a survey of the Bulgarian Helsinki Committee shows 115 pending cases of defamation against Bulgarian journalists in 2001. In March 2003, that number had swollen to 131 cases, the majority of them for criminal defamation (70), a number that had also increased in comparison with the figure for 2001 (60). What is even more worrying, 42 per cent of the cases had been initiated by public officials. In addition, cases were brought both by politicians and businessmen.⁷

Criticism, although necessary for public debate in a democracy, is often not well-accepted by public officials, especially in smaller localities in the country. This is linked to the mentality of non-accountability and non-transparency. The reluctance of public officials and public servants to accept criticism of their activities is clear from the defamation cases brought in response to criticism in newspaper articles such as: *The Mayor Lies?*,⁸ *Corruption in the Bourgas School System?*⁹

⁷ See the survey of the Bulgarian Helsinki Committee: Judicial Proceedings against Journalists Following Changes in the Penal Code of March 2000, by Boyko Boev at: <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=73>, and the survey Are Bulgarian Journalists Protected Against Accusations of Libel and Insult? – Results of the BHC’s 2nd Study at <http://www.bghelsinki.org/index.php?module=resources&lg=en&id=86>.

⁸ The first case was started by the mayor of the small Bulgarian town Tutrakan in 2005 against the journalist Grancharova, who wrote about an illegal contract he had made in a local newspaper. Although it was proven that the contract was indeed in breach of the law, the case is still pending, with the journalist having been convicted by the court of first instance.

⁹ The journalist Kassabova who wrote the article was convicted of criminal defamation in 2002. The article raised awareness about the admission of many children in the elite secondary schools in the town of Bourgas that was in breach of the law. The children were admitted without examination by a committee that examined medical documents proving diseases. The journalist based the article on an official complaint by 15 parents and a subsequent internal investigation that revealed many violations of the law. She was nevertheless found guilty due to her

*Is Justice S. Judging Justly?*¹⁰ and many others. A similar attitude among public officials can be seen in access to information cases, where often public matters are considered private data with the aim of justifying denial of information.¹¹

The highest-ranking officials in Bulgaria are rarely petitioners in cases of defamation. The criminal case brought by a former prime minister against a TV journalist in 2000 is an exception.¹² However, the intolerance to criticism demonstrated by officials outside the capital such as mayors, municipal council members and judges is still an issue. In December 2005 the Bulgarian Media Coalition received confirmation of pending defamation cases from 22 local media outlets located in 17 Bulgarian towns. Members of the judiciary such as public prosecutors and judges often appeared as victims of criminal

failure to prove that the committee members had taken bribes (a fact which she had just implied, rather than alleged). The case is pending before the European Court on Human Rights.

¹⁰ That article shed light on a civil case in which poor people had lost their property. The focus was on the fact that such circumstance can happen and did not include commentary on the court decision. Despite this, however, the judge brought a civil case for damages in 2005.

¹¹ For example, privacy was extended to obviously public matters in the case of the electronic newspaper *Vseki Den v. Ministry of Foreign Affairs*, in which diplomatic correspondence between Bulgaria and Spain (1970) was withheld for the protection of the Prime minister's "personal data" (the then-disputed status of Bulgarian king); in the case of *168 Hours Newspaper v. Ministry of Education*, when access to the names, education and qualifications of high ranking ministry officials was denied with reference to the personal data exemption. Other examples of such practices and conclusions can be found in the report *The Current Situation of the Access to Public Information in Bulgaria*, published by Access to Information Programme, Sofia 2006 and in the book published by Access to Information Programme: *Access to Information Litigation in Bulgaria*, by Kashumov and Terzijski, Sofia 2005.

¹² *Liuben Berov v. the journalist Yavor Dachkov*. The former prime minister (1992 - 1994) was referred to in a rated programme on the National TV as "the patron of the plunder of Bulgaria" without further reference to him in the show. The journalist was completely acquitted in 2003.

defamation in the past, before the 2000 amendments.¹³ The removal of *ex officio* prosecution of defamation from the Penal Code obviously led to a decrease in the number of such cases.

Insult and libel

The difference between *insult* and *libel* (i.e. allegation of facts) is seen mainly in the content of the expression (facts or judgments), but not only. The definition of insult in Art.146 of the Penal Code is as follows:

One who says or does something humiliating to the honour and dignity of a person in his/her presence shall be punished for insult with fine up to 3000 leva.

In Bulgarian jurisprudence and court practice there is a distinction between honour and dignity, in which the former relates to the public perception of someone's appearance, while the latter relates to one's own opinion of him/herself.

If the courts find that one part of someone's expression constitutes a value judgment, whereas another part contains allegations of untrue facts, both the offences of insult (Art. 146 of PC) and libel (Art.147 of PC) could be found and a separate sanction imposed for each. Consequently it is possible to allege that both offences were committed with one expression, thus the journalist-defendant bears a larger burden. According to the Bulgarian Helsinki Committee, both the offences of libel and insult were invoked in 44 out of 97 total court cases reported in

¹³ This could be easily seen in the facts of the cases from the early 1990s: see *Journalists Under Guns (Jurnalisti na pritsel)*, Tanja Harizanova and Vasil Vasilev, ed. Human Rights Lawyers Foundation, Sofia 2000.

the period between March 2000 and March 2001, while the petitioners complained only of libel in 33 cases and only of offending expression in 15 cases.¹⁴

Civil defamation

Civil defamation is regulated by the general provisions of civil law in Bulgaria. All the torts are generally regulated by the provisions of Art. 45 – 52 of the Obligations and Contracts Act (OCA). Consequently civil defamation is seen as an action breaching the general principle of Roman law *neminem laedere* set forth in Art.45 of OCA. Defamation lacks any definition in civil law statutes and is not even mentioned in OCA. Civil courts usually refer to criminal law jurisprudence and court practice to identify the elements of defamation.

Any natural person may initiate a civil claim for damages caused by defamation. Legal entities cannot be victims of defamation, as the jurisprudence and court practice have accepted. The ground is that they cannot suffer psychically from defamation and do not have personal dignity.¹⁵ However, if they can prove that they have suffered losses or have lost profits because of an allegation of untrue facts, they could be awarded compensation.¹⁶

¹⁴ The survey can be found at www.bghelsinki.org/bg/special/defamation.html

¹⁵ Despite this, in practice there are cases in which regional courts take into account claims of “damaging the reputation of a business entity.” This happened in the criminal libel case against the journalist Nelly Soukova from the Veliko Tarnovo newspaper Borba. The journalist was convicted in 2003 and ordered to pay higher compensation to the plaintiff on the grounds that his reputation as businessman was diminished.

¹⁶ The burden of proof would be on the petitioner.

Civil claims may be brought against the journalist, the publisher and the editor-in-chief. Civil cases differ from criminal cases, in which legal entities cannot be liable. An exception to this rule is when a civil claim for damages is brought in a criminal case.

Usually petitioners claim compensation for non-pecuniary damages. This is due to the fact that it is very difficult to prove loss of money or profit as a result of an allegation of untrue facts and almost impossible in cases of insult. So-called "moral damages" are easier to prove since their amount is determined on an equitable basis by the court.

In such cases the burden to prove that the defendant has affected his/her good name (reputation) and dignity by saying or writing words or by another form of expression falls upon the claimant. On the other hand, the burden to prove action in good faith rests with the defendant.¹⁷ It is not clear from court practice who has the burden to prove the truthfulness of alleged facts. On the other hand, it is usually accepted that facts, but not their absence, are subject to proof and consequently the one who alleged the facts is required to prove the truthfulness of the allegation.

When undertaking civil proceedings claimants should pay the court fee in advance, while in criminal proceedings fees are paid at the end. In both cases the losing party should pay all the costs. The amount of the court fee in civil proceedings in cases of a claim for damages is four percent of the total amount sought.

¹⁷ As a general principle in the law of torts there is a presumption of guilt if it is proven that the defendant committed the harmful action (Art.45, para.2 of OCA).

Civil defamation cases may be examined by three court instances if the claimant seeks compensation of more than 5000 leva (about 2500 EUR).¹⁸ The courts of first and second instance decide on the merits of the case, while the third level court (the Supreme Court of Cassation) is limited to reviewing lower court judgments only on points of law.

The combination of civil and criminal cases

It is possible under Bulgarian law to combine criminal charges for defamation with civil claims for damages in the same proceedings. The above-mentioned survey of the Bulgarian Helsinki Committee of the period 2001 – 2002 shows that in about half of the pending criminal cases the claimants also brought civil claims for damages. This is an effective way to put as much pressure as possible on a journalist and to minimize the costs of bringing a defamation case before the court. It is so because in such a case the potentially affected person does not pay any court fee in advance, but at the same time seeks double sanction for the alleged offender: a fine, which is payable to the state, and compensation, which should be paid to the victim.

Effect of the sanctions

Media outlets as companies are not usually seriously affected by defamation cases, unlike journalists. First, legal

¹⁸ Until 2002 the amount was 1000 leva. Art. 218a, para. 1, item, "a" of the Civil Procedure Code has been changed (State gazette No 105 of 2002).

entities are not subject to criminal prosecution, which is very much the preferred procedure.¹⁹ Also, they are stronger economically and the compensations awarded by the courts are not so great as to threaten their activity and existence.²⁰ Bearing in mind the problem of the urban-rural divide explained above, central media are less vulnerable than provincial ones. Some local newspapers have small circulations, employing 2-3 journalists and may be threatened by actions in court.

On the other hand, journalists who are not backed by their employers in cases of defamation face serious problems. The journalist Katja Kassabova, convicted of defamation of four civil servants in 2002 (see footnote 9) was ordered by the court to pay a total amount of more than 7 000 BGN (3500 EUR) composed of moral damages (1000 BGN per person, or 4000 total), fines (700 BGN per person or 2800 total) and 312 BGN in costs and expenses. In January of 2003 the Bourgas District court upheld the verdict. At that time the average salary in Bulgaria was about 250 BGN (125 EUR). The journalist worked for a local newspaper (*Compass*), which did not back her. The journalist Bojidar Bojkov, working for a daily newspaper (*Sega*), was ordered to pay a very similar amount for reporting on the same case of possible corruption by the four civil servants. In 2003 a journalist from a local newspaper in the town of Veliko Tarnovo (*Borba*), Nelly Soukova, was ordered to pay about 6000 BGN (3000 EUR) composed of 4000 BGN moral damages, 1223 BGN in costs and expenses, and a 700 BGN fine. She was convicted for using the word *business* in quotation marks, after

¹⁹ Only natural persons are subject to criminal liability.

²⁰ For that reason other forms of oppression are used against media outlets, like investigations by public prosecutors. Even in such cases there has never been anything more than inquiries, searches and sometimes interrogations.

the higher court overruled the decision of the previous court to acquit the journalist.

The chilling effect of such convictions is rooted in the high disproportionality of the sanctions compared with journalists' salaries. The problem is more relevant for provincial journalists rather than those in the capital. Furthermore, due to economic reasons, local media often fail to back their journalists, or to provide guarantees such as insurance. These circumstances encourage claims of defamation. Also, court procedures are a considerable burden on the journalists, irrespective of the outcome. The money awarded may be collected by execution against property, but a refusal to pay cannot be a legal ground for sending the journalist to jail.

Defenses and burden of proof

Most of the defenses such as "acting in good faith," "reasonable publication" and "overriding public interest" are not set forth in the law. In a landmark Constitutional Court decision in 1996, it was pointed out that the right to hold opinions and to seek, receive and impart information is the dominant principle, whereas its restrictions are exceptions. Such exceptions should be subject to narrow interpretation and applied only for the protection of conflicting interests such as privacy. In the latter case, it should be kept in mind that public figures enjoy a lower level of protection. Furthermore, the decision refers to the European Court of Human Rights case law. This interpretation of the Bulgarian constitution in line with the European standards is the legal basis for the application of the three-part test of Article 10 of the European Convention on Human Rights. It inspires good court practice and is often

referred to (also in access to information cases), especially given the lack of detailed legal provisions reflecting such standards.

According to the provision of Art.17, par. 4 of the Radio and Television Act (RTA), radio and television operators are not liable for the information they have imparted when the information is received in an official way, when they quote official documents, when they precisely reproduce public announcements and when the information is based on materials received from information agencies or from other radio and television operators. The provision is formulated as a privilege. It should be noted that such a rule does not exist as for the print press and the only way to apply the rule is by analogy. On the other hand, the provision mentions only the operators, i.e. the legal entities, but not journalists. However, the Supreme Court has held that referring to official sources excludes malicious intent and is sufficient to absolve one from legal responsibility.

The notion of "reasonable publication" has not been introduced in the relevant national legislation. Nor are journalists given the option to argue that they have acted according to the rules of professional ethics or journalist codes. According to the provision of Art.11, par.5 in conjunction with par.6, item 3 of the RTA, the rules of professional ethics are a matter of contract between an operator and the journalists employed by it. Consequently, the applicability of these rules is limited to the activity of the respective operator and is a matter of contract-creating rights and obligations only between the contractors. After the adoption of the Code of Ethics (2005), the situation may change in practice. In fact, courts have even been open to knowing more about the professional ethics of

journalists in order to identify more clearly the scope of their legal responsibility.

“Acting in good faith” and “truthfulness” are relevant defenses in Bulgaria. In the case of civil proceedings these defenses are based on the general provisions of the Obligations and Contracts Act. In the case of criminal proceedings the relevant provisions are those determining the notion of malice (*dolus directus et dolus indirectus*) and the provisions of Art.146-148 of the Criminal Code determining the crimes of defamation. There is no special regulation concerning journalists. Usually the courts in the capital apply them carefully in their practices and place the burden of proof on the claimant. They depart from the general rule that in criminal cases the prosecution should prove everything. Case law on Article 10 of ECHR has also been invoked in judgments after 2000. On the contrary, courts outside Sofia often are not prepared to accept the defense of good faith.²¹ Even when they apply the European Convention on Human Rights, they take their own approach, not adhering to the European Court of Human Rights practice.²²

²¹ Judges need more training on the application of the ECHR. Translations of the relevant case law are available on several websites, including that of the Ministry of Justice.

²² The court’s difficulty with accepting this defense is evidenced by the judgment No 430 of 11 May 2002 of the Bourgas District court on the case of Katja Kasabova, a journalist who reported of wrong-doing and possible bribe-taking of the five-member commission responsible for accepting children into elite high schools. Although it was proven that the journalist reported on evidence given by parents and the results of an investigation conducted by the Ministry of Education, the court convicted her on the grounds that she failed to prove bribe taking, although she referred to her source and, in fact, a group of parents had filed a complaint containing information about bribery to the Ministry of Education.

Following the changes to the Criminal Code in 2000, criminal defamation cases are not subject to cassation and subsequently there is Supreme Court case law on that matter. Thus, standards such as balancing interests, the goodwill defense, the proportionality of the restriction to the intended protection, the sufficiency and relevance of the restriction, etc., are not consistently applied. Whether this happens because of deficiencies in the law, or the periodic lack of good precedents, or the stubborn persistence of an outdated mentality, many judges in defamation cases continue to take the position that their job is to find out whether or not the defendant has committed an offence rather than to ask themselves whether the act in question should be regarded as a criminal offence and what defenses would be suitable. In other words, these judges do not approach such cases with the understanding that there is a dispute about a restriction of a fundamental freedom, but rather from the position that they must pronounce a judgment in a case of criminal behaviour. This being the case, it is easy to explain why such judges are not inclined to balance conflicting interests.

Protection of journalists' sources

The protection of journalists' sources derives directly from Article 10 of the European Convention on Human Rights. The privilege is further regulated only in the Radio and Television Act. The provisions of Art. 15 state:

Radio and television operators shall not be obliged to reveal the sources of information to the Electronic Media Council unless there is a pending procedure before a court or a pending procedure on appeal of a person concerned.

Journalists shall not be obliged to reveal the sources of information not only to the audience but also to the management body of an operator except for the cases set forth in par.1.

Radio and television operators are entitled to include in their productions information from unknown sources but they shall point this circumstance explicitly.

Journalists shall keep in secret the source of information if the person who has provided it has explicitly so required.

As the above-cited provisions imply, the right of journalists not to reveal their sources is not recognized as a general rule. Instead of regulating the exceptional cases where journalists have to reveal their sources, the law has determined when and to whom they are not obliged to do so. There are no analogous rules as regards the print press, as no law regulates print media in Bulgaria. Consequently problems could arise in such cases. A journalist could not invoke the right not to disclose his or her sources either in the case of criminal or civil proceedings. In such cases journalists are obliged to reveal their sources; this obligation does not depend on any condition such as the proper balance of interests at stake, or the type of legal procedures. Journalists are under the threat of being liable for false testimony under Art. 290 of the Penal Code if they do not say everything they know concerning a pending trial. The possible punishment is up to five years of imprisonment.

Since 1999, the search and seizure of journalists' materials and equipment could be done only in the course of criminal proceedings and after a judge has given the investigation authorities a warrant to search and seize. Only in case of an emergency could seizure take place without a

preceding warrant. In such a case the competent judge rules on the lawfulness of the action in question afterwards.

It is not clear whether a claimant can ask the police to conduct a search and seizure. Under Art.59 of the Penal Procedure Code private prosecutors (claimants) are entitled to seek assistance in gathering evidence by the authorities of the Ministry of Interior. There are not any requirements about the exercise of their powers under that provision.

In fact, since 2000 there have been no cases of trying to compel journalists to reveal their sources. Before, this used to happen in *ex officio* investigations for defamation, but still this defense was relatively widely known.²³

Access to information

The Access to Public Information Act (APIA) was adopted by the Parliament in June 2000.²⁴

Public information is defined as information that helps citizens form opinions about the activities of units obliged by the law. Archival information is excluded from the scope of the act. The right of access is focused on information rather than on documents. Every natural or legal person has the right to access public information. The obligation to disclose information

²³ Actually the seldom attempts to compel journalists to reveal their sources have failed. In spring 2002 after Trud newspaper published minutes of a Cabinet meeting, which evidenced an attempt to cocoon a wrong-doing, no measures were undertaken to press the newspaper to reveal its source.

²⁴ Available at: <http://www.aip-bg.org/library/laws/apia.htm>

actively or upon request is imposed on all the three branches of state power. Entities receiving money from the state budget and so-called “public law persons” are also obliged to provide information. However, the APIA is not applicable “horizontally,” i.e. in relations between private persons.

The APIA enumerates four grounds for refusal of a request for access to information: a) state secrecy b) official secrecy c) protection of third party’s interest, which covers personal data protection and business secrets d) preparatory opinions and recommendations preceding a final decision.

There is not a commission, ombudsperson or similar body working for the implementation of APIA. Denials are subject to court review, a mechanism which is used in Bulgaria.

The access to public information law is rather widely used in Bulgaria. The Access to Information Programme (AIP), an NGO working in this field, has provided legal help in about 3,000 cases in recent years. During the years after the adoption of the APIA, the number of court cases concerning it has increased. Citizens and NGOs use this law more and more frequently. The Access to Information Program alone has provided legal assistance in more than 100 court cases challenging denials, most of which were successful, which has thus contributed to the restrictive interpretation of exemptions.²⁵

Although skeptical in the first years after the adoption of APIA, Bulgarian journalists have started to use it in their investigations. In some cases they start litigation to achieve

²⁵ Information of the FOIA cases supported by AIP see on: <http://www.aip-bg.org/court.htm>

public awareness for their cases and thus ring a warning bell against unacceptable government secrecy. In the period 2004 – 2005 fifteen journalists litigated against denials from different institutions.²⁶ Some of the key cases won by journalists are: *Alexey Lazarov v. Council of Ministers* (for access to Cabinet meetings record), *Zoja Dimitrova v. President* (for access to the security services' report on Bulgarian companies' participation in the trade with Iraq during the UN embargo; still pending), and *Hristo Hristov v. Minister of Interior* (for access to former State security documents related to the case of the BBC journalist Gerogi Markov, killed in London in the 1970s). After the latter case was finished, Hristov published a book about his investigation in 2005, in which he identified Markov's actual murderer (the book will soon be printed in English).²⁷

Disclosure of classified information

The Classified Information Act²⁸ (PCIA) came into force in May 2002 and regulated state and official secrets. It set time limits for the duration of classification for the first time in Bulgaria.²⁹ The law introduced a relatively precise definition of "state secret," stating that it can only be introduced for the protection of strictly enumerated interests and can be applied

²⁶ See the book, published by the Access to Information Programme Access to Information Litigation in Bulgaria by Alexander Kashumov and Kiril Terzijski, Sofia 2005, p.11.

²⁷ A short overview of these and other journalists' cases see *ibid.*, p.14 – 16; for documents on the Hristov case: pp. 85 – 126.

²⁸ Available at:

http://faculty.maxwell.syr.edu/asroberts/foi/library/secrecylaws/BG_class_info_law.pdf

²⁹ From 2 to 30 years (Art. 34 of PCIA).

only to categories of information enlisted in the act if the disclosure would cause harm to protected interests. There are still attempts for broader application of the definition.³⁰ The definition of “official secret” is less clear, but is still somehow linked to the principle of harm.

The legality of classification is subject to judicial review only in cases of access to information. Under APIA the courts are entitled to obtain classified documents and to perform *in camera inspection* in order to rule on the lawfulness of the classification. The procedure has been implemented several times by the courts, but they have never ordered the declassification of a document. Usually, they overturn the denial on procedural or other formal grounds and leave to the administrative body the matter of possible reconsideration of the administrative decision for classification.

Everyone who imparts classified information bears criminal responsibility. In cases of state secrets punishment can consist of up to five years of imprisonment and up to 10 years if serious consequences result. In the case of official secret the penalty can be up to two years imprisonment. There is no public interest test apart from the directly applicable European Convention on Human Rights. In 2003 the government introduced draft amendments to the relevant Penal Code provisions seeking graver sanctions for disclosure of state or

³⁰ In 2003 there was a clear tendency toward over-classification under PCIA, which was also recognized by the Chair of the State Commission for Security of Information. The Government even tried to introduce graver criminal sanctions for disclosure of state and official secrets, but Parliament did not pass the amendments under pressure from NGOs and media, which included statements from Open Society Justice Initiative and Article 19, The International Centre for Free Expression. For more information about over-classification, see the AIP annual 2003 report at: <http://www.aip-bg.org/pdf/aip-report2003.pdf>

official secrets. In view of the chilling effect the amendments would have to whistleblowers and investigative journalists, civil society reacted to this proposal. After a huge campaign initiated by the Access to Information Programme, the Open Society Foundation in Sofia and the Bulgaria Media Coalition, with the participation of the Union of Media Publishers and more than 60 NGOs, Parliament was persuaded to reject the proposed amendments. It refused to introduce the public interest test in the Penal Code, however, noting the direct applicability of ECHR.

All refusals to provide information are subject to administrative court review in two instances. The procedure before the court is regulated by the general provisions of the Administrative Procedure Act and the Supreme Administrative Court Act. The law does not provide for an ombudsman or commissioner.

Concerning trade secrets and personal data, their disclosure falls outside criminal law. Personal data are defined by the Personal Data Protection Act,³¹ whereas trade secrets are regulated by the Protection of Competition Act. Disclosure of personal secrets, which are more narrowly understood than personal data, is criminalized. Changes in the Penal Code are pending in order to provide more protection of personal data.

³¹ Available at: <http://www.aip-bg.org/pdf/pdpa.pdf>

Accreditation of journalists for access to public bodies' sessions

Accreditation is not provided for by law, but is sometimes practiced. There is not a general right of everyone to access government bodies' meetings, i.e. there is not a "government in the sunshine" law in Bulgaria. The law proclaims the publicity of a number of different authorities' sessions such as parliament, municipal councils, etc. Sometimes public bodies attempt to develop supplementary conditions to the rules of publicity. For example, the Supreme Judiciary Council (SJC), an administrative body of the judiciary, refused to open its sessions in 2004 as the law required. It announced that additional rules should be developed, since there is not enough room for outside observers. Four journalists from different media referred the refusal to let them in sessions to the court. In November 2004 the Supreme Administrative Court reverted the denial. Following the decision, SJC has provided access to their meetings via camera, thus enabling journalists to watch in a room near the meeting hall.

Conclusions and recommendations:

- to completely decriminalize defamation or at least defamation of public officials;
- to introduce clearly in the law the defenses of goodwill, reasonable publication, and overriding public interest;
- to provide more trainings for judges and journalists;
- to develop the practice of the ethical commissions in order to replace trials or at least influence court practice;
- to change the general criminal responsibility for disclosure of secrets and to introduce the public interest test.

Croatia

By Geza Stantic and Gordana Vilovic

Executive summary

The present situation regarding ethical conduct, self-regulatory media systems and the level of protection of professional standards, media laws and the issue of defamation in Croatia can be succinctly described as controversial. On one hand, Croatia has a good legal infrastructure. Its important media laws (access to information, Media Act, Electronic Media Act, Croatian Television Act) are close to European standards. But, defamation is still a highly-debated issue. On the other hand, the violation of privacy and other legal possessions of a person are protected by civil law and also by penal law. Recent changes in penal law have taken a step toward the decriminalization of defamation.

The Croatian Journalists Association has an acceptable Code of Ethics; however, it is not as detailed as the code German journalists have, for example. Still it is not sufficient to strengthen ethical conduct. Journalists and editors who are members of the Council of Honor appointed by Croatian Journalists Association are not professionally engaged in the body, so very often they are not able to handle all the media obstacles and violations. Another problem is that representatives of publishers or media owners are not members of the Council of Honor, causing inefficiency in the Council.

The level of professional ethics in the Croatian media is in need of an intervention in order to improve. Despite the fact that all sides – journalists, editors, members of civil society and publishers/owners – have agreed that Croatia needs a professional media regulatory body such as a Press Council at the state level, things are moving forward very slowly. Given the current state of affairs in the Croatian media – both in electronic and print media – an autonomous Press Council should be an urgent priority for both journalists and publishers.

Context

The Republic of Croatia, a country situated on the crossroad between Central Europe and the Mediterranean, has around 4,5 million people. The main language is Croatian. The population is as follows (according to the 2001 census): Croatian 89.6%, Serb 4.5%, Bosniak 0.5%, Hungarian 0.4%, Slovene 0.3%, Czech 0.2%, Roma 0.2%, Albanian 0.1%, Montenegrin 0.1%, others 4.1%. The main religions are: Roman Catholic 97.8%, Orthodox 4.4% and Muslim 1.3%. Croatia's GDP is 34.2 Billion USD, according to World Bank figures from 2004.

After the election in 2003, the Croatian Democratic Union (HDZ), the party founded by the first Croatian president Franjo Tuđman, returned to power. HDZ won almost half of the seats in Parliament and formed a Government with Ivo Sanader as Prime Minister. In the last several years Sanader made significant progress in the process of joining the EU and NATO. Still, the exact year that Croatia might join the EU is not known, and there is only speculation – some optimistic and some less optimistic – about when it will be: "In June 2004, the European Council gave Croatia candidate status for European Union entry,

and on 17 December 2004, the EU decided that membership negotiations with Croatia would begin on 17 March 2005."¹

The situation with NATO membership is similar. According to a statement by international affairs expert Professor Radovan Vukadinović, "in an optimal scenario there is a distinct possibility that three countries – Albania, Croatia and Macedonia – could be offered membership at the NATO summit in 2008, becoming full members in Washington in 2009 on at the celebration of NATO's 60th anniversary."²

The Croatian media are in a progressive but unfinished phase of democratic transition. (An important turning point in the developing trend was the 2000 parliamentary elections, which are generally considered to be the starting point of the general consolidation of the democratic regime in the country.) The power of the media subsystem in Croatian society has increased. The media elite is no longer subordinate to the political one, as in the past years – their relationship is more and more seen as a partnership. However, those relations are not stable. Political circles occasionally show strong tendencies to restore the control over the media³ (especially public radio and television), which, given the right conditions, could lead to a sort of retrograde intervention as in Slovenia, with new laws on public television being adopted. Besides that, there has

¹ South East European Handbook 2005/2006 (ed. O. Vujovic), SEEMO and IPI, Vienna, 2006, page 110.

² Vjesnik, 9/10 September, 2006 (B. Lopandić, Vukadinović Croatia is the Closest to NATO)

³ In July 2006 Parliament appointed the administration board of HINA (Croatian News Agency), the dubious structure of which caused the Organization for Security and Co-operation in Europe (OSCE) Mission to Croatia to publicly admonish politicians about the responsibility of maintaining democratic media. The Croatian Journalists' Association and the opposition declared that it was an act of establishing control over the news agency by the ruling party HDZ.

been an increase in the dependence of the media on the commercial sphere not just in the business sense, but also in terms of content. Thus, apart from the media's emancipation from the political sphere, which has certainly contributed to progress of freedom of information and the practicing of higher professional standards, there are many new challenges from the point of view of journalism as a service to the public, as well as its essential ethics.

The legal infrastructure of the media system has been shored up by the reworking of basic media acts from 2001 to 2004 in cooperation with the Organization for Security and Cooperation in Europe (OSCE) Mission to Croatia and other international partners and also with substantial involvement by local public experts and NGOs. The most important legislation includes: Article 38 of the Constitution (1990), the Media Act (2004), the Act on HRT [Croatian Radio and Television] (2003), the Electronic Media Act (2003), the HINA [news agency] Act (2001), and the Right to Information Access Act (2003).

The solutions these laws offer to important issues (e.g. freedom of information and limitations to freedom of information, independence of the electronic media, and protection of privacy) are close to European standards. Concessions for the electronic media are granted by the Council for the electronic media, an independent body (out of the range of the executive authorities). After being proposed by the Croatian Government, members of the Council for Electronic Media are appointed by the Croatian parliament. The mandate for members is five years.⁴

⁴ The Council is occasionally exposed to severe but warranted public criticism. Still, significant progress has been achieved in terms of being non-political and fair in its decisions in comparison to the 1990s when, for example, one decision made by a similar body caused 100,000 people to demonstrate.

Croatian public radio and television is overseen by a special body, the Programme Council, which is also elected by Parliament. The Council has 11 members elected by Parliament. Council members should be representatives of major social groups and have reputations for supporting democracy as well. Candidates are gathered through a public call. In the Parliamentary Committee a selection is made and a list of candidates is created with the consent of the ruling and the opposition parties. If the Committee cannot achieve consensus, the remaining seats are equally divided among candidates representing the majority and the opposition. The Parliament then puts the agreed-upon list to a vote. The practice so far has shown that the political parties cannot achieve consensus, so the list consists of five people supported by the opposition and six supported by the governmental majority. Once appointed, the Council members' appointments are difficult to revoke. However, the Programme Council has shown a considerable amount of independence in the first two years of its mandate.⁶

Entrance to the print media market has been liberalized; since 2005 it is only necessary to enroll in the Trade Chamber register. Legal limitations on the freedom of information have been established following the principles of Article 10(2) of the European Convention. The violation of privacy and other legal

⁶ When in 2004 the administrative board of Croatian Television (HRT) was elected, the Council did not give in to the Government's expectation to immediately influence decisions to the Government's advantage. Furthermore, in two parliamentary discussions about the annual HRT reports in which ruling party representatives, using political "arguments", severely criticized the functioning and especially the programming of the Television, the Council stood its ground. The President of the Council, who was elected two years ago with the consent of HDZ, lost the confidence of the party during re-elections because of his defiant attitude, thus he was re-elected as a candidate from the list of the present opposition.

possessions of a person are protected by civil law (damage compensation), and under certain conditions (insult or defamation) by criminal sanctions. The Media Act also recognizes the standard rights of journalists (including the “conscious clause”) and requires the creation of self-regulatory newsroom statutes. The Media Act also requires the clear separation of advertising activities of the media outlet in question from the journalistic activities, which includes the clear marking of advertisements. The most common complaints about the media legislation concern the regulations on members and the way the Programme Council of the HRT is selected. In practice, however, the body has shown a satisfactory level of independence.⁷ The second continuous complaint about the legislative regulation concerns the reluctance of the Government to decriminalize media defamation. Changes in criminal code have created conditions very close to decriminalization. There is less criticism about the constant changing of media laws – the Croatian Television Act is probably the most frequently altered regulation in Croatia since its independence. Among other things, such repeated

⁷ More detailed analyses show that the functioning of such a body depends not only on the members and the way they are elected. It is a typically pluralistic body—constituted according to the Act on HRT from 2000—compromised itself as a strongly, politically-motivated group. Representatives of civil society included a minister from the Tudman period, the general director of the HRT from the period 1991 – 1995, and the former president of the state and HDZ. The first, however, did not succeed in turning the Council into a kind of parallel HRT administration, but rather instigated a latent conflict with the principal, which resulted in a programming and management crisis at the Television. Certain members used their functions for inappropriate public promotion, while three of them initiated the Alliance for a New Croatia, an association with unclear political objectives. The present Council is formally elected by Parliament but it has shown itself to be resistant to political influence. One of the probable reasons for this is the regulation governing the decision-making process. Important decisions are made by a majority of votes, so mutual respect certain members' interests is a condition for the survival of this body.

amendment of the Croatian Television Act undermines the authority of the law, which had led to a situation in which disregard for the regulations is considered to be only a “gentlemanly offence.”⁸

Ownership relations are an extremely complex and controversial phenomenon.⁹ The media sector was the scene of many curious and at times dramatic business transactions, often reminiscent of early Hollywood films.¹⁰ The responsibility for this lies with the upper levels of the social structure; although suitable regulations exist, nobody is particularly worried about them not being respected. Despite the privatization process, the state has remained the biggest media owner, while the second biggest is the Catholic Church.¹¹ The necessary minimum of ownership pluralism has nonetheless been achieved; a dual system has been established in the radio-television sector, while the print media market is controlled by private owners. Also, the most important state media outlet, e.g. Croatian Radio Television,¹² by law enjoys rate (as well as programming, statutory and human resources)

⁸ This could be illustrated by numerous examples. One of the most simple and widespread is that almost nobody publishes demands in a legally acceptable manner; instead they are put into the “readers' letters” section.

⁹ Stjepan Malović: *Media Ownership Report in Croatia*, a part of the project *The Influence of Ownership on Media Independence and Pluralism*, Zagreb 2004.

¹⁰ A former owner of a private national TV station was shot and soon after that sold the company; a car belonging to the owner of the largest newspaper concern was bombed, injuring many people. None of the perpetrators were ever found.

¹¹ It owns 82 media companies, among which are less significant media outlets, but also the national radio and television, HINA news agency, *Vjesnik* daily, and also the company for distribution of television and radio programs.

¹² Croatian Radio Television is financially the most powerful media company with an annual income of 190 million EUR. As a comparison, the annual income of the largest newspaper publisher, EuropaPress Holding, is approximately 90 million EUR.

autonomy. It would be unrealistic, of course, to dispute the influence of ownership on the programming, but in the case of HRT the bodies within this media outlet show significant resistance toward encroachment on the part of the government political group in their managing of the institution. Ownership relations in the media sector are also influenced by a significant share of foreign capital, especially in print media and private television. According to analysts this situation has resulted in modernization of the corporate philosophy, but also in media trivialization.¹³ In short, media ownership remains a controversial issue and is still not transparent.

More recent phenomena include the investment in the media by major Croatian companies and the expanding of the activities of media companies into book and DVD publishing, telemarketing, and the mobile telephone industry. Still, the fundamental relations in the sector continue to be burdened by the syndrome of non-transparency of ownership and the remnants of corporate "morality" typical of the first years of the privatization process. In principle, the media are subjected to the same tax and market regime as other enterprises.¹⁴ One of the major differences is the specific legislative measures for fighting media concentration. According to the point of view of the Agency for Protection of Market Competition, the fusions created so far are not problematic; however, media experts are more skeptical. The fact is that the media system consists of several large and complex dynamic organizations (HRT, EPH, Styria Group), a group of mid-sized publishers that typically suffer extreme financial difficulties, and a large number of small local media outlets, which are even more financially vulnerable.

¹³ Ante Gavranović, *Medijska obratnica*. Izvori, Zagreb, 2006.

¹⁴ The media are paying the 22 per cent of the market tax rate, and the publishers think it is too much of a burden. Only TV subscription is excluded from the tax as a parafixal income.

Economic motives turn the media sector in Croatia, as in other developed countries, into "business as usual," leading to the mentality that if newspapers can serve that purpose as well, all the better. In such an environment, available capital is transferred from informationally and politically-oriented newspapers to media dealing with show business, celebrities and social gossip, or those dedicated to niche issues (information science, sports, etc.). Formats are changing, political dailies are being "tabloidized," while almost every day in the week they publish a "theme appendix" and in that way attract the weeklies' audience.

Since 90% of newspapers are distributed via street sales, the fight for consumers is battled out every day on front pages. Tough competition encourages the spread of sensationalism. Television and radio programs, including the productions by the public radio-television company, are feature much trivial content. And while the public radio-television manages to keep high ratings, unlike in most of transition countries, and leading private TV and radio stations gain good corporate positions especially in the advertising market, newspapers and local media have been existing in a crisis-like conditions.¹⁵ That sort of business situation and development philosophy strongly affects the professional position and role of journalists. Leading journalists, especially in the electronic media, are becoming celebrities more and more. The percentage of journalists with a university education is decreasing, since publishers prefer to employ students. The space for political journalists is becoming narrower, while the demand for entertainment journalism and writers of various kinds of advice columns is increasing.

¹⁵ The proof of this is a dramatic decrease in circulation of dailies in 2004 (approximately 25 %).

Journalists are required to have the skills for doing other jobs besides writing. It has become more and more difficult for the owners to accept that the advertising business is a taboo for journalists. It is no secret that gathering advertisements and similar tasks has become an additional obligation for journalists, especially in local and small media. The range of salaries in journalism is wide, depending not only on the reputation of an individual journalist, but also very much on the newsroom: local and small media pay significantly less and sometimes irregularly. Because of these differences it has been impossible to sign a joint collective contract for years.

The *professional-ethical* level of the Croatian media is in need of an intervention to stimulate improvement. It has been the subject of discussion among leaders of journalistic organizations¹⁶ and publishers, but there are also certain objective indicators that also emphasize the need for improvement, such as the number of cases before the Council of Honor of the CJA,¹⁷ sanctions and criticism of the Council for

¹⁶ At the Assembly of the largest journalists' association, the Croatian Journalists' Association (CJA), president D. Lučić said in response to publishers' complaints about high compensations for media defamation that "violation of human rights must carry a high price. Lack of professionalism and disregard for laws and business ethics should be expensive. Those who go against professional and ethical principles and violate the law and Constitution should be punished!"

¹⁷ The number of complaints has reached its highest point in the past 100 years (in 2005 there were 119 complaints). Data on the structure of felonies are also important. Nearly half of the complaints were for publishing inaccurate, false, subjective or unbalanced information, as well as for bias or unclear distinction between information and commentary. Less numerous are complaints regarding violations of privacy, violations of cultural dialogue, and in only one case was "hate speech" mentioned. Currently, there are hardly any complaints stemming from political motives at the highest level (which nevertheless does not mean such problems do not exist). The records point to a certain normalization of the types of professional-ethical offences committed vis-a-vis the "years of neither war nor

the Electronic Media¹⁸ and the Programme Council of the Croatian Radio Television, numerous media court cases, and the results of several empirical research studies.¹⁹ A smaller portion of the professional-ethical postulates is included in

peace” (the 1990s), when political motivations were behind half of the offences examined in one research study.

¹⁸ The most severe sanction approved by the Council in its mandate so far was a 24-hour suspension of the local television OTV’s license because of the broadcast of an explicit pornographic scene.

¹⁹ According to IREX’s media sustainability index, for which records are gathered in 20 countries of South Eastern Europe and South West Asia, Croatia has held the leading position for the fifth year in a row. The main complaints concern the professional- ethical level of journalism, the lack of balance and objectivity, bias or the promotion of business or political interests by certain groups, and editorial dependence on the publisher.

As part of the project Politics in HTV Programmes (2003), in a half- structured interview (G.Stantić, V.Popović) half of socially elite representatives interviewed considered the choice of news professionally unsatisfactory. They were a lot more critical toward the interpretation of information; only one of them did not raise objections. Their complaints included accusations of a lack of professionalism, ethical instability, the use of “unnamed sources” as disguise for personal commentaries, lack of criticism towards the “new owners” of Croatia, unbalanced political coverage, and excessive coverage of points of view in agreement with the personal viewpoint of the journalist leading a given program. The project also analyzed the professional selection of news (G.Stantić/T.Perišin) on HRT and the private Nova TV. Analysts noticed balanced editorial behavior, but nevertheless noted the standards used to judge the informative value of news were applied selectively. News characteristics that are important for common people (degree of influence, personal involvement, closeness, prominence, particularity, human touch) were registered in only 20% of the news, which proves that, as journalists see it, the needs of the public are rated lower than the criteria that are important for professionals (relevancy, conflict and controversy, but also good image).

Other scientific studies on ethics and standards of journalism have been conducted over the last five years, as a separate project of the ICEJ (International Center for Education of Journalists) or as a doctoral theses. All studies clearly showed that ethical level in Croatia media is very low. The situation has improved in recent years and was judged as “satisfactory” in comparison to other neighboring transition countries, but it is far from what could be called “good.” One can still find many examples of many sensationalism, violations of human dignity, excessive use of anonymous sources, inaccuracy, bad taste and incomplete, one-sided stories.

media laws, mostly as declarative norms. Ethical codes contain more complete overviews. The most widely-acknowledged code is the Code of Ethics of the CJA and the matching corporate acts in HRT (Croatian Radio and Television) and HINA (Croatian News Agency). The judiciary control of the media, which also has jurisdiction over the professional ethical component, is rather extensive and has a reputation of being efficient; however, the judiciary is rather harsh, as the compensations it gives for media defamation are beyond the legal guidelines of the European court for human rights, which impedes the critical function of the media. Although the number of defamation cases has decreased significantly in comparison with the period 1990-1999, the sums given as compensation have remained the same, despite of criticism and warnings; there has been no compensation less than 4,000 euros, and some individuals (judges) were fined with almost 50,000 EUR!

In the electronic media sector, control is overseen by some independent regulatory bodies, including the Council for Electronic Media and the Programme Council of Croatian Radio Television. In practice, professional-ethical issues are part of the agenda of these bodies only from time to time. For the print media, bodies such as these do not exist.

Among self-regulatory supervisory bodies, the most important is the Council of Honor of the CJA, the moral authority most highly respected by the whole of the media system. It has a long tradition of serving as a necessary replacement for a complete self-regulatory system. Through its functioning it has contributed to developing the awareness in the profession about professional and ethical issues and about moral types of sanctions. The effects are to a certain extent limited by the fact that it is associated with only one (albeit the biggest) journalists' organization. Also, the Council is based on

the activist work of its members; it has no professional and administrative support, thus its functioning varies in quality.

The Croatian Journalists' Association (CJA) is the oldest, largest (3,300 members), and most influential journalistic organization. The second largest journalistic organization is the Trade Union of Journalists. The membership of the two is mostly overlapping. Catholic journalists also have their own separate association, while recently an Article 10 association was founded, which consists of a smaller group of high-profile and relatively influential editors and writers. The latter two organizations do not cooperate with the CJA or with each other.

HRT and HINA have internal ethics councils. The daily *Večernji list* recently introduced the post of readers' editor, which is a form of newsroom ombudsman with narrowed authority. Europapress Holding, the largest private news publishing company adopted an internal company code of practice in 2001. Formally, the code is quite good, however, a serious question remains: why is this code not put into practice in the company's everyday functioning?

The project of setting up a self-regulatory system at a national level was initiated two years ago, but has not yet been completed.

Main findings with examples with regard to self-regulation and legal practices concerning defamation

Ethical codes

The Croatian Journalists' Association developed its Code of Ethics in 1993. According to judgment of the European Journalists Association and the Federation of Journalists Association, there were no significant objections to the provisions of the code. On the contrary, the CJA Code of Ethics was seen as a good document for the protection of professional standards and ethics in media, for developed as well as for transitioning countries.

When comparing the CJA Code of Ethics (i.e. the Code of Honor of Croatian Journalists' Association) with similar codes from European media landscape, one can observe that all important issues concerning the everyday work of journalists have been covered by it. The issues addressed range from protection of sources of information, protection of human rights and the rights of all minorities, the protection of privacy, protection of state secrets, the promotion of good taste, the emphatic condemnation of plagiarism as a so-called "mortal sin of journalism," the obligation of journalists in situations in which editors change their stories or the sense of stories without their permission, etc. Accuracy and fairness are basic elements of ethical code of Croatian Journalists Association.

Three problems arise from the Croatian Code of Ethics: first, the Code does not include a detailed description of the range of possible mistakes and inaccuracies on the part of reporters and editors. This is especially true regarding children's

issues, as was noted two years ago at the Annual General Assembly of the CJA. Responding to numerous bad examples of coverage of children in the media, CJA's recommendation at that time was to protect each child, especially those who are ill, have been sexually abused or have suffered some other type of harassment.

The second problem with the Code of Ethics of the Croatian Journalists' Association is the fact that journalists (unless they are not formal members of CJA) are not forced to follow the rules from Code. If they are in fact members of CJA and disobey the Code and subsequently find themselves under sanctions from Council of Honor, very often journalists revoke their membership in that professional organization in protest.

The third problem is that publishers and broadcaster are not covered by the Code of Ethics; likewise they are not members of the Council of Honor. As long as owners, publishers and broadcasters are not covered by Code or are not required to be members of Council, the situation will not improve.

Croatian Radio Television (HRT) and HINA (Croatian News Agency) have internal regulatory bodies (ethical commissions) which are in fully functional. Three Croatian journalism departments at two Universities (two in Zagreb and one in Dubrovnik), have included journalism ethics or media ethics as obligatory subjects in the past three years.

The project of self-regulation

Two years ago, a group of professional and non-governmental organizations initiated the creation of a self-regulatory system at the national level. This group consisted of the Council for Media of the Croatian Helsinki Committee (which initiated the idea) and CJA; HUNI (the Croatian Association of Newspaper Publishers that was founded in 2002, which is a part of the very influential Croatian Association of Employers; it bring together 17 publishers, including the largest such as EPH and Styria Group; nevertheless, the association has no representatives from the three very important political weeklies: *Nacional*, *Feral Tribune* and *Fokus*, nor any representatives from any of the Catholic media); HURIN (The Croatian Association of Radio and Newspapers, which consist of approximately 150 private radio stations [mostly local but also two with national concession] and publishers of the regional and local newspapers; it should be mentioned that about 10 local radio stations, including the famous Radio 101 [the oldest private radio station, very involved in the promotion of freedom of information] are not part of HURIN); and ICEJ (the International Center for Education of Journalists).

The activity was supported by the Konrad Adenauer Foundation and the Open Society Institute in Croatia. In May 2004 the "Croatian model" (authored by Geza Stantić) of self-regulation was promoted, which was based on two standard principles: autonomous establishment of norms and voluntary submission to control and sanctions. The system should act as a service to the public and protect individuals from the media power misuse, but also protect the ethical and authorial integrity of journalists, in that way contributing to the social value of the media. Finally, the collaboration of social partners

in this project would, as a nucleus of the general media forum in Croatia, significantly ease the articulation of attitudes within the profession toward other fundamental issues of media policy. The founders of the autonomous body would be associations of journalists as well as publishers and their associations. The autonomous system would consist of a collaborating body (the titles "Council for Media" or "Media Council" have been suggested), in which there would be representatives of journalists (CJA and the Trade Union of Journalists) and publishers (HUNI; HRT; independent television stations such as local outlets, HINA and news agencies; and HURIN.²⁶ The actual jurisdiction of the Council would include professional and ethical issues arising in the journalistic production in the media; the Council would create codes, follow a two-stage decision making process to address concrete complaints, and establish basic professional/ethical attitudes on new or unregulated problems.

The sanctions of the Council would be of a moral kind; an important part of their task would be to act as mediators and peacemakers and to function as a public service. The functioning of the Council would not be limited to the print media, but would also cover the electronic media. As an alternative, it has been suggested that an ombudsman for media be appointed with jurisdiction within the autonomous organ. According to the estimated budget, 90,000 - 100,000 EUR per year should be provided for the regular functioning of this system in Croatia. The funds would be raised from the founders and – if possible – from state subsidies. The biggest

²⁶ When the project was at its beginning, representatives of journalists in the initiating group were a bit skeptical about the idea of including representatives of media consumers in the independent body; however, attitudes on this question have evolved in the meantime.

obstacle in the realization of this project was the restraint of the leading Croatian publishers, who simply would not answer calls to participate in the preparations. In June/July 2006 there was a survey among the 14 biggest publishers; the results were encouraging to a certain extent. The biggest publishers agreed to take part in the project, thus it is expected that in September or October of this year a consortium of the relevant organizations and companies will be formed that would lead the final stage of the project development. Activities requiring expertise would be undertaken by an ad hoc group from ICEJ.

Defamation

In the 1990s Croatia had a bad reputation for legal action against the media.²⁷ In recent years the number of such action has decreased, however, large compensations are still regularly awarded. Unfortunately, the newest and most exact figures for recent years are not available. According to Vesna Alaburić, a media lawyer, the figures for 2005 are as follows: "At the moment the Croatian courts are dealing with more than 150 criminal proceedings against journalists for libel and/or insult and more than 1,000 civil proceedings against newspaper publishers/broadcasters for recovery and damages" (*South East Europe Media Handbook 2005/2006*). Plaintiffs in such procedures against the media are most often public figures.²⁸ About 90% of the procedures were civil. In public, these procedures were ironically called by journalists "procedures for the compensation of mental pain."

²⁷ The State Department reports on the condition of human rights in 2001 record 1,200 such actions.

²⁸ One ex-politician initiated eight procedures at the same time.

Media defamation in the Croatian judiciary system can be claimed in both civil and criminal procedures.

A *civil procedure* is led against the publisher. The publisher can be adjudged to pay compensation of non-pecuniary damage for defamation (and for unauthorized invasion of privacy and certain other reasons). The relevant provisions usually applied are the *general regulations* on damage compensation (from the Obligation Relationships Act and several other laws). Specific issues (for example, reasons for excluding responsibility) are regulated in the Media Act. The procedure differs depending on whether the damage was done by factual claims or value judgments. In the first case, the defendant can be exonerated of charges if he or she proves that the published information was true. If the defendant cannot prove that, the court will judge whether the publishing of the information in question in the specific case was justified considering the importance of freedom of information, public interest and the right of the public to know, as provided by the Media Act.

Justifiability of publishing is proven by the test of professionalism. In such a test, the defendant has to prove that the author had a justified reason to believe in the accuracy of the information and that he took all the necessary actions to verify its accuracy; that there was reasonable public interest at stake, and that the author acted in good faith. If the charges concern a value judgment, the publisher will be exonerated if he proves that the publishing of the information was in the public interest and that he was acting in good faith. In both cases, the injured party must first ask for correction to be published; this is the condition for admissibility of the lawsuit.

The amount of compensation is not regulated. It can range from 4,000 to 50,000 EUR, which is extremely high compared to the average monthly salary in Croatia at the moment (which is around 600EUR/4,400 Croatian kunas)! Media circles criticize the penal policy of the judiciary system, pointing out that it differs from the point of view of the European Court and that it inhibits the controlling function of the media.

A criminal procedure concerning media defamation can be brought against the immediate perpetrator, meaning a journalist or another person (such as an interlocutor in an authorized interview). There are two basic forms of media defamation. *Libel* is defined as the publishing of something untrue if it can possibly damage someone's honor. Therefore, libel cannot be committed by the expression of a value judgment (since the court cannot verify its authenticity). According to a legal regulation instituted in June 2006, this offence is punishable by up to 300 daily personal incomes. *Insult* has been described by the law as the publishing of something offensive to another person regardless of its authenticity, thus such an infraction can be committed by the expression of a value judgment. It is also punishable financially by a fine of up to 150 personal incomes.²⁹ There are no differences in the compensation amounts for defamation of public figures.³⁰

²⁹ Up to recently there were also prison sentences for such offences, including up to one year for defamation and up to six months for insult.

³⁰ The courts, however, take into consideration the social position of the affected person when deciding upon compensation in the civil procedure, so the highest amount are adjudged to politicians and judges, etc.

A criminal procedure for media defamation can only be initiated by the person harmed in a private lawsuit.³¹ Even the highest-ranking officials can claim defamation only in a private lawsuit. Legal persons cannot file a criminal suit at all. The prosecutor must prove that the defamation was intentional, otherwise there is no criminal act. However, the burden of proving the veracity of the published information, if the procedure on defamation has already been initiated, is on the journalist. In a criminal procedure it is not possible to use the public interest defense,³² it is only taken into consideration in civil procedures and can contribute to the exoneration of guilt. The legal basis for this arises from the wording of the text of the Penal Act in which all criminal acts, including defamation and libel, are enumerated. Public media (e.g. HRT) are in no way privileged in these procedures.

Legislators have responded to criticism from media circles and civil society, thus important improvements of criminal regulations on defamation have been made. In 2004 the burden of proving the intention became the prosecutor's obligation (until that time the defendant could be exonerated of charges only if he proved that there was no intention to defame). The wording of the article was also changed, so that the defendant is required to give evidence that "*clearly*" demonstrates the intention and proves that the text in the article "intended *only* to hurt the honor or reputation" of the

³¹ The public prosecutor is authorized to filing charges only in cases that concerning the mocking of the flag or other national symbols of the Republic of Croatia, the reputation of other countries, international institutions and foreign diplomats. Such offences are not criminal acts specific to the media, but they can be committed in the media. Otherwise, it is a "dead norm."

³² There is no legal definition of "public interest" in Croatian law, although in certain media laws there are entities identified as part of this term (carrying out the right to public information, ethnic minorities rights etc.); it is used by the legislator as a legal standard.

plaintiff. Under normal circumstances, one would expect that such amendments would be enough to restrict criminal prosecution only to truly severe cases of defamation and that the media defamation would be effectively decriminalized. However, this has not proved to be the case; in 2005 alone there were six legal procedures before home courts.³³

The most vocal reactions on this subject were provoked by the invalid conditional prison sentence handed down to P.Matvejević,³⁴ who had called the writer M.Pešorda a "Taliban." According to the opinions of several prominent lawyers, Matvejević did not commit a criminal act at all according to the then-existing law, because the prosecution could not prove the intention to exclusively offend.

A very peculiar case occurred in the city of Rijeka. One individual, who was both a city official and the wife of the former vice president from the ruling Government, won two cases against journalists in the same year. Apart from such rare efficacy on the part of a claimant, it is considered scandalous in journalist' circles that in one of these cases the court accepted the argument that defamation is possible even in a satirical text.³⁵

³³ The same year six journalists were accused before the International Court Tribunal for Ex-Yugoslavia. They were charged with contempt of the court, while the essence of the accusation concerns the revealing of names of protected witnesses and their testimonies (official secrets).

³⁴ A writer, university professor, and highly-respected intellectual of international reputation, who in the so-called communist period stood up for people convicted of political crimes. In the 1990s, he was detested in nationalistic circles as one of the liberal critics of president Tuđman's policy, gaining the reputation of being "yugo-nostalgic" and an incurable left-winger.

³⁵ Technically, only insult could be possible here.

Remarkably often, juridical officers appear as private claimants bringing suits against journalists. In 2004 the editor-in-chief of the local newspaper *Novi brodski list*, M. Jurić, was sentenced with a fine in the private lawsuit brought by the state attorney from Slavonski Brod. The defendant had published an article about the local court and the district attorney's office, which had been taken from other newspapers (against which the prosecutor did not press any charges). Jurić thought that he could defend himself by truth, however the sophisticated lawyer beat him in the trial. He refused to pay the fine on the grounds that it was unjust, hence he was supposed to be sent to prison. In order to avoid a scandal, the Minister of Justice at the time, V. Škare-Ožbolt, "secretly" paid the fine, as a private person, and in that way halted the procedure. Journalist I. Mršić from Split was penalized with a fine in 2005 because, according to the court, he had defamed the local state prosecutor. The journalist wrote that the prosecutor deliberately kept a file on highly suspicious activities in the privatization process of the daily *Slobodna Dalmacija* in his drawer.³⁶ The CJA Assembly, having decided that this was a case of hopeless (but useful) journalistic ambition to discover the truth about a big privatization scandal, decided to pay Mršić's fine using CJA funds.

The case of the editor-in-chief of *Narodni list* from Zadar that was tried in the court in Šibenik, although it had a „happy ending“, is particularly notable because of the extreme illegitimacy of the charges. The state prosecutor in Zadar filed a private lawsuit against him, appealing to criminal law regulations that had in the meantime been abolished or altered

³⁶ This was the biggest case of controversial privatization of the media. It is known publicly as a poorly disguised robbery, which, however, was never resolved in court and the perpetrators of which were never brought to justice.

to the defendant's benefit. The municipal court in Šibenik accepted the charges, although it should have officially dismissed them, since in such cases the court is required to apply a more suitable regulation. Even worse, the journalist warned the court about their oversight at the beginning of the process, but the judge ignored the objection and sentenced him with a prison sentence. The higher court abolished the sentence and set Pavić free, which is certainly formal proof that the primary court acted illegally. It was a case of severe and deliberate illegal proceedings on the part of two judiciary officials; regardless of the final outcome, the case proves their participation in scandalous behavior against journalists. Considering that this incident constituted a significant compromise of the justice system, the routine correction of the higher court was a weak response on the part of the system. This case is unique only in terms of the drastic illegal procedures; as other cases show, many more verdicts³⁷ on media defamation would not withstand more detailed expert criticism.³⁸

³⁷ Also of concerns the verdicts that dismiss lawsuits against media personnel. Recently the verdict was announced in a case in which a civil lawsuit brought by the distinguished journalist Z. Letica against Slobodna Dalmacija has been dropped. In 1995 Letica was offended by the author of the article Media fifth column, in which texts from the files of totalitarian secret services about foreign correspondents in Croatia and especially Croatian citizens were identified as subversive. At that time, one third of Croatian territory was out of the control of Croatian authorities and the country was living in war psychosis, thus such claims could have endangered the safety of the defamed person. The court accepted Letica's claim, however but the higher court reversed the decision. Other judges of that same court had previously accepted the claim of another Croatian journalist who had been defamed in the same article. Legally, it is a situation which is hardly sustainable: The factual basis is identical, yet the verdict is completely different because of the different application of regulations. The explanation of Letica's verdict does not contain nearly enough elements that could justify such a drastic change in the court's point of view.

³⁸ Four out of six verdicts in media defamation cases resulted in probation. Formally, probation is a form of court warning, but in reality it is more inconvenient for

It is also an indicative fact that the plaintiffs are public figures and business men; there is no “common people” among them. From these facts it can be concluded that criminal processing of media defamation in reality serves more as an instrument of revenge for members of the elite toward critical journalists, and not as a true means of protection of honor and reputation from misuse of the media. The Croatian justice system, as it has already been said in this text, turns out to be the most problematic aspect of the state influence on freedom of the media. Considering the imperative of the independence of the judiciary, it is a very sensitive problem, but most certainly a problem.

Protection of sources

Journalists are protected by law from revealing data about the sources of information in their professional work that were used or will be used in the editing of public media. This right is regulated by the Act on Media and the Act on Criminal Procedure. The first Act specifically mentions journalists and editors, regardless of the type of media or whether it is full-time or part-time job, as well as authors of published texts who are not journalists. Newsroom facilities and technical resources

journalists than a financial fine because it limits him in processing any contradictory situation. This kind of strictness shows that the courts are “deaf” when it comes to the general call to decriminalize media defamation. Moreover, their strictness is selective. While in cases of media defamation they often give probation, in general courts tend to give very mild sentences. Thus, during the latest changes in the law in 2006 legislators had to, increase the minimum punishment for a large number of criminal acts, while in the case of media defamation the situation was reverse; the possibility of prison sentences was abolished!

used by journalists are not specifically mentioned, but the protection should be extended to them also.

Such protection is not absolute. A state attorney can ask the court, if a case concerns matters of national security, territorial integrity and health safety, to request from a journalist the disclosure of the protected information. The court can only require such disclosure if it is a matter of protecting the public interest, if the circumstances are extremely serious and if it is determined beyond a doubt that there is no reasonable alternative solution and that the public interest in revealing the information based on the law outweighs the interest in protecting it. The court can order that the public be excluded from the hearing of a journalist.

If a journalist refuses such an order from the court, he is faced with a 2,500 EUR fine and can also be imprisoned for up to a month.

Until now only the editor of the *Nacional* weekly, Ivo Pukanić, who published an interview with General Ante Gotovina, who is a fugitive from the Hague, pleaded to the right of source protection and that right was respected.

Disclosure of classified information

The procedure for handling information of different levels of secrecy is regulated by the Secrecy of Information Act, the Criminal Act and the Media Act. The first of the laws regulates the issue systematically, while the Criminal Act is focused on sanctions. The Media Act contains only a regulation that says that an official person can withhold information from journalists only if it concerns a national or military secret. Basically, everyone is obliged to keep information secret,

regardless of how they found out about it; however, the responsibility of officials for its disclosure is a lot bigger.

State and military secrets are the most highly protected secrets. The Law lists 13 groups of data that could qualify as a state secret, including strategic, military, political and economic assessments important for defense, plans for defense and mobilization, lists and locations of war reserves, data on cryptological protection, certain technical discoveries and findings etc. The list of data that could be classified as a military secret is similar. An official person who discloses a state or a military secret can be sentenced to up to five years in prison. In war times or other special circumstances the sentence can be doubled. If this category of secrets is disclosed by a third person, the sentence is shorter, up to three years. The sentences for publishing state and military secrets is also three years; however, if such secrets are published during war times the sentence could be up to five years.

The Criminal Act contains sanctions for publishing only these two categories of secret information. Disclosure of business secrets carries the same sentence (five years and, in special cases, ten years). Disclosure of official secrets carries a sentence of three years in prison, while disclosure of professional secrets carries a fine or up to three years in prison. There is no particular punishment listed for the publishing of secrets in these three categories.

The media do not shy away from publishing classified information; however, no one, not even a journalist, has been prosecuted in Croatian courts on account of such actions over the past several years.

However, six Croatian journalists have been accused at the Hague Tribunal of publishing an official secret. The editors, publishers and associates of three newsrooms were accused (including S. Šešelj, I. Križić and D.Margetić,³⁹ J. Jović, I. Marijančić and M.Rebić⁴⁰) of revealing the identity of protected witnesses and their testimonies. The initial reactions to the accusations in Croatia varied widely, ranging from legal analysts arguments that the journalists should be called upon to defend their actions before court to claims that such a trial is a drastic attack on information freedom, which needs to be defended by the journalistic profession. In this case, the journalists' organization has remained silent because it is controlled by left-wing politicians.⁴¹ This case has also led to uncomfortable friction in the CJA leadership. Soon a critical attitude towards the prosecution of the Croatian journalists was established, due to the usual high level of respect for the Tribunal. CJA formed intensive contacts with different international institutions, including the Tribunal's Prosecuting Office. The Croatian Helsinki Committee wrote a letter to the Tribunal President asking the Tribunal to take into consideration, when judging the responsibility of the journalists, the repercussions such cases could have on the controlling and critical function of the media in Croatia and to keep in mind the position of the European Human Rights Court when making decisions. The outcome of these processes will certainly have a strong impact on the position of journalists in home courts in the future.

³⁹ In June 2006 the Prosecutors dropped the charges in these 3 cases.

⁴⁰ A retired general in the Croatian Army. In the 1990s he was the chief of intelligence and a secret service advisor to president Tudman. After retirement, he has been writing specialized articles on matters of national security for several magazines.

⁴¹ The accused journalists gained a certain reputation for their connections to secret service sources or nationalistic political lobbies, which greatly complicated the situation but did not affect public reactions in a decisive manner.

At the present moment it is not possible to say with certainty that journalists could defend themselves successfully before home courts or to prove that in a concrete case the public interest to know could be valued above the interest to protect the secrecy of information. Croatian regulations do not specifically require the court to test the compatibility of the secrecy status of a published document with the principles of Article 10/2 of the European Convention. However, international legal acts are above domestic law, so the court would have to make that test during the process, especially upon the defendant's request.

Access to public sources

Freedom of Information Act (FOIA) has existed since 2003. The proposal was created by experts from an NGO coalition and was adopted by Parliament thanks to the former's continuous lobbying. The Act itself did not introduce a drastic change in journalistic access to information in the possession of public authorities. The Media Act already required certain local authority bodies, as well as public institutions, to put information from their field of functioning at the public's disposal. Information can only be withheld if it concerns matters of state or military secrets and protected personal data; furthermore, all journalists must be insured equal access to information. The Act also determines the procedure of acquiring public information and the appeals procedure in which a final decision can be made by the court. Unauthorized denial of information to journalists is a criminal act, punished by the Penal Act with a financial fine or up to one year in prison. The extraordinary importance of the FOIA lies in the fact that it

guarantees every citizen the right to access public information. Apart from this, the process of lobbying for this Act and the NGO campaigns for its implementation raised the level of importance of this issue in public, which makes journalists' job a lot easier.

According to a research study,⁴² "secrecy" appears to be a large obstacle in claiming rights for journalists and regular citizens. When analysts monitored citizens' inquiries, only 38% of answers were given in the set deadline and to the full extent requested. Journalists also complain about politicians' tendencies to make decisions behind closed doors. According to an analysis by journalists,⁴³ the present government made at least 50 major financial decisions over two years without the public ever knowing about it. A disturbing chronology⁴⁴ was published that detailed a journalist's attempt to get certain information from the Office for Combating Money Laundering. The journalist did not receive an answer for three months, even though he sent three written requests and telephoned 10 times. When he appealed to a higher organ, he received the response that his request had been "received." Still, other, slightly different examples can be found. A journalist from the independent Radio 101 sued the Prime Minister for "administrative silence" and won. The typical reaction of his public relations office was lack of action: even the deadline set by the court was not respected. A reply was nevertheless forced out under public pressure; the journalist finally received it, perhaps ironically, on international Human Rights Day.

⁴² See: Croatian Helsinki Committee report at www.gradjani-imaju-pravo-znati.hho.hr.

⁴³ Feral Tribune, April 15, 2005.

⁴⁴ Večernji list, July 4, 2005.

Journalists who have to report regularly from Croatian Parliament or Government can gain accreditation by going through a simple procedure: Newsrooms send a request for accreditation for a certain journalist and in a short period of time (a week or two) the approval with accreditation is sent back to the journalists and editors. So far, in the last four years, accreditations, once given, have not subsequently been taken away from any of journalists.

A similar but significantly shorter accreditation procedure exists for a one-day visit to Parliament to film for television or to conduct interviews for other media.

Conclusion

Croatian media are in a progressive but unfinished phase of the transition to democracy. The normative machinery is satisfactory, but the real socio-political status of the media is still not stable, so we still cannot discount the threat of more massive retrograde interventions from the political sphere. A large number of problematic verdicts indicate that the Croatian judiciary system, instead of being one of the most important guarantees of freedom of information, is in fact a major factor in the violation of some of the essential functions of the media. The state's share in media ownership is still very high, but the minimally-necessary level of ownership pluralism has been reached, both in the system as a whole and in the field of the electronic media. Despite the large problems facing the sector, the level of development and independence the media have achieved makes the democratic system sustainable. The journalistic profession is in agreement that in order to improve the social quality of the media and promote of standards of good journalism, we should begin establishing a self- regulatory

system at the national level. The initiators of this project could use all available help from countries that have made progress in this area.

Recommendations

1. Associations of journalists, publishers and their associations, and non-governmental organizations dealing with the promotion of the media freedom should intensify and unite their efforts in order to realize the final stage of establishing a self-regulatory system, which should be a priority for their development goals.

2. It would be desirable if the self-regulation initiative group would gather all the relevant journalistic organizations, publishers and their associations, and NGOs that deal with protection of the freedom of information. If that is not possible, it would be reasonable to begin the finalization of the system as soon as a consensus on all the important elements has been reached between the most important social partners of the profession.

3. Elements of the self-regulatory system should not be worked out in the national legislature; instead, they should be in the exclusive domain of journalists and media organizations. The best thing the state can contribute to the process is to provide strong guarantees for the freedom of information not only in the legislature, but also in the practical actions of Parliament, executive authorities and the judiciary system. It would be useful if the Government encouraged the profession in an appropriate way, including unconditional financial support for the establishment and functioning of the system.

4. For the establishment of the project itself it would be very useful to have detailed insight into experiences of established foreign systems; however, it is most important to carefully adjust the model to the structure of the home system and to mobilize its authentic energy. The three-sided model would be most suitable for Croatia. The system should also include electronic media and not just print media. It seems that it is too early to make a final decision as to whether the institution of ombudsman should be introduced, as a collaborating organ in addition to the Council for the Media.

5. It is recommended to use the experiences of already-established systems, which offer precise and concise codes appropriate to the nature of media ethics, rather than wide-ranging collections of strict rules. Such a code will, of course, be largely determined by the local tradition, but there are contents that would certainly have to be included. These include: a definition of "public interest"; enabling the public's right to know; accuracy in gathering news and reporting; correctness of methods of gathering news, photos, data and documents; protection from ethnic, racial, religious, and sexual discrimination; consideration in reporting on members of sensitive groups such as children, crime victims and others; taking into consideration the presumption of innocence when reporting on criminal processes; the duty to protect a confidential source of information; the duty to correct published information that turns out to be false or damaging.⁴⁵

⁴⁵ According to the publication Freedom and Accountability: Safeguarding Free Expression Through Media Self-Regulation, Article XIX, 2005.

Hungary

By Peter Bajomi-Lazar and Krisztina Kertesz

Executive summary

Context

Hungary is a relatively stable post-communist democracy in both economic and political terms. The print press and the broadcast media have been privatised; national and regional newspapers and broadcasters are typically owned by Western European multinational companies, whereas local outlets are predominantly run by minor Hungarian ventures. Members of the political elite have repeatedly interfered with press freedom over the past 16 years, causing most analysts to describe the status of the press and media as one ruled by a quasi-permanent “media war.”

Self-regulation

Awareness of journalistic standards in the Anglo-Saxon sense of the term is low; few press and media outlets have codes of ethics and even fewer make them accessible to the general public. At the same time, however, efforts to enhance professional journalism have multiplied in recent years, as demonstrated by the passing of codes of ethics, the activity of the Ethics Commission of the Hungarian Journalists Association, the establishment of professional awards such as the Pulitzer Memorial Award, the Quality Journalism Award, and the Soma

Award, as well as the appointment of a newsroom ombudsman with the nationwide quality daily *Magyar Hírlap*. Yet there still is a wide gap between the theory and the practice of journalism: partisan journalism prevails to the detriment of neutrally objective journalism, as a result of which public trust in the press and media is low, and audience ratings of public service broadcasters, as well as the circulation figures of quality newspapers, have been steadily declining in recent years.

Regulation

In general, the regulation of the print press and broadcast media in Hungary complies with European standards. Since the political transformation, the rulings of the Constitutional Court as well as the case law established by regular courts have gradually expanded the limits of free speech, especially regarding the criticism of public officials. The protection of sources and access to public information, however, are arguably not regulated in an adequate way. Key problem areas include the seizure of editorial equipment by the police and some governmental institutions' reluctance to release public information on time.

Conclusions

Recent years have seen a multiplication of efforts to enhance professional journalism, the results of which, however, are hardly tangible as of yet. The legal context of journalism is undergoing continual but slow change; this process has not yet come to an end, even though most of the recent trends in this field are welcome from the point of view of press freedom.

Recommendations

The authors of this paper recommend the following changes in the fields of self-regulation and of regulation:

- the establishment of a professional journal in order to provide for a forum where controversial ethical cases and issues of journalism can be publicly discussed;
- the appointment of newsroom ombudspersons to news outlets in order to investigate complaints submitted by the public and fellow journalists;
- the abrogation of imprisonment as punishment in defamation cases;
- the abrogation of the responsibility imposed upon every natural and legal person to preserve state and other secrets, and to limit this responsibility to those public officials who actually are in charge of classifying information.

Context

Hungary is a consolidating post-communist democracy that joined the North Atlantic Treaty Organisation in 1997 and the European Union in 2004. Since the political transformation in 1989–90, the economy has been largely privatised, and foreign, mostly Western European, investors have been active in Hungary.

The economy has been relatively stable over the past 16 years, and so has the political system: all democratically elected governments have fulfilled their entire, four-year terms in

office. Currently,¹ there are five parties in Parliament, including the current coalition partner parties the Hungarian Socialist Party (MSZP, 190 parliamentary seats) and the Free Democrats Association–Hungarian Liberal Party (SZDSZ, 20 seat), as well as the opposition parties Fidesz–Hungarian Civic Association (Fidesz), the Christian Democratic People’s Party (KDNP, the two latter parties jointly holding 164 seats) and the Hungarian Democratic Forum (MDF, 11 seats).²

According to the latest census conducted by the Central Statistical Office (KSH) in 2001, Hungary has a population of 10.198 million.³ In 2005, the per capita GDP was HUF 2,160,000.⁴

Since the political transformation in 1989–90, the print press and the broadcast media pursued different developmental paths. The privatisation of the newspaper industry began on June 15, 1989, when the last communist Government issued a decree abolishing the licensing procedure that had been, under state socialism, imposed upon print publications.⁵ As a result, thousands of new titles entered the market in just a few years,

¹ This paper was completed in September 2006.

² See the official webpage of the Hungarian Parliament, http://www.mkogy.hu/cgi-bin/insurl?pairhelp/ogy_magyar.htm, last accessed 21 July, 2006.

³ Data provided by the Central Statistical Office (KSH), http://www.nepszamlalas.hu/hun/kotetek/10/10_osszef.pdf, last accessed 21 July, 2006.

⁴ See the official webpage of the Prime Minister’s Office at http://www.magyarorszag.hu/hirek/gazdasag/gdp20060310.html?mohu_location=C_NewsAdvisor, last accessed 24 July, 2006. The exchange rate was EUR 1 = HUF 275 in the summer of 2005, but fluctuates.

⁵ Government decree 58/1989. (VI. 15.).

including political as well as entertainment newspapers; in 1989 alone, 1118 new publications were registered.⁶ As regards broadcasting, however, the same Government issued a “frequency moratorium” on July 3, 1989, which froze the licensing of radio and television frequencies and sustained the monopoly of state broadcasters.⁷ The moratorium was to remain in effect until a broadcasting act could be passed; however, no such law came into force until early 1996, and the privatisation of nationwide broadcasters began only in 1997 (by contrast, the first local television channels had been launched as early as 1986, and the first local radio stations licensed in 1994).

General questions

Prior to the political transformation, the liberation of the press and media was a key slogan of the emerging democratic opposition in Hungary. The declaration of press freedom in the Hungarian Constitution, amended on October 23, 1989, was a symbolic act of the democratic changes. According to article 61 of the base law:

(1) In the Republic of Hungary everyone has the right to the free declaration of his views and opinions, the right of access to information of public interest, and also the freedom to disseminate such information.

⁶ Seregélyesi, János, “A nyomtatott sajtó helyzete [The status of the print press]”, in Cseh, Gabriella, Mihály Enyedi Nagy and Tibor Solténszky (eds) *Médiakönyv 1998* (Annual of the Hungarian Media 1998). Budapest: ENAMIKÉ, 1998, pp. 191–196.

⁷ Government decree no. 1008/10/89/VII. 3.

(2) The Republic of Hungary recognizes and protects the freedom of the Press.⁸

Similarly, the preambles of the 1986 II. Act on the Press (amended in 1990 and 1996, hereafter referred to as the Press Act) and of the 1996 I. Act on Radio and Television (amended in 2002, hereafter referred to as the Broadcasting Act) recognise press freedom as a key democratic value protected by the state.

Despite this legal framework, media analysts unanimously agree that the political elites have repeatedly curtailed press freedom in post-communist Hungary. From the early 1990s up to the present day, the country has seen a quasi-permanent “media war”, i.e., subsequent governments’ efforts to control the press and the media in an attempt to improve their coverage and to silence critical voices. Freedom House, the U.S. Government-sponsored international freedom watch organisation described the Hungarian press and media as only “partly free” for some of the 1990s and, even though in recent years it has recognised the Hungarian press and media as “free”, the qualitative data available on the webpage of the organisation suggest that the performance of the Hungarian press and media is well below the Central European average.⁹ The International Journalists Federation, the Committee to Protect Journalists, the International Press Institute and the European Broadcasting Union have also expressed concerns with the status of press freedom in Hungary in past years.

⁸ 1949. XX. Law (Constitution) amended by Law 1989. XXXI.

⁹ <http://www.freedomhouse.org/uploads/FIWrank7305.xls>, last accessed 21 July, 2006.

A longitudinal study conducted by sociologist Mária Vászárhelyi and the Communication Theory Research Group among 700 Hungarian journalists also revealed a deficit in press freedom. During the 1990s and in 2000, corruption, cooperation between the political parties, business groups and organised crime were leading items on the list of taboo issues that journalists could not freely cover. Every second journalist said that the political parties had too much influence upon the media. Two out of three strongly agreed (33%) or agreed (39%) with the view that the political parties have institutionalised their control over the public service institutions of Hungarian Radio (*Magyar Rádió*) and Hungarian Television (*Magyar Televízió*). Moreover, journalists perceived a gradual decline in their professional autonomy as well as an increase in political pressure throughout the 1990s: the same longitudinal study shows that in 1992, 45 percent of journalists thought that press freedom was unlimited, while in 1997 and in 2000 only about 27 percent held this opinion. In 1992, 45 percent said that they were free to comment on facts, in 1997 and 2000 only 31 percent thought so. In 1997, 38 percent reported on political efforts to prevent the publication of compromising information, while in 2000, 49 percent did so.¹⁰

Political interference with the press and media in Hungary over the past 16 years has included efforts to influence the privatisation of print publications and the licensing of broadcasters, the removal of senior news editors and the appointment of loyal personnel, the distribution of state subsidies on the basis of political considerations, as well as the

¹⁰ Vászárhelyi, Mária, Újságírók, sajtómunkások, napszámások [Journalists. An opinion survey]”, Budapest: Új Mandátum Kiadó, 1999; Vászárhelyi, Mária, “Újságírókutatás 2000 [An opinion poll among journalists, 2000]”, Jel-Kép, 4/2001.

release of public information to selected (i.e., loyal) press and media outlets.¹¹

This deficit of press freedom is best explained in terms of the shortcomings of the current institutional system of the press and media. As regards *the print press*, in theory anyone can, after a process of automatic and low-cost registration, establish a new title. In practice, however, the market is too small to sustain a sufficient number of political outlets. At the same time, unlike in some Scandinavian and Latin countries, Hungary has no system of press subsidies to sustain financially unviable newspapers, even though the establishment of a press fund run in a politically neutral and transparent way would make it pointless to fund newspapers and other media outlets on the basis of political considerations and in a non-transparent way. Well-designed press subsidy systems in established democracies have contributed to the plurality of newspaper markets and have helped newspapers improve their independence vis-à-vis political elites.¹² Arguably, they would have the same impact in post-communist democracies.¹³

¹¹ Lengyel, Emőke, “The Art of Careful Power Balancing: Hungary”, in: *The Development of the Audiovisual Landscape in Central Europe since 1989*, foreword by Flesch, Collette, Luton, UK: John Libbey Media, 1996, pp. 81–120; Sükösd, Miklós, “The Media War”, in *East European Reporter*, April 1992, pp. 69–72; Lánczy, András and Patrick H. O’Neil, “Pluralization and the Politics of Media Change in Hungary”, in Patrick H. O’Neil (ed.), *Post-Communism and the Media in Eastern Europe*, London: Frank Cass, 1997, 82–101; Bajomi-Lázár, Péter, “Press Freedom in Hungary 1990–2001”, in Sükösd, Miklós and Péter Bajomi-Lázár (eds), *Reinventing Media. Media Policy Reform in East Central Europe*. Budapest: Central European University Press, 2003, pp. 85–114.

¹² Cf. Humphreys, Peter J., *Mass Media and Media Policy in Western Europe*, Manchester and New York: Manchester University Press, 1996, pp. 83–89; Hutchison, David, *Media Policy. An Introduction*, Oxford: Blackwell Publishers, 1999, pp. 170–180; De Bens, Els and Helge Ostbye, “The European Newspaper Market”, in McQuail, Denis and Karen Siune (eds), *Media Policy. Convergence*,

As regards *the broadcast media*, the current institutional setting seems unable to enhance and protect the freedom of public service broadcasters in particular. The supervisory bodies, i.e., the so-called boards of trustees, institutionalise rather than relax political pressure. Furthermore, inadequate funding, and especially the removal of the television subscription fee in the summer of 2002, undermined the financial and symbolic independence of public service broadcasters. Public service broadcasting is in dire need of reform, the basic elements of which should include the reform of the composition of the boards of trustees, as well as the re-introduction of the subscription fee, which should be tied to the yearly inflation rate. The licensing of private broadcasters has also been a controversial issue. The National Radio and Television Board (*Országos Rádió és Televízió Testület, ORTT*) has repeatedly distributed both radio and television frequencies on a political basis. Furthermore, the Broadcasting Act imposes a requirement of impartial information on all broadcasters without, however, defining the concept of impartiality. At the same time, the various agents of ORTT, namely the Monitoring and Analysing Service and the Complaints Commission, evaluate broadcasters' performance on different criteria. The qualitative analyses of the former are based on the principle that the government, the coalition parties and the opposition parties should each be covered in 33 per cent of the political news, while the *ad hoc* analyses of the latter understand

Concentration and Commerce, Sage, 1998, pp. 7–22; Humphreys, Peter J.: *Mass Media and Media Policy in Western Europe*, Manchester University Press, 1996.

¹³ Cf. Bajomi-Lázár, Péter, “Még egyszer a sajtóalapról [Do we need a press fund]?” in Enyedi Nagy, Mihály, Gábor Polyák and Ildikó Sarkady (eds), *Magyarország médiakönyve 2003 (Annual of the Hungarian media 2003)*, Budapest: ENAMIKÉ, 2003, pp. 365–376.

impartiality as 50 per cent of airtime being devoted to representatives of the coalition government and 50 per cent of it to those of the opposition parties. No matter what the broadcasters do, they will inevitably break the law, which exposes them to politically motivated sanctions by ORTT. The shortcomings of the operation of ORTT would be best handled by replacing the current licensing process by a lottery system and by removing the requirement for impartial information.¹⁴

The press and media are, in general terms, subject to the same tax obligations (including value added taxes) as any other industry. At the same time, however, because of the specificities of Hungarian tax regulation, an estimated 50 per cent of all journalists work as freelancers, which makes them economically vulnerable. Freelance journalists are not protected by collective contracts, nor are they bound by the rules of editorial codes.¹⁵

As regards ownership, despite existent anti-monopoly and cross-ownership regulation, analysts describe the market as “fairly concentrated” because the overwhelming majority of the nationwide press and media in Hungary is controlled by foreign, predominantly Western European-based multinational companies such as Bertelsmann, Axel Springer, Westdeutsche Allgemeine Zeitung, Ringier and RTL, while local newspapers and media outlets are typically controlled by minor Hungarian

¹⁴ For details, see Bajomi-Lázár, Péter, “Hungary”, in Dragomir, Marius et al. (eds), *Television Across Europe: Regulation, Policy and Independence*. Budapest & New York: Open Society Institute, vol. 2, 2005, pp. 789–864.

¹⁵ Bajomi-Lázár, Péter, “Hungary”, in Preoteasa, Manuela (ed.) *Media: The Business of Ethics, the Ethics of Business*. Bucharest: Center for Independent Journalism, 2005, pp. 93–118.

ventures.¹⁶ It needs to be noted, however, that the privatisation of press and media outlets by foreign companies and the subsequent financial investments in the industry were a necessary condition for the modernisation of production technologies. Furthermore, ownership by independent foreign investors offers some protection to editorial independence vis-à-vis political pressure by the domestic political elites.

Codes of Ethics

In Hungary, few press and media outlets have codes of ethics.¹⁷ An exception to this rule is the joint code of ethics of the country's major journalists' associations, including the Hungarian Journalists Association (*Magyar Újságírók Országos Szövetsége, MUOSZ*), the Hungarian Journalists Community (*Magyar Újságírók Közössége, MUK*), the Hungarian Catholic Journalists Association (*Magyar Katolikus Újságírók Szövetsége, MAKUSZ*), and the Press Union (*Sajtószakszervezet*), which was

¹⁶ Gálik, Mihály, "Evolving the Media Market. The Case of Hungary", in: Paletz, David L. and Karol Jakubowicz (eds), *Business as Usual. Continuity and Change in Central and Eastern Europe*. Cresskill, New Jersey: Hampton Press, Inc., 2003, pp. 177–204; von Dohnanyi, Johannes and Christian Möller (eds), *The Impact of Media Concentration on Professional Journalism*, Vienna: OSCE, 2003, pp. 133–144; Gálik, Mihály, "Hungary", in Petković, Brankica (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism*, Ljubljana: Peace Institute, 2004, pp. 191–216.

¹⁷ Szűcs, László, "Médiaetikai kódexek a mai Magyarországon [Codes of media ethics in present-day Hungary]", in Sükösd, Miklós and Ákos Csermely: *A hír értékei. Etika és professzionalizmus a mai magyar médiában [The Values of the News. Ethics and Professionalism in the Hungarian Media]*, Budapest: Média Hungária, 2001, pp. 71–82.

passed in September 2000.¹⁸ Online media outlets have also passed a joint code that binds all those who subscribe to it.¹⁹

Other means of journalistic self-regulation are not very widespread either. The employment of newsroom ombudspersons to discuss readers' complaints, to enhance professional journalism, and to improve contact with audiences is practically unknown in Hungary: currently, there is one single outlet, namely the nationwide quality daily *Magyar Hírlap*, that has employed an ombudsman since March 2005. László Majtényi has discussed several controversial cases in the pages of the daily; his reports are also accessible on the website of the newspaper.²⁰ In August 2006, however, he quit the newspaper, after it failed to publish his report criticising the way *Magyar Hírlap* covered a conflict between its owner Gábor Széles and Prime Minister Ferenc Gyurcsány.

The in-house ethical codes of those selected press and media outlets that have one—including the weekly economic magazine *HVG*, the leading nationwide quality daily *Népszabadság*, the nationwide private television channel *TV2* and the network commercial radio *Radio 1*—are binding for their own journalists.

A comparative analysis of the various codes of ethics and the daily practice of journalists reveals some contradictions. All

¹⁸ The full text of the code can be downloaded at <http://www.muosz.hu/kodex.php?page=etikai&sub=etikaikk9>, last accessed 21 July, 2006.

¹⁹ The code can be downloaded at http://index.hu/mte_kodex/mte_kodex.doc, last accessed 21 July, 2006.

²⁰ http://www.magyarhirlap.hu/Ombudsman_index.php, last accessed 21 July, 2006.

codes (as well as the relevant paragraphs of the Press and the Broadcasting Acts) are a reflection of the idealised standards of *neutrally objective Anglo-Saxon journalism*, including such norms as fairness, impartiality, neutrality and factuality. Everyday practice, however, is governed by the traditions of *partisan European journalism*, including the unfair, partial and engaged coverage of political events as well as the lack of separation of facts from opinions.

Awareness of the codes is required by law; however, few press and media outlets make their codes accessible to the public on their websites. Furthermore, as already mentioned, many journalists are freelancers who may simply not consider them.

Most of the controversial cases are discussed by the Ethics Committee of MUOSZ. Its decisions are available on the website of the organisation. The Committee investigates cases on the basis of complaints submitted by individuals, including non-members of MUOSZ; in some cases, the body itself will decide to take a position. The sanctions imposed by the board, and in particular dismissal from the journalists' organisation, are binding for the members of MUOSZ only; in other cases all the body can do is publicise its position.²¹

The Ethics Commission is independent inasmuch as it is subordinate to the General Assembly of MUOSZ only, which body is also responsible for electing its president and 24 members. Cases are discussed by three-member commissions.

²¹ The decisions of the Ethic Commission can be downloaded at <http://www.muosz.hu/main.php?page=bizottsagok&fo=8&id=5>, last accessed 24, July, 2006.

One major impact of the inefficiency of self regulation is the low level of public trust in the Hungarian press and media.²² Another is the relative lack and poor results of investigative journalism: several corruption cases have gone unnoticed or, if disclosed, have had no consequences.²³

The inefficiency of self-regulation has to do with the fact that, for evident political reasons, no such regulation existed prior to the political transformation. Furthermore, the Hungarian journalism community is deeply divided along political and ideological lines; there is no professional solidarity among journalists, nor is there any consensus on what standards journalists should uphold. Also, before the political transformation, there was no wide-scale journalism education in the country; most of the now-active journalists acquired their knowledge of the profession in practice. Journalism education was launched on a massive scale, with several university colleges and universities offering journalism training, as late as the mid-1990s. There also are some independent organisations such as the Centre for Independent Journalism (*Független Médiaközpont*) that provide journalists with education and training.

²² Závecz, Tibor, “Főszerepből karakterszerep. A média presztízse a magyar lakosság körében 1988 és 1998 között [The prestige of the Hungarian media with the Hungarian population 1988 – 1998]”, in Sárközy, Erika (ed.) *Rendszerváltás és kommunikáció* [Political transformation and communication], Budapest: Osiris, 1999, pp. 87–90.

²³ Terestyéni, Tamás, “A nyilvánosság erőtlensége [The poor performance of the media]”, in Sárközy, Erika (ed.) *Rendszerváltás és kommunikáció* [Political transformation and communication], Budapest: Osiris Kiadó, 1999, pp. 59–69; Sükösd, Miklós, “Tényfeltáró újságírás Magyarországon [Investigative journalism in Hungary]”, in Kovács, Zoltán and Gizella Tarnói (eds) *Fiúk a bányában. Fidesz perek az ÉS ellen* (Lawsuits launched by Fidesz against the weekly *Élet és Irodalom*), Budapest: Irodalom Kft., 2000, pp. 13–20 and 373–393.

It needs to be noted, however, that in recent years several efforts have been made to improve the performance of journalists. Professional awards have been established in an attempt to honour and to enhance quality journalism, including the Pulitzer Memorial Award, the Quality Journalism Award, and the Soma Award.²⁴ Furthermore, several books on the standards of neutrally objective journalism have been translated and published.²⁵ At the same time, however, there is no printed journalism review providing a forum for debates on the profession.

In order to protect the independence of journalists and to enhance professional journalism, several non-governmental organisations have been established since the political transformation. The first such organisation, namely the Openness Club (*Nyilvánosság Klub*), has distinguished itself with various forms of protest in cases in which journalists' right to access information was curtailed.²⁶ The Hungarian Press Freedom Centre has prepared several analyses of journalists' performance, which are also available on the organisation's website.²⁷

²⁴ Cf. <http://www.pulitzer.hu/tort.htm>, <http://www.minosegiujsagiras.hu/>, <http://www.gsoma.hu/>, last accessed 21 July, 2006.

²⁵ E.g., Rivers, William L. and Cleve Mathews, *Médiaetika (Media Ethics)*, Budapest: Bagolyvár, 1993; Burgh, Hugo de (ed.) *Oknyomozó újságírás (Investigative Journalism)*, Budapest: Józsefvég Műhely Kiadó, 2005.

²⁶ <http://www.nyilvanossagklub.hu/allasfoglalások.shtml>, last accessed 21 July, 2006.

²⁷ <http://www.sajtoszabadsag.hu/>, last accessed 21 July, 2006.

In sum, efforts to enhance professional journalism have multiplied in recent years. There is, however, a lot to do if journalists want to do away with unethical behaviour and be real watchdogs of democracy. First and foremost, *a professional journal-similar to the American Journalism Review or the Columbia Journalism Review-should be established* in order to provide a forum where ethical cases and other problematic issues in journalism can be publicly discussed.²⁸ Secondly, *newsroom ombudspersons should be appointed* in order to investigate complaints submitted by the public and fellow journalists-a measure that should be promoted by owners and publishers if they wish to regain public trust in their outlets and, consequently, improve their audience share and circulation.

Defamation

Several pieces of regulation in the Hungarian legal system aim at protecting one's honour and good reputation. Some of these are part of the Penal Code, others of the Civil Code. Insult and libel are regulated in Penal Code.²⁹ Both insult and libel (see Table 1 below) cover issues concerning private as well as legal persons' honour. In such cases, the responsibility of both journalists and editors can be investigated.

²⁸ MÚOSZ used to have a monthly magazine which, however, has recently ceased publication and is now available online only at <http://www.emasa.hu/>, last accessed 21 July, 2006. This publication, however, had hardly ever provided a forum for ethics debates.

²⁹ 1978. IV. Law.

Table 1
The Main Differences between Insult and Libel

	Insult	Libel
Where?	before a large public	before any third person
What?	any expression or injurious act intended to hurt somebody's honour	a factual statement or an expression regarding facts
Other conditions	the act has to be in connection with the work, fulfilment of public charge or public interest activity of the affected person	–
Maximum punishment	one-year prison sentence	two-year prison sentence

The major difference between insult and libel is that the former regards expressions and injurious acts other than value judgements, whereas the latter can be used in the event a false factual statement or an expression regarding facts is made.

Courts have repeatedly affirmed that free expression of opinions is under constitutional protection,³⁰ and can be restricted only in the event and to the extent that it interferes with another basic right laid down in the Constitution. In this respect, the Constitutional Court and its rulings are of particular importance, the most important rulings being decisions no. 30/1992 (V.26.), 37/1992 (VI.10) and 36/1994 (VI.24.). According to these rulings, the right to the free expression of opinions is not absolute, but the laws limiting it must be interpreted narrowly.

³⁰ For details, see for example the BH 1998/317 and 1998/212 decisions of the Supreme Court.

As regards press freedom and free speech, the generally held opinion is that defamation rules are more important. Firstly, it is a widely shared view that people must take responsibility for their factual statements. Secondly, processes regarding opinions might allow public officers and authorities to limit the free operation of the press and media. Such a limitation would jeopardise democratic rights: if journalists or other people cannot freely express their opinions on persons holding public offices, the public cannot be well informed about those who represent them.

Efforts to limit free speech with the help of the Penal Code have been sporadic in Hungary. As a general rule, those affected seek to defend their interests with recourse to Civil Code institutions. The reasons for this trend are fourfold.

Firstly, criminal processes can be conducted only after a request for prosecution has been launched. In other words, the affected person must take part in the process from the very beginning until the final sentence is made and, for this reason, it is insufficient for him or her to simply submit a charge.

Secondly, unlike in a civil law case, in criminal law cases the affected person cannot claim damages.

Thirdly, punishments in a criminal law case are relatively mild, including only a low fine as penalty, and do not offer satisfactory amends to the affected person. In the event that a criminal process is conducted, the sentence may be a monetary penalty, public service and imprisonment, but the application of the second and third sanctions seems to be but a theoretical possibility. Up to the present, no sentence imposing the last

two types of punishment has been passed except for in one single case: the courts both of the first and second instances imposed a prison sentence on a journalist, Gábor Bencsik. The editor of the extreme right political weekly *Magyar Demokrata* stated in an article that Imre Mécs—currently an MP who after 1956 had been sentenced to death because of his revolutionary activities, but whose sentence was later modified to imprisonment—had contributed evidence that played a key role in several of his companions’ being sentenced to death after the revolution. Bencsik’s statement was factually false, as a result of which the court of the first instance sentenced him to ten months in prison; the sentence was maintained but suspended by the court of the second instance.³¹ Even this relatively strict decision was completely overturned in an extraordinary decision by the Supreme Court: according to the final sentence, instead of ten months in prison, Bencsik was ordered to pay a penalty of HUF 60,000 (approximately EUR 250). This was a very low sum compared to damages judged in Civil Code cases; for the same act, Bencsik was sentenced to pay a damage of HUF 750,000 (EUR 3,000) to Mécs in a civil law process.³² In penal cases the damage must not be transferred to the person affected but to the Hungarian state, while penalties in civil law cases are transferred, by way of compensation, to the person affected.

And fourthly, Civil Code processes are preferred when the falsity of the publicised facts cannot be tested. If one feels

³¹ Dózsa, Kata, “A rágalom ára [The price of defamation]”, 8 July 2005., <http://www.emasa.hu/print.php?id=278>, last accessed 21 July 2006.

³² See the report of the Hungarian Wireless Agency (MTI), “Mécs Imre első fokon pert nyert Lovassal, Bencsikkel, Bayerrel és Járáival szemben [Imre Mécs has won on the first degree against Bencsik, Bayer and Járay]”, <http://www.data.uno.hu/print/news.php3?id=168981>, last accessed 21 July 2006.

that a statement may damage his or her honour or good name, he or she can claim damage not only if the statement is false, while in Penal Code cases the charged person has the right to prove the truthfulness of his or her statement. The defendants even have the right to prove that their statement or activity promoted public interest or warranted private interest, and this instrument gives them a chance to avoid a negative sentence, while Civil Code cases, in which defendants cannot plead that they acted in the public interest, offer better chances to the persons affected. The argument that the statement was made in the public interest does not play any role in defamation cases, in which neither journalists nor the public or state media receive preferential legal treatment.

As regards affected persons, one can notice a consistent distinction in the courts' practice, whose roots go back to decision no. 36/1994 (VI.24.) of the Constitutional Court. Prior to 1994, the Penal Code had recognised a crime called "offence to authority or an official person." This crime was realised in the event that authorities or public officials, defined very vaguely by the law, were offended. Based on this paragraph, the courts had repeatedly condemned persons who criticised politicians, but in 1994 the Constitutional Court abrogated this implementation of the Penal Code.³³

The 36/1994 (VI.24.) Constitutional Court decision was a very important step on the road to democratic civil rights, because it abrogated not only the above-mentioned crime, but also set out criteria for the criticism of public officials. In particular, the Constitutional Court ruled that (1) opinions about

³³ Halmai, Gábor, *Kommunikációs jogok [Communication rights]*, Budapest: Új Mandátum Könyvkiadó, 2002. p. 149.

politicians and persons of public authority may be more critical than about private individuals; (2) value judgements about public officials may not be punished, even if such judgments are of a defamatory nature; and (3) factual statements can be punished only in the event that the person who made them was aware that they were untrue or had failed to take the expected steps to check their truthfulness. Since the Constitutional Court's decision was passed, public officials have initiated fewer criminal proceedings than before. Judicial practice has also changed: more cases ended with acquittal than previously.

An example may shed some light on how the higher tolerance limit regarding expressions about public officials in defamation cases works. László Grespik, former head of the Administrative Office of Budapest, the capital, submitted a lawsuit against three speakers of *Heti Hetes*, a humorous popular weekly talk show that discusses public issues on the nationwide private television channel *RTL Klub*. The participants of the show charged in the case had repeatedly commented on the person of Grespik, whose controversial decisions as a public official and whose "scientific" publications as a private individual had shared the public opinion. Grespik was also a candidate nominated by the extreme-right Party of Hungarian Justice and Life (MIÉP) for the legislative elections that were to be held in April 2002. He initiated the process because the defendants had described him as "abnormal" and "stupid." The court of the first instance acquitted the defendants and explained that Grespik as a public official must tolerate such criticism. The court of the second instance, however, condemned three of the four defendants, claiming that the words they used had gone beyond the limits of the free expression of opinions and therefore offended Mr. Grespik's honour. The three defendants were condemned to pay penalties of HUF 160,000–375,000

(EUR 666–1562). Convinced that the sentence was too strict, the viewers of the show took up a collection to pay the fine.

In sum, the need to use criminal code and especially imprisonment as punishment in defamation cases has increasingly been questioned.³⁴ The relative weakness of the sanctions imposed by the Penal Code are unfit to prevent offences against one's honour. At the same time, however, the very existence of such regulations may impose a constitutional risk, since journalists may be sentenced to prison if convicted of defamation. For this reason, we recommend *the abrogation of punishment by imprisonment* in defamation cases.

Protection of sources

According to article 11 of the 1986 Press Act, journalists have the right not to disclose the names of their information sources. They are obliged not to do so when such protection is explicitly requested by their sources. Despite the fact that, the same article states that if a piece of information concerns a criminal offence, the relevant paragraphs of the criminal law must be applied, it must be emphasized that the above protection of sources is of an absolute value because, according to Article 82 of the Penal Process Code,³⁵ persons obliged to preserve any information as part of their profession can invoke their right of silence, and in this case they cannot be called as witness.

³⁴ For example see Gábor Halmai's opinion in Dózsa, Kata, *ibid.*

³⁵ 1998. XIX. Law, article 82.

According to court practice, this solution protects all people receiving information from other persons and working for the print press and the broadcast media, including editors, journalists and any other personnel. This absolute protection is derived from the general definitions of the press and of "press outlets" as laid down in the Press and the Broadcasting Acts. Since the latter law was passed, the definition of press outlet has also applied to broadcasters. By contrast, the internet is not considered a press outlet, even though in practice journalists working for online media are not distinguished from other journalists.

The above-mentioned rules of the Penal Code do not imply that journalists cannot ever be forced to disclose their sources; all it means is that they are entitled to protect them in civil law cases and other non-criminal processes. The Penal Code has no specific rulings on journalists (who are defined, in article 11 of the Press Act, as "persons employed by press outlets and providing information as a professional activity"), therefore in criminal law cases they can be tried in the same way as any other person. More importantly, journalists may not only refer to their right of silence, but courts and other authorities must bring this right to their attention. A failure to do so would be a procedural mistake that would result in the statement not being allowed as evidence in the process.

As a result of this regime, Hungary has not seen any significant tendencies whereby free speech has been limited by authorities forcing them to reveal their sources; there is no known case of authorities requesting journalists or press outlets to disclose their sources. There is, however, another way to disclose journalists' sources, namely the seizure of their materials and equipment (such as computers, audio tapes, CD-

ROMs, etc.). Also, authorities may force third parties working for journalists or press outlets to disclose data on journalists' communication with sources.

The Criminal Process Act allows for the seizure of journalists' materials and equipment in the event that they can be used as evidence. Because editorial equipment can be seized under the general regulations, there is no specific regulation protecting the sources of journalists in this field. At the same time, however, there is no known case of the police accessing journalists' sources in this way.

Disclosure of classified information

The treatment of classified information is regulated by several laws:

1. One particular law deals with governmental secrets.³⁶ According to this law, classified data includes the following:
 - State secrets: The first attachment to the law includes a 151-item list of state secrets and gives a detailed description of the types of information that the various governmental organisations must classify. It also sets a maximum period for classification, ranging from five to 90 years. Only those data are considered state secrets that are classified as such in the proper way and by the authorised person or organisation.

³⁶ 1995. LXV State and Service Secrets Act.

- Official secrets: Such data include information that must be secret so that no unauthorised person can access them, or else the operation and neutral decision-making of the governmental organisations would be hindered.
2. Further types of secrets defined by other laws are as follows:
- Business secrets (as defined in article 81 of the Civil Code)
 - Private secrets (as defined in article 81 of the Civil Code)
 - Letter secrets (as defined in article 81 of the Civil Code)
 - Economic secrets (as defined in the Penal Code)

The consequences of the disclosure of secrets defined in the Civil Code are regulated by the Civil Code, and can be sanctioned by civil law institutions (such as damages, amends, etc.). The Penal Code contains general provisions on the disclosure of state, official, and economic secrets, and in particular:

- State secrets may be violated by any person who accesses, uses or discloses a state secret. Thus, this prohibition can be applied not only to officials or persons who have signed security documents, but to any person aware that the information concerned is classified. The minimum punishment for this crime is a prison sentence ranging from one to five years, or up to 15 years if, as a consequence of the crime committed, an unauthorised

foreigner accesses a state secret. This crime may be committed not only intentionally but negligently as well.

- Official secrets may be violated in the same way, but the sanctions are less severe: they may also include public service and monetary penalties. The minimum prison sentence is one year at the most, but can be raised to a maximum of eight years if, as a consequence of the crime committed, an unauthorised foreigner accesses a military service secret.

It is a generally held opinion that the current regulation on the disclosure of classified information provides authorities with an opportunity to limit press freedom to an unwarranted extent, since the crimes above can be committed not only by the officials responsible for the classification of information but any person who publishes or discloses them.

Over the past ten years, several legal processes have been undertaken against journalists for leaking information. In 1997, the police held that the content of several documents published by the weekly *Kriminális* included state secrets, and they consequently began a criminal process against editor-in-chief László Juszt, who not only wrote the article in question but who was also the owner of the company publishing the weekly. The police seized all the computers and other equipment of the editors, as a result of which they could not continue work and the paper ceased publication. This, of course, caused significant harm to Juszt, who could make claims for damages only three years later when the

Metropolitan District State Attorney's Office dismissed the original charge for, citing an absence of criminal activity.³⁷

In two other cases, journalists from the nationwide quality daily *Népszava* were accused in criminal processes of revealing state secrets. In 1998, a process against László H. Bíró ended in the investigation phase, since the documents that he publicised, which the police claimed were a state secret, had not been classified by the authorised office. However, the other process, launched against Rita Csík, was brought to a close by the court of the second instance only. She was charged with revealing a state secret because she had publicised a letter written by the former chief of the police headquarters in Hajdú-Bihar County to the deputy leader of the State Attorney's Office in the same county. The document contained no indication of being a state secret, but the prosecutor did not dismiss the case, arguing that Csík held a law degree and should have realised that the document in question was a state secret. This argument was dismissed by the courts of both the first and the second instances.

In sum, up to the present time no journalist has been condemned for breaching state secrecy.³⁸ At the same time, however, several civil rights organisations and journalists hold that the current regulation is questionable in that not only officials but also journalists can be charged if a secret is publicised. In recent years the police have not attempted to disclose the persons leaking such secrets; what they do,

³⁷ Fahidi, Gergely, "Perek a rendőrség ellen [Lawsuits against the police]", *Heti Világgazdaság*, 12 May, 2001.

³⁸ Pilishegyi, Noémi: Titok, törvény, tervezet [Secret, law, draft], <http://www.168ora.hu/cikk.php?id=4610&priht=1>, last accessed 23 July 2006.

however, is charge the journalist named as the article's author.³⁹ Another problem is that courts may not inquire into whether the publication of the information in question served the public interest or whether the document was classified in the normal way. Furthermore, the courts may not apply the public interest test in order to assess the government's classification concerns.

In order to change the current situation, our recommendation is *to abrogate the responsibility imposed upon every natural and legal person to keep state secrets*, and to limit this responsibility to those public officials who actually are in charge of classifying information.

Access to public sources

The protection of personal data and the openness of public data are regulated by the 1992. LXIII. Act. According to article 19 of this law, governmental organisations must facilitate the public's access to timely and exact information. They must publicise electronically or otherwise the most important data concerning their sphere of authority and competence, function, activities and results. In this field, journalists, as opposed to non-journalists, do not have any privilege, but they do often refer to this piece of regulation when seeking public information.

The Press Act also has some rulings on access to information. Journalists may access any open sessions of the

³⁹ Sajtószabadság: a titkot őrizni kell [Press freedom: the secret have to be kept], <http://www.teleschola.hu/?11&cikk=1959&print&print>, last accessed 24 July 2006.

state and civil organisations and their boards, as well as the open hearings and trials of the courts. The Press Act also requires state and civil organisations to release information regarding their operation, but in practice governmental organisations have several instruments to restrict this right. Firstly, according to article 31 of the 1992. LXII. Law, in the event that a journalist's request for public information is rejected, he or she can bring an action out of turn against the organization in question. Courts, however, may only require it to release the requested information, but cannot impose any sanction in order to prevent further misbehaviour. Secondly, some governmental organisations state their intention to release the requested information at a later date, in which case journalists cannot bring an action. There are, however, some limitations to this general rule.

Recent years have seen one particularly controversial case of the political elites' limiting access to public information. Television cameras are not allowed to enter the regular sessions of Parliament; all television channels can do is to buy and broadcast the footage shot by a company specifically hired by Parliament to follow session meetings. Television journalists argue that this practice equals censorship, as the footage shot by the company in question is highly edited and expensive; minor television channels cannot even afford to buy it. Also, this practice seems discriminative, as it works to the detriment of television as opposed to newspapers, since print journalists are allowed into the session meetings and can use their cameras to take photographs. This situation has come about as a result of a loophole: the Broadcasting Act rules that Parliament must pass a law specifying the transparency of parliamentary sessions; however, even though the time framework provided by the Broadcasting Act for MPs to pass

the piece of regulation in question has long expired, no such law has been passed to date.⁴⁰

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⁴⁰ Lampé, Ágnes, "A parlamenti ülések nyilvánossága. Cenzúra vagy szabályozás?" (Public access to Parliamentary session meetings: Censorship or regulation?) Médiakutató, Fall 2006.

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Macedonia

By Boris Georgievski

Executive summary

The broadcast media and the print press market in Macedonia is rather fragmented. The number of media outlets is too high in comparison with the population and the economic potential of the country. Currently, there are 126 commercial broadcasters, eight of which function on a national level (five television channels and three radio stations), and 118 broadcasters operating on a local level (51 television channels and 67 radio stations). In addition to the commercial media, there is also a national public broadcasting service, which includes *Macedonian Radio and Television* with three television channels and three radio stations.

The current situation in the broadcasting sector regarding the forms of influence on media freedom is largely determined by the ownership structure: powerful local companies or individuals affiliated with some political or industrial interest groups stand behind the major national television channels, while local broadcasters are usually in the hands of individuals, some of whom are often stakeholders in other commercial fields. The market for the print press is also highly fragmented, and there is pluralism, at least in terms of quantity. There are 12 daily newspapers, some 15 weeklies, ten biweeklies, 20 monthly magazines, 21 periodicals and 21 children's magazines in Macedonia. Nine dailies are published in Macedonian and three in Albanian. The total circulation of all

daily newspapers published in Macedonia is, on average, approximately 80,000-100,000 copies.

Broadcasting is regulated by the Broadcasting Law, while no special law has been adopted for the print press. The first Broadcasting Law was adopted in 1997, laying the groundwork of the new democratic media system. Besides establishing public service broadcasters, the law endorsed the work of the private media and made it possible for the first regulatory body in the broadcasting area to be established. Article 4 of this law guarantees:

“...the broadcasting activity provides freedom of public expression of thought, freedom of speech, public address and public informing [...] free access to information, freedom of reception and transmission of information”.

Research commissioned in 2005 by the Association of Journalists of Macedonia about the state of journalism shows that most journalists are poorly paid and only few media outlets (namely *TV Telma* and the dailies *Dnevnik*, *Utrinski vesnik* and *Vest*) pay full health and pension insurance benefits.

Types of influence that the owners or groups of interest have exerted on the media over the years can be divided in two categories: internal (i.e., by the owner) and external (i.e., by political parties, advertisers or other interest groups).

The crisis in Macedonia's journalism escalated at the beginning of 2006, when the “Fabrika” affair was revealed to the public. Suspicions that a group of journalists secretly worked for a public relations firm, spin-doctoring for government ministers and other officials, caused an uproar in

Macedonia.

The Association of Journalists has a poor reputation among the journalists themselves. The main reasons are that this association is occupied with its own issues and in the past few years it has not undertaken any activities aimed at promoting professionalism and standards in journalism. The Association adopted its Code of Conduct in 2001, but major media outlets do not have codes of ethics or other instruments of self-regulation (such as ethic commissions, newsroom ombudspersons, etc.). The Code of Conduct of the Association covers almost all important issues, but it is quite short and declarative and cannot be a guide for conduct for journalists in practical situations.

Decriminalisation of defamation in Macedonia has been a hot issue over the past few years. The initiative for amending the Criminal Code was taken by the Ministry of Justice at the end of 2003 in order to harmonize national legislation with European standards and the recommendations of the Council of Europe. However, the amendments were passed by Parliament in May 2006. With the exception of the criminal offences classified as severe types of defamation and libel, only monetary fines are foreseen for all other cases.

After several initiatives undertaken in the past years by various non-governmental organisations, in the beginning of 2006, Parliament finally adopted the Free Access to Public Information Act. Basically, the law regulates the circumstances under which the state administration, local government and other public institutions and facilities are obliged to provide free access to available public information. All legal entities and natural persons have an equal right and access to information,

meaning that journalists and media outlets are not privileged in this respect.

Context

Macedonia gained its independence in 1991. The country was spared the inter-ethnic violence that raged elsewhere in the Balkans following the break-up of Yugoslavia in the early 1990s, but it came close to civil war a decade after independence. Rebels staged an uprising in early 2001, demanding greater rights for the ethnic Albanian minority. EU and NATO support enabled the country's leading politicians to strike a peace deal. Under the Ohrid Agreement, Albanian fighters laid down their arms in return for greater recognition of ethnic Albanians within a unitary state. Acknowledgement of the rights of ethnic Albanians was formalized in amendments to the constitution approved by parliament in late 2001. Ethnic Albanians account for about a quarter of the population, which is estimated at about two million. The major religions in Macedonia are Christianity and Islam.

In November 2005, the European Commission recommended that Macedonia become a candidate country for EU membership. In July 2006, the centre-right VMRO-DPMNE (Internal Macedonian Revolutionary Organisation - Democratic Party for Macedonian National Unity) party won the parliamentary elections, winning 44 seats in the 120-seat parliament. Nikola Gruevski, leader of the VMRO-DPMNE was named prime minister, and he formed a government after reaching a coalition agreement with the Democratic Party of Albanians and three small parties following general elections.

Mr Gruevski says his priorities will be to tackle corruption

and organized crime and to foster economic recovery and job creation. The economic situation in Macedonia was the main issue during the last parliamentary elections campaign. The level of foreign investments in the country remains one of the lowest in the region, while Macedonia has one of the highest unemployment rates in Europe, at around 35%.

The print press and the broadcast media market in Macedonia is rather fragmented. The number of media outlets is too high in comparison with the population and the economic potential of the country. This has unfavourably affected the general business environment, creating numerous difficulties for the media that tend to work professionally and to remain independent of the centres of political and economic power in Macedonian society.

By the end of 2005, the broadcasters obtained concessions from the Government upon the proposal of the Broadcasting Council, which was established as a regulatory body in the field of broadcasting by the Broadcasting Activity Act from 1997. Although the Broadcasting Council has independently conducted transparent and expert procedures in all competitions held so far, the fact that the final decision on granting the concessions lies with the Government was one of the major shortfalls of the law and the reason why the regulatory body did not have full independence.

Currently, there are 126 commercial broadcasters, eight of which function on a national level (five television channels and three radio stations), and 118 broadcasters operating on a local level (51 television channels and 67 radio stations). In addition to commercial media, there is also a national public broadcasting service, which includes *Macedonian Radio and*

Television with three television channels and three radio stations. The 29 local public radio stations that existed on the basis of the previous law are to be transformed into local commercial radio stations by the end of 2006.

In addition to domestic broadcasting, audiences have access to a large number of foreign programmes distributed through 65 cable networks. This number is expected to rise in the near future given the recent liberalisation of the cable market with the Electronic Communications Act. The large number of media outlets and the unfavourable economic environment are the main reasons why business conditions in broadcasting remain difficult and why there are only few profitable private broadcasters.

The present situation in the broadcasting sector regarding the forms of influence on media freedom is largely determined by the ownership structure: powerful local companies or individuals affiliated with some political or industrial interest groups stand behind the major national television channels, while local broadcasters are usually in the hands of individuals, some of whom are often stakeholders in other commercial fields. This is clearly evident from the ownership data from the five national television channels in Macedonia:

- 1) The leading television channel on the national level, *A1*, is owned by Velija Ramkovski, an influential Macedonian businessman, owner of several trade companies, who also owns the daily newspaper *Vreme* and who recently founded a new political party, the Party for Economic Reconstruction;
- 2) Behind *Site1*, the second-largest national television channel

according to the audience figures, is the company RIK Sileks, owned by the businessman and politician Ljubisav Ivanov Dzingo, the leader of the Socialist Party;

- 3) Half of the *Kanal 5*'s stock (the third most influential national television channel) is held by Pecatnica BS company. This company (a printing house) is owned by the son of the businessman and politician Boris Stojmenov, who is a former minister in VMRO-DPMNE's coalition Government, and a current leader of the party VMRO Makedonska. The other 50 percent is owned by the company Metalsivas, which only formally owns the television channel. It is widely known that behind this company stands the largest ruling political party, SDSM (Social Democratic Union of Macedonia);
- 4) *Telma* television channel is backed by the company Makpetrol, which deals in crude oil and oil products. This company is in the hands of very influential businessmen close to the Liberal Party, which is now part of the opposition;
- 5) Finally, the fifth national-level television channel *Alsat M*, which is to broadcast Albanian-language programming (but has not started yet), is owned by the businessman Vebi Velija, who owns the satellite television channel *Alsat* in Albania.

The print press is not subject to any regulation and there is no specific licensing procedure for them. They are obliged to register themselves as legal entities only at respective court registers. The market for the print press is also highly fragmented, and there is pluralism, at least in terms of quantity. There are 12 daily newspapers, some 15 weeklies, ten biweeklies, 20 monthly magazines, 21 periodicals and 21 children's magazines in Macedonia. Nine dailies are published in

Macedonian and three in Albanian. The total circulation of all daily newspapers published in Macedonia is, on average, approximately 80,000-100,000 copies.

Dailies are not very diverse in terms of their content and format. The tabloid formats (*Dnevnik*, *Vest*, *Vecer*) have the biggest circulation and sales, but more quality analytical newspapers (*Utrinski vesnik*) are very influential with politicians and business elites. Until recently, the ownership structure of the private print press was dominated by individuals or smaller groups of journalists mainly recruited from the ranks of the state newspaper publisher. Some of the dailies (*Vest*, *Utrinski vesnik*) were affiliated with big business groups before 2003.

In 2003, the German media group WAZ entered the Macedonian market, purchasing the three leading dailies *Dnevnik*, *Utrinski vesnik*, and *Vest*. This was the first big foreign media acquisition in Macedonia. Fears that the German corporation WAZ might negatively influence the editorial policies of the newspapers it bought have proved unfounded. While editorial policies may have changed, there is no evidence of untoward ownership pressure, and each WAZ newspaper has improved its technical quality and design. In addition, the market has remained open for new competitors: in a period of two years four new dailies have appeared, namely *Vreme*, *Vecer*, *Biznis* and *Spic*. However, WAZ publications occupy a dominant position on the market (their circulation is around 50,000 copies) and they receive the major share of revenue from advertisements. According to some journalists, exactly due to this dominant position: "the marketing agencies [...] direct the large purchasers of advertising space towards WAZ editions; the result is [...] additional impoverishing of other papers." Only the daily newspaper *Vreme* is successfully

competing with WAZ publications, but only because of its affiliation with the television channel *A1*. When clients buy advertising space on *A1*, they are also offered advertising space in *Vreme* at much lower prices as part of the “package.”

Legal framework of freedom of expression and freedom of information

The freedom of expression is enshrined in the Constitution of the Republic of Macedonia as part of the general freedoms and rights of the citizens. Specifically, article 16 of the Constitution guarantees freedom of speech, public address, public information and the establishment of institutions for public information. Furthermore, free access to information and the freedom of reception and transmission of information are guaranteed.

Broadcasting is regulated by the Broadcasting Law, while no special law has been adopted for the printed media. The first Broadcasting Law was adopted in 1997, laying the groundwork for the new democratic media system. Besides establishing public service broadcasters, the law endorsed the work of the private media and made it possible for the first regulatory body in the broadcasting area to be established.

Article 4 of this law guarantees:

“...the broadcasting activity provides freedom of public expression of thought, freedom of speech, public address and public informing [...] free access to information, freedom of reception and transmission of information”.

The principles on which broadcasting activity is based, *inter alia*, include, according to article 8:

“...accurate and punctual information, openness for free competition and information on different political ideas, cultural and other tendencies and opinions; independence and autonomy of the broadcasting organisations, [...] preventing the monopoly on influencing individuals and groups in the broadcasting organisations; appropriate and impartial treatment of the political entities in the programmes”.

The law also had specific provisions (namely articles 32, 33, 34) guaranteeing that the content of a programme shall not serve the sole purpose of furthering a particular political party or particular interests; state institutions and local administration shall not influence the creation of programmes and programmes shall provide truthful, unbiased and professional coverage of news and events with equal treatment of different approaches and opinions.

The new Broadcasting Activity Act was adopted in November 2005, only partially maintaining the provisions of the previous law regarding the guarantees of freedom of expression and general principles on which broadcasting should be based. Although in the objectives of the law, laid down in article 2, it is clearly stated that it should “provide freedom of expression in broadcasting activity,” some experts say that the practice has already demonstrated a series of shortcomings in terms of providing concrete mechanisms for the protection of media independence from different types of political or economic influence.

In the past few months, the situation has escalated due

to the fact that the owner of the television channel *A1*, who previously did not belong to any political group, established his own political party, namely the Party for Economic Revival. Formally, he started actively organizing an election campaign among part of the electorate, mainly among farmers. His party organized protests by farmers in front of government buildings, and his television channel had extensive media coverage of all these events. He even personally led the negotiations of some of the discontented farmers with the Prime Minister. With the forthcoming parliamentary elections approaching, he intensively used the television channel for promoting the activities of his political party and his own image. This problem was on the agenda at the regulatory authority, but the Broadcasting Council noted that the Law was not detailed in this respect and that specific measures cannot be undertaken or sanctions imposed against the owner of *A1*. For example, article 11 does not specify that not only a political party (as a legal entity), but also the leader of that party (as a natural person) may not appear as the owner of a broadcaster. Furthermore, the issue of broadcasting any form of political activity (including paid political advertising) in the programming of broadcasters outside of the legally determined period of the election campaign has not been specifically regulated in the new law. A special problem is that it seems that the law only partially provides mechanisms for protection of commercial broadcasters from other forms of (hidden) influence. For example, the law contains only general provisions, namely in article 68, where it is stipulated that broadcasting activity, among other things, is based upon the principles of:

“...openness to diverse political views and positions; Objective and unbiased presentation of events, with equal treatment of diverse views and opinions, enabling the free

creation of a public opinion on individual events and issues; Autonomy, independence and accountability of broadcasters, i.e., editors, journalists and other authors involved in the creation of programmes and editorial policy.”

The problem is that there are no penalty provisions for not respecting this article, so the Council can only make an appeal to the media, but not undertake measures.

Media freedom, professionalism and ethics in practice

When we speak of professionalism in journalism and of observance of the Code of Conduct of Journalists, it is necessary to point out the main factors affecting the current state of journalism as a profession: the socio-economic status of journalists and the types of influence to which the journalists are exposed on a daily basis. Two separate studies have been conducted in Macedonia in 2005 by the Network for South East European Media Professionalization, providing clear indicators of the influence of these factors.

The research about the state of journalism shows that most journalists are poorly paid and only a few media outlets (the television channel *Telma* and the dailies *Dnevnik*, *Utrinski vesnik* and *Vest*) pay full health and pension insurance benefits. The main reason is that

“...the unfavourable economic environment encourages most media owners to try to operate with as few expenses as possible, i.e., with the fewest possible employees, who are

generally not compensated properly”.

Types of influence that owners or interest groups have exerted on the media over the years can be divided in two categories, namely internal (i.e., by the owner) and external (i.e., by the political parties, advertisers or other interest groups). Internal pressures are primarily the result of the dominant patterns of media ownership. For example, in the broadcasting sector, the companies or individual owners that stand behind the largest television channels regularly use them to promote their commercial or political interests. The influence of media owners, who are also politicians, is most obvious at election time, when they use their media outlets for political promotion. Another aspect of their influence is the way they use television channels to cover controversial stories involving their financial backers. In principle, they either avoid reporting on these stories or report in a biased and selective way.

Branko Trickovski, one of the editors of the daily *Utrinski vesnik*, said that the new political or business bosses of the country's media have often proved incompetent: “They do not invest in media development but in instruments that help them achieve their political or business interests.”

Katerina Blazevska, editor of *Dnevnik*, admitted that journalists were often powerless to resist pressures coming from owners: “They have only a formal choice to leave the media outlet, because in practice they will have to go to a similar outlet.”

The external pressure on journalism is mainly noticeable when media outlets favoured by advertisers avoid publishing or broadcasting critical pieces or completely shun “problematic”

stories about those companies. It is difficult to determine whether this trend is an outcome of outright economic pressure or self-censorship. Powerful companies practice more sophisticated methods of influence, such as organising media clubs, offering gifts, providing credit cards or mobile phones for journalists. Other types of external influence, like direct pressures from political parties and other groups are less evident now than in the past. Media owners, unless they have strong political affiliations themselves, are often a primary wall of protection for journalists and editors. Still, some forms of indirect or hidden political influence remain.

These are the main reasons why even 15 years since the development of private media and independent journalism we are experiencing a major ethical crisis in journalism and lack of professionalism in the media. Despite the fact that the leading journalistic organisation Association of Journalists of Macedonia has adopted a Code of Conduct applying international standards, many examples from practice indicate a disrespect for professional and ethical norms. After a wide public debate, the Code of Conduct of the Macedonian journalists was adopted on November 14, 2001, regulating the conduct of journalists in all sectors. With financial support from Irex-ProMedia, a number of foreign experts participated in the process of its development and adoption, as well as in the establishment of the journalists' association. Although the Code includes almost all important issues concerning journalistic ethics and standards of professional journalism, it is quite short and declarative and therefore cannot serve as a guide for the conduct of journalists in practical situations. What is missing are self-regulatory documents by specific media outlets (statements, declarations, etc.), which would offer journalists practical guidelines for resolving numerous problems they encounter in their everyday

work. Actually, almost no media outlet has an ethical code of its own. The only exceptions are the dailies *Dnevnik* and *Utrinski vesnik*, whose organisational structures are based on WAZ's "Model of Cooperation between Publishers and Newsrooms."

The crisis in Macedonia's journalism escalated at the beginning of 2006, when the "Fabrika" affair was revealed to the public. Suspicions that a group of journalists secretly worked for a public relations firm, spin-doctoring for government ministers and other officials, caused an uproar in Macedonia. The daily newspaper *Vreme* named several journalists from various media houses who were working for the PR firm "Fabrika," meaning Factory, without the consent of their newsrooms. An additional factor that has been cited in the "Fabrika" case is the generally low level of pay in the media, which some say encourages a climate of corruption among the 1,000 or so journalists that work in Macedonia. "About 75 per cent do not receive any regular salaries and payments are usually minimal," said Ivan Andreevski of the Association of Journalists.

Mircela Dzuvalekovska, a former Reuters correspondent and editor for the Macedonian Information Centre said the "Fabrika" revelations showed that the Macedonian media had hit rock bottom: "We cannot go any lower, as we are already at the bottom. Journalism and professionalism has never been at such a low level."

The Association of Journalists has a poor reputation among journalists themselves. The main reasons are that this association in the past few years has not undertaken any significant activities aimed at promoting professionalism and standards in journalism. The mere fact that journalism in

Macedonia is undergoing a deep crisis raises the issue of why the Association of Journalists acts so passively in this respect. In response to the different negative examples of journalists affiliated with political structures or economic power centres, the Association has reacted mildly or not at all. For example, the Association did not react to the non-transparent decision of the public service broadcaster in 2004 that forced journalists to look for commercials and sponsors, while the reaction over the latest "Fabrika" affair went unnoticed.

The Council of Honour is a special body within the Association, established in April 2001, and charged for implementing the Code of Conduct. It is composed of five members, bringing together journalists from different media. Although it has undertaken several activities, in a situation in which the entire association has a bad reputation, it is not very influential among journalists. But there are also some objective reasons for their inertness. The journalists are working voluntarily and are all professionally engaged in some of the media outlets. So, they do not have time for any major engagement in the Council; hence, the body works only upon received complaints. In principle, complaints can be submitted by any individual citizen or institution. Judging from the low number of complaints submitted to the Council of Honour, it can be concluded that the public does not know much about the work of this body. There was no campaign to raise public awareness of the Council's activities, since it has insufficient funds for its work. The Council can not impose sanctions on journalists in the event that the ethical code has been breached. Its decisions are communicated to the public only by some of the media, because the Council has no money for its work and the media (especially the ones that have breached the Code) are not always willing to publish its decisions.

The public remembers the activities of the Council of Honour during the military crisis in Macedonia in 2001: a journalist from the television channel *Channel 5* was condemned for opening artillery fire in front of the television cameras; the director of the Macedonian Information Agency was denounced for presenting his personal comment as editorial, and so on. In the following years, the decisions of the Council of Honour did not receive much publicity. Usually they are not made public, as they are addressed to the media outlets in question. The Council of Honour has sometimes actually helped to settle cases (a journalist in *Radio Veles* was given his job back), while some journalists and media outlets have corrected their behaviour after receiving a warning.

However, the readiness of media and journalists to be actively involved in the work of this body, as well as the trust in the power of self-regulation, seems to be low. In this respect, the chairperson of the Council of Honour, Katerina Blazevska says: "Not a single colleague, journalist, has knocked on our door to ask whether we need help and no one offered to work as a volunteer." She also notes that many journalists are hypocritical in that while some of them are not members of the Association and thus the decisions of the Council of Honour are not binding for them, when these journalists have a problem they demand that the Council of Honour resolve their case. According to Blazevska, journalists should "show initiative to rectify the situation in the existing Association, which needs initiative and engagement."

Other forms of journalistic self-regulation virtually do not exist. There is no professional journal to discuss controversial ethical cases, while debates on ethical and professional issues

are organised only occasionally.

One positive aspect is that organizations providing professional training for journalists, such as the Macedonian Institute for Media, regularly devote attention to ethical issues in their programs for journalists and reporters. The Institute also grants an annual award for outstanding journalists and regularly print publications from its round tables, debates and other activities.

Defamation and libel

The decriminalization of defamation in Macedonia has been a hot issue over the past few years. The Criminal Code of the Republic of Macedonia as of 1996 considered defamation and libel a criminal offence against one's honour and reputation, with imprisonment and fines as penalty measures. Journalists were also liable for fines and prison sentences of six months to one year if they published any incorrect information or insults that damaged the honour and reputation of another person. A defamation and libel case had to be initiated by a complaint from the affected person, not *ex officio*.

The Association of Journalists has exerted continuous pressure on Parliament to amend the Criminal Code, arguing that these provisions are frequently abused and jeopardise journalism as a profession and as freedom of expression. It is a fact that in recent years a large number of criminal defamation and libel cases have been brought against journalists. The local non-governmental organisation "All for Fair Trials," which directs the project "Trial Observation Against Journalists in Domestic Courts," noted that 26 criminal defamation and libel

charges have been brought up in the period of January-July 2006. A total of 20 journalists and three editors-in-chief were accused of defamation and only one of insult. The journalists or editors come from three daily newspapers, two weeklies and two national television channels. By the end of July 2006, six cases were concluded in the first instance courts, where three journalists were fined, whereas one case ended in acquittal, while three cases were withdrawn by the plaintiff.

Information from journalists and the Association of Journalists of Macedonia reveals that most defamation and libel cases brought against journalists are initiated by public figures (politicians, directors, businessmen, etc.). This leads us to conclude that journalists most often criticize public figures, which, in fact, is the main role of journalism in a democratic society.

In Macedonia there are journalists against whom several criminal defamation and libel cases have been launched. The most private complaints, totalling 73, have been made against Zoran Bozinovski for articles published in several daily and weekly newspapers. He has been found guilty and convicted in 12 verdicts, two of which resulted in six-month prison terms (or a two-year suspended sentence), while nine have resulted in fines totalling MKD 436,610 (EUR 7,160).

The initiative for amending the Criminal Code was taken by the Ministry of Justice at the end of 2003 in order to harmonise national legislation with European standards and the recommendations of the Council of Europe. However, the amendments were passed by the Parliament only in May 2006. The amendments have abolished incarnation as a punishment for defamation, except in cases of graver types of defamation

and libel. Moreover, defamation and libel through the press, radio, television or other media outlets are no longer classified as a severe criminal offence. In this respect, the only exceptions in which defamation and insult are classified as a severe offence is in cases when the criminal offence of defamation has caused grave consequences to the affected person or in the case of insult when the person is subject to mockery due to his belonging to a certain community, ethnic or racial group, or because of his religious affiliation.

In the case of defamation or libel through a newspaper, television channel or radio station, the editor-in-chief is liable if the author of the article is not known, or if the information is published without the consent of the author, or if there are some obstacles to prosecuting the author. The editor-in-chief, i.e., the person assigned as a substitute, is not liable only if he or she was not aware of any of the previously stated circumstances.

Such cases can be initiated solely by private complaints. A person who believes that he or she has been defamed or insulted can submit private charges in three months since the day he or she found out about the offence and the offender. With the amendments to the Criminal Code as of April 2004, the option for initiating an *ex-officio* criminal case on defamation and libel was removed, erasing the provision according to which if the President of the State was subject to defamation or libel about his position, the Public Prosecution takes over the case *ex-officio*, or upon proposal. Also, a provision was erased that used to allow *ex-officio* prosecution against a person committing defamation or insult against a state body or its representative, or against an official or military person regarding with their service or realization of

their duties. These changes were of great significance for freedom of expression and for the democratic system in general, as they restricted the options of the authorities for hindering public criticism of their work.

With the exception of the criminal offences classified as severe types of defamation and libel, only monetary fines can be levied in all the other cases. There is no legally prescribed minimum and maximum of the fine foreseen for the offenders committing defamation and libel. This is a major weakness of the Criminal Code due to the fact that the levying of high fines on journalists or media outlets can also affect freedom of expression. Prior to the 2004 amendments to the Criminal Code, there was a legal minimum on fines for committing defamation and libel through the media.

Protection of sources of information

There is no national law protecting journalists from sanctions for refusing to disclose their sources of information. Article 16 of the Constitution of the Republic of Macedonia guarantees the right to protect a source of information in the mass media. Also, the Broadcasting Activity Act has a special provision in article 162 stating that "the journalist shall be entitled to refuse to disclose the source of the information, i.e., the data that may disclose the source." This protection does not refer only to the journalists, but also to all other persons professionally associated with the journalist. Because the law does not define the circumstances under which the journalist is obliged to disclose the source of information to the Court, no penalties are foreseen if a journalist refuses to do that. No data can be provided on whether and in how many cases

courts have requested journalists to disclose sources of information and on what grounds. It seems that courts in general open the cases taking into consideration the constitutional provision and international standards.

Access to public sources and disclosure of classified information

After several initiatives undertaken in the past years by different non-governmental organisations, in the beginning of 2006, Parliament finally adopted the Free Access to Public Information Act. Essentially, the law regulates the circumstances under which the state administration, local government and other public institutions and facilities are obliged to provide free access to available public information. All legal entities and natural persons have an equal right and access to information, meaning that journalists and media outlets are not privileged in this respect. The law also ensures the establishment of a commission to protect the right to information, charged with monitoring the implementation of the law's provisions.

The law also defines the circumstances under which bodies and institutions can deny access to information or data, including information or data classified as secret or confidential; personal data whose disclosure would imply violation of the protection of personal data; data whose disclosure would violate the tax procedure; data gathered for or part of a criminal, misdemeanour or civil lawsuit and whose disclosure would jeopardise the procedure; information from documents which are being prepared by the holder of information; information on environmental protection which are not available

in order to protect the human health; information threatening the industrial or intellectual rights, etc. The holders of information are obliged to approve access to such information only if the public interest outweighs the consequences of their being revealed. A civil servant disclosing a protected piece of information in order to unveil abuse of an official position and corrupt behaviour or that is in the interest of human health and environmental protection will be released from responsibility.

Bodies and institutions having public information are obliged to regularly publish and update the list of available information. According to the law, they have a duty to inform the public on all regulations, documents and data related to their work and the procedure with which this right can be exercised. A series of fines have been established for bodies and institutions as well as holders of information if they: refuse to provide access to public information; do not appoint a liaison officer responsible for accessing the information; or do not make, update or publish a list of public information, etc.

The first results of this law are expected this autumn. The Commission on monitoring the law's implementation was established in May 2006 and has already undertaken an array of activities related to its responsibilities. A list of institutions holding public information has been published, but their main activities have yet to be realised. Regarding the meaning of this law for journalists, the chairman of this Commission, Janko Nikolovski, said:

This is not a law for the media or the journalists, but I guess that they will benefit the most. The law creates elementary conditions for inauguration (I do not say promotion) of professionalism in Macedonian journalism, which

in my opinion is the major problem in the field of public informing. With the open documents the journalists will have the facts in their hands, which previously, very often, were fabricated or assumed.

The Classified Information Act regulates the unauthorised release, gathering and publishing of information related to the national security of the state. Article 6 of this law describes the information treated as classified. In this respect, information that is subject to classification relates to: public security, defence, foreign affairs, security, intelligence and counterintelligence activities of the state administration of the Republic of Macedonia, systems, appliances, projects and plans of importance to the public security, defence, foreign affairs, scientific research and technological, economic and financial affairs of importance to the Republic of Macedonia.

Furthermore, the Criminal Code guarantees the protection of the personal information of citizens. A fine or one-year prison term is foreseen for an offender who gathers, passes on or uses personal information about a citizen without his consent and contrary to the legally defined provisions. If this offence is committed by an official person, he will be sentenced to a prison term of three months to one year in length, while a legal entity will be fined.

The two laws do not specify the rights and obligations of media outlets regarding the protection of classified information, nor the protection of personal information. According to the Classified Information Act, access to this type of information will be provided only to those persons who have obtained a security certificate. In the past three years, there were no cases against journalists or media outlets for unauthorized publishing of

classified information and there is no jurisprudence on this matter.

Conclusions

At first glimpse it seems peculiar that even 15 years after the development of private media outlets and independent journalism we are noting again today that there is an ethics crisis in journalism and non-professionalism in the work of media outlets. If we analyse the existing level of development and the wider societal context in which media outlets operate, we can see that there are much deeper reasons for these problems. They can be located both the on macro and the micro societal level.

On the macro level, politics still dominates in other societal spheres, i.e., the media are not free of political and other types of influence. They are still seen as an instrument for achieving political, economic and other goals. At the same time, the market environment is unfavourable for those media outlets wanting to be independent of any power centres, financing its work only from commercials. Furthermore, we can also note the lack of quality undergraduate education for journalists and of efficient legal mechanisms for the protection of the autonomy and independence of media outlets, as well as of self-regulation in journalistic practice. The Code of Conduct of journalists includes all international professional and ethical standards, but does not provide enough guidelines for the practical work of journalists. Furthermore, few media outlets have their own self-regulatory documents.

On the micro societal level, we can list reasons

connected to the status of journalism as a profession and the immediate environment of the journalist, i.e. the media outlet in which he or she functions as an individual. First of all, we must note the poor socio-economic status of journalists (with very few exceptions) and the pressure they face in their working environment (from the editor, director, owner, external pressure, etc.).

Numerous analyses and surveys show that in the area of broadcasting media, owners use their own outlets to promote their own businesses, and those affiliated to certain political parties use media outlets for the promotion of their political goals. It is interesting that they have no intention of hiding this practice, but rather in many articles they openly say it is "natural" for an owner to interfere in the editorial policy of his media outlet or for the media outlet to be inclined to a certain political orientation.

Therefore, it seems that the developments in the broadcasting area in Macedonia are similar to the situation in the other countries in South Eastern Europe. The commercial media have disentangled themselves from structures of the state; however, they still remain strongly influenced by political parties and local ventures. In a situation in which journalism is undergoing a professional and ethical crisis (the latest "Fabrika" affair is a prime example), the inevitable question is raised as to the direction in which the media sector in Macedonia is heading. Some journalists are concerned about the decline of professional standards and the perspective of independent journalism in cases when "bosses" tailor the editorial policy of their own media outlet. No one believes in self-regulation, because although the Code of Conduct exists, it obviously is not implemented.

At a recently-held roundtable regarding the coverage of forthcoming parliamentary elections, some journalists voiced their concerns publicly, raising the question:

...how to cover the elections in an objective, unbiased and balanced way, if one knows that behind every large television channel is a political party and even the editor-in-chief cannot decide on the way of reporting.

Of special concern is the fact that there is confusion among the public regarding the basic standards of independence of private media, because some theses imply:

...the influence of media owners is not of much concern, if there is a balance in the overall media landscape, because they (media outlets) belong to different political options.

It seems that journalists are right in asking the question as to whether journalism that is "protected" by media owners with strong political ambitions and powerful backgrounds to criticise the government is an independent and professional journalism? With the current distribution of forces in the media system, perhaps it is good that the "boss" protects the journalist so he can criticize the government, until the very moment when the "boss" himself becomes involved in politics. Then, most probably, journalists will have only one possible choice: either to change their boss or their profession.

Recommendations

- (1)** It is very important for journalists to find the strength and courage to get out of the current professional and ethical crisis. Support from foreign experts, and financial support for the projects is required in order to reform the Association of Journalists and to amend and expand the existing Code of Conduct and its application.
- (2)** One of the essential prerequisites is to establish a strong and independent self-regulatory body, such as the Press Council with the participation of all stakeholders: publishers, journalists, and citizens/the public.
- (3)** The principle of self-regulation should be widely affirmed and initiated in media outlets, which should adopt declarations and other documents obliging owners not to interfere with editorial policy. Even though such declarations are “only on paper,” they are nevertheless very important for raising the awareness of owners, managerial structures and editors, as well as journalists about these principles.
- (4)** Assistance is also necessary for trade union organisation. There is no independent journalists’ trade union; instead, journalists are part of a broader trade union branch, the GIFIH (Trade union of graphical, informative, film, publishing activities and paper production of Republic of Macedonia). This is important because if the socio-economic status of journalists is not improved, they cannot be expected to feel secure in pursuing their profession.
- (5)** Further education should be provided for journalists, both in professional education institutions and in the form of in-house training in the media outlets.
- (6)** The state should make efforts to improve education for journalists. The Journalism Studies program within the Law

Faculty lacks a teaching staff, appropriate equipment, literature, etc.

(7) Although the changes to the Criminal Code have abolished prison sentences for defamation and libel, these offences should be fully decriminalised, i.e. they should be regulated with civil law. Special attention should be paid to reducing the fines in order not to affect freedom of expression.

(8) The implementation of the Free Access to Public Information Act is of exceptional importance for pursuing the journalistic profession. It is very important to raise the awareness of both the public and journalists about the rights deriving from this law.

The Commission on monitoring the law's implementation was established in May 2006 and has already undertaken an array of activities related to its responsibilities. A list of institutions holding public information has been published, but their main activities are yet to be realised.

Moldova

By Olivia Pirtac

I. GENERAL CONTEXT

Recent History

Historically, the territory of the Republic of Moldova (also known as Bessarabia) was a part of Romania. In 1812 this territory began to be controlled by Russia. With the collapse of the Russian and Habsburg empires in World War I, Romania gained back Bessarabia in 1918. In 1940, Romania was forced to concede Bessarabia to the USSR, as stipulated by a secret protocol of the Molotov–Ribbentrop Pact of 1939. In the Soviet period the Cyrillic alphabet was imposed and attempts were made to differentiate a “Moldovan” language from Romanian. Large numbers of Russian and Ukrainian settlers arrived, especially in the capital, Chişinău.

Moldova gained its independence in 1991 with the breakup of the USSR. The period of “national awakening” (1989–1991) was accompanied by a renewed emphasis on the Moldovan language, which is virtually indistinguishable from Romanian, and the re-introduction of the Latin version of the Romanian alphabet in place of the Soviet-enforced Cyrillic version. In Transdniestria (in the East) and Gagauzia (in the South), the possibility of re-unification with Romania (mooted during the early years of independence), fuelled calls for autonomy and/or separation of these regions from the rest of Moldova. Both regions declared independence, in August and September 1990 respectively. While the Gagauz conflict was defused by the granting of local

autonomy in 1994, the more problematic situation was in Transdniestria, which has high concentrations of Russians and Ukrainians. In the ensuing conflict, approximately 1,000 people were killed. The presence of Russian troops prevented Transdniestria from succumbing to Moldovan forces. Since the ceasefire negotiated in July 1992, Transdniestria has been *de facto* independent (although not internationally recognised), with the Transdniestrian authorities remaining in control of the territory of the 'Transdniestrian Republic of Moldova.' Officially, Moldova does not recognise Transdniestria and Transdniestrians are eligible to vote in Moldovan general elections. At the Istanbul Organization for Security and Co-operation in Europe (OSCE) Summit of 1999, Russia committed itself to destroying its military equipment in Transdniestria and to withdrawing its forces from the region by the end of 2002. This commitment was not adhered to and, after lengthy and complex negotiations, the deadline was extended to December 2003 at the OSCE 'Ministerial' in Portugal. But Russia has still not respected its obligations. The attitude of the Transdniestrian authorities is reflected in the virtual absence of proper legal practice, allowing the authorities great leeway to take arbitrary measures. The situation is also characterised by dependency on Russia: there are still Russian forces in Transdniestria, and the region is dependent on Russia for trade and energy supplies. The European Court of Human Rights (ECHR) concluded in July 2004 that the Transdniestrian republic "remained under the effective authority, or at the very least under the decisive influence, of Russia, and in any event that it survived by virtue of the military, economic, financial, and political support that Russia gave it." Russia has also tried to support Transdniestria while increasing pressure on Moldova. On various occasions, Russia stopped Moldovan exports of meat, vegetables, and wine to Russia and raised gas prices in 2006.

Political Background

In 2000 the Moldovan Parliament passed a decree declaring Moldova a parliamentary republic, with the presidency henceforth to be decided not by popular vote, but by parliamentary vote. As Parliament failed three times to elect a new President, Petru Lucinschi (the President) dissolved Parliament and called new parliamentary elections. In the February 2001 parliamentary elections, certified by international observers as free and fair, the Communists gained 71 of Parliament's 101 seats and so were able to elect as President their leader, Vladimir Voronin. Since the Party of Moldovan Communists (PCM) came into power in 2001, Moldovan politics have been marked by increasing centralisation and a tendency toward soft authoritarianism. Despite the fact that Moldova is a parliamentary democracy, the country's president, Vladimir Voronin, has been the dominant figure in politics since 2001. The government manipulates rather than violates the existing democratic framework, achieving a certain amount of stability through co-optation of important societal, political, and economic actors rather than coercion or outright abuses of human rights. The most obvious attempts to centralize power have been traditionally reversed under pressure from the European Union (EU), the United States, OSCE, and the Council of Europe. Virtually all political actors in Moldova publicly support democracy and EU integration as the best route to stability and prosperity. The elections on March 6, 2005, created the basis for strengthening Moldovan democracy while maintaining governmental stability and economic growth. Despite the victory of the PCM, a new political consensus between the government and the opposition has emerged. The parliamentary parties also launched a political partnership for European integration with a declaration that stated:

further development of the Republic of Moldova can be ensured only through the consistent and irreversible promotion of the strategic course toward European integration, peaceful and democratic resolution of the Transdnistrian problem, effective functioning of democratic institutions, and ensuring of national minorities' rights.

To ensure the re-election of President Voronin, the PCM made an alliance with the three opposition parties, namely the Christian Democratic People's Party (CDPP), the Social-Liberal Party (SLP), and the Democratic Party (DP). As part of an agreement with the opposition, Voronin agreed to a set of ten measures to ensure the independence of the media, the independence of the judiciary, decentralization of local government, greater parliamentary oversight of law enforcement agencies, reform of the electoral authorities, reform of the Communist Party, and his resignation as Communist Party chairman. Some of the measures have been partly implemented. For example, legislative sessions are now broadcast live, and deliberations are posted verbatim on Parliament's website. The government has renounced ownership of its two official newspapers (Moldova Suverana in Romanian and Nezavisimaia Moldova in Russian), but their editorial policies remain strongly pro-governmental.

Population

Moldova currently has a population of around 3,4 million (according to the 2004 census and not counting the population of the Transdnistria region, which is not controlled by the Moldovan authorities). Romanian-speaking Moldovans make up 75.8 per cent of the population (we should also add to this the

2.2 per cent of the population that call themselves Romanians). Other large minorities are Ukrainians (8.4 percent) and Russians (5.9 percent). The remainder is made up mainly by Gagauz (4.4 per cent), Bulgarians (1.9 per cent), Jews, Roma and others (less than 1.0 per cent). Regarding the confessional structure of the population, 93.3 per cent of the population are Orthodox Christians.

Economic conditions

The collapse of the Soviet Union affected Moldova's economy deeply. The early years of independence were characterised by initial bursts of capitalist reform accompanied by declining standards of living, widespread poverty, rising crime and hyperinflation. Unemployment and significant migration of the population abroad is a serious and widespread problem. The Moldovan economy remains largely tied to the Commonwealth of Independent States (CIS) and particularly Russia, with the majority of exports going there, making Moldova vulnerable to pressures (especially political-motivated pressures) from Russia and fluctuations in the Russian economy. Foreign investment is welcome in Moldova but hindered in practice by complex regulations, onerous taxation and corruption. The "black market" economy plays a large role in the national economy, providing a significant proportion of income.

Media landscape

Moldovan law guarantees the right to freedom of expression and access to information, prohibiting censorship in the media. Political pressures on the media are frequent in Moldova, but the main bottleneck hindering the development of independent media is the lack of financial means. Most media

outlets are dependent on political or economic sponsors, and interference with editorial policy by owners is widespread. Revenues from advertisements and newspaper circulation are very small. The majority of print outlets are financed directly or indirectly by various political party sources and act as mouthpieces for particular sectional interests. Generally there is a large number of newspapers (more than 60), news agencies (around ten), radio stations and television channels. According to data by the Broadcasting Coordinating Council in March-April 2006 in Moldova there were 38 television channels, 45 radio stations, 149 cable operators and nine operators in MMDS system. The broadcast media are the most important means of communication, as they are relied upon as the number one source of information for the vast majority of the population. Unfortunately, the great majority of channels re-broadcast Russian channels. This is because of the limited possibilities for local production and the knowledge of the Russian language by the whole population. In the print press, there is an almost equal number of Russian-language newspapers and Romanian-language newspapers. The Russian-language media receive a disproportionate share of advertising revenue in comparison to the Romanian-language press. Hence, Russian-language newspapers, unlike the Romanian-language media, can be financially self-sustaining. The average purchasing power of the population is very low, so usually newspapers are sold at lower prices than the production costs. Other factors, such as fees for the distribution of the newspapers, also contribute to the unreliability of the position of Moldovan newspapers. This inevitable deficit has to be covered by subsidies from the State, political parties or other sponsors, or by foreign donors. A number of local newspapers, as well as local radio stations and television channels, are funded by the local authorities, who exercise extensive control over these outlets, virtually deciding

on the appointment of managing boards and dismissing journalists who do not faithfully reflect the views of the establishment. Among other pressing problems is a lack of tolerance of criticism by the authorities, who punish dissenting voices with defamation suits, tax inspections and other direct or indirect means. News, to a greater or lesser extent, is filtered by the authorities; information of clear public interest might be omitted, or presented in overtly negative or positive terms. The authorities enjoy extensive positive coverage.

The level of training in journalism is not of the highest quality; the system of education is old-fashioned and Soviet-style, with little emphasis on practical training. In recent years, however, non-governmental organisations have helped considerably in improving the professional level of journalists and the level of training in journalism. The state of investigative journalism continues to be a precarious one in the Republic of Moldova. Journalists who carry out investigations do not benefit either from legal guarantees and facilities, nor from any support offered by law enforcement bodies. The fact that the law enforcement bodies do not react to the disclosures published in the press is also a sign of alarm. Journalists are also the target of different kinds of intimidation, including civil proceedings and various threats. In conclusion, even though Moldovan legislation provides for certain guarantees, in practice the mass media find themselves caught between political pressures and economic difficulties.

II. OVERVIEW OF THE MEDIA LAW ENVIRONMENT

The Media Law environment

Moldova is bound by a number of important international human rights treaties that uphold the right to freedom of expression, including the European Convention on Human Rights and Fundamental Freedoms (ECHR), which came into force in Moldova on September 12, 1997, and the International Covenant on Civil and Political Rights, in force in Moldova from April 26, 1993. Moldova is also a participating state in OSCE. The Constitution of the Republic of Moldova of July 1994 guarantees freedom of opinion and expression (Article 32) and also the right of access to information (Article 34). Some aspects of Articles 32 and 34 of the Moldovan Constitution are not totally harmonized with European standards; for example, Article 32(3) of the Constitution limits the freedom of expression proclaimed in Article 32(1) by forbidding *inter alia* "actions aimed at denying or slandering the state or the people" and "instigation to sedition [...] or other actions threatening constitutional order." Article 34(4) states: "The state and private media are obliged to ensure that correct information reaches public opinion." Even if these provisions generally were not used in practice against the media, media experts argue that the respective stipulations should be removed. It is true that it is provided in Article 4 that the Constitution is to be interpreted and implemented in accordance with the human rights treaties to which Moldova has adhered and that, in case of conflict, international law should have precedence over domestic law. These general themes are reinforced in the Moldovan Press Law, adopted by Parliament on October 26, 1994. On October 3, 1995, Parliament adopted the Television and Radio Act, which stipulated general mechanisms

for the establishment of independent broadcasters. The basic constitutional provisions on freedom of expression are again reflected in the both laws. On July 26, 2002, the National Public Institution of the Audio-visual Company *Teleradio-Moldova* Act (NPIA Act) was also adopted, which was the basis for the legal transformation of the state television into a public service broadcaster. However, political control over the public audio-visual company is still evident at the present time. Currently the Parliament of the Republic of Moldova is working on a new draft law (the Audio-Visual Code), which would modify all audio-visual legislation. Although there are a number of articles in the Criminal Code (CC) that deal directly or indirectly with limitations on freedom of expression, one positive feature is the decriminalization of calumny and insult. However, Article 16 of the Civil Code has repeatedly been used by different individuals to sue media outlets in courts for defamation.

The Television and Radio Act set up a Co-ordinating Audio-Visual Council (the Council), which has two main functions: regulating the functioning of broadcasting (through the allocation of licences) and ensuring that broadcast media respect the Television and Radio Act. Unfortunately, in the past the activity of the Council was non-transparent and seriously affected by political and sometimes commercial interference in its operations. The Television and Radio Act was often misapplied and abused, primarily due to the law's inherent weaknesses and the interference by public authorities in the regulation of broadcasting. Among the main problems were the provisions regarding the appointment of the Council members, which did not guarantee its independence from the authorities, despite the provision of Article 14 that the Council should be an "independent body." The Council is comprised of nine members, three of which were appointed by Parliament, three by the

President of Moldova and three by the government. Beginning in 2001, the members were effectively appointed by the Parliamentary majority (since 2001 the Communist Party) and the President (the Communist Party leader). We hope things will change when new audiovisual legislation is adopted. Unfortunately the new draft Audiovisual Code, adopted on its first reading by the Parliament on April 6, 2006, was seriously criticised for these flaws by the Moldovan civil society and the experts of the Council of Europe, OSCE and Article 19.

Article 6 of the Press Law requires periodicals and news agencies to be registered by the Ministry of Justice (or as enterprises according to other laws) and makes it illegal for them to operate without registration. Even though the Press Law is very broad and does not specify the procedure and the necessary documents for registration, only one complaint referring to illegal behavior of the Ministry has been made public in the media, probably because of political reasons (the Social-Democratic Party complained that the Ministry of Justice did not register its publication *Socius* for four months). The Ministry of Justice registered the publication in two days after the party disseminated its complaint in the press (February 24, 2005).

The market entry and tax structures for media outlets are comparable to other industries. There are no particular disadvantages for the media industry. At the same time, there is no strategy that would help the development of media outlets. The institution of public subsidies is not fairly or normally developed. Only state media (public service broadcasters and media connected to local authorities) receive public subsidies. There is no contest and criteria that would offer the possibility for private media to obtain public money.

Both the Press Law and the Television and Radio Act contain articles restricting the ownership of Moldovan media outlets by foreigner citizens. Article 5(3) of the Press Law restricts the right of foreigners to establish a media outlet by stating that foreign persons can act as co-founders of a media outlet *only* if they own at most 49 percent of its capital. In addition, Article 8(6) establishes that only citizens of Moldova can be editors of a periodical and heads of press agencies. Concerning broadcasting, Article 5(2) prohibits foreign persons from establishing a media outlet, with the exception of when they do so with Moldovan citizens through a joint venture. Regarding Moldovan citizens or companies, the Press Law does not specify any limitations, but article 5 of the Television and Radio Act stipulates that a legal or natural person cannot have more than 50 percent of the joint stock in one audiovisual company and not more than 20 percent of the joint stock in other audiovisual companies. Generally, in Moldova there is no real transparency of media ownership. In Moldovan society there are many rumors about the real owners of various outlets, since ownership is not enough open. Practically, there has been neither research nor serious debate on this matter. This situation motivates the relatively reduced credibility of journalists in Moldovan society. This problem has to be considered more seriously both by journalists and by media-related non-governmental organisations.

The media legislation in Moldova is in a process of continual improvement. Even if still there are a number of rules not harmonised with accepted European norms, it is generally the case that legislation is not the main obstacle to media freedom, but rather some administrative practices or pressures and difficult economical realities. The national public service broadcaster remains biased in favour of the authorities and,

given the quality of its programmes, is not a truly public institution. As regards the print press, few of Moldova's newspapers can be seen as truly independent, since in the current market it is very difficult for them to be financially viable. The advertising market is limited and the purchasing power of the population is low, especially in rural areas. Also, there are media outlets financed by local authorities, which at a regional level places the independent media at a disadvantage, as this does not allow for fair market competition. Among the journalists who are employed by the public service broadcaster and the media of local authorities, self-censorship is the predominant practice: engaging in independent journalism would result in losing one's job. The same is true of the majority of private media outlets, which are in fact controlled by different political parties. Despite the constitutional guarantees on the right to free expression, in practice the authorities often put pressure on the media through financial and other means, including defamation suits.

III. SELF-REGULATION OF THE MEDIA

General aspects

The first private media outlets (newspapers, television and radio companies) and the issue of setting up some means of guaranteeing their fully responsible functioning appeared after the breakdown of the Soviet Union and the assertion of the Republic of Moldova as an independent and sovereign state.

Unfortunately, starting from when the Republic of Moldova declared its independence and continuing to the present day, juridical regulations have played a predominant role

during the process of creation of some mechanisms for prevention of irresponsible activity by the media.

The first tool of self-regulation in the media field, namely the Code of Professional Ethics of the Journalists (hereafter referred to as the Journalists' Code), appeared too late, i.e. five years after the moment the Press Law was passed (1994).

Another tool of regulation in the media field is *The Producer's Code of Principles, Standards and Recommendations of the National Public Institution of Audio-Visual Company Teleradio-Moldova* (adopted on the 30th of December 2005, hereafter referred to as the NPJA Code), which appeared ten years after the Television and Radio Act was adopted (1995) and three years after the passing of the National Public Institution of the Audio-Visual and the Company Teleradio-Moldova Act (2002).

Other mechanisms of self-regulation include the monitoring conducted by non-governmental organisations and critical analyses made by media experts, which are published in newspapers and specialised print or on-line publications. However, there is no special forum to discuss ethical cases and issues on a regular basis. In Moldova there are no media outlets that would have an ombudsman. However, "media ethics" is a compulsory course in all faculties of journalism. Also, NGOs (every year) and authorities (sometimes) give awards to the best journalists, promoting quality journalism in this way.

The small market of advertisers in the Republic of Moldova, as well as various political, financial, and career interests on the part of managers of the broadcast media contributed to the lack of concern for self-regulation.

Self-regulation in the Republic of Moldova had (almost) no social impact. The norms of professional ethics, imposed via self-regulation tools, focused mainly on rights and liabilities, which is why the need for self-regulation in the Republic of Moldova was associated only with the tendency to set up some mechanisms for prevention of irresponsible activity by the media.

Finally, a majority of journalists adopted a sceptical position towards the need for serious activity in this area. The last conclusion feeds on a series of other factors, such as frequent defamation lawsuits, the 'defamed heroes' of which were politicians, high ranking civil servants, and magistrates (including judges), as well as adjustments and frequent attempts (even more numerous) to modify media legislation, etc.

Currently the attitude towards the issue of self-regulation, unfortunately, can be featured as a domain, the study of which, from the cognitive point of view, is useful for one's career, but useless in practical activity. Such an attitude can be explained, first of all, by the existing deficiencies in the area of self-regulation in the Republic of Moldova. We believe that the following two issues constitute the main deficiencies:

- The declarative and abstract character of the regulations from the self-regulation tools. The majority of the norms are similar to the norms from acting legislation and offer neither supplementary informative support nor the mechanisms needed by journalists for solving some frequently confronted problems.
- Awareness of the self-regulation targets. Up to now the self-regulation tools in the Republic of Moldova have been mainly regarded as a means to set up some guarantee for the

responsible functioning of the media. From this perspective the self-regulation tools were associated with a supplementary repression mechanism. For the future we need to promote a new vision of the goals of the self-regulation mechanism, which will also include the self-control issue.

The Code of Professional Ethics of the Journalists from the Republic of Moldova¹

The provisions of article 20 paragraph (4) of the Press Law established expressly journalists' right to set up self-regulation tools: "(4) The duties of the journalist ensue from the legislation in force, from the present law and professional ethics." In spite of the fact that it is an ambiguous and dangerous stipulation that distorts the core sense of the self-regulation tools and mechanism, this norm was not seriously criticised. The lack of such criticism is due to the (in)efficiency of the self-regulation tools in the Republic of Moldova. More than that, page 20 of the Journalist's Code asserted:

The present Code of ethical principles may serve as argumentative basis in cases reviewed in law bodies and other bodies, in any litigation which involves the journalist himself or the product of his professional activity.

On May 4, 1999, the Extraordinary Congress of the Union of Journalists in Moldova adopted the Journalist's Code and launched an appeal to all journalists' associations to countersign the document. On the May 26, 1999, the document was signed

¹ The English translation of the Code can be found at the following address:
<http://www.ijc.md/en/bulletin/1999jun/09.html>

by 11 more professional associations, and in this way it was recognised at the national level.

The Journalist's Code was conceived for and addressed to all media outlets and journalists, including the print press and the broadcast media, both state and private outlets, and can also be applied to online journalists. The goal was to harmonise media activity with social norms and values. The political, social and professional environment in the country at that moment (for instance, a considerable number of journalists worked for the state media) and the lack of traditions in this field resulted in the fact that the regulations which would have established efficient tools and mechanisms to reach the intended goal were not included in the Journalist's Code.

The Journalist's Code was elaborated on the basis of the Resolution of the Parliamentary Assembly of the Council of Europe 1003 (1993) on Ethical Norms of Journalism (hereafter referred to as the Resolution), mainly reflecting its content and structure, and the International Federation of Journalists' principles of behaviour. The Journalist's Code comprises 22 points. Subsequently, the code has not been modified.

The main differences between the content of the *Journalist's Code* and the *Resolution* are as follows:

1. A distinction is made between "information and opinion" in the Journalist's Code (p. 4). The authors of this document obviously meant to follow the principle set up in p. 3. of the Resolution concerning the difference between facts and opinions. However, this mistake in translation has not been corrected to date;

2. The corporate character of the media was not reflected (pp.10 and 32 of the Resolution). The operation and efficiency of the Journalist's Code was not based on the free initiative and voluntary behaviour of the main media stakeholders, namely (a) the owners and administrators of the means of mass communication, (b) the journalists and (c) the public.

The representation and the frequency of utilisation in the Journalist's Code of the terms by means of which the above-mentioned stakeholders are designated constitute an example of this fact:

- the media owner and the administrator (public authority, private sector, government, state administration bodies, economic structure) - six times,
- the journalists - 42 times,
- the public (citizen, person, individual person, society) - ten times.

At the same time, we should mention article 8 paragraphs (1)–(5), (7) and (8), article 9, article 10 paragraphs (1)–(2), article 11, article 16 paragraph (1), article 20 paragraph (1) letter g) and h) from the Press Law, where the most important juridical liaisons between the owner ("founder," "co-founders"), administrator of the media outlet ("editor-in-chief" or "editor," "manager of the [press] agency") and journalists working for periodicals and press agencies are asserted. In compliance with the provisions of the above-mentioned law, the juridical relationships between the owner, the administrator and the journalists are regulated by (a) the acting legislation, (b) the statute of the periodicals or press agency, which are adopted by the general assembly of the editorial or press agency staff and

approved by the owner, and (c) the bilateral contract concluded between the founder and the editorial body of the periodicals or press agency. The Press Law envisages the appointment of an administrator (who can be even the founder) according to the conditions set up in the acting legislation and the statute of the corresponding periodicals or press agency. According to the Press Law, the periodicals and press agencies, within the framework of the juridical liaison with the owner, benefit from the right to develop their activity on the basis of professional autonomy. This mechanism, set up by the Press Law and pursuing the aim of establishing equilibrium between the three media stakeholders, could also be used for the establishment of a functional and efficient character of the Journalist's Code. Unfortunately, the mechanism from the Press Law was never functional: in an absolute majority of cases the statutes of periodicals and press agencies are adopted in the form in which they are presented by the owner or administrator, while many journalists had never heard about bilateral contracts.

- 3 The principle of the transparency of ownership in media also was not reflected (p. 12. from the Resolution). It is hard to understand the negligent attitude of the persons who continuously fight for access to information towards the transparency of ownership and management in their own field of activity. Unfortunately, at present the public in the Republic of Moldova is informed of media ownership via the following wording: Founder of the newspaper (press agency, radio, television) - "X" Ltd.

The establishment of a monitoring body for the implementation of the norms of professional ethics was envisaged in point 21 of the Journalist's Code: the National

Council of Professional Ethics of Journalists (hereafter referred to as the NCE).

In the last section of the Resolution, entitled "Ethics and Self-Regulation in Journalism," the self-regulation mechanisms and the activity of the media's self-regulation bodies are examined in direct connection with the transparency of the journalist's activity, the citizen's right to have access to information concerning the journalist's work and to create his/her own opinion on it, and the improvement of the way journalistic activity is undertaken. Unfortunately, in the Republic of Moldova no clear concept was created that could serve as the basis for the constitution and activity of some of the self-regulation bodies with the view to reach these desired aims.

The adoption of the Journalist's Code did not mean the establishment of a more or less detailed mechanism for the functioning of the self-regulation bodies. In the Journalist's Code one can find only the appointment of famous journalist as members of the NCE by the Congress of the Union of Journalists from Moldova and the NCE's obligation to develop its activity according to its own regulations. In order for the NCE to be recognized by all journalists, the Journalist's Code provides for the countersigning of the NCE Regulation by all the representatives of all media organisations from the Republic of Moldova.

In order to establish transparency in journalistic activity and to enhance journalists' credibility, point 37 in the Resolution provides for the need to create some mechanisms or larger representative bodies made up of editors, journalists, media user associations, academic experts and judges. In Moldova, in compliance with the provisions of the Journalist's Code, only

famous representatives of the profession can become members of the NCE.

To enhance the NCE's credibility vis-à-vis the public, the Journalist's Code also implies the elaboration and implementation of a mechanism that would allow for the involvement of the representatives of some other professions (such as teachers, sociologists, lawyers, political scientists, etc.) and social categories (representatives of national minorities, etc.) in the NCE's activity.

The NCE Regulation was adopted on December 8, 1994, within the framework of the Union of Journalists from Moldova (hereafter referred to as the UJM), that is, before the approval of the Journalist's Code. After its approval it was amended with the view of establishing the NCE's independence with respect to the UJM (the Journalist's Code being a document that other professional organisations adhere to, as well), although the NCE is still required to submit reports to the UJM. The need to modify the Regulation was not felt. The NCE is stipulated in the Regulation as a consultative body (articles 1 and 2), aimed at the promotion of the principles of professional ethics in the media field. The NCE's activity is relevant to all media organisations that have adhered to it.

The number of the NCE members is not determined in the Regulation. At the moment, the NCE is composed of eight persons who have been appointed by the UJM Congress (2004).

The NCE's activity requires the presence of the quorum during the session (article 2), which at the time turned out to be a serious problem (due to the lack of financing for this activity).

According to the provisions of the Regulation (article 2), the NCE is obliged to carry out an analysis of any written request concerning the violation of a journalist's rights and freedoms or those of other persons, referred to by journalists. According to the Regulation, it is not mandatory for the NCE to make a decision concerning the examined issues. According to the provisions, the NCE must approve, via the voting of its members, the detailed examination of issues considered. The NCE Regulation does not comprise restrictive provisions concerning the persons who could bring complaints before the NCE or regarding the NCE's right to self-information. The NCE is responsible for informing the public about its decisions concerning administrative or political pressures on media or journalists.

Beginning in the years between 2001–2004, NCE members tried to set up a mechanism to monitor the press, but this tentative effort failed. During the above-mentioned period of time different requests concerning violation by journalists of the norms of professional ethics were examined many times. Drafts of statements on the observance of the norms of professional ethics within the framework of some media outlets were also considered and approved.

During the time, the NCE examined a series of cases regarding the violation of the norms of professional ethics committed by journalists, but in only two cases out of all those examined did the NCE make a decision expressing total disapproval of the journalists' activity. The NCE during its period of activity also had to solve many other issues, including the submission of some opinions to courts of law, the adoption and dissemination of certain statements, elaboration of a series of

adjustments to the Journalist's Code (the elimination of contradictions), etc.

However, at present the public associates the activity of the NCE with a few notable decisions in which the NCE, as strict sanction against the offending journalists, recommended that the Standing Committee of the UJM exclude two journalists from membership in this organisation (UJM): the first case was in 1999, when the editor-in-chief of an important state newspaper was accused of seriously altering facts in his articles, and the second case in 2003, when the president of the public service broadcaster (who was also the author of an analytical television programme) was accused of violating the right to privacy of two journalists from a newspaper and of defaming them for political reasons (the case occurred during an electoral campaign and was intended to discredit an electoral candidate). Without making an assertion of a causal link between the NCE decisions and the subsequent actions taken by the journalists in question, we would like to mention the fact that after the publishing of the above-stated decisions these journalists abandoned their profession.

Unfortunately, the NCE did not contribute by its activity, directly or indirectly, to the elaboration of certain norms of self-regulation nor to the improvement of the existing ones. Since the goal of the NCE's contribution was the elaboration or explanation of journalists' professional rights and liabilities in the context of social, moral and professional values, such an aim could become a tool to raise the prestige of self-regulation bodies in general, and that of the NCE especially. The efficient activity of some of the non-governmental organisations from the Republic of Moldova attempting to adjust the provisions of national legislation to concur with European standards does not

cover the whole range of problems that could be solved within the framework of the self-regulation bodies.

The realisation of this task could also contribute to civil society's encouragement of self-regulation of the activity of the media in other domains, too, which at the moment are regulated only by the state. In this way, the public and professional interest towards self-regulation could increase as an alternative to abstract and incomplete juridical regulations.

Another domain of real interest that could be pursued by the self-regulation bodies would be involvement in the approval of drafts of laws and other juridical deeds. Until now the NCE has not been active in this field.

We think that the process of improving the efficiency of self-regulation bodies in the future also demands the elaboration of some provisions within the framework of the NCE that would ensure a balance between media administrators (owners, editors-in-chief, managers of press agencies, electronic media) and journalists. At the moment such provisions do not exist in the Journalist's Code.

For the Republic of Moldova, the lack of a dialogue between the above-mentioned media stakeholders is obvious. We think that the inefficiency of the self-regulation tools in the Republic of Moldova is due to the non-involvement of the self-regulation bodies in the establishment and maintenance of such a dialogue. The NCE should contribute to the determination of the journalists' work, as well as the social and professional conditions that would make possible the realisation of the norms of professional ethics *under normal conditions*. Otherwise, the self-regulation tools will remain simple good-will public

statements by journalists. There is a need for a co-operation between all participants in media activities; the self-regulation bodies must play their own role in this process. Also we would like to recall in this context that provisions exist within the Press Law concerning the statute of periodicals or press agencies and bilateral contracts; the NCE could get involved in the process of their elaboration and adoption. Unfortunately, the NCE has paid no attention to any of these issues.

The efficiency of the self-regulation tools and mechanisms has a direct link with public opinion, and that is why the population should be informed about such regulation. Within the framework of this process the falsehoods, errors and perhaps even the lack of professionalism committed by the media are tracked and denounced. Informing the public concerning the observance and non-observance of the norms of professional ethics brings into play one of the most efficient and influential tools in the self-regulation domain: public opinion. Today the NCE is practically absent in this domain.

At the moment, the process of informing the public concerning the norms and values of professional self-regulation and their observance by journalists in the Republic of Moldova is carried out by journalists at individual level. Important newspapers are involved in this kind of self-regulation, some of them even have special columns dedicated to this topic (e.g., the *Teleobservator*). The materials that are published within such self-regulation frameworks very often do not even try to denigrate the journalists carrying out their professional duties. In this way, we can speak about the existence of self-regulation in the Republic of Moldova, first of all, due to this form of activity, which could even be said to function well.

Nevertheless, we think that the self-regulation carried out by journalists at an individual level at the moment cannot take the place of one of the important duties of self-regulation bodies: the study and professional analysis of conflict of interest situations in the domain of mass media, which would allow the public to create its own opinion regarding journalists' morals and their work in general. The lack of generally available self-regulation mechanisms, the dynamic evolution of the media under new technological conditions and social changes have led to the appearance of new types of conflicts. Under these conditions the self-regulation bodies should be prepared to get involved in the process of examining and solving such conflicts and to contribute to the identification of the motives that caused such conflicts. The involvement of self-regulation bodies in solving conflicts between diverse media outlets could facilitate the appearance of some new regulations that are sorely needed.

The NCE develops its activity in sessions. The majority of the members of the self-regulation body are active within the various media, while their work for the NCE has an episodic character and is unpaid. Some of the members of the present and former staff of the NCE share the opinion that this body should develop more regular and consistent activity. Taking into account precarious financial conditions of the Republic of Moldova, adequate financing (from outside the country) would have a positive impact on the NCE's efficiency.

A consistently functioning NCE would provide for ongoing activity in the field of elaboration and implementation of ethical standards, which would not be confined to listing ethical and professional liabilities (interdictions); in this way, the NCE's self-regulation tools would become truly useful for the journalists. At the moment, this duty is carried out in a more efficiently by non-

governmental organisations. They have involved themselves actively in the process of journalists' training, media monitoring during electoral campaigns, monitoring of the public service broadcaster, monitoring of the print press, etc.

We think that thanks to the contribution of non-governmental organisations to the process of media monitoring, an adequate "barometer of credibility" was established in Moldova. Such a barometer, as stipulated in the Resolution on p. 38, can be utilised by citizens as a guide regarding the observance of ethical norms by different media outlets. Usually the goal of monitoring is to evaluate the quality, impartiality and accuracy of television and radio programmes, as well as to observe violations of laws and ethical standards. The public is informed of which media outlets respect the rules and which partially or seriously violate them. In this way, the public becomes aware of which media outlets they can trust.

The Producer's Code of Principles, Standards and Recommendations of the National Public Institution of Audio-Visual Company Teleradio-Moldova

Recently, the first tool of self-regulation at the level of the media entity appeared in the Republic of Moldova, namely the NPIA Code.

Before its adoption, the NPIA Code was discussed within the framework of a conference organised by representatives of Moldovan civil society. A series of provisions were criticised during the sessions of this conference, which was also attended by the representatives of the NPIA administration. The vast majority of suggestions offered by participants were accepted,

although some of them were ignored. Within the framework of the above-mentioned workshop, all the provisions of the NPIA Code cited below were found to be in conflict with the provisions of European and national legislation.

The adoption of the NPIA Code was necessitated by the low level of professionalism that is apparent in many programmes on the NPIA (this fact was recognised by the administrative body of the institution).

According to the provisions of article 12 of the NPIA Act, the managing bodies of the NPIA are the following: the Council of Observers, the Council of Administration and the Chairman. The NPIA Council of Observers adopted the NPIA Code on December 30, 2005. The NPIA Council of Observers is the NPIA managing body that appoints the Chairman and approves the staff of the Council of Administration (which is proposed by the Chairman), supervises the NPIA's observance of the norms of acting legislation and the provisions of normative deeds of interior use (article 13 of the NPIA Act).

The title of this document suggests the idea that some self-regulation is expected, especially on the part of NPIA program producers; it is also suggested in Chapter 1. General Principles:

The Producer's Code of Principles, Standards and Recommendations is meant to help the NPIA program producers to take correct decisions in especially difficult editorial moments.

Yet in Chapter 32. Post face (which is an integral part of this document), the addressees and the juridical nature of this document is stipulated very strictly:

The present Code is addressed to all program implementers and program producers from the NPIA. [...] The Code outlines the framework, the dimensions and the risks of the existence and activity of the Public Company Teleradio-Moldova, setting up the duties, the tasks and the requirements for all employees, without any interference in the principle of the freedom of speech. [emphasis added]

In this way there is no doubt that the NPIA Code is a document addressed to all employees of the NPIA and having mandatory juridical power.

Actually, the adoption of the *NPIA Code* constitutes an opportunity to create a self-regulation tool. This can be proved by the fact that there are many recommendations in the content of the document. At the same time, one of the goals of elaborating and adopting the NPIA Code was to solve issues that were present in the evolution of the first tool of self-regulation (the Journalist's Code), and in particular:

- The elaboration of some field-related, detailed self-regulations, which would be very useful for journalists from the NPIA. Unfortunately, for the time being some of the stipulations contradict European standards and provisions of the legislation of the Republic of Moldova.
- Self-regulation of the relationship between journalists and editors. During the process of NPIA Code adoption, only the will of the NPIA administration was manifested, the presence of journalists in the process being a formality. Even under these conditions we should welcome the positive attitude and the interest of the administrative body of the institution toward the need to set up a self-regulation tool.

- The NPIA Code is a self-regulation tool for a public service broadcaster. The distinct juridical and social statute of a public service broadcaster involves specific obligations within the framework of its juridical relationships with other categories of media. The existence of some specific self-regulations should comply with such obligations. This self-regulation tool, in spite of some deficiencies (unavoidable at any early stage, and unavoidable given the political control over the activity of the institution), should constitute an impetus also for the electronic media from the private sector, which at the moment does not possess self-regulation tools that reflect the specific peculiarities of this field.

The NPIA Code is over 40 pages long and comprises recommendations and regulations, especially regarding the editorial policy of the institution, juridical relationships between the administration and journalists during the production process (unfortunately, some of them constitute the source of censorship/self-censorship in the case of this institution), informative programmes (elaboration, news presentation, etc.), talk shows and news documentaries, political broadcasts and journalists' relationships to politicians, juridical risks (censorship, intimidation, defamation, private life, violence, media and public order, children's rights and their protection, electoral campaigns, publicity and marketing, etc.), relationships with persons invited to the broadcasts, manipulation of public opinion, verification of information, correcting errors, utilisation of statistical data and archival materials, observance of ethical norms (decency and good style), representation of ethnic minorities, NPIA relationships with the public, etc.

In Chapter 29: Ethic Norms and Incompatibilities from the NPIA Code, it is asserted that it is the general responsibility of

journalists to observe the norms of professional ethics within the framework of a public service broadcaster. Chapter 29 also provides for the following: "Other moments of the norms of professional ethics within the activity of the NPIA journalists are materialised in the Statute of the Journalist of TRM (Teleradio-Moldova)."

Under these conditions, within the framework of this institution, the link between the self-regulation tools and the tools of juridical regulation is not perceived. The provisions of paragraph 3.3 confirm this fact:

The Council of Administration may revise the Producers' Code and other regulations, elaborate new guidelines in case there is a need for them and has the right to monitor the observance by the NPIA producers of the provisions of the Codes, Regulations and other normative deeds.

The *NPIA Code* calls for the control by the administration as a mechanism for monitoring the observance of the norms of professional ethics. Chapter 3: Co-ordination and Responsibility (which has, by the way, a precise and suggestive title) states:

The program implementers will solicit consultations from the superiors in case the material produced by them could turn out to be a problematic one or could have an impact on the editorial policy of the NPIA [...] The program implementers should be sure that their supervisors are warned about any program that could cause public or political controversies, even in the cases when the broadcast complies with the NPIA editorial principles and standards" [...] The Council of Administration is the last authority that can provide [...] solutions to the producers

and the chiefs of editorial boards concerning difficult editorial problems. [emphasis added]

The administration of the institution will solve controversial cases, there is no special body established for this purpose. The NPIA Code does not specify how controversial cases will be examined or what might serve as a basis for such an examination: complaints from private individuals or findings resulting from monitoring. Possible sanctions also are not clearly specified, but from the content of the NPIA Code we can conclude that sanctions from the Labor Code of the Republic of Moldova will be applied.

Taking into account the above-stated facts, it is clear that in the future this document will be taken as the basis for juridical sanctioning of journalists working within the institution.

We would make the following recommendations regarding the NPIA Code:

1. Transform the NPIA Code from a tool of juridical regulation into a self-regulation tool.
2. Exclude from the content of the NPIA Code the provisions that contradict the European standards and the norms of national legislation.
3. Set up self-regulation bodies and define their procedures.
4. Ensure publicity for the NPIA Code. Many of the NPIA journalists during 2006 still did not know about the existence of this document, not to mention the public, which also does not know about the existence of the NPIA Code.

IV. REGULATION OF THE PROBLEM OF DEFAMATION

A number of risks are inherent in journalistic activity in Moldova. Some of them are of an exceptional nature and refer to different types of intimidation of journalists, including threats to their life, health and physical integrity – fortunately these are rare cases in Moldova. In most cases, the Moldovan journalist faces the problem of legal (as well as moral) responsibility for published articles or broadcast reports.

The most frequent confrontations between journalists and the legal system take place in defamation cases.

In the Republic of Moldova, civil, criminal, and administrative law contains legal regulations on defamation.

Application of the Civil Code Provisions on Defamation

In practice, starting in the 1990s, disputes about defamation have been of a civil nature to a great extent. Criminal and administrative norms have rarely been used against journalists. This can be explained by the fact that the “calumniated” ones emphasize the possibility of obtaining certain compensations that could be obtained relatively easily, because newspapers usually lost such cases under the conditions at that time, in which the European standards were not known and therefore not applied. At the same time, in a criminal and administrative case, the prosecuting party had to prove intentional defamation on the part of the information spreader, while in civil cases journalists could be held accountable without

being guilty, their task being limited to the burden of evidence of information veracity.

Currently, defamation is regulated by article 16 of the Civil Code, which entered into force in June 2003. This article has a very general content, loyal to the Soviet traditions, in which none of the subtle aspects promoted by the jurisprudence of the European Court of Human Rights is regulated. The essence of the article is contained in paragraph 2, which stipulates:

Any individual has the right to request denial of the information that would damage his/her honour, dignity or professional reputation, if the one who has disseminated this information does not prove that it corresponds to the reality.

The burden of proof is on the defendant in all cases. The plaintiff is only obliged to prove that such information was indeed disseminated by the person against whom the grievance is filed. The liability can consist in denial, publication of a reply, and repair of moral and material damage.

On the basis of this article, anyone can appeal to the court claiming defamation (including politicians, other public persons, public and private institutions, and the state) choosing a single information distributor or many simultaneously (including the newspaper, the author, and the source, as they wish). Traditionally, the rule is that the author of the information and the newspaper (the media institution) as a legal entity are held accountable. There are no norms that would favour public persons and authorities in defamation cases, yet nor are there any that would disfavour them either.

Because of the poor economic situation, Moldovan journalists are especially vulnerable to monetary sanctions imposed on them. The previous civil legislation stipulated a maximum (and a minimum) threshold for the possible amount of compensation. The new Civil Code no longer provides for this; instead, compensations are awarded depending on the individual peculiarities of each case, that is, depending on the nature and seriousness of the damage caused to the injured individual, on the degree of guilt of the author, on the measure to which this compensation can bring satisfaction to the injured individual, etc. Generally, the lack of a ceiling for possible monetary compensation contributes to a more adequate restoration of the rights of the injured individual. At the same time, it is worrying in relation to the "guilty" party, because in imposing an exaggerated fine there is a risk of substantially affecting freedom of expression. Payment of a substantial amount of compensation can lead to the bankruptcy of any media outlet. Out of fear of sanctions, self-censorship appears in the media, which, in turn, can cause much damages to the democratic regime.

After the new civil legislation came into force, there were several cases in which the media had to pay large fines. Due to such a ruling concerning an article of public interest, the enterprise that published the independent newspaper *Timpul* was forced to close. The court made *Timpul* and the author of the article, journalist Alina Anghel, in a final decision, pay 100,000 Lei (approx. € 6,000) for the moral damage caused to the defamed legal entity (a fine that is in fact 13 times less than the amount imposed on the newspaper by the court of first instance). Nevertheless, *Timpul* was unable to pay the fine and was forced to declare bankruptcy. Other newspapers have also been heavily fined following defamation cases; in particular we would like to mention the independent newspaper *Moldavskie*

Vedomosti. It is true that, *de facto*, the *Timpul* newspaper (with the same editorial team), continues to function, having started another newspaper (another legal entity) under the title *Timpul de Dimineata*. At the same time, the affected newspapers hope to find justice by means of the European Court of Human Rights.

These cases demonstrate for an intense discussion about the issue of introducing a ceiling for the compensation of moral damage in the Republic of Moldova. Journalists consider such a discussion absolutely necessary under the conditions of the current legal system that, *de jure*, is independent, however, *de facto* is subordinated to political elites and corruption. At the same time, the majority of lawyers argue that imposing a threshold for compensation for moral damages would be legally nonsensical and that it would be dangerous from several points of view:

1. for the damaged individual, since the damage to severely affected individuals will not be compensated;
2. for the media, as the judge will generally apply the maximum amount, without thinking too much about setting an equitable compensation (as happened on the basis of the old legislation);
3. for society, as there will always be individuals who will be able to pay the threshold amount, and in such cases defamation could become a common phenomenon. However, these arguments are not convincing for some journalists, who know that they can lose everything because of a word.

The application of European standards in Moldova

One of the reasons that civil defamation cases began to be regarded as a form of media harassment was the fact that

the legislation in the Republic of Moldova that regulated this issue was not interpreted according to European standards. Regarding the compatibility of the Moldovan legislation with the European standards, there are several deficiencies:

1. the legislation does not provide for the need to differentiate facts from value judgements;
2. the legislation does not provide for differentiations between different categories of plaintiffs and defendants in relation to their status in the society (politicians, public persons, media, judges);
3. the legislation does not provide for the need to take into consideration the good will of the journalist and to ensure a certain protection for investigative journalism.

To the same extent, the legislation does not contain norms that would establish whether information relating to the public interest should be treated differently from information that is not of such a nature, all the more since there is no definition that would establish certain criteria in order to determine what information can be considered of public interest. To these purely legal aspects, we can add the issue of the real lack of independence of the judiciary in relation to the political sphere, as well as the incompetence and corruption of judges.

According to the jurisprudence of the European Court, distributors are not necessarily held accountable for opinions (ideas, value judgments) expressed. However, in Moldova, in some cases, the court forced the media to refute opinions and views and pay out compensations for moral damage.

Public persons should have a higher degree of tolerance to media criticism, and the media should be sanctioned only in

cases of extreme exaggeration. This principle is not adequately applied by the Moldovan justice system; on the contrary, the politicians in power easily win defamation cases, even without appearing before the court for examination, and in most cases obtain the entire amount requested as damage. Of course, media organisations have consistently criticised these practices, which has led to certain improvements; however, the *de facto* dependence of the judiciary on the political elites makes this quite a sensitive topic.

A journalist's task in a defamation case, which is to prove the truthfulness of any publicised information, seems to be exaggerated under conditions in which the journalist's good will is not taken into account in the examination of the case, nor is the fact that the disputed issue is of public interest. For this reason, investigative journalism in the Republic of Moldova is underdeveloped, being a completely unattractive field of activity, in which journalists usually work only for a short period.

Nevertheless, recently certain things seem to have improved in the field of freedom of expression following the impact of certain decisions by the European Court of Human Rights condemning the Republic of Moldova, as well as due to pressure exercised by European bodies and the activity of Moldovan civil society.

One earlier, positive development was a ruling by the Supreme Court on June 19, 2000, in which it was held that the case law on article 10 of the European Convention on Human Rights is directly applicable to all Moldovan courts. Although the ruling does not have a compulsory character and serves as a recommendation, some judges have subsequently referred to the case law of the European Court in their verdicts. The

Decision of the Supreme Court of Justice emphasised the need to differentiate facts from value judgements, as well as the fact that public persons can be criticized more harshly than private individuals, especially when it comes to an issue of public interest, as well as other European rules. Some judges applied these standards in practice; others, however, who are either less competent or have other reasons, ignored these aspects and applied the letter of the law in the Soviet tradition.

According to article 10 of the Convention that consecrates the right to freedom of expression, the Republic of Moldova has been condemned in three cases as of the time of the writing of this article: *Amihalachioaie* (decision of April 20, 2004), *Busuioc* (decision of December 21, 2004) and *Savitchi* (decision of October 11, 2005). Surely, taking into consideration the number of appeals submitted to the Court, this number will steadily grow.

In general, a steady improvement can be seen after the condemnation of the Republic of Moldova at the European level; for example, after such cases, violations similar to the ones contested by the European Court cease, or at least their number significantly reduces at the national level. We have had the pleasure of observing that in the Republic of Moldova, after the first condemnations of the country in Strasbourg, defamation disputes are examined with more caution, with more judges differentiating facts from value judgements and referring to the principle of public interest in knowing the information.

Criminal Code Provisions on Defamation Calumny Decriminalisation

Between 2002–2004, significant changes in the criminal legislation on defamation were registered: in 2002, the Criminal Code was passed in the third reading; in June 2003, it entered into force; and in 2004 it was significantly amended.

In its initial edition, the new Criminal Code of the Republic of Moldova provided for calumny as an offence. Article 170 stipulated:

Calumny, that is, intentional dissemination of certain untrue fabrications that calumniate another individual, accompanied by the blame for committing a very serious or extremely serious offence or an offence with serious consequences, is punished with up to 5 years of imprisonment.

The criminal proceedings on defamation provided for by article 170 of the Criminal Code must be initiated exclusively upon the request of the damaged person. This article had been in force for almost a year, that is, from June 12, 2003, to April 22, 2004, when it was excluded from the Criminal Code by law, following the constant non-approval of the article by civil society and the media.

After the new Criminal Code entered into force, civil society suddenly became more active in its campaign for calumny decriminalisation, which was in a way surprising, because starting with 1990, the public has not been informed about any case involving insult or calumny, nor about the application of the articles on calumny and insults of the Administrative Code against the media. Still, despite the

apparently positive situation concerning the (non-)application of the Criminal Code (i.e., the non-existence of punishments), several criminal cases against journalists have been filed within the corresponding period, and although those have not ended in convictions, it is very unlikely that they have not influenced freedom of expression negatively. On the contrary, there are reasons to state that psychologically, they have had serious consequences for journalists.

Currently, only two types of calumnies are punishable according to the Criminal Code:

- Article 304, “Calumny of the judge or person who carries out criminal prosecution or contributes to making justice, accompanied by their blaming for committing a very serious or exceptionally serious offence, in relation to the examination of cases or materials in court, is punished with a fine in the amount of 200–500 conventional units or up to 6 months of arrest, or with up to 2 years of imprisonment”;
- Article 311, “defamatory denunciation” that represents intentionally false communication about the commission of an offence brought to the notice of law enforcement agencies.

Bringing a criminal action (according to article 304 CC, 311 CC) does not exclude bringing a parallel civil action for defamation. The criminal prosecution body can be informed about Article 304 and 311 CC by any of the means provided for by the Criminal Procedural Code (Article 262), that is, not only at the request of the damaged person.

In the Criminal Code currently in force, insult is no longer a criminal offence, except in the case of article 366, which

punishing military personnel for the offence of “insult of a military person” by a subordinate.

Despite the welcome positive changes mentioned above, Moldova has so far failed to repeal from the Criminal Code article 304 on “libel of judges, criminal investigators and enforcers of justice” and article 347, prohibiting the “profanation of national and state symbols.” Article 347 is particularly worrisome, as state symbols cannot be protected from defamation since they are objects and, as such, they cannot have a reputation.

Stipulations regarding defamation in the Administrative Code

In the Administrative Code, adopted on March 29, 1985, there are a few articles referring to defamation: article 47² considers “calumny” (slander), which “means spreading wittingly false and disgraceful information about any person,” an administrative offence and involves a penalty in the form of a fine in the amount of 10-25 conventional units,² and/or administrative arrest for term of 30 days; article 47³ considers “insult”, which consists of “wittingly humiliation of person’s honour and dignity expressed in oral or written form or by an action” an administrative offence and involves a fine in the amount of 7-15 conventional units or administrative arrest for a term of 15 days:

...The insult in press or in any other work multiplied by other means, and also insult done by a person who was already subjected to administrative penalty for the same infringement is

² A “conventional unit” is equal with 20 Moldovan lei, which is approx. 1,17 EUR.

punished by a fine in amount of from ten to 25 conventional units or by an administrative arrest for a term of 30 days.

Insult is only an administrative offence, it was decriminalized in 1994. In 1996 the article concerning public injury of the Moldovan President was also excluded from the Penal Code.

Other specific types of administrative offences are: "outrage against a police officer or a judicial executor" (article 174/6 of the Administrative Code), "manifesting disrespect to a court" (article 200/7 of the Administrative Code), "insult of a judge" (article 200/8 of the Administrative Code). All these are applicable while the respective state employees are carrying out their professional duties, and in all articles the penalty is a fine or administrative arrest.

We hope that the Moldovan legislator will exclude "calumny" and "insult" from the Administrative code, as these have to be treated only in a civil procedure. At the same time, concerning the insult of a judge, a police officer and a judicial executor whilst carrying out their professional duties, these have to be punished only with a fine, while sanctions involving administrative arrest have to be excluded.

Prospective solutions

Even if the criminal code contains no problems for Moldovan journalists, in the context of civil legislation defamation is a great concern for them. The strict rules imposed by the jurisprudence of the European Court are not contained in the national legislation and only a few judges are familiar with those and apply them into practice. For this reason, civil society

has seen the inclusion of these rules in the national legislation as a solution; at present, a working group created by the Center for Independent Journalism is working on a draft law on freedom of expression, with the intention of passing improved legislation that would ensure a just balance between the right to freedom of expression and the right of a person to be protected from defamation and unjustified intrusions in his/her personal and family life.

V. PROTECTION OF SOURCES

Current legislation provides for the protection of sources by journalists except in cases of a criminal nature and after a court order. Article 18 of the Press Law stipulates that:

Periodicals and press agencies have no right to disclose the source of information or an author's pseudonym without the consent of the source or the author. The source of information can only be disclosed when the distributed material contains constitutive elements of a crime and only after the decision of the judicial court.

Article 20 (1) (i) gives a journalist the right to require anonymity if desired, while article 20 (2) prohibits the confiscation of a journalist's notes and stipulates that a journalist's "technical devices can only be confiscated for use in a criminal case."

Concerning broadcasting, such protection is mirrored in article 28 (1) (d) of the Television and Radio Act, which stipulates that an audio-visual company is required "not to

disclose the pseudonym of the author, or the information source, willing to stay unknown.”

The legislation does not contain other clarifications or exceptions for the respective right that in Moldovan legislation is actually an obligation (!). In practice, the courts accept the argument of “protection of sources” from all journalists that invoke it, without trying to analyse whether the respective person has or does not have a right protected by the law.

Moldovan journalists have not made public any cases in which they were obliged by the judicial system to disclose their sources. At the same time, in defamation cases, if they cannot prove the truth of their affirmations without disclosing their sources, and they refuse to disclose them, the journalists will be held personally responsible for any affirmations.

We think that article 18 of the Moldovan Press Law and the appropriate articles of the Television and Radio Act should be expressed in terms of a right held by journalists and others not to disclose the source of confidential information, but not as an obligation. This right does not have to be subject to any restrictions in civil and administrative procedures, but in criminal cases restrictions have to be applied only if they correspond to the principles included in the Council of Europe Recommendation R (2000)7 on the right of journalists not to disclose their sources. Also, the notion of “journalist” has to be interpreted as in the Rec(2000)7 and extended to different types of Internet-based media, journalists, commentators and to other persons that, due to their professional relations with journalists, could identify their sources.

VI. ACCESS TO INFORMATION AND PROTECTION OF SECRETS

The Access to Information Act

The right to information, guaranteed by article 34 of the Constitution of Moldova, was detailed in the Access to Information Act, adopted in 2000. According to article 4 of this law, every person "has the right to seek, obtain and disseminate official information". Initially, the draft of the law stipulated some additional rights and privileges for media and journalists. However, this stipulation was criticised by experts, thus the final text, which was adopted, does not contain special provisions concerning journalists: every person has the right to official information, all are equal in this right.

Types of information with limited access

The article 7 of the Access to Information Act stipulates five types of official information (information held by public authorities and institutions) to which access can be limiteded:

1. state secrets,
2. commercial secrets,
3. personal data,
4. information related to investigative activity in criminal cases,
5. information that represents the final or preliminary results of scientific and technical research.

State secrets

State secrets are protected according to the State Secret Act from May 17, 1994. Article 2 of this law defines a state secret as that which:

...constitutes information protected by the state in the field of its military activity, external policy, counter-information and operative investigations, the distribution, disclosure, loss, misappropriation or destruction of which may infringe the security of the Republic of Moldova.

Under article 11 of the law, state secrets fall into different categories. Those labelled as of "special importance" or "strictly confidential" are classified for a period of up to 25 years, while information labelled "secret" is classified for ten years, although the government can establish longer terms if it feels that this is warranted. Article 12 (1) details categories of information that should not be classified. These include information on: violations of human rights and freedoms; emergencies, accidents and their consequences that threaten the security and health of the population, as well as information concerning the forecasting and consequences of natural disasters; the true situation in the spheres of education, health protection, ecology, agriculture, trade and justice; cases of infringement of the law, inactivity and illegal actions of the state authorities and officials, when such disclosure does not threaten the security of the Republic of Moldova.

Other categories of limited access to official information

The protection of business information is contained in the Commercial Secret Act of 1994. Besides these two laws, there

are more than 400 normative acts that contain provisions on the protection of limited access to official information. The interdictions consecrated in the legislation of the Republic of Moldova in the field of protection of limited access to information are of a general nature addressing both the persons who have access to such information and to other persons, including the media.

Sanctions

The main sanctions for the divulging of restricted official information are provided for in the Criminal Code, the Administrative Code and the Civil Code. These sanctions apply to all individuals (including journalists and the media), if not expressly stipulated otherwise. Article 344 on "The Divulging of State Secrets" in the Criminal Code is an eloquent example:

(1) The divulging of information considered a state secret by an individual to whom these information were entrusted or became known in relation to his/her work or job, if it is not considered country betrayal or espionage, shall be punished with a fine in the amount of 200–600 conventional units or 2 to 5 years of imprisonment, in both cases with the deprivation of the right to hold certain positions or to exercise a certain activity for a term of up to 5 years.

(2) The same action that has lead to serious consequences shall be punished with 5 to 10 years of imprisonment with the deprivation of the right to hold certain positions or to exercise a certain activity for a term of 2 to 5 years."

In certain cases, for the same actions, sanctions for journalists are more severe than for other individuals (for example, Article 177 on “Violation of Private Life Inviolability” provides for a double penalty). Cases of imposing sanctions on public officials or the media for divulging classified information have not been covered in the media (such cases are not known).

The public interest test

The Access to Information Act in article 7 specifies clearly the public interest test that courts have to apply in cases of conflict:

(4) No restrictions may be imposed on the freedom of information, unless the information provider can successfully prove that such a restriction is regulated by an organic law and is necessary in a democratic society for the protection of rights and legitimate interests of the person or national security, and that the damage to those interests would be larger than the public interest for that kind of information. (5) No one can be punished for the fact that he or she made public information with limited access, if releasing this information does not damage or cannot damage legitimate interests related to national security, or if the public interest for knowing the information is larger than the damage that can result from its dissemination.

Media accreditation

The accreditation of journalists in Moldova is regulated by a few provisions of the Press Law, most of which refer to the accreditation of foreign journalists in Moldova (articles 21, 22, 23, and 25). Foreign journalists are accredited in Moldova by the

Ministry of Foreign Affairs and European Integration according to the Regulations for Accreditation and Professional Activity of Journalists in Republic of Moldova, approved by the Moldovan Government in 1995. Even if the respective Regulations contain some ambiguous provisions that could be abused by the Ministry, until now there have been no information about abuses.

Concerning the accreditation of Moldovan journalists for access to public authorities (including meetings and sessions), this is regulated by the article 21(2) of the Press Law: "Periodicals and press agencies can have journalists accredited, in the established way, to the seats of public authorities, as well as at artistic and sports manifestations." This ambiguous stipulation ("in the established way") constituted the legal basis for the elaboration of internal regulations, by the means of which authorities have created their own rules for the accreditation of journalists. These regulations are not published in the Official Monitor and generally are not easily accessible. Until now the main form of abuse by public authorities was their refusal to accredit journalists (without serious motivation) and the lack of transparency in the accreditation process itself.

VII. GENERAL CONCLUSIONS

Self-Regulation

Certain progress in creating self-regulation mechanisms can be seen in Moldova. However, until the present time, neither the continuity nor that promptness and efficiency that have been expected when creating these mechanisms can be observed in

their operation. There are many reasons for this situation. On the one hand, there is no mass awareness of the need for an efficient self-regulation system among journalists or among the population (i.e., the information beneficiaries). On the other hand, the lack of efficient self-regulation is a result of the excessive legal regulation, journalists being subject to legal responsibility in many cases. At the same time, excessive legal regulation is to a certain extent a result of inefficient self-regulation.

In Moldova, it is necessary to establish an efficient self-regulation mechanism that would prove the maturity of the media by proving the desire of the latter to take responsibility before the public. We welcome the adoption of Codes of Ethics at the level of media entities and encourage such a practice. At the same time, taking into consideration the fact that the vast majority of media entities (newspapers, television channels, and radio stations) do not have many human resources, there is little probability that efficient self-regulation systems will be established within these outlets. For this reason, we believe that efforts should be made to increase the efficiency of a self-regulation system (of the current or of an alternative self-regulation system) that would be built upon the consensus of the media in Moldova.

Defamation

European standards are not included in the national legislation, which is why judges apply the latter contrary to these standards, in detriment to freedom of expression. The biggest problems are the forcing of the media to pay exaggerated compensations for moral damages and the ignoring of the

principle of reasonable publication when solving defamation suits.

Protection of confidential sources

The media did not disseminate information about such problems, but these could appear given that Moldovan legislation is incomplete in this respect.

Access to information and classified information

There have been repeated attempts in the Republic of Moldova to amend the Access to Information Act, which the civil society has vehemently opposed, since it is the most conclusive proof of the existence of a very good law (a conclusion confirmed by many European experts as well). However, there are serious shortcomings regarding the enforcement of this law.

In the six years after the adoption of the Access to Information Act, the legislation addressing classified information has not undergone any important amendments, while the obvious contradictions with the Access to Information Act have not been eliminated, a task that must be undertaken.

VIII. FINAL RECOMMENDATIONS

Recommendations regarding the improvement of self-regulation mechanisms:

- To eliminate the prescriptive and abstract character or the regulations from the self-regulation tools.
- To remodel the character of self-regulation, changing the accent from repression mechanisms to self-control.
- The self-regulation body has to undertake specific activities in its field, for example recommendations on how controversial and delicate subjects should be reflected in the press.
- To self-regulate the relation between journalists and editors within the framework of the self-regulation mechanism.
- To inform the public about self-regulation values and norms and on how these are respected by journalists.
- To create financing mechanisms for the self-regulation body.
- To transform the NPIA Code (the Code of the public service broadcaster) from a tool of juridical regulation into a self-regulation tool and to eliminate from its content the norms that are contrary to European standards and Moldovan legislation.

Recommendations regarding legislation on defamation and its application:

- To complete the civil legislation with a new law, harmonising it with ECHR case-law standards on freedom of expression.
- To train judges on the application of European standards on freedom of expression.

Recommendations regarding legislation regulating the protection of sources:

- To complete and harmonize legislation with the stipulations contained in the Council of Europe Recommendation R (2000)7 on the right of journalists not to disclose their sources.

Recommendations regarding the access to information:

- To work on the public awareness of the Access to Information Act provisions.
- To create and mediatise strategical litigations.
- To improve the legislation that regulates the accreditation of journalists.

Montenegro

By Petar Komnenic

Context

Montenegro is a newly-formed country, which proclaimed its independence during a referendum for independence held on May 21, 2006. Until that time, it was the last Yugoslav republic that stayed in a joint state with Serbia after the Balkan War. The population of Montenegro is close to 700,000 citizens. The country is striving to become a member of European Union. The Montenegrin economic situation is still pretty weak, however it is starting to recover from a long period of decay.

Freedom of expression is guaranteed by the Montenegrin Constitution; this right, as far as journalists are concerned, is additionally regulated by the Broadcasting Act. This law states:

Montenegro guarantees the right to free establishment and undisturbed operation of media based on: freedom of expression, freedom of investigation, collection, dissemination, and publication of information, as well as free access to all information sources, protection of man's personality, dignity, and the free flow of information.

The human right to freedom is most widely protected by Article 10 of the European Convention on the Protection of Fundamental Human Rights and Freedoms; this is exactly the source of rights regarding the freedom of expression in

Montenegro. Therefore, the legal framework, together with media legislation that was adopted in 2002, completely guarantees Montenegrin journalists the freedom of expression and provides favourable conditions for their work.

Notwithstanding freedom on paper, media analysts in Montenegro claim that we still have self-censorship, which is the consequence of a long history of the dominance of political structures over state-owned and private media. On the other hand, abrupt growth of media market brought about tougher competitiveness, which has resulted in an unscrupulous struggle for publicity and sometimes sensationalism. Unfortunately, the professional standards and ethics that were clearly defined only in 2002 by the Montenegrin Journalists' Code are often the first victims of this struggle. Even four years after its formal adoption, this document has not been accepted by journalists as "law"; nor has the body that is in charge its implementation started functioning.

Licensing

According to the Broadcasting Act, the Montenegro Broadcasting Agency, an independent body formally free of political pressures, which awards frequencies in a transparent and legally-prescribed procedure, is in charge of licensing the broadcast media in Montenegro. Unlike broadcast media, whose establishment requires one to meet strictly prescribed technical conditions, registration of the printed press is under the jurisdiction of the Montenegrin Ministry of Culture, which simply keeps a record of those companies. When founding a newspaper no special permit is issued; the Ministry simply registers their establishment.

The media in Montenegro do not enjoy any tax exemptions, hence they are obligated to pay income tax, payroll taxes, and value added tax. They also do not enjoy any special exemptions when importing the materials and equipment necessary for their operations.

Ethical Codes

The Montenegrin Journalists' Code was adopted on May 21, 2002, following an initiative by the Montenegro Media Institute. The Code's provisions relate to all journalists working in electronic and printed media. The code is available online at following address: www.mminstitute.org. The whole of the media community took part in drafting the Code, while all Montenegrin journalists' associations and organisations participated in the formulation of the provisions and the basic principles of the document. Signatories of Journalists' Code include: the Association of Young Journalists, the Association of Montenegrin Independent Printed Media (MONT PRESS), Montenegrin Journalists' Independent Trade Union, the Association of Independent Electronic Media (UNEM), the Montenegrin Association of Journalists, and the Association of Montenegrin Professional Journalists.

The signing of the document was an important contribution to improving the situation in media arena, since the content of the Code was accepted by all associations, which in pre-referendum Montenegro gathered journalists of different political profiles, who later expressed different positions regarding Montenegrin statehood. However, even in this extremely tense political atmosphere, agreement was reached

on the final version of the document that prescribes basic professional standards.

The Code states that journalists should honour the truth and pursue it relentlessly, always bearing in mind the public's right to know. A "journalist" is defined as a person obligated to defend the freedom and right to undisturbed collection and reporting of information, as well as a person entitled to freely express comments and criticism. Journalists must put collected facts into their proper context and prevent their misuse; in the case of a mistake, they should amend and correct the incorrect information. According to the Code, the journalist is allowed to mention a person's race, religion, nationality, ethnical origins, sexual orientation, and family status only when that is relevant to the information that he or she is providing.

Journalists are also instructed that during the process of collecting the information they should use "professionally honest and legally allowed methods"; deviation from this rule is allowed only in exceptional cases when the aforementioned methods are not sufficient and when the information to be obtained is of the utmost importance to the public.

In addition, the Code says that a journalist has the right and obligation to protect confidential sources of information, but that he or she must also always check the motives of confidential sources before he or she promises to provide the source anonymity and protection. Journalists are also required to treat people's private lives sensitively, to protect the integrity of minors and the handicapped, as well as persons that can be perceived, from any point of view, as "different." Any privileges that might limit or question the autonomy and impartiality of

the journalist, and thus hurt the freedom of choice of the publisher and editorial team, are strictly forbidden.

Notwithstanding the clearly prescribed obligations and ethical guidelines, as well as publicly declared readiness of media to comply with the Document, we cannot say that the Code has been widely accepted in practice. Breaches of the Code in certain media outlets are quite frequent, while its principles are often breached in pursuit of exclusive and sensational information that is meant to raise audience ratings or circulation.

One of the reasons for non-compliance with the Code is the fact that the Journalists' Self-Regulatory Body (JSB), which is in charge of monitoring the media and professional principles, has not yet come to life and has not been recognised as the key judge in Code violation cases, although this body was founded back in 2002.

The JSB is composed of journalists associations' representatives and consists of a Steering Committee and a Council. The Steering Committee is a kind of legal body established by the Council, which is made up of the associations' representatives (founders) and five renowned media professionals. All representatives are appointed by the Council; the representatives' term in both bodies is four years.

The Council, which performs the practical part of the body's work, has two sub-committees, one for broadcast and online media outlets and the other for the print press. These subcommittees accept complaints and register Code violations through media monitoring. Media monitoring is entrusted to journalists' associations. UNEM is in charge of print press, while

the Association of Young Journalists is in charge of electronic media. Therefore, JSB reacts to individual complaints and identifies Code violations through media monitoring. Complaints can be raised by any citizen, no matter whether the given citizen has been damaged by a certain violation, as long as the complaint was not filed by anonymously.

In cases when a Code violation is registered, no fines for media are envisaged, but rather special JSB press conferences are held, where the violations are disclosed publicly. Media outlets are publicly denounced only if JSB representatives fail to convince the managers of a media outlet that has breached professional standards to stop the practice and to publish corrections and apologies.

Additional difficulties arise from the fact that certain media outlets refuse to co-operate with JSB, to comply with the Code, and to cover JSB press conferences, since this body still does not enjoy full respect within media community. The latter is largely the result of the JSB's own inactivity. Newspapers and broadcasters do not have ethical codes of their own.

One positive development is that a Faculty of Journalism was finally opened at the Montenegrin University in 2003, giving hope that students will be taught how to practice quality journalism much better than before.

Media self-regulation in Montenegro is still hindered by an undisclosed willingness on the part of some individuals to give priority to exclusivity before professionalism, even if by doing so they clearly violate basic moral and ethical principles. Greater help for journalists from international organisations, as well as an educational campaign for editors would be welcome;

also, greater pressure from international associations engaged in the field of freedom of expression would greatly assist in stopping the aforementioned practice.

Libel and insult

The adoption of a new Criminal Code represents a big step for the decriminalisation of libel in Montenegro. This law, which went into effect beginning of April 2004, still treats libel as criminal offence, although it eliminates the possibility of a prison sentence in cases of libel, replacing it with the fine. The minimum fine is 1,200 EUR, while the maximum is 14,000 EUR. However, even the new law has a defect: If the convicted person does not have money to pay the fine, the sentence is transformed to imprisonment; each 40 euros of the fine are counted as one day in prison, however the convicted person cannot be imprisoned for more than six months. Such cases have not been registered yet.

The new law defines that damaged parties can file a criminal charge for libel three months after the libelous statement has been published, and according to the law, the charge is filed by the damaged person as a private plaintiff and not by the state prosecutor. In the case of a conviction, the state collects the fine set by the court. Libelled person can bring civil suits for up to three years after the offence was committed, and eventual fines from such suits are awarded to the plaintiff as damages. Criminal and civil suits can be started simultaneously. In Montenegro, damaged persons often opt for a criminal procedure, which is far faster compared to civil suits. The second reason is that if a certain statement is determined by the criminal court to be libel, that sentence must be valid

even for the civil suit; thus the only remaining task for the civil court is to set the fine to be paid to the plaintiff as damages for mental distress suffered.

Although the fines for journalist who have slandered or insulted public officials or figures should be smaller compared to that of ordinary citizens, Montenegrin courts in practice do not recognise this difference, thus the fines do not, in fact, differ. As far as public bodies are concerned, they cannot bring charges against anybody because according to the law only a natural person can be slandered. Nevertheless, these bodies have the right to seek compensation in civil proceedings.

Regarding the media, libel charges can be brought up within criminal proceedings against those persons who make and disseminate falsehood, i.e., journalists. In extreme cases, when the identity of a journalist is unknown or the editorial team does not want to reveal it, even the editor responsible for the publication of disputed information can be put on trial. In a civil suit, the plaintiff can seek financial compensation from both the journalist and the publisher.

The Criminal Code differentiates between libel and insult. Libel by definition is falsehood, while insult is defined as a statement that may be accurate but still inflicts mental distress on the plaintiff. Libel fines are higher.

When the case comes before the court, the burden of evidence, i.e., the truthfulness of published information, is placed upon the journalist. If the journalist is unable to prove the truthfulness, he or she still has the option of proving that he or she had a justifiable cause to believe the information he or she published, or to claim that he or she was misled. In

libel cases the court does not give much weight to arguments that certain information was published because it served a higher public interest, but rather focuses on determining the truthfulness of the given information and the circumstances that caused the journalist to accept the information he or she obtained as truthful.

We can say that in Montenegro today, all media outlets have equal treatment before the law, although representatives of certain media companies claim that libel or insult charges were brought against them because of the political position they advocate. In practice, this is most often just an excuse for a lack of professionalism and non-compliance with professional and legal provisions.

Protection of sources

The Montenegrin Broadcasting Act that was adopted in 2002 completely protects journalists and other media employees in situations in which they do not want to reveal confidential source of information. Protection is absolute, and the article 21 of the law explicitly states:

Journalist and other persons who, in the process of collecting information, editorial processing, or publication of various contents, come into possession of information that could disclose the identity of the source are not compelled to reveal the source of information that wants to remain anonymous, neither to legislative, nor judicial, or executive power or to any other natural or juristic person.

Therefore, state and judicial bodies, can under no circumstances ask journalists and media professionals to reveal the identity of their sources. No such cases have arisen in Montenegrin practice. Of course, the journalist may reach an agreement with the source to reveal his or her identity, so if the source so desires, he or she can appear before the court as a defence witness and support the information published by the journalist. However, there have been no such cases registered in our judicial practice.

The right not to reveal the identity of sources of information is given to all those employed in the media chain (i.e., journalists, freelancers, publishers, and editors) and relates equally to the printed press and broadcast media. This privilege also applies to persons working in internet media and to columnists – in brief, to all persons employed in media, who are included in the process of collecting and processing information.

Revealing confidential information

The Freedom of Information Act that was adopted on November 8, 2005, defines situations in which state bodies are obligated to provide requested information to an interested party. The law also lists the situations in which access to information can be limited. Article 9 of the law limits access to information, if its publication would endanger national security, defence, and international relations, as well as public safety, commercial and other economic, private, and public interests. It is also forbidden to access information whose publication would endanger the economic and monetary policies of the state, prevent the investigation and prosecution of criminal offences,

and endanger the privacy and other personal rights of an individual.

This rather wide and imprecise range of situations in which access to certain information in possession of state bodies is forbidden came under heavy criticism from interested individuals, media outlets, and non-governmental organisations, who insisted that extraordinary situations must be precisely defined, because according to the current legislation state bodies always have a legal excuse not to provide requested information.

The same law stipulates that in situations in which it is forbidden to provide sensitive information, the state body that violates the prescribed procedure can be fined by an amount ranging from ten to one hundred times the minimal monthly salary in Montenegro. The responsible person within a state body who has issued disputed information without the proper authorisation can be fined by an amount ranging from two to ten times the minimal monthly salary.

These sanctions relate only to state bodies and their employees, while media employees have certain freedom in this respect. According to the article 21 of the Broadcasting Act, information obtained in an illegal way can be published if it relates to national security, protection of territorial integrity or public security, prevention of riots, crime, protection of health and moral, protection of others' reputation or rights, prevention of disclosure of information obtained in confidence, or in order to protect the authority and impartiality of the judiciary.

According to the law,

the journalist and media are not responsible if they obtain or publish information that represents a state, military, official, or business secret, if there is a justifiable interest for the public to be informed.

In the last few years, there were no registered cases in Montenegro in which state employees were sanctioned because of unauthorised disclosure of confidential information.

Access to state-owned information

The Freedom of Information Act was adopted on November 8, 2005. It defines the right to access information possesses by state bodies and institutions, because such information is public property and thus belongs to every natural and legal person, domestic and foreign, without the need on the side of interested party to explain its interest, i.e., why it needs certain information. While the right of domestic claimants is based on the fact that every Montenegrin citizen, according to the Constitution, is the bearer of sovereignty, the right of foreign nationals is based on the international obligation of Montenegro, as an integral part of international community, to respect the standards in the area of freedom of information. This law does not offer any special privileges to Montenegrin journalists, because the right to undisturbed access to information is guaranteed to all citizens alike.

Montenegrin journalists receive annual accreditations for press conferences and other activities involving government officials. Accreditation is issued via a standard procedure, according to which the journalist must submit basic information about him- or herself and his or her media company, together

with a filled-out form and two photographs. Accreditation can be denied only if the journalist does not follow the procedure. On the occasion of press conferences held by the highest-ranking state officials such as the President and the Prime Minister, journalists are required to announce their presence in advance.

Conclusions and recommendations

Formally and legally, almost all obstacles to investigative journalism have been eliminated in Montenegro. Although things look good on paper, the state bodies and institutions are still trying to find loopholes or are simply ignoring the regulations in order to avoid fulfilling their obligations regarding free access to information and facilitating the work of journalists.

The situation is similar when it comes to professional standards, which the journalistic community has accepted only verbally. In practice ethical standards are often breached, while priority is given to financial and other interests over ethics. These problems and irregularities can be eliminated only through the further education of journalists; through the development and strengthening of institutions that are in charge of professionalism in media such as self-regulatory bodies and non-governmental organisations; self-awareness; and also through stricter sanctions on those individuals who do not meet professional standards. By clearly establishing and complying with professional laws, the media community would be in much more favourable position and would be able to confront limitations and obstacles coming from the external environment.

Romania

By Ioana Avadani

I. General questions

With a population of over 21 million people and a surface area of 238,391 km², Romania is the largest country in SEE. It is a parliamentary republic with a bicameral parliament composed of the Senate and Chamber of Deputies. Following the elections in 2004, the country has been led by a coalition of the National Liberal Party, the Democratic party, the Hungarian Democratic Union in Romania and the Romanian Conservator party. Romania is a member of NATO and is expected to join the EU in January 2007. Sixteen years after the fall of communism, Romania is still building its market economy. However, the process accelerated only in the late nineties, after the elimination of consumer subsidies, floating prices, the liberalization of exchange rates, and the establishment of a tight monetary policy. The level of foreign investment is low compared to its Balkan neighbors. The GDP was 58,9 billion EUR in 2004 (Media Sustainability Index 2005, p.97)

WHY SO MANY MEDIA ASSOCIATIONS?

In Romania, the media is admittedly one of the most dynamic sectors of society, as well as one of the most trusted

institutions in the country, ranking third after the church and the army (Public Opinion Barometer).¹

The media field virtually exploded after 1989, when the country saw media outlets mushrooming into the thousands. The first sector to develop was the print media, since the means needed to start such a business were relatively low. The early 1990s brought about the emergence of the private broadcasters in both radio and TV, who have established themselves ever since, creating what is now a diverse, vibrant and over-populated landscape. The successive governments have adopted a quite liberal approach to the entrance to the media market, which has led in time to the crowding of the market with small players with scarce economic resource, which are hence vulnerable and easily compromised.

The last two years have witnessed a clear trend of re-shaping within the market, characterized by takeovers, mergers and even the disappearance of certain outlets.

Media play various roles in Romanian society; they are undeniably the main source of information for the majority of the population, but they are also a major source of non-expensive entertainment (which is relevant in a country with a still-fledging economy and where the living standards are lagging behind). Other functions of the media include education and "chasing away boredom".² They are also perceived as being an instrument of public interest, although

¹ The Public Opinion Barometer, November 2005, Opens Society Foundation, available at http://www.osf.ro/ro/publicatii.php?id_cat=2, accessed August 8, 2006

² The Public Opinion Barometer, May 2006, Open Society Foundation, p. 31, available at The Public http://www.osf.ro/ro/eveniment_detaliu.php?id_eveniment=12, accessed August 2nd, 2006

fewer and fewer people believe that they “protect the good functioning of society.”³

Given their dynamism and the high degree of credibility they enjoy in the public view, the media were very attractive to law-makers. Since 1990, the Romanian media “survived” a dozen attempts at passing a “press law.” Most of the proposed laws were pushed forward by politicians, without consultation with any professional group. The moves were resisted mainly by civil society groups, who were more active and more vocal than the journalistic community itself in expressing their concern regarding the innate restrictions such legislation can impose.

As Romania neared the moment when it will join EU, the process of harmonization of legislation produced an improved – even if far from perfect - legal framework for the exercise of the journalistic profession. Freedom of expression and freedom of the press are protected by the constitution, as is access to information. There is specific legislation to regulate the access to public information, but its provisions are not harmonized with other conflicting provisions (see the National Security Act and the Classified Information Act). Specific legislation has been adopted for data protection, but this is largely perceived as being a “technical domain.”

³ 24% of the population, according to The Public Opinion Barometer, May 2006, Open Society Foundation, p. 37, available at http://www.osf.ro/ro/eveniment_detaliu.php?id_eveniment=12, accessed August 2nd, 2006

Insult and libel are no longer criminal offences, thanks to very recent changes in the Criminal Code, which went into effect on August 11, 2006.

The Audiovisual Act regulates the licensing process, the rights and obligations of broadcasters and cable operators, as well as the functioning of the National Broadcast Council, an autonomous body who is bound by law to represent the public interest. The licensing process is transparent and competitive, although in the past there were complaints that it was affected by biased decisions and political influences.⁴ There is an ongoing process to pass amendments to the broadcast law that are meant to prepare the legal framework for the switch to digital TV.

The public media are regulated by specific legislation, namely the law on the public radio and TV⁵ and the law on the functioning of the national news agency Rompres.⁶

The media business enjoys the same treatment as any other business. A media outlet does not to meet any specific requirements to register. All media outlets are subject to the same tax as any other business operation. There are claims that the print media should enjoy a reduced VAT level, but such a move is not possible under the current fiscal obligations

⁴ See Media Sustainability Index reports, 2001-2005, IREX, available at www.irex.org

⁵ Law no 41/1994 on organization and the functioning of the Romanian Radio Company and the Romanian Television Company, available at <http://www.cna.ro/legea504/legea41.htm>, accessed on August 6, 2006

⁶ The law no. 19/2003 on organization and functioning of the National News Agency Rompres, available at http://www.cdep.ro/pls/legis/legis_pck.htm_act_text?id=39839, accessed on August 6, 2006

of the state (Romania obliged itself to harness inflation and to reduce the state budget deficit in order to meet EU requirements).

Ownership of the media is not immediately transparent. Like all other companies, media operations should declare their owners and administrators with the Trade Register when they register for business and any time thereafter when the structure of the ownership changes. Still, this information can be obtained only based on a specific request filed with the Trade Register and only for a fee. The companies active in broadcast are required to provide this information to the Broadcast Council, when they apply for a license and any time thereafter when the structure of the ownership changes. In recent years, the National Broadcast Council took the initiative to publicly post the list of owners and shareholders on their website, but the information is just listed in PDF format and no cross searches are possible. The media companies themselves do not volunteer such information as a rule. Thus, a complete image of the media ownership situation is very difficult to obtain.

In conclusion, one could say that the media field is “partially free,” still affected by conflicting legislation, by insufficient awareness and concern for media concentration that may affect pluralism and the diversity of voices, and by a journalistic community that is just beginning to explore effective self-regulation.

II. Ethical Codes

While ethical codes have been adopted as early as mid-90s, the ethical conduct of the media became a real issue of professional debate only over the last years. Instances of the breach of generally-accepted ethical rules can be found on any given day, but they are not stirring a public outcry or a visible reaction from media professionals.

For many years, the media community was dominated by the **Romanian Press Club (CRP)**, which was created in 1997 and which initially gathered the directors and editors-in-chief of the biggest media outlets in Romania (print and broadcast, private as well as public). Later, the Club opened its ranks to individual editors and journalists, but it was still perceived as representing more the interests of the top editors rather than the file-and-rank journalists.

CRP was the first media organization to adopt a Code of Ethics in 1999, thus a pledge to observe the ethical rules of the Code is a pre-condition for joining the club, as stated on the CRP website.⁷

The Code⁸ was elaborated as a CRP document and only its members were consulted while it was being drafted. It contains 10 articles and deals with issues such as the duty of journalists to report the truth, use of verified information, the separation of facts from opinions, the right to privacy, interviewing all the parties involved, observing the presumption of innocence and protecting the confidentiality of the sources. The Code also asks journalists to act on behalf of "social

⁷ See <http://www.pressclub.ro/prezentare.html>, accessed on August 6, 2006

⁸ Available at <http://www.pressclub.ro/cod.html>, accessed on September 4, 2006

justice,” to refrain from entering into agreements with public authorities and business companies that could restrain their independence and impartiality and prevents them to join any political party. Using false information or purposely distorting information, using texts, pictures or video materials without the prior approval of the copyrights owners, plagiarism and libel are considered “serious professional violations.” The Code also asks all newsrooms to observe the right to reply of parties who feel that they have been wronged by a media outlet by publishing incorrect information.

The body in charge of enforcing the Code is the Council of Honor, the executive management body of the Club. It is made up of one president, two vice-presidents and 24 members.⁹ Enforcing the Code and recovering the complaints from the public is just one of the functions of the Council, which is also in charge of defining the public positions of the Club and overseeing the current activities of the CRP. The positions adopted by the Council of Honor on issues of general interest are available on the Club’s site and have to be published by all the members of the Club. Still, the sanctions imposed on the members (i.e publishing companies, not individual journalist) are not publicly available. The sanctions can range from “verbal warning” to exclusion from the club.

Although many important media outlets have representatives in the Council of Honor, violations of the Ethic Code – some of them blatant – can be found in the journalistic products of those very newsrooms. In a significant number of cases, these violations remained unsanctioned by the Council. Still, over the last year the Council became more present in the public arena and took a stand against some of its prominent

⁹ See full list at <http://www.pressclub.ro/CO.html>, accessed on August 6, 2006

members in cases of violations of the Code (i.e. revealing the name of a rape victim based on the fact that she was the daughter of one of Romania's vice-prime ministers).

Another group that has developed a Code of Ethics is the **Convention of the Media Organizations (COM)**. The Convention is a loose, informal alliance of over 35 journalistic associations, trade unions, media owners' associations, as well as organizations of photojournalists, specialized reporters, camera people and editorial cartoonists. COM was created in 2002 around a platform for common action that specifically mentioned self-regulation as a necessary alternative to restrictive regulation by law. In 2004, COM adopted its own self-regulatory documents: a Journalists' Statute (describing the relations between journalists and "third parties" – the public, employers, and authorities), as well as a Deontological Code. The Code defines "public interest" (there is no legal definition of "public interest" anywhere in Romanian legislation), states the fact that journalists exercise their profession on behalf of the public and lists the rights and duties of journalists. These duties include: respect for human rights and the presumption of innocence, respect for privacy, and special protection due to minors, victims of violence or people in vulnerable situations. The Code also calls for journalists to write their materials in good faith, to separate facts from opinions, to protect their sources, to strive to gather information via legitimate means whenever possible, to act independently, to correct factual errors and to allow for the right of reply. It also asks journalists to avoid conflicts of interest and to refrain from gaining personal benefits from the exercise of their profession. The rights of journalists include the right to resist censorship, to benefit from the clause of conscience, to enjoy the copyright protection of their work and

to receive legal protection from their employers. The Code is available online on the site of the Center for Independent Journalism (www.cij.ro).¹⁰

The Code was developed through regular meetings of COM (as part of a PHARE project) and the members of the Convention contributed ideas and wording to the draft. The Code was not meant to be immediately enforced by a single body, since the COM members agreed that the time was not ripe for such a process in Romania, because the community is fragmented and polarized, thus such a body would be at risk of being “confiscated” by narrow interests. Instead, the member associations pledged to adopt the Code as their own document and to enforce it within their membership. Moreover, some of the editors participating in the debates adopted the Code as part of their newsroom internal regulations or even as an annex to the job descriptions of their reporters. There are tentative discussions to establish a body to monitor the violations of the code’s provisions, but a practical solution still needs to be found.

The **Association of the Hungarian Journalist in Romania (MURESZ)** also has its own Code of Ethics, as well as a Council of Honor in charge of receiving and judging the complaints against Hungarian-speaking journalists in Romania. The Code was modeled after the Code of the journalists’ associations in Hungary. The Council’s resolutions have to be published by the concerned newsroom. There Code is available

¹⁰ Available at http://www.cji.ro/index.php?option=com_content&task=view&id=35&Itemid=58, accessed on September 4, 2006

only in Hungarian, thus non-Hungarian speakers cannot read it. It is available online.¹¹

Other groups, such as the **Union of Professional Journalists (UZP)** has ethical norms embedded in their statutory documents, so that joining the organization makes respect for the norms compulsory. Still, the organization, who claims to have 3,000 members, has no functional enforcement body.

The **Association of the Broadcasters (ARCA)** is another association that is active in self-regulation. ARCA was founded in 1990 and has 63 member companies, totaling 60 TV stations and 168 radio stations. In December 2003, ARCA members adopted a Self-Regulatory Code regarding the representation of violence in TV programs¹², as well as another Self-Regulatory Code intended to protect minors against the negative effects of some musical pieces or video clips.¹³ There is no enforcement of the codes and no rulings against those who violate the provisions are made public.

Special ethical norms are established for journalists working for the public media – **the public television SRTV and public radio SRR**. These norms are both part of their functioning legislation and of internal regulations such as “The Statute of Journalists Working for SRTV and SRR.” The two institutions have their own Ethical Committees, composed of journalists working for these institutions, as well as

¹¹ Available at www.mure.ro, accessed on September 4.

¹² Available at <http://www.audiovizual.ro/cod22aprilie.htm>, accessed on August 6, 2006.

¹³ *Id.* 6.

ombudsman services, where viewers and listeners can file complaints directly.

Apart from the deontological norms that they adopt internally, journalists working for public institutions are under ethical obligations under the law. The **Public Broadcasting Services Act**¹⁴ creates a legal obligation for the two institutions to promote pluralism, the free expression of ideas and opinions, the free flow of information and to correctly inform the public. Article 3 of the law reads specifically that the programs of the public broadcasting institutions “shall meet professional standards.” Articles 4 and 5 detail further obligations of the two institutions, content-wise: objectivity, impartiality, promoting national values, as well as those of national minorities, and promoting the democratic values. The two institutions shall not promote hate speech and refrain from immoral programming, shall protect minors as well as the right to privacy and human dignity. Further on, Article 10 requires the two institutions to adopt Statutes of Journalists Working with SRR and SRTV respectively, which are internal documents aimed at protecting the editorial independence of the journalists. Article 14 reiterates the obligations of correctness and fairness in the news programs. The same article deals with the terms under which the right to reply shall be granted, as well as the protection of sources. Unveiling sources has to be done only under exception circumstances, when public interest is at stake and only based on a court order or a prosecutor’s order.

An important body in terms of the ethical conduct of broadcasters is the **National Broadcast Council (CNA)**. The

¹⁴ Law no 41/1994, available at <http://www.cna.ro/legea504/legea41.htm>, accessed on August 6, 2006.

Council was created under the Broadcasting Act¹⁵ as an autonomous body under the control of the Parliament. Thus, its statute is not that of a state body, but it is not a self-regulatory body either. Over the years, the CNA has adopted several norms meant to regulate the ethical conduct of private (as well as public) broadcasters. In the spring of 2006, for the sake of consistency, all these recommendations and regulations were gathered into a single document,¹⁶ which was re-debated by broadcasters and civic groups, then updated and adopted. The document reflects the double nature of the CNA as a protector of the public interest and the legitimate regulator in the broadcasting field. The final document contains norms regarding the protection of minors, the protection of human dignity and the right to one's own image, the right of reply and correction, and the securing of correct information for the public. It also deals with topics related to sponsorship, advertising and teleshopping, TV games and shows, as well as the cultural responsibilities of the broadcasters.

The CNA accepts complaints from any member of the public or from legal and juridical persons on issues pertaining to the compliance of broadcasters with the CNA norms and rules, including the ones on content. In addition to such complaints, CNA acts based on its own assessment and monitoring. The CNA rulings in such cases are public. In the circumstances described by the Broadcast Act, the CNA can impose sanctions on the broadcasters, ranging from warnings to fines to limited suspension of broadcasting activity and eventually to the withdrawal of the broadcasting license. The

¹⁵ Broadcast Law no. 504/2002.

¹⁶ Decision no.187 of 3 April 2006 regarding the Regulation Code of the Broadcast Content, available at <http://www.cna.ro/reglementari/decizii.html>, accessed on August 6, 2006.

sanctioned broadcasters are obligated to announce the sanctions imposed to them publicly during their programs.

The latest addition to the existing Romanian Code of Ethics is an agreement proposed by the **Media Sind Trade Union**. In May 2006, Media Sind, which claims to represent "the interests of 72% of the total of employees in the field of print, radio, TV, publishing, printing and distribution of media,"¹⁷ negotiated and concluded the second Collective Labor Agreement in the Mass Media Field.¹⁸ This Agreement, which has the power and the effect of a law, incorporates a Deontological Code as an organic component. This Code was created Media Sind and was not discussed or debated with the rest of the community, although it is applicable to all the people employed in the media field, irrespective of the fact of whether they are members of the trade union or not. The Code, presented as an annex of the Agreement, has 10 articles and it is a mixture of the CRP and COM codes, quoting some articles from both documents.

It is the first time that such a Code has been empowered as a law. Still, there is no body created to supervise its implementation and enforcement, thus possible conflicts must be solved in court.

The multitude of self-regulatory documents has not had a visible impact on the quality of the journalism in Romania. While all the codes restate the same principles, a unification of those documents has so far not been sought. Judging by the

¹⁷ According to the website of Media Sind trade union, available at www.mediasind.ro, accessed on August 6, 2006

¹⁸ Available at www.mediasind.ro

different reactions and positions in a number of cases involving violations of ethical norms, it is clear that, for the time being, the associations may share the same values and principles, but sometimes they have a different, if not conflicting, reading of these principles.

Still, the main associations – CRP and COM – recognized the necessity to agree on a single document that would compile and combine their respective self-regulatory norms, as a step towards effective self-regulation.

The most delicate issue remains the enforcement of such a harmonized set of rules and norms. The directors and publishers of the main media outlets made it clear that they are not ready to accept an external body (that is, external to the Club they belong to) to judge their compliance with the ethical norms. The fact that even prominent members of the Council of Honor violate ethical norms with impunity is an indication of how difficult and time consuming the process of establishing a single self-regulatory body will be.

For their part, the representatives of the local media fear a centralization process that would leave the local media, one of the most important sources of information for the majority of population, trailing behind the “big national” media.

Most probably, the less conflictual process would be a bottom-up approach to self regulation. A vigorous promotion of ethical norms and regulations, followed by equally vigorous measures to secure their enforcement in the newsrooms, as part of the day to day professional routine, seems to be the solution of choice for many media professionals in Romania. It is expected that the consolidation of the market and the

maturity of the professional community will create, in time, the pre-conditions needed for an effective self-regulatory mechanism: common documents, efficient implementation, and trusted enforcers.

While the practical effects of self-regulation remain to be seen, the preoccupation with the ethical aspects of journalism and the quality of the media products is increasing. There are several journalism contests (for young journalists, for journalism on EU-related subjects, on human development topics, prizes awarded by the Romanian Press Club and by the Association of Professional Broadcasters, etc). These contests are intended to bring "excellency" in journalism into the public view and to reward not only talent and hard work, but also respect for ethical norms. Still, the organizers often complain that the number of journalists competing for these prizes is not very large and that many important journalists do not apply, since they see themselves "above" such contests.

Journalism Ethics is a compulsory topic in the curricula of journalism schools. Still, the approach is rather theoretical, thus the graduates, as well as those who hire them, complain about the gap between the "ideal" taught in schools, which does not correspond to the harsh reality. Journalism school does not play the role of "academic watchdog" in the media field in Romania, since there is a serious divide between academics and professionals. The two groups seldom engage in dialogue about the needs of the media field and of the journalistic profession.

One important element still lacking up until now in this landscape is an active group of media consumers, i.e. people who are educated about the media's obligations to the public

and who have an appetite for feedback and public debate. Unfortunately, the consumers' movement is in its initial stages in Romania – in media as well as in any other field – thus energetic interventions are needed in order to create a critical mass of such consumers. In this respect, media literacy programs, especially for young people, are an unavoidable must.

III. Defamation

Insult and libel were both criminal offences until recently; thus, the media community, as well as the civil society, invested much energy, effort and resources in order to bring about their decriminalization.

The payoff for this effort came only very recently by the adoption of the Act no. 278/2006 for the modification of the Penal Code.¹⁹ The amendments abrogate the articles regarding insult (205) and libel (206 and 207), as well as the one regarding verbal outrages (239).

Article 205 of the Penal Code defined insult as “the damage inflicted to the honor or the dignity of an individual, by words, gestures or any other means or by exposing them to mockery.” Similarly, the crime of “insult” covered the act of attributing to a person a fault, or a disease or an infirmity which should not be revealed, even if true. Insult was punishable by one month to two years in prison or by penal fine.

¹⁹ Due to come into force on August 11, 2006

Article 206 defined "libel" as "stating publicly, irrespective of the means, a well-defined action attributed to a person that, if proven true, would expose that person to a penal, administrative or disciplinary sanction or to public embarrassment. Libel is punishable by three months to three years in prison or by penal fine.

Article 207 stated that the proof of truth could be admissible if the statement was made for the protection of a legitimate interest. If the truthfulness of the statement was proven, the act of stating it was no longer considered libel.

Article 239 states that insult, libel or threats brought against a public servant who represents the state authority, in their line of duty or for acts related to the exercise of their duty, is punishable with three months to four years in prison.

As a result of the changes in the Penal Code in 2006, insult and libel are no longer criminal offences. The issues concerned can be solved through the Civil Code, under article 998 that concerns the general liability principle. Based on this article, anybody who feels that their interests have been harmed can file a lawsuit claiming material and/or moral damages. Under the Civil Procedure Code, filing a lawsuit is subject to a court fee. The amount to be paid is related to the amount of the damages required. Previously, the Penal Code enabled plaintiffs to bring a civil claim for damages together with the criminal charges, which was why most lawsuits for libel and insult were filed under the provisions in the Penal Code, since it allowed the plaintiffs to ask for as much damages as they wished without paying any fees.

The level of damages is not prescribed by the law, nor is the procedure to establish them. Even if material damages can be proved one way or another, moral damages cannot; thus, in some cases the level of these damages required from journalists was huge. For example, in one of the most recent cases, the current president of the National Broadcast Council, Ralu Filip, was sentenced to pay 900 million lei (more than 25,000 Euro) for an article he wrote in the earlier part of this decade, when he was still an active journalist. The average monthly salary in Romania is approximately 150 euro, which makes sums of this kind extremely difficult to cope with. There is no consistent practice in establishing the level of damages, thus the court has complete liberty to accept, deny or even increase the sums required. In an already famous case in Craiova (Dolj county), the court doubled the amount of damages required by the then-prefect (the governmental representative in the county), although the journalist did not do anything but quote what the prefect had said in a press conference. The amount of damages seems to be related to the high profile of the plaintiffs, as well as to the position of the accused journalists. It is mainly used as a deterrent for other journalists, thus leading to self-censorship.

New legal norms will also affect lawsuits currently pending. By eliminating insult and libel from the Penal Code, Romania has removed one of the most serious limitations to press freedom. These provisions have been used often in the past 15 years to harass journalists and were repeatedly cited in reports issued by international organizations monitoring press freedom for their chilling effect that encouraged self-censorship. Given that the decriminalization is so new, only time will tell how these changes in the legal system will affect

the way the justice is served in the cases of insult and libel under the Civil Code.

IV. Protection of sources

In Romania, there is no specific legislation to protect journalists who refuse to disclose their sources.

As a principle, the issue is perceived as being covered by the case-law of the European Court of Human Rights; the case invoked most frequently (in training as well as in practice) is *Goodwin vs. United Kingdom*. The court judgement states that “the protection of the journalists’ sources is one of the essential conditions of the press freedom”; it is this principle that is used whenever it comes to protection of sources in Romania.

There are only a couple of references to these issues in particular pieces of legislation: the law on the functioning of the public broadcast services²⁰ and the law on the functioning of the national press agency Rompres.²¹

Article 14 of the Public Broadcast Services Act reads: “The confidentiality of the sources used by the specialized personnel defined as per Art. 11 is guaranteed by law. The unveiling of these sources, motivated by a violation of the public interest, can be done only exceptionally, based on a

²⁰ The law no. 41/1994 on the organization and the functioning of the Romanian Television Company and the Romanian Radio Company, available at <http://www.cna.ro/legea504/legea41.htm>, accessed on August 6, 2006

²¹ The law no. 19/2003 available at http://www.cdep.ro/pls/legis/legis_pck.hp_act_text?idt=39839, accessed on August 6, 2006

court order or an order of the prosecutor.” Article 11 of the same law defines the “specialized personnel” as “the staff who write, produce, coordinate or are directly or indirectly involved in the production of programs.”

Article 10 of the Rompres Act reads: “The confidentiality of sources of information used by specialized personnel is guaranteed under the present law. The unveiling of the identity of the sources, motivated by the existence of public interest, can be done only based on a court order.”

As can be seen, there is a significant difference between the two articles when it comes to the terms under which the unveiling of the sources can be required. The PBS law was adopted in June 1994, months before Romania joined the Council of Europe (October 1994). The Rompres Act was adopted in January 2003. The almost ten-year period in between the two laws helped the media community and Parliament mature and better digest the European principles, which explains why in the latter document the unveiling of sources can be required only by a judge. This difference was one of the reasons why the then- President Ion Iliescu refused to sign the law into force and returned it to the Parliament. He asked for the provision to be completed with the “prosecutor’s order,” to be consistent with the PBS legislation. Civil society reacted and wrote a letter to the President, explaining how fundamental the protection of sources is to press freedom and insisting on keeping the law as it was. President Iliescu wrote again to the Parliament, asking them to drop Article 10 altogether, arguing that if the issue was that important, it should be dealt with by a separate law. In a rare move, the Parliament disobeyed the President and kept the text of the article as it was.

While these provisions relate only to journalists in the public media, most journalists are aware of the principle and are able to argue adequately for the protection of their sources.

Unfortunately, the same does not apply to the so-called "third parties," such as telephone and internet providers. Over the last few years there were several cases in which the ISPs revealed the identity of journalists or originators of Internet communications to the authorities (police, municipal prosecutors, and even ministries).

In a recent case, the Foreign Affairs Minister asked an Internet provider to terminate a website they considered to be detrimental to the FM image and to reveal the identity of the authors. According to a Reporters sans Frontieres report,²² two journalists, George Damian and Victor Roncea, both with *Ziua* newspaper, created their spoof site after writing a series of articles about the dismissal of a senior official at the foreign ministry, known by the acronym MAE in Romania. The ministry's web address is www.mae.ro, while the address used by the journalists for their site was www.mae.haos.ro, because their aim was to highlight the "chaos" and instability within the ministry. They copied the ministry site's layout closely but clearly indicated in the heading at the top of the page that it was a spoof intended to make fun of the ministry. Claiming that the spoof site's content was designed to destabilize the government and damage its reputation, the foreign ministry asked CHML (the internet provider and site host) to close it down, although it has no power to make such a demand. CHML also complied with the ministry's request for personal

²² See http://www.rsf.org/article.php3?id_article=18337, accessed August 6, 2006

information about the two journalists even though this is banned under Romanian law for the protection of personal data.

Time and again, journalists have brought accusations against the intelligence services who tapped their phones. The intelligence services and even the President Traian Basescu rejected the accusations, mocking the journalists. "What do you think there is that you have in your minds that and you don't say publicly?" said Basescu in a press conference, in one of his not-so-rare slamming of media professionals. Such blunt statements make the journalistic profession more vulnerable and less credible and are likely to encourage, even if not on purpose, interference in the editorial freedom of media professionals.

The lack of a general rule applicable to all journalists and all types of media creates a certain uncertainty or "grey zone" that can be used against press freedom. Unequivocal and all-encompassing legislation on this issue may be a solution. At the same time, the "third parties" – mobile communications systems, telephone companies, internet providers, etc – should be "educated" regarding their role in preserving media freedom, especially with the increase and spread of new technologies that will dramatically change the media field.

V. Disclosure of classified information

The handling of national-security-related information is regulated by a multitude of laws, adopted in various periods during Romania's recent history. Therefore, these laws bear the mark of the prevailing doctrine at the time of their adoption and their provisions are often conflicting.

The National Security Act,²³ adopted in 1991, lists among the "threats to national security" (Article 3 (5)): "espionage, transmitting secret state information to a foreign power or agency or to their agents, gathering and possessing documents containing state secrets for the purpose of transmitting them to a foreign power or agency or to their agents or for any other purpose not authorized under the law, as well as disclosing state secrets or being negligent in their handling."

Article 12 of the same law details: "Nobody has the right to reveal secret activities related to national security by invoking the right to free access to information, the right to impart information and the right to freely expressing their opinions. Disclosing, by any means, secret data and information that may harm national security interests, irrespective of how these data and information have been obtained, is prohibited and entails the responsibility of those found guilty, under the law." It should be noted that the same law stipulates that all intelligence related to national security is secret.²⁴

²³ Law no. 51/1991, available at http://legislatie.resurse-pentru-democratie.org/51_1991.php, accessed August 7, 2006

²⁴ Law no. 51/1991, article 10.

Further on, Article 19 provides for prison terms – from two to seven years – for “gathering and transmitting secret and confidential information, irrespective of the means used for this,” if these acts do not amount to a “more serious crime.” The attempt to do this is also punishable, according to the article. It should be noted that this time, however, the article includes the term “confidential information,” a concept not defined under the law.

Consistently, the **Penal Code**²⁵ (The Special Section, Title I, “Crimes Against National Security”) lists several instances of mishandling of secret information:

- Article 157²⁶ determines the sanctions for “treason by transmitting secret information” (sanctions include a life term or 15 to 25 years in prison), while paragraph 2 deals with “other documents that, by the virtue of their character or importance” may harm national security (punishable by 5 to 20 years in prison).
- Article 168²⁷ determines the sanctions for “communicating or spreading, irrespective of the means, of false news, data or information, if such an act harms Romania’s national security²⁸” (one to five years in prison);

²⁵ The Penal Code was firstly adopted in 1968, amended and republished in 1973 and 1997 and modified repeatedly between 2000 and 2005. Consolidated version available at <http://www.dscllex.ro/coduri/codpenall1.htm>, accessed on August 7, 2006

²⁶ Modified as per Law no. 140/1996.

²⁷ Introduced as per Law no. 140/1996.

²⁸ This article was amended by Law 278/2006, to make clear the imminent danger posed to the national security (instead of “that have the potential to harm the national security” and to drop the reference to the harm to “Romania’s international relations”.

- Article 169 determines the sanctions for “disclosing state secrets or documents, as well as other documents or data, by the person in charge of handling them in their line of duty, if such an act may harm the national security” (7 to 15 years in prison); possession of secret documents by authorized personnel but beyond the line of duty (5 to 10 years in prison); any of the above mentioned acts, if performed by any other person (1 to 7 years in prison).

The **new version of the Penal Code**²⁹ was adopted in 2004, but its coming into force (initially scheduled for June 2005) has been already postponed twice, for one year each time. This new version provides for the following crimes:

- Article 272 determines the sanctions for “transmitting state secret information to a foreign power or organization or to their agents, as well as gathering documents or information or the possession of such documents by unauthorized persons for the intent purpose to transmit them to a foreign power or organizations or to their agents” (life term or 15 to 25 years of severe detention);
- Article 290 determines the sanctions for “disclosing state secrets or officially secret information by people who obtained that information in their line of duty, if such an act may harm the national security” (15 to 20 years of severe detention); the possession of documents containing state and trade secrets by authorized personnel but beyond their line of duty is punishable by 3 to 10 years of strict detention;

²⁹ The Penal Code adopted in 2004, available at http://www.dsclex.ro/coduri/codpenal_2004.htm, accessed on August 7, 2006

- Article 320 determines the sanctions for “negligence that caused the destruction, the alteration, the loss or the theft of a document containing state secret information, as well as the act that allowed another person to get hold of such information, if the act may harm the interests of the state” (one to 3 years of strict detention).

The Ministry of Justice asked for the postponement of the implementation of this new version of the Code, claiming that some of its provisions are unacceptable from the point of view of international standards. Moreover, the Penal Code has to be harmonized with the Criminal Procedure Code, a process still in the initial phases. The Justice Ministry initiated its own modifications to the Penal Code, which are to be submitted to the Parliament. As a result of this “legislative fervor,” the “old Code” and its restrictive provisions are still in force.

The adoption, in 2001, of the **Free Access to Information of Public Interest Act** brought about a change of philosophy. Article 12 lists the legitimate exceptions to the free access to information of public interest, including state secrets. In order to counter-act the existing legislation that made protection of secrets a patriotic duty, Article 12(2) of the law placed the full and exclusive responsibility for the protection of state secrets on the individuals and institutions in charge of handling them and on the public institutions who hold them, as well as on the public bodies responsible for protecting the classified information. While it is not the FOIA’s role to set the norms for transparency issues, the promoters of the law seized this opportunity to bring about a legislative change in this respect and used this window of political opportunity for transparency. For the first time, regular

individuals (journalists included) are exonerated from the responsibility to protect the state secrets.³⁰ Moreover, the law reads that information that could hide a violation of the law cannot be considered classified, thus indirectly opening the way for the public interest test in cases of information disclosure by the media, although this is not specifically stated. Article 25 of the law specifically abrogates “all legal provisions contrary to this law,” effective the day the law came into force.

In the spring of 2002, only months after the adoption of FOIA legislation, Romania adopted a new **Protection of Classified Information Act**,³¹ which is not in line with the access to information law. The law was adopted under the alleged pressure by NATO, as the North-Atlantic Alliance was about to decide whether to invite Romania to join it, which would have entailed security obligations for the country.

Under this law, there are two types of classified information:

- State secrets – defined as information related to national security, whose disclosure may harm national security and the defense of the country; (article 15 (d))
- Trade secrets – defined as information whose disclosure may harm a legal person, be it public or private. (Article 15(e))

³⁰ The law on state secrets no. 23/1971 (in force until 13 June 2002), used to read in its Article 1: “The protection the state secrets is a patriotic duty, an obligation of honour of all the citizens of the Socialist Republic of Romania – workers, peasants, intellectuals, other categories of working people – and by this they contribute to the defense of the revolutionary achievements of the Romanian people, of the independence, sovereignty and the territorial integrity of our state”.

³¹ Law no. 182/2002, available at http://legislatie.resurse-pentru-democratie.org/182_2002.php, accessed

The broad definition given to “trade secrets” and the discretionary and unlimited powers bestowed onto the heads of any public and private body and company allow the latter to basically classify any information, reducing the opening effect of the FOIA legislation. For example, the Senate declared that all the documents related to senator’s travel (financial ones included) are “trade secrets,” therefore inaccessible to the public.

Article 16 places the responsibility for protecting state secrets on “the authorized personnel, who generate, handle or obtain it”.

Article 20 creates the right of all persons to challenge the classified status, the degree of secrecy and the duration for which information stays classified. A challenge can be brought in front of the authority that decided on the classification, which must follow the given administrative procedure.

Chapter V of the law re-states the “Obligations, responsibilities and sanctions” related to the protection of classified information and makes clear once again that only authorized personnel and the heads of the institutions holding classified information bear the responsibility for its protection.

Although the Access to Public Information Act affirms that all older provisions contrary to the law are abrogated as per the coming into force of the Act no 544/2001, this did not happen. There were no follow-up moves to identify the “contrary provisions” and to start formal procedures for their specific abrogation. As a result, the conflicting provisions are used when they better suit certain interests.

In one very recent case, these conflicting provisions were used in an investigation against two journalists.

In February 2006, anonymous sources provided two national dailies, *Ziua* and *Romania Libera*, with military documents about Romanian and US troops in Afghanistan and Iraq. The newspapers exercised journalistic responsibility by deciding not to publish the information and later handed the documents to Romanian authorities. Nevertheless, two journalists were charged with possession of classified information. One of them was held in custody for two days and the premises of both journalists were searched.³² The accusations against the two journalists were formulated based on the 1991 National Security Act. "In democracies civilians, including journalists, cannot be treated as criminals merely for obtaining state secrets. Journalists are even entitled by law to keep their confidential sources to themselves," writes the OSCE Representative for Freedom of the Media, Miklos Haraszti, in the letter he addressed to the Romanian Foreign Minister, urging Romanian authorities to annul old laws that do not comply with modern democratic standards.

Within weeks of the incident, the Defense Ministry announced that they identified the source of the leakage and that they had applied administrative sanctions against those found guilty for it, while the prosecutor's office started criminal investigations.

Still, despite these developments and the OSCE official's appeal, the investigations against the two journalists are still continuing. The case was mentioned by the OSCE

³² Press release of the OSCE representative for Freedom of the Media, available at http://www.osce.org/fom/item_1_18287.html, accessed on August 7, 2006

Representative for Freedom of the Media in his Regular Report to the Permanent Council (released on July 13, 2006).³³

VI. Access to public sources

Romania adopted its first ever Access to Information of Public Interest Act³⁴ in 2001. The law states that all information produced or held by a public body is of public interest and shall be accessible to any person, free of charge. Under the law, the person requesting the information will not be asked to reveal the reason why they require certain information. The law lists the exceptions under which information can be excluded from the free access of the public and describes the mechanisms that each public body shall create in order to secure easy access to information for citizens. The law provides for several forms of request: in written form, in an electronic format or orally. An oral request can be answered on the spot, if the information is available. Article 8 (5) of the law states: "oral requests filed by media representatives shall be answered, as a rule, immediately or within 24 hours." This provision establishes a minimal advantage for the media, creating a special deadline – the 24 hour period. But taking into account that all oral information should be answered on the spot, if the information is available, this is not a true advantage, since the article does not create a real cutting edge for the media.

³³ Regular Report to the Permanent Council by the Representative on Freedom of the Media, available at http://www.osce.org/documents/html/pdftohtml/19856_en.pdf.html, accessed on August 7, 2006

³⁴ Law 544/2001, available at <http://www.publicinfo.ro/download/legea544.pdf>, accessed on August 6, 2006

The whole of Section 2 of the law – articles 15 to 20 – is dedicated to the media’s access to information. The law requires public bodies to appoint spokespersons to ease the pro-active passing of information to the media. Generally, this provision has been implemented. Spokespersons have been appointed, but there is a clear need for further training in media relations for these persons. Article 18 describes the accreditation process, which must be quick (accreditations have to be released within two days after they are requested) and non-discriminatory. Public bodies can withdraw the accreditation of a journalist if he or she acts in a manner that disturbs the normal functioning of the public body. Accreditations cannot be withdrawn based on the content of the journalist’s articles. If a public body withdraws the accreditation of a journalist, the media he or she works with can ask for another representative to be accredited. The implementation norms of the law 544/2001 explain that accreditation should play the role of a clearance that guarantees the speedy access of journalists to premises or to events that require a special degree of security. Access to public information held by a certain institution is in no way limited to those who are accredited with that institution. Despite the general good reception of the implementation norms, there were cases (for example, the Prosecutor’s Office in Bucharest, the mayor’s office in Bacau) when the authorities withdrew the accreditation of journalists as a result of their critical reporting. Under pressure from civil society, the measures were reversed promptly. Still, the idea of critical journalists being “disruptive” is relatively prevalent. In the spring of 2006, the Senate discussed the idea of introducing new regulations (even a law) to restrict the access of journalists to the Senate’s building because their reporting

ruins the body's image; however, this idea has not been pursued so far.

VII. Conclusions and recommendations

The recent developments that led to the decriminalization of insult and libel represent (probably the last) big breakthrough in shaping up a liberal and supportive legal environment for the practice of journalism. Analyzing the legislation that can impact media content, one can say that there are enough legal provisions to secure both the free exercise of journalists' rights and sufficient protection for those who seek redress.

There are still some "parasitic" provisions, especially in the Penal Code, punitive articles stemming out of old Communist rules or from the nationalistic rhetoric characteristic of the early 1990s when these laws were drafted. Civil society is continually pressuring Parliament to eliminate these provisions and to bring them in line with the internationally accepted standards. This kind of work should be continued until conflicting provisions are harmonized and any possible interpretation that would allow for the restriction of the media freedom can be avoided.

Still, Romanian media legislation does not stand completely alone; nor does any other legislation, for that matter. It is subject to influences and trends that affect other countries. It is a well-known fact that anti-terrorism legislation brought about a series of (sometimes unnecessary) limitations to the freedom of information and the freedom of speech everywhere, even in the most advanced democracies.

Moreover, the recent Danish cartoon scandal raised concerns regarding the protection of religious beliefs, which was in some cases remedied to the detriment of the freedom of expression.³⁵

It is the task of the media community, watch dogs and free speech activists to monitor such trends and take energetic action against moves that may represent a backslide.

EU accession will add to this problem, as Romania will be required to abide by and implement the EU regulations. There are a set of EU documents that affect the media field, in both content and functioning. Disseminating and explaining these documents is another task for the media community and civil society organizations. At the same time, these actors have to connect themselves to the European watchdog and advocacy movement, to be able to contribute to – and not only be at the receiving end of – the continental push for press freedom.

While the proper crafting of the laws is important, their implementation is vital. There have been cases when good legislation was not implemented, sometimes out of sheer ignorance on the part of public authorities. New developments in decriminalizing defamation should be closely monitored to see how they work in practice and how journalists make the best of their newly gained freedom.

³⁵ For example, when the draft law on religious cults was debated in Romania, members of the culture and media committee unanimously voted for an amendment that would punish "offences against religious symbols." This occurred directly following a years-long fight by civil society to strike the provision in the Penal Code that sanctioned "offences against national symbols." The provision in the Penal Code was finally repealed, which demonstrates the lack of consistency and the opportunism of the law-makers.

Of course, the freedom of the media unquestionably comes with increased responsibility in terms of self-regulation. The decriminalization of defamation in Romania presents the media with a huge task: They have to make good on their pledge to self-regulate and take active steps to enforce the ethical codes available. The consistent enforcement of ethical norms “in-the-newsroom” will bear immediate and visible results in terms of the quality of reporting and will create a baseline for the public. Such an approach will create a critical mass of good practices in journalism and will raise the overall quality of media offerings.

In time, this will lead to the necessary shared understanding of journalism ethics and will create the foundation for a unique enforcement system. This process will not happen naturally, though. It is the responsibility of media associations and watchdog organizations, as well as trade unions and owners’ associations to cooperate in order to secure a good pace for this process and to ensure the candid participation of all stakeholders. The involvement of the public – as the beneficiary of the media products and those on whose behalf the media exercise their informational function – is absolutely crucial.

Recommendations

1. To identify all the legal provisions that are either conflicting or restrict media freedom and create a public “to do list” for future advocacy moves. To start a coherent advocacy campaign for preserving the access to information to the largest extent possible by amending the Classified

Information Act, the National Security Act and the Penal Code.

2. To set up a cooperative task force meant to identify in the very early stages of legislation bills and draft norms that may have an impact on media freedom and to alert the community.
3. To create a “quick reaction” cooperative mechanism (including most of the stakeholders) able to raise the public awareness and trigger a public response to threats to media freedom.
4. To start a consultation process aimed at harmonizing the existing Ethical Codes and to develop the same understanding of the ethical norms.
5. To cooperate with professional associations, newsrooms and trade unions in order to achieve an active implementation of ethical norms and conduct within each newsroom.
6. To increase the visibility of the professional groups’ reaction to blatant violations of ethical norms.
7. To educate media consumers about how media works, what the rights and obligations of journalists are, as well as the rights and courses of action available to media consumers.
8. To encourage the stakeholders to consider ways and means that will lead to a unified enforcement of a self-regulation mechanism.

Serbia

By Milica Miletic

Executive summary

The media scene in Serbia has made significant progress over the past six years. Moving away from the repressive regime and abandoning some very oppressive laws has been a significant step towards the full exercise of freedom of expression. A significant body of new legislation aiming to protect the freedom of expression has been passed, which, even though it has certain flaws and questionable provisions, can be considered a sufficient framework for observance of this right. A new Public Information Act was passed; also, a Broadcasting Act has been adopted, as well as some fundamental laws such as the Free Access to Information of Public Importance Act, which ensures observance of the public's right to know. Consequently, the number of attacks and actions against journalists and media outlets has significantly decreased. Nevertheless, each attack or threat to journalists, which still sporadically occur, should be addressed vigorously and publicly condemned. Even though the legislative framework is considered to be relatively sufficient, implementation has turned out to be a source of numerous problems. These problems in implementation arise for different reasons: lack of knowledge; rigid old structures that are slow to accept and apply new policies and legislation; and, what is most worrying, political and economic influence and in some cases even legislative interventions that hinder freedom of expression. Two

paradigmatic examples of such problems are: 1) the questionable court rulings in some cases, combined disrespect by the affected parties for the rulings in others; and 2) the amendment of legislation in order to provide privileges for certain interested parties. The Government seems unprepared to abandon the policy of influencing the media, while the judiciary fails to facilitate adherence to the laws, due to both lack of capacities and corruption. Furthermore, there are still some important legislative acts yet to be passed, namely complete decriminalization of libel and insult, adoption of the State Secrets Act and amendments to the Free Access to Information Act that would provide protection for whistleblowers.

However, the liberalisation of the media and alleviation of repression have uncovered another important aspect of the freedom of expression. While there are generally opportunities for journalists to report objectively and free of pressure, they often fail to adhere to the rules of professional and ethic conduct. The general level of journalism in Serbia is low, with sensationalism and crude economic interests prevailing over ethics. There are still many cases of misdemeanours conducted by journalists, which are very often neglected and regarded as unimportant. This practice undermines credibility and the status of the profession, seriously damaging and hindering the right of the public to objective and unbiased information. The violation of privacy is a serious issue, since unfounded claims and false information are aired and distributed regularly. The solution is twofold: first, it is necessary to compel the state authorities and judiciary to closely observe the implementation of the laws and react in cases in which *ex officio* action is stipulated. Secondly, there is an urgent need for the adoption of the general Ethical Code and for an independent body that would have sufficient

competence and power to ensure complete adherence to it. Current developments suggest that the Draft Code proposed by the two major journalists' associations could be a sufficient tool for improving the situation in the Serbian media field; however, the process of establishing the Media Council is slow, thus the future structure of the body still remains unclear and uncertain.

Context

Statistical overview

Population:

7.5 million (Serbs 82.86%; Hungarians 3.91%, Bosniak 1.82%, Roma 1.44%; Croats, Bulgarians, Slovak and others)

GDP per capita (2005):

\$4,400 for Serbia (including Kosovo) *agriculture: 16.6%, industry: 25.5% , services: 57.9%*

Direct foreign investment (2005):

1,3 billion USD

Unemployment:

20,8 % (without Kosovo)

Average salary:

330 USD

Political scene:

unicameral National Assembly (250 MPs) composed of the *Serbian Radical Party* or SRS (a right-oriented party) 83 and Government Coalition: *Democratic Party of Serbia* 53,

Democratic Party 37, G17 Plus 34, Serbian Renewal Movement, SPO + New Serbia, NS 22, Socialist Party of Serbia, SPS 22

The first wave of privatization in Serbia, in 2002 and part of 2003, witnessed the sale of enterprises belonging to industries that were more attractive to the market; there was more explicit interest on the part of potential buyers. Those enterprises had readily available and fairly complete documentation, while their management demonstrated high initiative and readiness for privatization.

The stormy political scene in Serbia is full of very serious issues that need to be resolved. Montenegro's declaration of independence left the state to deal with the issue of transferring duties and adopting legislation that would replace the those that had been adopted on the national level. Negotiations on the future status of Kosovo are ongoing, taking up much of the political attention in the country. Negotiations on signing the Stabilization and Association Agreement with the European Union have been halted, due to insufficient cooperation with the Hague Tribunal, more specifically due to lingering reluctance to arrest and deliver Ratko Mladic to the Tribunal. There is an urgent need to adopt a new constitution, a problem that in public discourse is very often linked with new Parliamentary elections.

However, issues over media regulation are still very high on the country's agenda; that is not say they are a priority, but rather that such issues are nevertheless of serious concern.

Reports dealing with media issues usually start with a reminder that six years have passed since the downfall of Slobodan Milosevic's socialist regime and that promises made

by the opposition in 2000 were not kept. There is a serious problem with reforms being stalled, which leaves the media sector in a poor condition, if judged by professional and European standards.

The infamous date October 5, 2000, that symbolized the beginning of democratic changes (the day of mass democratic rebellion calling for Milosevic's resignation after the electoral victory of the Democratic Coalition) was readily greeted by media activists, who had already formed working groups to work on drafting media laws. At that time, the draft proposals were almost complete, and due to the new political structures the new Parliament should have been able to easily adopt these proposals. However, the proposals were amended in the course of parliamentary procedures, while some provisions were removed or significantly changed.

Over the past six years key media laws have been adopted: the Public Information Act, the Broadcasting Act, the Advertising Act, and the Free Access to Information of Public Importance Act. However, the implementation of these laws is still an object of criticism by professional associations and media experts. Nevertheless, progress has been made. Legislation adopted not only provides a framework for decent media operation, but also it creates opportunities for improvement by engaging professionals as well as the public.

On the other hand, in the newly-established democratic society in Serbia, there is a danger of further deterioration of the media sector. Apart from political elites with their agendas and preoccupations, the media have missed the chance to arrange their own playing field and to establish self-regulation mechanisms and professional standards. Only recently, media

outlets and professional associations have called upon the president of Serbia not to sign the new amendments to the Broadcasting Act, while radio stations and television channels that have acquired licences for broadcasting are afraid that the whole licensing procedure will be annulled, due to several questionable decisions. The Council of the Republic Broadcasting Agency is widely resented in the public, while administrative proceedings before the Supreme Court are ongoing.

The founding of a Press Council by the Professional Journalists Associations, an organization which would deal with the ethical and professional conduct of media, is just in preliminary stages, with ethical codes on the verge of being adopted by both major professional associations in Serbia.

Freedom of expression

Legislation regulating freedom of expression

Freedom of expression, which is considered a basic human rights, is guaranteed by the Serbian Constitution in accordance with the European Convention on Human Rights.

The Public Information Act (PIA) is the basic law regulating media in Serbia. It regulates the right to public information as a right to the freedom of expression and of thought and also regulates the rights and obligations of persons involved in the public information process.

It seems that this law, passed on April 22, 2003, by the Serbian Parliament during a state of emergency enacted after

the assassination of the Prime Minister Zoran Djindjic, clearly and appropriately defines and guarantees freedom of speech. However, it is more important to look at the practice of implementation of this law and the ways in which it affects and governs the state-of-affairs in the media in Serbia. Beside the fact that this law was adopted under extraordinary conditions, it is even more indicative that the version adopted underwent a peculiar process. The draft law prepared by the expert working group formed by the Media Center and consisting of members of numerous professional and expert associations was amended during the parliamentary procedures, in such a way that it contains some questionable provisions.

On the one hand, some of the law's provisions may be perceived as repressive, for example Articles 17-19 allow for so-called "censorship by suspension." Namely, these articles stipulate that upon a motion by the public prosecutor (within 12 hours upon receipt of the motion), the court may pronounce a temporary ban until an irrevocable ruling on the ban comes into force, ordering all copies of the newspaper to be confiscated by the Ministry of Interior. This provision has been used only twice, in the case of the magazine *Svedok*, which published an interview with the prime suspect for the murder of the Prime Minister Zoran Djindjic, and against a local television channel when videotapes were confiscated. In the latter case, five minutes after political commentary criticizing work of the County Prosecutor and several other judges, prosecutors and barristers was aired on local *TV5*, police confiscated the video material on a motion by the County Prosecutor.

On the other hand, some provisions are too vague and as such allow for very liberal interpretations of journalists' responsibilities. Namely, provisions stipulating the right and

obligation of the journalists and editors to convey the information from third parties using quotation and their statements, ideas and opinions accurately and thoroughly, have proven to be a little too liberal, freeing journalists of any responsibility for dissemination of indecent, inaccurate and false information.

However, the main problem with the media scene in Serbia is not the inadequacy of legislation but rather the implementation of laws, both by the journalists and by the state authorities responsible for such implementation. Due to the generally low level of the culture of communication and expression, the press is filled with pornography, especially on the cover pages, as well as statements (even headlines) that grossly violate the presumption of innocence and the right to privacy. Regrettably, journalists and editors for the most part lack any sense of responsibility in such cases, thus affected people have no redress to protect their rights.

In accordance with the Public Information Act, access to the media industry and market is not restricted. Unlike for the broadcast media, there is no licensing for the print press, only registration. By adopting the law, the policy of registering media with the Ministry of Information (which ceased to exist) was abandoned, replaced by a registration procedure identical to the registration of any commercial enterprise. The founder of a media outlet is under obligation to register with the Commercial Registry. The founder of a newspaper or television production also needs to be clearly identified in an Even though the media outlet does not enjoy the status of a legal person, it is possible to identify all of the media owners by browsing the Register using the code of operation.

Media outlets may not be founded, either directly or indirectly, by the state, a territorial autonomy municipality, or by an institution or company that is prevalently state-owned or that is fully or predominantly funded from public revenues, unless such a possibility is envisaged by a separate Broadcasting Act. As an exception, the state may establish a news agency under a separate law.

Media outlets are exempt from the general VAT Act, being subjected to eight percent instead of the general 18 percent VAT. Regard other tax exemptions, there is no difference between the media industry and any other industry.

The Broadcasting Act

The Broadcasting Act was adopted in July 2002, replacing the outdated Radio and Television Act that had been in force since 1991. For the first time the law introduced an independent regulatory authority, the Republic Broadcasting Agency (RBA), as a regulator with a wide of duties in broadcasting, including licensing of privately-owned broadcasting media outlets. Although the Broadcasting Act was adopted in 2002, the Broadcasting Agency became fully operational only in 2005, after a series of controversies.

It started off with the nomination and election of the RBC members, a process which was carried out in an untimely (it was done eight months after the date stipulated by the law), non-transparent and secretive (biographical details of several members were not available to the public, which resulted in the resignation of two members nominated by professional journalists), and arbitrary fashion (Parliament decided to re-

election the disputed members). Such conduct undermined the professional credibility, independence and legitimacy of the RBA. Two amendments to the Broadcasting Act, concerning nomination of members and the nature of their mandates, passed in 2003 and 2005 respectively, followed by the re-election of the previously disputed members into the newly-elected RBC, has demonstrated that the state is not very eager to transfer these very important duties to the truly independent body. No media experts are represented on the new council; Parliament completely disregarded public protests regarding the decision. Serbia's media scene had witnessed a somewhat paradoxical situation – while the duties of the independent body were widened, state influence has seriously impeded its independence and professionalism, thus derogating the whole idea of state-independent and unbiased regulation of the broadcast media.

Two Council's main tasks were to adopt a Broadcasting Development Strategy and to allocate frequencies for broadcasting. Needless to say, implementation of both of these project did not proceed without controversy. The hastily adopted strategy was criticized for failing to recognise and determine the specific needs of the population, thus leaving criteria for frequency allocation vague and open to arbitrary decisions.

The whole saga climaxed over the allocation of frequencies for broadcasting on the national level. Given that the council was supposed to regulate a veritable media jungle of over 750 radio stations and television channels, it was of crucial importance to establish a competitive, fair and apolitical procedure for license allocation. The council has been widely criticized for its dubious evaluation of the proposals submitted

for the acquisition of national broadcasting frequencies. Evaluation of the proposals was processed according to criteria that were presented to the public after the proposals had already been submitted, during the deliberation process. The fees that the "lucky winners" were suppose to pay were set considerably high: 60.7 million dinars (700,000 EUR) annually for a national television license and five time less for a radio licence at the same level, while the fee for regional broadcasting was set at 22.8 and 4.5 million dinars (260,000 EUR and 52,000 EUR) for television and radio respectively. According to the Council Decision issued on April 19, 2006 national coverage licenses were granted to *Avala TV*, *B92*, *Kosava/Happy TV*, *Pink* and *Fox* for television broadcasting, and to *B92*, *Index*, *Radio S*, *Radio Fokus* and *Roadstar* for radio.

The decision was met with public rage over both the approved proposals (*TV Avala* had never been aired) and the rejected proposals, which led to more bitter disputes. While *RTL's* complaint was dismissed within 24 hours, *BK TV*, after airing fierce criticism of the decisions, was denied a temporary license and forced to cease broadcasting on the grounds that it was impeding the work of the independent body. *BK TV* filed a complaint with the Supreme Court, which overruled the council's decision. The council's immediate reaction was to adopt a new decision consisting of the same content, thus demonstrating the Council's profound disrespect for the Court.

It may be concluded that the council has practised its independence and duties as if it holds discretionary power to issue licences, even though the Broadcasting Act clearly stipulates that the decision should be made according to established conditions and standards for production and distribution of programming and with the highest regard for

non-discriminatory, objective and measurable criteria. The impression among the public was that the whole process was highly political, driven by the interest of the economic moguls. The crisis has been further fuelled by the latest development, which has occurred in the aftermath of the whole process. The Democratic Party of Serbia (DSS) Parliamentary caucus has submitted a proposal for amending the Broadcast Act, which has further stirred up the public. One of the most problematic provisions in the proposal is one according to which the legal deadline for airing programming after acquiring the licence is being extended from 60 to 120 days (a deadline that *Fox* and *Avala* have already violated). A second, even more dubious provision, stipulates that the financial reports and budget proposals should be submitted to and approved by the Government and not to the Parliament. Finally, the powers of the RBA are further extended, allowing the RBA not only to adopt a decision to withdraw broadcasting licences, but also to execute such withdrawals in practice by officially sealing off the premises of the broadcaster. Even though Parliament passed the amendments using an expedited procedure, the President of Serbia, Mr. Boris Tadic, on July 27, 2006 exercised his power to return the law to Parliament by refusing to sign it.

Protection of sources

Even though there is not a specific "shield law" guaranteeing protection of sources, there is what might be called a "shield article" in the Public Information Act (PIA): "A journalist is not obliged to reveal data related to his or her source of information." This article is harmonized with provisions in the new Penal Code, which entered into force on January 1, 2006; this right is enjoyed by journalists, editors,

editors-in-chief and publishers, both in the print press and the broadcast media. Furthermore, since the PIA does not specifically exclude the internet, the general formulation may be applied to all media.

However, the same article regulates that the right is not absolute, stipulating that the above- mentioned right does not apply if the data refer to a criminal act or to a perpetrator of a crime punishable by a minimum prison sentence of five years, which, within Serbian legal system, is considered a grave offence. The court may order the source to be disclosed; however, no such cases has occurred recently. Since there is no precise stipulation in the Penal Code and there has not been such case before the court, it is unclear what the penalty for a journalist in such a case would be if he or she refused to reveal sources.

The Law does not cover the right of the source to be anonymous in the event that a journalist reveals his or her source, disregarding the source's request to stay anonymous, thus the whole issue is left for the Ethical Code to deal with. In other words, journalist is not legally responsible for such action *en generale*, but only if the case were to be brought before a civil court on other charges (libel, insult, damages, etc.)

Free access to information and state secrets

The Free Access to Information of Public Importance Act (FAI Act) in Serbia became effective on November 13, 2004. The FAI Act regulates free access to information for all citizens, including journalists. Even though frequently considered to be a "media" law, the right to access to information should be

considered as one of the fundamental rights that ensures transparent government that can be held accountable to the public, and as a right that ensures the full exercise of other fundamental rights, including the right to information. Through this law, an independent post was formed to monitor and implement the law, namely the Commissioner for Information of Public Importance, which holds the status of a second-instance organ (the first instance body being the governmental institution that had been requested to release information). Besides monitoring and overseeing the implementation of the law, the Commissioner may initiate amendments to the regulation that deals with the right to free access to information. Mr. Rodoljub Sabic was elected to be the first Commissioner for a seven-year term.

Under this law, media outlets and journalists do not have preferential treatment. The only two provisions that distinguish journalists and associations for human rights protection from others is one that states that such groups are not charged the costs that occur in the process of handling requested information (copying, posting, etc); the second such provision is the indiscrimination clause, which prohibits discrimination between different media outlets. The second provision was at stake in two cases. In one of them, the Ministry of Interior denied a request for information submitted by the television channel *B92*. After the Commissioner demanded the disclosure of the information in question, upon request by *B92* crew, the information was first delivered to the daily press, then to *B92*.

This provision can also be applied to the procedure of accreditation of journalists for specific state meetings, conferences, etc. According to this provision, no media outlet should be discriminated against. Foreign reporters are

accredited with the Ministry of Culture and Media, where there have not been any registered cases of denied accreditation. The accreditation procedure for meetings of official government body depends on the nature of the matter discussed. Parliamentary Sessions are open; annual accreditation is issued by the Parliament's Administration Office, while accreditation for attending Government meetings is issued by the Office for Public Relations. Both Parliamentary committees and Government meetings are closed to the public if the matter on the agenda is considered to be a state secret (i.e., session of the Parliamentary Committee for Security are usually closed to the public). However, journalists often complain about state institutions being secretive, especially the Security Information Agency and the Ministry of Interior, which often request that a precise list of questions be mailed or faxed in advance.

Surprisingly, right after the law entered into force, journalists did not exercise their rights very often; the situation to this day has remained substantially unchanged. The leading role in exercising the law was left to the civil sector. Over the course of two years, various non-governmental organisations and individuals filed over 3,000 requests for information to various authorities in Serbia. In the one-and-a-half years that the law has been in effect, practice has shown better results than those achieved in most of the other countries that were in economic and political transition when they implemented similar laws. Large numbers of people were informed, state bodies' silence was tackled on numerous occasions, while the Commissioner himself took a very active role in the implementation and observance of the law. However, there are three groups of problems that have come to light.

Firstly, there is insufficient knowledge and in some cases complete non-compliance with the law on the part of the state bodies, combined with a lack of interest in exercising FAI rights on the part of the public. Public campaigns, educational trainers and programs for developing court practices regarding this law have already tackled this issue.

Secondly, various shortcomings and limitations of the law became evident, establishing the need for further amendments. Since free access to information is one of the basic human rights, it should be included in the new constitution. Furthermore, the institution of the Commissioner should also be provided with a constitutional basis, since the practice both in Serbia and abroad has shown that such a body is a very efficient way to ensure free access to information. Securing for the Commissioner the right to challenge decisions of the President of the Republic, the National Assembly, the Government, the Supreme Court, the Constitutional Court and the Republican Public prosecutor would be an important step towards strengthening the Free Access to Information Act.

Finally, the need to protect civil servants who, in contravention of the obligation to preserve secrets, place at the disposal of the public documents that reveal the presence of unlawful and impermissible actions and thereby protect the public interest (protection of "whistle-blowers") leads to the third group of problems that arise from the inadequate legislation on state, military and official secrets. The lack of existence of a law on handling secrets (instead, this subject is regulated by more than one hundred legislative acts and pieces of secondary legislation) has, since the Free Access to Information Act was adopted, frequently proved to be a basis for abusing the right of free access to information. Restriction

of the right of access to information in the area of confidential documents, which takes place quite frequently, can be prevented only by adopting a specific law on handling secrets, which would provide for the following: an establishment of a single procedure for classifying the level of secrecy; a definition of the concepts of state, military and official secrets; a definition of a new classification of secrets; a definition of the requirements for classifying data under each of the secrecy categories; the possibility for inspecting such data; the establishment of an organ that would look after the protection of secrets; clear explication of the responsibility of handlers of secrets; and an obligation to implement a public interest test, regardless of the form of the document, before every secrecy classification.

Under the current legislation, the Commissioner rules in individual cases by applying the three-part test provided by Article 10, para 2 of the European Convention on Human Rights, to establish whether the public interest to know overrides the need to preserve a state or official secret. This test should be used in any instance when there is a conflict between FAI rights and interests that prevent disclosure of information.

This situation can be nicely illustrated by a case involving the non-governmental organisation Youth Initiative for Human Rights, which, at the end of October 2005, requested information on how many individuals were tapped by the Security Information Agency. The request was quickly denied, on the grounds that it was a state secret. However, the NGO filed a complaint with the Commissioner, who ruled that there was no harm to the interests of the state in the disclosure of such information, since no details about who was tapped and

when had been requested. The Security Information Agency decided to shield itself behind the tradition of state secrecy, completely disregarding the public's right to know. The information in question was statistical data, the disclosure of which would have no impact on the operation of the agency bodies, even though the data concerned an area that was traditionally considered a secret information; thus, protection of this data did not fall into the category of interests whose observance overrides the right to free access to information. However, even after the ruling by the Commissioner, the Agency did not provide the requested information, but appealed to the Supreme Court, initiating an administrative proceeding over the case. On May 23, 2006, the Supreme Court ruled that the information should be provided within three days, but the Agency to this day still disregards the ruling.

The Penal Code stipulates that if a state or military secret is disclosed, the perpetrator, whoever he or she is, shall be sentenced to one to ten years in prison. An exception to this is when the information disclosed pertains to a case of gross human rights violations, violation of the constitutional order or to the cover-up of an offence that carries a minimum punishment of five years in prison.

Defamation: national legislation and court practice

Serbia is one of the countries in Europe in which journalists are tried for defamation in accordance with the Penal Code, while in many other countries it is regulated only by civil law. After the amendments in 2005 (adopted at the end of 2005 and entering into force on January 1, 2006), the threat of

imprisonment was abolished, but defamation and libel are still regulated by the Penal, not the Civil, Code (thus, decriminalization has not been carried out).

Libel is still regulated by the Penal Code, but only financial penalties may be imposed. However, instead of making the presumption of innocence, Serbian courts continue to engage in the harmful practice of placing the burden of proof of innocence on journalists. Some media legislation experts maintain that a prison sentence is still a possibility, because if a convicted journalist refuses to pay or cannot pay the typically severe fines for defamation (which are sometimes up to a million dinars, i.e., 1200 EUR), the journalist could end up in jail.

The Penal Code does not precisely define "insult," while "libel" is defined as harm inflicted upon someone's honour or reputation by expressing or circulating untrue information. Libel proceedings can only be initiated by a complaint of the affected party and not *ex officio*. Defamation charges cannot be pressed by public bodies and institutions. The Penal Code distinguishes between value-judgments (insult) and statements of fact (libel). Penalties are graver for libel, thus the fines are double the ones that can be levied for insult. Fines for insult and libel are graver if they are committed through the print press or the broadcast media. The journalist, the responsible editor and the legal person who is the founder of the media outlet shall, according to the Public Information Law, not be held liable for damages if the inaccurate or incomplete information was an accurate quote from a public parliament debate, a public debate in a parliamentary body, a court proceeding or a document provided by a competent state body. However, the case of the journalist Zeljko Bodrozic suggests that this provision is not adequately

observed by the judiciary. Mr. Bodrozic was sentenced for libel, even though he used official documentation from the Ministry of Interior when claiming that the plaintiff was a criminal.

While in theory the criminal code and acts do not distinguish between public officials and common citizens, in practice public officials and public personalities in Serbia enjoy greater protection from the courts regarding defamation litigation, which is not the case in Western Europe, where public officials are subjected to greater criticism and scrutiny by the media and public opinion.

Besides libel and insult, a journalist can also be sentenced on other grounds, such as for "revealing or spreading abroad personal information or family conditions" (regulated by Article 172 of the Penal Code); the sentence can range from fine up to six months, and in the case of spreading questionable information through a media outlet, can be up to one year of imprisonment. Articles 173, 174 and 175 of the Penal Code stipulate a penal sum or a sentence of confinement of three months for those who publicly insult the state, the flag, the national coat of arms, any ethnic group, international organizations, the United Nations, the International Red Cross, or any other organisation of which Serbia is a member.

There is another continuous threat to journalists, namely the possibility of being punished not only for revealing, but also for "spreading abroad" information or, as it is defined in the Penal Code, "deliberate launching news intended to insult someone." Spreading abroad someone's words is what journalists actually do, and bearing in mind that the courts are not very sympathetic to the media, it is obvious that this

provision can potentially be used as a very efficient means for suppressing the freedom of the media. Once again, the problem is in the field of court practice; that is, journalists' treatment of a case depends on which judge tries the case, how independent from political and other authority he or she is (systematic lustration of the Serbian judicial sector has not been performed), and how experienced he or she is in the field. The situation is much more dire outside of Belgrade.

Another case involving Mr. Bodrozic is once again a paradigmatic example: on January 21, 2002, Mr. D Mitar Segrt filed private criminal complaints of libel and insult against Zeljko Bodrozic in the Kikinda Municipal Court, for a commentary entitled "Born for Reform". Bodrozic had written of Segrt that the latter, "being another supporter of Slobo [Slobodan Milosevic]" who "spent millions for the SPS [Socialist Party of Serbia] and JUL [Yugoslav Left] campaigns" and realised that "there was no way out", decided "to give the finger to his party and become a great supporter of reforms." At the time the article was published, Segrt was General Manager of Toza Markovic company in Kikinda, and prior to that had held high offices within the Socialist Party of Serbia; he was also Head of the Parliamentary Club of that party in the Parliament of what was then the Federal Republic of Yugoslavia.

On May 14, 2002, the court convicted the author of criminal insult, but acquitted him on the charge of libel. It dismissed the libel charge on the basis that the factual aspects of the extracts in question were, in fact, true and correct. As to the charge of insult, the Court found that the extracts were "actually abusive" and "inflict[ed] damage to the honour and reputation of the private plaintiff." Rather than constituting, as

argued by the author, "serious journalistic comment in which he used sarcasm," the Court decided that the words used:

are not the expressions that would be used in serious criticism; on the contrary, these are generally accepted words that cause derision and belittling by the social environment.

In the Court's view the use of slang words and emphasised quotations, rather than "a literary language that would be appropriate for such a criticism," showed that the expressions employed:

were used with the intention to belittle the private plaintiff and expose him to ridicule, and therefore this and such an act of his, though it was done within the performance of the journalist profession, is indeed a criminal offence [of insult].

The Municipal Court in Kikinda, Serbia, sentenced Zeljko Bodrozcic, a journalist with the *Kikindske* newspaper, to a fine of 10,000 Dinars (i.e., approximately the average monthly salary in Serbia during that period). The District Court in Zrenjanin dismissed Bodrozcic's appeal, explaining that the article was, indeed, insulting. But, on behalf of Mr. Bodrožić, the Human Rights Committee brought this case to the consideration of the United Nations Human Rights Committee), which ordered Serbia and Montenegro to annul the sentence and compensate the convicted journalist. The Committee also concluded that, when dealing with public debate on personalities from political life, and especially in the media, special attention should be paid to unhindered expression.

Even though there is a legal possibility for legal entities to press charges against journalists on the grounds of the civil

law, such cases have not occurred. The probable reason is the fact that such proceedings take a much longer time. The usual strategy deployed is to start both criminal and civil proceedings, then to use the ruling of the criminal court in the civil proceedings, thus leaving the civil court only to set the compensation amount. According to the Penal Code, there is a maximum fine for both libel and insult, while there is no limitation for determining compensation for damages in civil proceedings.

Accountability of Journalists

Ethical Codes

The two major journalists' associations in Serbia, the Independent Journalists' Association of Serbia (Nezavisno udruzenje novinara Srbije, NUNS) and the Association of Journalists of Serbia (Udruzenje novinara Srbije, UNS), after several years of working in different direction and fighting over premises,³⁶ have finally gathered together to establish the first self-regulatory body in Serbia. The unified Draft Journalists' Code was finally written in March 2006; this Draft Code, once launching, approved and signed by journalists all over the country, should replace the associations' individual codes that had been previously adopted. Adopting a unified Code of Ethics is intended to be the very first step toward establishing a media council in Serbia. At this moment, the process of establishing the Council is in the phase of promoting the Draft Code.

³⁶ Both associations are situated on the same address, in the very same building, each claiming to have an exclusive right to the facility.

Members of the working group that prepared the (two representatives per association, namely Dragan Janjic and Dmitrije Boarov representing the NUNS and Nino Brajovic and Miroslav Pusic representing UNS) together with other media experts have actively engaged in promotion of the draft code, fostering debate with other associations' representatives, as well as with journalists, editors and media owners in Serbia. Numerous roundtables and open discussions on the Draft Code have been organized all over the Serbia, while NUNS is still e-mailing this document to all the members, asking for suggestions and comments on the document.

At the moment, numerous issues regarding the Council have not yet been precisely established, i.e., what its duties would be, how many members the Council would consist of, who would be allowed to nominate them, how the Council should be financed and what the mechanism and sanctions used by the council would be. The working group that prepared the Draft recommends not including state officials on the Council, but instead gathering prominent representatives of journalists' associations for members of the council. Having in mind previous experiences of state regulation and state interference in media sector, this idea is widely supported, but it subsequently raises the question of financing that body, i.e., is it reasonable to expect this Council to be financially supported by the State?

The Draft Code is relatively short (consisting of a preamble plus nine articles), containing the principles of reporting accurately and free from pressures, regulating responsibility of journalists and their relation to their sources of information, dismissing dishonest methods, upholding respect for private life, prohibiting the publication of unfounded claims,

defining protection and support provided by the Journalists' association, etc. The Draft Code is available on the NUNS web site.³⁷

While the two professional associations of journalists in Serbia have internal codes, no media outlet has one of its own. The Serbian media do not practice use of internal codes, although there are no legal obstacles preventing them from adopting one. Observance of ethical standards and norms is monitored by the Courts of Honour, which were established under the auspices of the journalistic associations (either UNS or the NUNS, depending on which organization a journalist is a member of). For example, when it is noticed that a media outlet or a member of NUNS does not follow these principles and standards, the Court of Honour may publicly express its own position regarding the unethical conduct and publicly criticize the editorial board or journalists. If unethical conduct was perpetrated by members of the Association, NUNS may undertake the procedure of temporary or permanent exclusion from the Association. However, it seems that these entities have very narrow competencies, dealing only with large incidents and reacting only to specific complaints. The Court of Honour's criticism has a little effect, especially in cases when the criticized journalists are not members of the respective Association.

The comment on ethics made by Dragan. J. Vucicevic, editor of one of the major newspapers in the Serbia press, is indicative:

³⁷ <http://www.nuns.org.yu/>.

*When I write that the Governor of the National Bank of Serbia is a thief and a crook, I really mean it, so let him send me to jail if it is a lie... I am told that professional ethics should be observed. Well, I will adhere to ethics when Serbia becomes a normal state respecting the rule of law.*³⁸

On the covers of the daily newspapers in Serbia, one may encounter much ethically inappropriate content. For example, the daily *Kurir* featured on its cover page a photo of a suspect in the murder of a baby with the headline: "Serbia, Watch Out: He Killed a Child!" Cases of indecency, pornography and hate speech are not particularly rare, either.

Public awareness of the Code throughout the country is still very low, since the initiators are primarily focused on presenting the draft to journalists and media outlets and advocating for the Code to be considered, and hopefully adopted, by the journalists. The Draft Code regulates the conduct of all journalists, regardless of the media outlet for which they work, whether it be television, radio, newspaper, online, etc. NUNS and UNS suggest that the internal codes should be adopted by every media outlet and signed by journalists, editors and owners. In this way owners would be included in the self-regulation process.

At the moment, a citizen wishing to complain about content in the press may press charges before a court (if a particular law is violated), or exercise the right to address the public in the readers' section. If the complaint concerns content in the broadcast media, citizens may take the matter to court, the Broadcasting Agency, or, in case of public service media, to

³⁸ Weekly Reporter, no. 341, 25. January 2006, p. 19.

the Program Council of *RTS*.

The journalists' associations have not permanently monitored the media, due to insufficient capacities and above all financial resources, while the Courts of Honour presented their findings to the public sporadically and without any exact indicators. The independent body Media Watch Serbia, formed by the Media Centre and supported by UNESCO (United Nations Educational, Scientific and Cultural Organization) and the OSCE Mission to Serbia (The Organization for Security and Co-operation in Europe), has taken on the task of regularly monitoring and reporting on ethics in the print press. The work of this Council indicates that the media in Serbia, at least to the certain extent, are conscious of public criticism that addresses their work. It may be concluded that, over the past year, there was less pornography, while minors' privacy was better protected. These findings allow us to maintain that a permanent body with wide public support could considerably contribute to the general improvement of the media scene. There is almost no practice of establishing newsroom ombudspersons or adopting internal ethical codes within specific media outlets in Serbia. The only exception is the weekly *Reporter*. Editors and journalists from the *Reporter* had drafted, adopted and signed an Internal Code; unfortunately, this weekly has been closed due to bankruptcy.

Professional standards are usually promoted by the publication *Media Files*, which is a specialized quarterly journal issued by NUNS. It instigates debate on media-related issues, and therefore is sometimes used as a professional forum for discussing topics related to media ethics.

Also, a few journalistic awards granted by professional associations and sponsored by donors, in particular the Jug Grizelj Award and the NUNS award, may also be considered a kind of self-regulation instrument.

Recommendations

- It is essential to strengthen the capacities and increase the knowledge of media and media-related practices among the judiciary, especially on the local level.
- Governmental and public officials need to be constantly reminded of their obligations to observe the Freedom of Access to Information Act, the Public Information Act and the Broadcasting Act.
- Flagrant political and economic influence in the media sphere, especially through legislation, needs to be curbed by various initiatives in the media sector. Political and economic pressures could be decreased or at least revealed by making media ownership entirely transparent.
- Ensuring greater influence of professional associations in the nomination and general operation of the Broadcast Agency, insisting on professionalism and expertise in the work of the Broadcasting Agency, strengthening its capacities to deal with broadcasting issues and the establishment of mechanisms to ensure the accountability of the Broadcasting Agency.
- The right of free access to information must be included in the set of human rights guaranteed by the new Constitution for Serbia; also, the Commissioner for Information of Public Importance must be a constitutional category.
- It is necessary to amend the Free Access to Information Act so as to ensure protection of whistleblowers.

- A law on state secrets must be adopted.
- A law on the protection of personal data must be adopted as soon as possible.
- Complete decriminalization of defamation is needed.
- Individual media outlets need to adopt a unified ethical code and support adoption of internal codes.
- Raise awareness of the importance of media ethics and promptly react in cases of its violation.
- Ensure effective mechanisms of enforcing the code by establishing a Media Council.
- Involve the wider public and media owners in a debate on the founding of the Council.

Slovenia

*By Brankica Petkovic, Jernej Rovsek,
Gojko Bervar and Spela Stare¹*

Executive summary

There is a tradition of self-regulation within the journalists' association in Slovenia since the 1980s in the form of journalists' Court of Honour. However, although there have been initiatives from civil society to introduce new forms of media self-regulation such as a press (media) council, which would include not only journalists but also publishers and representatives of the public, there is hesitation on the part of the journalists' association and uncertainty among publishers about how to take such a step. One of the reasons for this probably lies in the fact that there is a constitutional right to reply and correction that is regulated in the details of the Broadcasting Act. However, despite such heavy regulation, the right of reply and correction has never been fully implemented.

¹ Given their professional affiliations and limited time to write this report, the authors have decided to divide the work. Jernej Rovšek described issues related to defamation and access to public sources. He works in the office of Human Rights Ombudsman in Slovenia. Gojko Bervar, editor at Radio Slovenia, described issues related to self-regulation and code of ethics. Špela Stare described issues related to protection of sources and disclosure of classified documents. She is secretary general of the Association of Journalists in Slovenia. Brankica Petković compiled and edited the contributions of the other authors and wrote the introduction, summary, conclusions and recommendations. She is program director at the Peace Institute.

Defamation is defined as both a civil and criminal offence. The Penal Code determines sanctions for such criminal offences, including the penalty of imprisonment for up to one year. In recent years, civil procedures have been used more frequently, while prior to 1990, there were more criminal procedures. In principle, the liability lies with the author or journalist, unless he or she is unknown, in which case the liability lies with the editor of the particular media outlet. The upper limit of civil compensation is not defined by law. There have been proposals to limit or abolish the criminal liability of journalists in Slovenia, but these proposals have not as yet been realised.

Under the provision of the Broadcasting Act, editors, journalists and other authors who publish in the media are protected from being forced to disclose of sources. However, it is not possible to appeal for the protection of a source of information in penal proceedings. Protection of sources is also covered by the journalists' Code of Ethics. In practice, few cases concerning protection of sources actually make it to trial. Journalists mostly appeal to the principle of the protection of information sources in case that end at the pre-trial proceedings, thus the public is not even informed about such cases. The most common situation in which journalists are pressured into revealing their sources is in cases involving the revealing of confidential state documents. In almost all known cases in Slovenia, journalists have been prosecuted and pressured into revealing their sources because they have revealed confidential state documents.

Access to public sources in Slovenia is regulated by a special law that grants everybody the right to obtain any information in the public sector, except information that is

specifically excluded by this law. Journalists have the same rights with respect to access to public sources as other citizens; however, the recently amended Broadcasting Act determines a shorter period for obtaining information for journalists (seven days instead of 20).

Context

With the population of two million and GDP per capita EUR 13,677 in 2005 (79.8% of the European Union [EU] 25 average), Slovenia enjoys the benefits of an established democracy and stable economy, have been a member of the EU since May 2004 and having entered the Euro monetary zone in January 2007. Still, there are serious political conflicts and a lack of consensus about major social and economic reforms, especially after the change of the government in 2004. The 2004 parliamentary elections brought the first big political change since 1992, in which the Liberal Democrats (LDS), after more than a decade as the leading political, force lost the elections and were not able to form a government. Instead, Slovenia got its first conservative government led by Slovene Democratic Party (SDS). Within the Parliament, which consists of 90 members, SDS occupies 29 seats and leads the governmental coalition which includes two other parties (the New Sloveni-Christian People's Party and the Slovene People's Party). The three governmental parties have a weak majority in Parliament, but often gain the support of members of Parliament representing the Slovene National Party and of the two members of Parliaments who represent Italian and Hungarian minorities.

Ever since the 2004 election, the debate about the media in Slovenia has been at the centre of political and public life. In particular, for many years the SDS harshly criticised the media as biased in favour of left-centre parties. After gaining power, the SDS started to introduce changes in media legislation, while at the same time using state ownership in the media or in the companies owning the media to influence changes within the ranks of media executives and editors. In 2005, the government introduced the new law on the public service broadcaster *RTV Slovenia* (RTVS), which was criticized for strengthening political control over RTVS; subsequently, the law was even challenged in the referendum. In 2006, the government introduced changes to the Broadcasting Act, which again provoked heated debate especially with regard to the right of reply and the distribution of state subsidies to the media. In both cases the changes in media legislation were introduced without consensus within the media community and society as a whole. Especially problematic are the huge disagreements between the journalists' association and the government about media legislation changes.

The media situation in Slovenia does, however, reflect the consequences of the transitional period, especially the specific privatisation process that allocated a significant portion of the ownership share of each privatised company to state funds. Even now, after almost 15 years of a market economy and a completed privatisation process, many media companies, including the most influential outlets, are still directly or indirectly owned by the state.

General overview

The legislative framework and social conditions in Slovenia guarantee a high level of protection of freedom of speech, although occasionally there are debates, mainly about hate speech or privacy, or about how to define the balance between freedom of speech and other human rights.

Article 39 of the Constitution states:

Freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions. Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well-founded legal interest under law.

At the same time, the Broadcasting Act (adopted in 2001, and amended in 2006) guarantees freedom of expression in article 6, stating:

Broadcasting Activities shall be based on freedom of expression, the inviolability and protection of human personality and dignity, the free flow of information, media openness to different opinions and beliefs and to diverse content, the autonomy of editorial personnel, journalists and other authors/producers in creating programming in accordance with programme concepts and professional codes of conduct, and the personal responsibility of journalists, other authors/creators of pieces and editorial personnel for the consequences of their work.

One unique feature of the legal framework in Slovenia is the constitutionally-defined right to reply and correction in the media. In the Constitution the article defining the right to reply is placed immediately after the article on freedom of expression. Thus, article 10 of the Constitution states:

The right to correct published information which has damaged a right or interest of an individual, organization or body shall be guaranteed, as shall be the right to reply to such published information.

Consequently, in the Broadcasting Act the right to reply and correction is defined in detail within a special section (chapter) of the law that includes almost 20 articles. In recent amendments of the Broadcasting Act, even more strict rules for the media on right to reply and correction have been introduced. This approach by the ruling coalition was criticized by the journalists' associations and media experts, since right of reply and correction have been proscribed in detail since 2001, but without any real efficiency. Although the media have not observed the law with regard to the right of reply in many cases, very rarely have cases been brought to court.

There is a self-regulatory body, i.e. an ethics council (official name is the Journalists' Court of Honour) within the Association of Journalists and the Trade Union of Journalists, which, through implementation of its code of ethics and judgments about complaints, contributes to the promotion of professional standards in journalism in Slovenia, including the understanding of value and challenges to freedom of speech.

Regulatory bodies in the broadcasting sector such as the Broadcasting Council and Agency for Post and Electronic

Communication deal with the licensing of broadcasting media independently from political developments. However, it is important to note that the director of this Agency is appointed by the government and that the new government after the 2004 elections changed the director. In recent years, the power of the Agency in comparison to the power of the Broadcasting Council (the body appointed by Parliament) has been increasing. According to recent amendments to the Broadcasting Act, the Broadcasting Council is becoming even formally only an advisory body to the Agency, without any real power.

There is a compulsory media register within the Ministry of Culture in Slovenia that was established by the Broadcasting Act in 2001. According to the law, all media outlets have to register before starting their operations and must provide certain data and documents. In its five years of existence, the media register has proven to be an instrument contributing to transparency since it is available on the website of the Ministry of Culture, although data are not always updated.

The media market is competitive, but still determined by the fact that there is significant state ownership in different and subtle modalities, especially in the most prominent print outlets. Several attempts to launch new general quality daily newspapers have failed. At the same time, foreign investments in the media industry have been until recently the exception rather than the rule. When we review the media ownership situation, we can see that the most powerful media outlets are concentrated in the hands of several companies with strong connections to state ownership, which provides opportunities for political influence on appointments of media executives,

which has occurred especially after the change of the government.

Self-regulation and Ethic Codes

The journalists' Court of Honour was established within the Association of Journalists as early as the 1980s; at that time it played an important role in establishing media distance from and resistance to political power. Due to some ethically irreproachable and professionally very powerful individuals, it resisted all attempts to function as an extension of the political elite and rejected attempts to have the Association punish disobedient journalists. One must know these few historical facts in order to understand the Slovenian self-regulation model and the problems connected to the attempts to change it into a fully-operational self-regulatory model like a press council. The historical position of the relatively independent journalists' ethics council – which now exists in the form of the journalists' Court of Honour – has led to a situation in which the majority of members oppose any attempts by the leadership (or leaderships) of the Association of Journalists to change the structure of the journalists' Court of Honour, even changes that have tried to bring the representatives of the public into its structure. Therefore even now the ethics council consists of nine members, all of them journalists elected for four-year terms (with the unlimited possibility of being re-elected) by the congress of the Association of Journalists and (this is the only change) the Trade Union of Journalists. The majority of Slovenian journalists are members of the Association of Journalists and Trade Union of Journalists, therefore we can say that these two organizations are the representative

organizations of Slovenian journalism, thus the code adopted by them is a representative code of ethics.

There are two codes of conduct within individual media organizations in Slovenia, namely the code of conduct of the public service broadcaster *RTV Slovenia* and the code of conduct of the financial daily *Finance*; however, the Code of Ethics of Slovenian journalists is the only code in the media industry on the national level Slovenia. (It should be mentioned that in the advertising industry there is code of conduct that has been adopted by the Advertising Chamber, which includes some media organisations among its members.)

We can take the code of ethics adopted by the journalists' Court of Honour within Association of Journalists and Trade Union of Journalists as a general code. As such, it is more or less respected by all journalists within the print press and broadcast media (it is binding for the Association and Trade Union members, but is respected also by most non-members). However, ownership changes in the Slovenian media have made the code less effective than it used to be. At the same time, the code of conduct of the public service broadcaster *RTV Slovenia* is a rather unfortunate compilation of some foreign codes of this kind (*BBC*, *CBS*, Netherlands Public Broadcaster, etc.) and will most likely be changed, not only because of the weak solutions it offers, but also because the regulation, governing bodies and management of the public service broadcaster have been changed after the change of the government.

The general code of ethics of Slovenian journalists was redesigned four years ago (the former code was inspired by the German Press Council code) by the members of both

organisations (the Association of Journalists and the Trade Union) with some help from media experts. The content of the code answers the classical repertoire of questions related to journalism ethics: the question of accuracy, balance and fairness in reporting (including checking information with multiple sources, giving the chance to the accused to tell their part of the story, admitting mistakes when they are made, not suppressing information, making a clear distinction between facts and commentary, etc.). The second set of professional standards included in the code is connected with journalists' accountability; with such provisions journalists want to insure they have no personal interest in producing such an article or report. Therefore, the code requires journalists to avoid any connection with advertising or conflict of interest that could compromise the profession. The third set of standards in the code prescribes special rules regarding reporting on minorities, children and other vulnerable social groups. The last set of standards serve and safeguard journalists' integrity and autonomy. Journalists should protect their sources, stick to professional rules and should not be punished when acting in accordance with the code.

The code was adopted in 2002 and is generally accepted by journalists in the major Slovenian media. The code is available at the web site of the Association of Journalists and Trade Union of Journalists in Slovenia at <http://www.novinar.com>. The journalists' Court of Honour decides cases on the basis of this code, generally in response to a complaint from the affected person or anybody else who thinks that an article or report breached the code. In some rather rare cases the ethic council can adopt a decision on its own initiative or can produce a statement on a special social phenomena. Implementation of the code of ethics of Slovenian

journalists illustrates the work of a typical self-regulatory mechanism without any sanctions other than public exposure, which is provided by the publication of judgments by the journalists' Court of Honour on the website of the Association of Journalists and Trade Union of Journalists. The judgments are occasionally published also in the major print outlets. The fact that this self-regulatory body does not include publishers and the public make the judgments of the Court of Honour more vulnerable. Without publishers taking part in the self-regulatory body, the media are not committed to regularly publishing judgments by the court of honour. Such a situation makes the work of the Court of Honour less convincing in the eyes of the public. Especially the new, mostly small, commercial media outlets ignore the main principles of the code of conduct, while producing their programmes or publications mostly with uneducated or inexperienced journalists and cutting them off from links with professional organizations. On the other hand, the publishers of the biggest newspapers and broadcasters more or less respect the code. The situation has slightly worsened due to the growing number of tabloid publications, which generally ignore the code, although sometimes they respond to the requests of the journalists' Court of Honour. Given the rather confusing state of Slovenian media ownership situation, in which ownership data are published in the media register but without accuracy and without providing a complete picture about owners of the media, it is hard to talk about the media owners' relationship to self-regulation or the code of conduct. Their relation could be best described as "silent ignorance," as most of them simply do not try to enter deeply into the mechanisms of media production, because some of them have only staked their shares in the media for a short time, while others have entered the media scene following the advice of their political partners in the government.

Because of the fact that some of the decisions by the journalists' Court of Honour have been used in regular court proceedings as aggravating circumstances against the journalists, both founders of the ethics council (i.e. the Association of Journalists and the Trade Union of Journalists) have decided that in such situations, the journalists' Court of Honour should refrain from making a decision until the court process is concluded.

Several years ago there was a substantial effort by the Peace Institute supported by the Dutch embassy in Slovenia to encourage debate on the possible re-design of the current journalists' Court of Honour into a real and complete tripartite self-regulatory body. The initiative failed, although it is still debated from time to time. The main reason was resistance on the part the leadership of the Association of Journalists, who argued that the journalists' Court of Honour is sufficient and that it is not right time to invite publishers to participate in an ethics council, since they are ignorant and abusive with respect to social and labour issues. Given the growth of politically-motivated changes in media ownership in Slovenia, media regulation changes enforced by the government without wide consensus in society, and the rise of an aggressive yellow press, there is an increasing awareness that the media community and society as a whole would benefit from a strong, influential and independent media self-regulatory body that included not only journalists. Still, it is difficult to predict whether consensus (primarily between journalists and publishers) will be reached to make such move in near future.

There are no newsroom ombudspersons or readers' editors in the media in Slovenia, but at the public service

broadcaster *RTV Slovenija* there are initiatives to introduce the position of ombudsman within recent changes of the statute. Since 1998, a group of researchers and journalists in Slovenia have been developing the Media Watch project, which includes a media watch journal, books, brochures with guidelines, seminars and round tables, and which provides regular reflection on media policy and practices. Journalism education is provided at the Faculty of Social Sciences in Ljubljana, but recently new university media-related programmes have been offered in other academic institutions outside Ljubljana.

Defamation

In Slovenia, defamation is defined as a civil and a criminal offence in Civil Code and Penal Code, respectively. The definitions of individual offences differ in the two laws.

Proceedings related to criminal offences against one's honour and good name, including insult, defamation, injurious accusation, exposure of personal and family circumstances, and accusation of a criminal offence, are initiated by a civil lawsuit. When these offences are committed against a state body or an official person, the prosecution is initiated following a proposal by the injured party.

The Penal Code determines sanctions for the criminal offences described in this chapter in the form of either a pecuniary penalty or penalty of imprisonment for up to one year.

The civil-legal responsibility is defined by the Civil Code as the umbrella or systemic law. In recent years, civil

procedures have been used more frequently, while prior to 1990, there were more criminal procedures.

In sentencing, there is no difference made between cases involving offenses against ordinary citizens versus public figures, the only difference being that in the case of the latter, the procedure is initiated by a public prosecutor following a proposal by the injured party.

Public administration bodies cannot initiate a proceeding in relation to the criminal offences referred to in this chapter; however, the offence of the defamation of national symbols, of the president of the republic, of a foreign country or of an international organisation is defined separately.

In principle, liability lies with the author or journalist, unless he or she is unknown, in which case liability lies with the editor of the particular media outlet. The upper limit of civil compensation is not defined by law.

The difference between value judgments and statements of fact (insult and libel) lies in the law. The Penal Code defines a higher penalty for defamation than for insult. The differentiation is complicated; however, the fact that the statement is true does not release one from liability for insult. The assessment of this difference is subject to a specific procedure; however, to a large extent courts protect journalists in cases of infringement of privacy, in particular in relation to public figures.

There have been proposals to limit or abolish the criminal liability of journalists in Slovenia, but these proposals have not as yet been realised.

Protection of sources and disclosure of classified information

The right of a journalist to protect anonymity of his/her sources gained legal basis in the Broadcasting Act, which was adopted in 2001. Article 21, paragraph 2 of this law states: "Editors, journalists or authors of the work published in media are not bound to reveal the source of information except in cases provided by the penal legislation."

In the previous media law, which was in force from 1994 to 2001, there was no provision that would protect the right of journalists not to reveal the source of information.

Yet since the information about the source is not considered a professional secret, the protection of a source is not an obligation but a right of the journalist. This means that such a right will not release the journalist from testifying in trial proceedings in the court of law; however, the journalist can, in accordance with article 231 of the Trial Proceedings Act and based on the Broadcasting Act, refuse to respond to a question about a source of information. Whether the reasons to refuse to answer are justified is then assessed by the court of law.

However, it is not possible to appeal for the protection of a source of information in penal proceedings. There is no such provision in the Penal Code to acquit editors and journalists of an obligation to testify about the origin of the source of information and those pieces of information that they learned about at their professional work. There is no protection of confidentiality of sources and information especially in cases that involve classified information. For journalistic work there is an especially important provision that defines circumstances

that make the publishing of classified information without permission not liable to punishment; however, numerous stipulations make this provision practically unemployable. The stipulations that make the publishing (or the provision for publishing) of an official or military secret not liable to punishment are:

- the contents of an official or military secret must be in opposition to the constitutional order of the Republic of Slovenia;
- the secret must be exposed with the intention to let the public know about the irregularities which have been (or still are) going on in the organising and conducting of an office or military forces;
- the publishing of this information needs to have no harmful consequences for the state.

However, even more interesting is article 282 of the Penal Code, which states that the penal act of betrayal of a military secret is committed by the military person who delivers the secret to an unauthorized person as well as by the person who "in an unlawful manner acquires information that he/she is aware is guarded as a military secret or whoever publishes such information without permission." For both acts the threatened sanction is from three months to five years imprisonment.

The liability for the disclosure of an official secret is analogous. Both the journalist and the paper that publishes classified information can be punished for betrayal of a state secret. The threatened punishment is up to three years imprisonment.

The protection of classified information is regulated by the Protection of Classified Information Act, which defines sanctions (fines) for authorised persons who reveal such information. The Penal Code defines disclosure of an official secret as a special criminal offence.

Article 6 of the Protection of Classified Information Act states that a document that was classified as confidential to cover up a penal act, breach or abuse of authority, or to cover up some other illegal act is not considered classified.

According to article 244 of the Penal Code, a witness who does not appear in court can be brought by force or punished with a fine that can be at least one-fifth of the average monthly salary in Slovenia and not more than three average monthly salaries. If the witness appears in court and without legal ground refuses to testify, then the fine is the same as described above or the witness can be committed to prison for as long as he or she is not willing to testify or as long as his or her testimony becomes dispensable or as long as the penal proceeding does not end, but in any case for not more than one month.

The meaning of the principle of protection of information sources was nevertheless acknowledged by the Slovene court when deciding about one case of tapping journalists' telephone calls that was widely discussed publicly. According to the court, in this case the public's interest in learning the truth and identifying the person responsible was proven without doubt. Through the acquisition and processing of the list of incoming and outgoing phone calls of the journalist's mobile phone, the police tried to identify information sources. The phone was the tool that enabled the plaintiff as an investigative reporter to

acquire relevant information. This, according to the court, blocked further investigative work by the journalist since:

...no one will wish to give certain information over the telephone when it is possible and even likely that the source of this information is identified, which consequently influences also the professional integrity and the success of the journalistic work, especially when investigative reporting in the political domain is concerned.

Under the provisions of the Broadcasting Act, editors, journalists and authors of works published in media are protected from forced disclosure of sources. This includes staff journalists as well as freelancers, print journalists and those working for broadcasting media and different types of Internet-based media, but excludes publishers and cable and satellite channels. Third parties who act for journalists or media organisations or their telephone or Internet providers are not protected from forced disclosure of data about journalists' communications with sources or from interception of them.

When publishing articles that include information gained from sources who demand anonymity or that include even business, official or military secrets, journalists must by all means set the agreement of his or her editor. According to the Slovene legislation, the accountable editor is, besides the author, responsible before the law for all published information. Due to the cooperation of the journalist and the editor, the responsibility for a single published item is broader.

In reality, the editors of the Slovene media as well as journalists appeal to the right of the source's anonymity, while

the media institutions support the editors' decisions to protect the sources of published information.

Media institutions mostly cover the legal expenses that arise from the defence of journalists when criminal or civil prosecution takes place. Bigger media outlets cover expenses for regularly employed journalists as well as for those bound to them by contract only. Smaller outlets more or less cover expenses for regularly employed journalists only. We should mention that journalists are usually defended by the best Slovene lawyers.

Protection of sources is covered also by the journalists' Code of Ethics. The previous Code of Ethics of Slovene journalists stated in the Article 6: "the journalist is obliged to respect the confidentiality asked for by the information source." The new code, passed by the Slovene Association of Journalists and the Trade Union of Journalists in October 2002, states the following on the confidentiality of the source of information in Article 4:

The journalist should identify the source whenever feasible. The public is entitled to know the source if it is to appraise the significance and credibility of information. The journalist may consent to the anonymity of the source if information can not be acquired otherwise.

Article 5 of the Code explicitly enables the right to decline disclosure of the source of information: "The journalist may decline testifying and disclosing the source."

There are not many court cases involving the protection of sources. Mostly the cases end with the journalist being

brought to the police for a hearing. Journalists usually appeal to the principle of the protection of information sources, and thus the cases end at the pre-trial proceedings, which the public is not even informed about. The most common situation in which journalists are pressured into revealing their sources is cases involving the revealing of confidential state documents. In almost all cases journalists are prosecuted and pressured into revealing their sources because these sources revealed confidential state documents. Some such cases are described below:

The Hojnik case

In 2003 this case was taken to the court, where the public attorney's office (following the suggestion made by two police officers) began prosecution of the main Slovene daily *Delo's* journalist Žarko Hojnik. The public attorney's office took over the prosecution for two penal acts of offensive accusations since there were two officials in question. In his article, the journalist had written about irregularities at the police administration in Kranj and the public discrediting of its director. In the process, the journalist reported some serious accusations about the irregularities occurring in the work of the two police officers. Hojnik claims that he trusted his source completely and that he wrote the article based on the source's information. At the trial in the court senate the journalist, with permission from the source, revealed the source's identity and said that his source would be willing to testify as well. The court then questioned the source who gave the journalist the information in question.

The Zgaga case

On June 9 and 10, 2000, a journalist from *Večer* newspaper published two articles, in which he exposed the joint intelligence operation of the Defense Intelligence Agency (OVS) of the Slovene Ministry of Defence and the US Defense Intelligence Agency against the Army of the Federal Republic of Yugoslavia. The document proving that the operation was carried out without legal grounds had a top secret classification. The document contained written statements from both intelligence agencies about the non-existence of proper contracts and the need for higher level arrangements in order to cover their co-operation.

In June 2000, the criminal police following the suggestion of the OVS and the attorney general's office conducted a search of the journalist's apartment and office. Following his lawyer's advice and having realized that the document contained no indication about his sources, the journalist himself turned over the incriminating document to the criminal police. In August of the same year a penal denunciation was filed against the journalist for the supposed penal act of the betrayal of a military secret. The public was informed about the charges at a press conference by the Minister of Defence Janez Janša, while the journalist, despite the fact that he had been covering this field for numerous years, was not allowed to enter the press conference. The minister's statements and accusations against the journalist were made public, while he had no chance to defend himself, since he was not informed about the content of the charges against him at all.

In October 2001 he had his first hearing before the investigating judge on suspicion of having committed the penal act of betrayal of a military secret, for which the sentence is

three month to five years of imprisonment. The two OVS officials were also questioned; all three defended themselves with silence. After the hearing the investigating judge immediately ordered legal investigation into this case, while the lawyers of all three defendants lodged a complaint. The public attorney's office, in making a claim for an investigation, argued that the journalist threatened the lives of the agents, did harm to the state's defence and jeopardised the entry of Slovenia into the North Atlantic Treaty Organisation.

The out-of-hearing court senate granted the defendants' complaint and demanded that the attorney's office and the OVS substantiate their reasons for prosecution in greater detail. The matter returned to the investigating judge. On June 28, 2002, he led the second hearing for the defendants, who again defended themselves with silence. After examining all the statements and gathering evidence, the investigating judge decided to discard prosecution, since no evidence of a crime was demonstrated. In such cases, the decision of the investigating judge must be upheld by the out-of-hearing court senate, which in this case voted down his decision and ordered a legal investigation. A complaint has been lodged against the decision of the senate at the high court in Ljubljana; however, the complaint has not blocked the investigation.

After three years, the journalist is still involved in the pre-trial proceedings. He is waiting for the decision of the high court or the findings of the investigation. If the complaint is turned down and the investigation finds enough evidence for prosecution, the public attorney can decide to file a bill of indictment, which would initiate the prosecution of the journalist for the supposed betrayal of a military secret. There

is a great possibility that if the case comes to court that the trial will be conducted behind the closed doors.

The JBTZ case

This case dates back farther but we bring it up to cast more light on the importance of the protection of sources in Slovenia. Namely, in 1989 the Yugoslavian military intelligence agency working through Slovene agents arrested a journalist from the weekly *Mladina* Janez Janša, which was followed by the arrest of the journalists and editors Franci Zavrl and David Tasić. Through a Yugoslavian Army employee, Ivan Borštner (who was arrested as well), they had managed to obtain a secret military document that indicated an overthrow of the Government in Slovenia was imminent if the Slovene leadership's resistance to the federal policy continued. Yet the arrests of the foursome (Janša, Borštner, Tasić, Zavrl = JBTZ), who of course at the trial did not wish to confirm that Borštner was their source, brought about severe public protests, which were gradually joined by all representatives of the authorities. The movement turned into the democratic opposition, and in only a year and a half it led to the change of the regime and the beginning of the preparation for the independence of Slovenia. Janez Janša is today the leader of the biggest political party and president of Slovenian government. although as the Zgaga Case indicates, he seems to have forgotten his journalistic past.

Thus, the issue of the protection of sources in Slovenia can be understood as the inducement (but not the reason) for the disintegration of Yugoslavia.

Access to public sources

Access to public sources in Slovenia is governed by a special law that grants everybody the right to obtain any information in the public sector, except information that is specifically excluded by this law.

Journalists have the same rights with respect to access to public sources as other citizens; however, the recently amended Broadcasting Act determines a shorter period for obtaining information for journalists (seven days instead of 20).

There is an Information Commissioner in Slovenia, who deals with complaints related to the access to information of public character and the protection of personal data, including complaints from journalists. According to the latest changes in legislation, the test of public interest can be introduced in cases in which it is not clear whether certain information qualifies for exception from public access.

Conclusions

In Slovenia there are many constitutional and legal instruments that could provide free and responsible journalism. With regard to certain issues the media regulation is arguably too detailed and difficult to implement. However, apart from the legal instruments, there are also political and social circumstances that strongly effect media performance in Slovenia.

Although defamation is regulated in both Civil and Penal Code, it is encouraging that there are almost no criminal proceedings against journalists in this field.

It is significant that there was a case of the disclosure of classified documents and protection of journalistic sources (namely the JBTZ case) that contributed to the democratic movement in Slovenia in the late 1980s. It is even more interesting that the present Prime Minister of Slovenia, Janez Janša, was a victim of military prosecution in that case, while later in his position as Minister of Defence he was involved in the prosecution of a journalist on the same basis: disclosure of classified documents and protection of sources.

Journalists in Slovenia have developed their own self-regulatory body, the Court of Honour, which deals with complaints based on a code of ethics, but its power and visibility is not very convincing. It seems that further steps need to be taken to make the industry, i.e. the publishers, also committed to the self-established code of conduct, and to require the publication of the court's decisions.

Recommendations

It would be good if publishers and journalists in Slovenia would act together to establish a joint, strong and visible self-regulatory body, based on the mode of press councils in many European countries.

Right to both reply and correction is formally provided, but it is necessary to analyse how it works in practice and what should be done to make legal provisions more clear and

efficient. At the same time, additional efforts should be made to promote and empower citizens to use of the right to reply and correction since it is presently most frequently used by political and other public figures.

Additional public debate is necessary to question the fact that defamation is still a criminal offence in Slovenia which can lead to the imprisonment of a journalist for up to one year.

CHALLENGES TO MEDIA SELF-REGULATION IN 2007

ALBANIA

By Ilda Londo

Executive summary

At the moment, Albania has a robust media scene, which has developed significantly since its early stages. However, in spite of the undeniable progress, ethical violations still exist. Some journalists have perceived freedom of expression as “a license to kill.” Although many journalists seem to be aware of the situation, they lack both the incentive and the initiative to improve the situation.

Last year witnessed some progress in the area of self-regulation, with the approval of the revised Code of Ethics by the journalists’ associations and their agreement to endorse the Council of Ethics as a self-regulatory body. However, given the weak organization of these very associations, self-regulation as a practice has not progressed significantly.

On the other hand, the journalists’ union has made some progress in its negotiations with the Ministry of Labour and the media community about a collective agreement, although a concrete result has yet to be reached. In this context, the labour market and the working conditions of journalists continue to be unstable, leading to a low interest in achieving ethical excellence through self-regulation. Similarly, media owners, with a few exceptions, do not seem to be particularly interested in improving the ethical record of their media.

On a more positive note, after several rounds of negotiations and discussions, the attempts to decriminalize defamation have marked significant progress and the law is expected to be passed this year. This expectation renders the necessity for media self-regulation even more imperative and the need for an efficient and widely accepted implementing body for ethical conduct more urgent.

Context

The free press constitutes perhaps the clearest achievement of the young Albanian democracy. The role of media in Albanian life has become progressively more powerful and it is increasingly being perceived as a tool for development in different sectors of society.

However, in spite of the undeniable progress made in this regard, Albanian media still presents themselves as oriented more towards politics than towards public interest. In this context, problems of journalistic ethics remain among the most serious problems in Albanian media. Some journalists have perceived freedom of expression as “a license to kill”.

When it comes to journalistic standards, even though significant attempts to provide sources and balanced reporting have occurred, the implementation of ethical codes has lagged behind. Admittedly, the last revision of the Code of Ethics was completed last year, along with a project that aimed at examining the possibility of establishing a self-regulatory mechanism. In September 2006 the representatives of the journalists’ associations and the journalists’ union signed an agreement that stipulated the observance of the Code of Ethics

and their support for the Council of Ethics. However, due to the numerous political developments since last September and the lack of awareness and agreement among the media outlets on the need for a body that would oversee ethical conduct, there has not been any real progress in the Council's activities so far.

In other developments, two years ago the Albanian Media Institute in cooperation with the Open Society Justice Initiative drafted proposals for the amendment of Albania's Civil and Criminal Codes, which would in effect decriminalize defamation. After discussions and negotiations with many Members of Parliament, the Minister of Justice and recently the Prime Minister, these amendments have made it on to Parliament's agenda. They seem to have encountered no particular resistance and are expected to pass in early autumn, once Parliament elects the President and other emergency issues are addressed. This will mark an important step forward, which would still need to be balanced by a greater individual responsibility and the application of higher professional and ethical standards.

Such balance would be provided by an efficient self-regulatory mechanism, which would improve the ethical standards of the Albanian media, thereby increasing their social value as well as diminishing the potential for libel cases. Bearing in mind the Albanian media landscape, the establishment of an efficient self-regulatory system is by no means an easy task. So far, self-regulation has been almost non-existent. The lack of journalists' rights poses serious difficulties for the facilitation of a self-regulation process. Although in the last year the union has made progress and has agreed to sign a collective agreement with the Ministry of Labour, it still has a long way to go in order to convince the

media owners to respect this agreement. On the other hand, low ethical standards, the existence of a criminal law on defamation, and inconsistent court practices in this area point to a clear need for establishing such a practice.

In spite of the generally accepted need to self-regulate the media, the Council faces the formidable task of establishing its authority with the media community and raising awareness about the necessity of requiring and enforcing ethical rules both among the media and the general public. This task becomes increasingly important in light of the decriminalization of defamation and libel measures currently under debate in Parliament. Hence, the efforts to promote media self-regulation as an invaluable tool in implementing ethical standards should rank among the priorities in media development.

Media monitoring on ethical conduct

In order to identify the needs and areas of improvement in Albanian media and outline the best ethical practices and their violations, a three-month monitoring of print and electronic media was undertaken. In the absence of regular market research on the popularity of both print and electronic media, the selection was based on the general existing perceptions of popularity among the media community. The monitoring included the prime time news on two commercial channels, TV Klan, a national channel, and Top Channel, which does not have a national license, on two randomly selected days per week for a period of three months. Although Top Channel does not have a national license, it has managed to cover a substantial part of the territory by retransmission on other channels or by other means. In addition, it is also

regarded among the three most influential TV stations in the country, because of its news coverage and other very successful programs. Top Channel's *Fiks fare*, a satirical information program, which combines investigative reporting and humour immediately after the prime time news, and which is one of the most popular TV programs in the country, was also monitored.

With regard to print media, again no circulation figures or any other market research on their impact or popularity exist. Our monitoring focused on four out of 25 daily newspapers, *Shekulli*, *Shqip*, *Panorama*, and *Gazeta Shqiptare*, arguably the most influential ones in the market. The monitoring was done on a daily basis, focusing on the sections on social issues and crime and justice reporting, which continue to be rather problematic, involving as they do, communication with people in difficult situations, and hence a potential for ethical misconduct.

The analysis employed the criteria of professional journalism, such as accuracy, impartiality, balance, good taste, public interest vis-à-vis private life, etc. The findings below focus on the best practices and most flagrant violations in the coverage of minors, privacy, reporting of suicides, visuals, investigative methods, selection of topics, and economic interests vis-à-vis editorial content.

Reporting on minors

One of the most sensitive aspects of media coverage are the articles that deal with children, and the way they are identified, presented, and dealt with, especially in times of

distress, including juvenile crimes or juvenile victims of crime. Naturally, these are delicate cases even when reporting on adults; with coverage of children, they hold a special ethical importance, given the different care and methods it takes to address minors. Compared to several years ago, when identification and coverage of minors was a major problem in Albanian media, there has been significant improvement in this area. However, as the following analysis and examples will show, this is still a lingering issue and it is far from being completely resolved. Hence, a careful look at the way minors are covered in the media can reveal the progress made in the ethical treatment of minors.

The starting point in this analysis is the identification of minors in the media. Simple as it might seem, in practice it varies a lot and unfortunately, often is not in the child's best interest. For example, minors are only rarely not identified in the articles. The most widespread practice is that of identifying them with initials and no photos, which at first glance might seem reasonable. However, a closer examination reveals that it is not appropriate since most of the cases mentioned are in small villages or towns, where people know each other well and it is not difficult to guess who the victim or the perpetrator is, given the initials and the age.

For example, during the period of monitoring, there were several pieces on rape cases, some involving minors. In none of the cases the name or image of the victim was revealed; only initials and other data were made public. So, on May 28, *Gazeta Shqiptare* reported the rape of a 16-year old girl identified as "V.L., 16, a freshman in the village high school." The village in question was Luzni in Peshkopia, which would make the actual identification of the girl easy enough for the local residents. In

another rape case, this time in Saranda, the victim was identified in *Panorama* on March 23 as "Z.L., 15, a freshman in the 'Sulejman Delvina' High School." Similarly, for a small town it is not difficult for the students and other people to associate the initials and the other facts with the rape victim. In such cases, which are already traumatic enough for the victims, the gossip and the public knowledge and attention brought by the media coverage in small villages and towns certainly makes things much more difficult for them. Besides, it is questionable what the real public interest in revealing the initials of the victims is, in the first place.

Other cases of reporting on minors, although not as serious as rape, also involve their identification, sometimes in full. For example, the article "High School Girls Fight with Bottles for Their Boyfriend," published in *Gazeta Shqiptare* on April 17, covers a fight between two girls in Berat. The article identifies the girls by full name and age, respectively 16 and 18. It recounts the aggressive quarrel that took place in the street and resulted in injuries for one of them. Again, it is questionable what the gain in the public interest is by reporting on this issue in first place. Secondly, revealing the fight participants' full identity, especially given the fact that the quarrel was related to private issues, makes the piece even more suspect.

In fact, the intrusion into private life and the way details, rather than the essence, become the motive for making certain information public, is another aspect analyzed in regard to the ethical conduct of Albanian media.

Intrusion into private life

The way people are addressed by the media in cases of grief, mourning, accidents, or general distress and how this is reported to the public, are very revealing of the media and journalists' ethical engagement. In general, Albanian journalists seem to have no problems getting interviews from victims, witnesses, or relatives of the victims and perpetrators, sometimes even the perpetrators themselves. This aspect adds to the complexity of covering social issues or crime and court reporting. Sadly, the coverage is not always ethical and the information is not necessarily vital to the public.

Intrusion into private life is especially salient in cases of domestic violence, which are abundantly covered on the pages of Albanian media. For example, in mid-April the police arrested a woman in a village near Tirana for murdering her husband a year before, after suffering constant abuse. After the murder, she asked her 10-year old daughter to help her bury the body, and then make up a plausible story of his disappearance for the neighbours. The girl was identified by name and age, and one newspaper even had a photo of her crying after her mother's arrest. In general, when the crime was discovered, almost all newspapers had interviews with the daughter, trying to get details on the crime.

Although one of the papers acknowledged the girl's traumatic experience, it had no problem interviewing her and publishing the interview. The commentary read: "Nobody but Migena knows what happened. In a really difficult situation, where even the adults cannot find easy answers, Migena has revealed to our newspaper details of the crime after its

discovery.”¹ An interview follows, taking her through the murder and its cover-up step by step. Surely, it must have been a horrible experience to live through, let alone recount again and again for the papers. And, again, it is doubtful that the readers had any benefit from knowing the manner of burying the victim, or the stories told to the villagers, and so on. Other than sensational details for avid crime story fans, this story seems to present nothing of public value as a whole; at least nothing that would justify the repeated trauma for the minor.

Media intrusion in times of distress is also found in less severe cases. For example, in mid- May, a 69-year-old professor, ex-Member of Parliament, suffered a fit of depression and left home for two days. Subsequently, he was found alone and disoriented in the hills around Tirana and was taken to the hospital. Top Channel interviewed him for its news edition on May 15, at the hospital, while he was clearly distressed, exhausted, and wearing a breathing mask. At one point they asked him, “How are the doctors treating you?” a question perhaps irrelevant to the situation, and one that would only further exhaust him, without any specific interest for the viewer.

Even in those cases when there is an interest for the viewer or the reader, the potential dilemma between privacy intrusion and public interest is almost invariably resolved in favour of the public interest, however it is defined. For example, when a woman was hospitalized after a bite from a suspected black spider, a threat for farmers that has emerged in the last two years, there was an undeniable public interest. However, the media coverage did not fully address the public

¹ Gerti Xhaja, “Vret dhe gropos burrin ne sy te vajzes,” Gazeta Shqiptare, April 17, 2007, p.15.

interest. For instance, the May 15 evening news edition of Top Channel included an interview with the woman in the hospital. Barely able to speak, clearly tired, she described very briefly what had happened. And yet, the story only elicited the interest, but did not satisfy the need for information: there were no interviews with experts, no advice from doctors, or data from relevant authorities on the perceived danger.

Other cases that arguably fall within the category of public interest are those concerning domestic abuse, a widespread problem in the country. Covering these issues has become an instrument of raising awareness and trying to find a solution. However, given the manner of coverage, a legitimate question emerges: is the goal, service to society or pure sensationalism. Very often the pieces include gruesome details, usually in the headlines; there are shocking images, real or illustrative, and the victims are often interviewed. If properly used, these stories would analyze the phenomenon and try to address it in order to provide information to the public and even attempt to find a solution. However, they often stop at simply covering the case at hand and very rarely present it as part of a problematic practice, with statistics, experts' opinions, and serious analysis or follow-up.

A typical case was that of a seven-month pregnant woman, who went to the emergency room after her husband had beaten her the night before. The story appeared in almost all the media; it focused on this woman's sad life after marriage, her problems with her in-laws and her husband, and the many other difficulties she experienced, as told by her. *Shekulli* covered the story on March 23, including a photo of her, two black eyes and various other bruises on her face, in her hospital bed. From the interview, it is clear that the woman

had consented to the photo. However, this is only one of the many stories that rightly report on the situation and raise awareness of these important issues, but are forgotten the very next day. The weakness of these reports stems partially from the fact that they are rarely woven into a deep factual analysis that would present a complete picture of this severe social problem. Rather, due to the lack of resources, interest, or sometimes professionalism in the media, these articles simply provide a one-day job for the journalists, who quickly move on to the next case. Even worse, this often comes at the expense of the victims, who expose their personal lives to the public, but gain nothing for themselves; in fact, quite the opposite at times.

Reporting on suicides

Another particularly sensitive aspect of reporting on people, crime, and private life is that of suicide reporting, perhaps the last straw in terms of how much the people affected can take. Those left behind have not only suffered a terrible loss and are asking hard questions of themselves, but also have to endure questions from the media, or the public in general. Hence, the reporting on such cases, the number of which has recently increased significantly in the country, is an important measure of journalistic and media ethics.

Perhaps the most delicate and widely covered case in this respect was that of a 10-year-old boy's suicide on April 17, under mysterious circumstances. *Shqip* was the only newspaper among those monitored, that identified the victim as "E. Lala, 10," with no further information other than a brief description of the sad event. The other media ran long articles, including

pictures of the deceased in his school uniform, his name, the place where he had hung himself, as well as interviews with his father, also pictured. Clearly, the media were very much present in the lives of the family hit by the misfortune, in perhaps the most terrible time they had experienced.

In general, in the three months of monitoring, the Albanian media almost always revealed the identity of the suicides, their full names and age, and if available, their addresses and pictures. If possible, the reporters also interviewed the relatives, breaking into their grief and conveying it to a wider audience. In addition, the reports also described the manner of death, providing details on how the hanging was done, where the gun was aimed, or what kind of poison was used. In this way, the stories ran the risk of offering blueprints for potential future suicides, something that the media are clearly not worried about at the moment.

A notable exception in this respect was the daily *Panorama*, which published the opinion of a psychologist as a sidebar to the article on the 10-year-old's suicide mentioned above. Among other things she wrote: "I would particularly call on visual media to be more careful with the news coverage of suicides, since last year we had copycat suicides after news broadcasts (e.g. jumping off a balcony) , the same way as we are having this year."²

In addition, such shocking events as the one mentioned above have also prompted the media to take a pause and look at the phenomenon more carefully, providing analysis, figures, and trying to give a more complete picture and address the roots of the problem. So, apart from reporting on the sad

² "The 10-year-old's Suicide, a Copycat" *Panorama*, April 18, p.9.

suicide of the 10-year-old, *Gazeta Shqiptare* ran other complementary articles on the issue, as well. One headline ran, "Suicides Victims Outnumber Murder Ones by Two." The piece quoted official figures and incorporated interviews with authorities on the subject. Similarly, *Shekulli* reviewed recent suicide numbers in Tirana, and provided a list including motives. This trend is not limited to suicides, though: in mid-March several serious road accidents happened throughout the country, all involving multiple victims. The reports were accompanied by interviews with the police authorities, concerns about road safety, and statistics. An example is the March 14 TV Klan story, which included an interview with the head of the police in the country, pictures of the problematic roads and missing signs, as well as statistics,. Unfortunately, it seems that these relatively in-depth reports or pictures are possible only when a tragedy happens and are not a regular routine of the reporters.

These extreme cases have another peculiarity: they surely touch the hearts of the reporters and hence the public, as shown in their comparatively more sentimental coverage. Here are two newspaper descriptions of the grief in the suicide boy's house:

"By three o'clock he was dead. A broken brick on the roof where he had put his foot, the narrow path leading to the yard, where people passed along all the time, the elder sister already dressed in black, who covered her mouth with her hand, tears rolling down her cheeks; all these underscored that he was dead. Eni Lalo, only 10, had tied a rope around his neck and ended his life,

without realizing that suicide means you no longer wake up."³

"It took ten years to teach him to speak, to enjoy, to love, to amuse himself, to make friends..., but nobody in these ten years taught him that it was not him that had decided to come to life, the same way that it was not up to him to decide to leave this life!"⁴

"Graphic" coverage in Albanian media

As mentioned above, sentimental notes are present in the media coverage, but they are the exception, rather than the rule. Instead, the rule is graphic coverage of crimes and other issues, especially when it comes to headlines and images. Sensational headlines scream from the newspaper pages every day and open the TV news editions every evening. Although the actual content that follows may be more factual and the tone, restrained, the headlines certainly attract attention, and occasionally cause tensions. Just to mention a few: "How I Cut My Beautiful Wife's Throat,"⁵ "Police Track Down Murdering Maniac,"⁶ "By Cannon Law I Should Kill My Wife, But I Forgive Her,"⁷ "Woman Kills and Buries Her Husband As Daughter Watches,"⁸ "Cause for Alarm: 50% of Medicine on the Market

³ Vladimir Karaj, "10-year-old Hangs Himself in Tirana's Suburbs," Shekulli, April 18, p.9.

⁴ Gerti Xhaja, "Boy Hangs Himself After his Mother Slapped Him," Gazeta Shqiptare, April 18, p.14.

⁵ Zenepe Luka, Gazeta Shqiptare, May 29, 2007, p.21.

⁶ Gerti Xhaja, Gazeta Shqiptare, April 23, 2007, p.11.

⁷ Aldo Kozarja, Panorama, April 19, 2007, p.10.

⁸ Gerti Xhaja, Gazeta Shqiptare, April 17, 2007, p.15.

Forged,⁹ "In Street Accident, Truck Tears 60-year-old Woman in Two,"¹⁰ etc.

Although recently the media have shown greater care in the use of images, there are still reasons for concern in this area, especially when it comes to crime or accident reporting. It is not uncommon for scenes from accidents or crimes to appear in the media, some more detailed than others. For instance, on March 15, TV Klan reported on a man murdered close to his home, and proudly displayed images from the scene of the murder, which had happened just before the news edition. Although it was dark, a man lying in the ground, blood covering his face, was clearly visible even without a close-up. Similarly, after the serious car accidents the same day, there were fleeting images of a body being taken out of a river, another on the road, scattered shoes, a sheet covered in blood, streams of blood in the streets, and so on. To be fair, we should also mention that the viewers were forewarned of the graphic nature of the images to follow; what is more, they illustrated an analysis of the situation after the numerous road accidents all over Albania in just two days.

Newspaper readers, however, cannot be forewarned of the graphic nature of images. These photos rarely show the victims; yet there are cases when unburied bodies or similar images appear. In addition, newspapers often use illustrative photos indiscriminately. They do not affect the people covered, as they have faces nobody knows, or the faces are blurred; however, they include graphic images reminiscent of rape, murder, assault, etc. Newspapers also use drawings, which are far from objective: in the case of a man allegedly assaulting

⁹ Lorina Mixha, Shqip, March 22, 2007, p.24.

¹⁰ Panorama, May 5, 2007, p.13.

young women at knife-point, the newspapers always accompanied the text with a drawing of a big dagger dripping blood. Similar attention-grabbing images abound in the papers, often crossing the line of good taste. Undoubtedly, in some cases the graphic choices attract attention to the text; yet sometimes they are disturbing and can come at the expense of the text content, which might be quite accurate, with no ghastly details, or other excesses.

“Mobilizing” journalism

As mentioned above, in general the media reports are limited to giving the facts; they rarely contain sentimental notes or take sides with the victim or the perpetrator. However, taking sides is only human, and there are cases when the reporters cannot help but convey this to the public. In this respect, we should note that sentimental coverage is more typical for reporting of serious cases, and especially those that are still actionable. In them the media play a kind of a mobilizing role, calling on the state or other relevant authorities or organizations to assist the people in need.

For instance, on April 11, Top Channel aired a story of a family with three sons paralysed by a genetic disease. Despite his paternalistic attitude towards the “unfortunate boys,” the reporter brought the suffering of the people and their poverty to the public and assisted them in their pleas for help. Similarly, TV Klan broadcast a story about a four-year-old boy in need of help, accompanied by his picture and pleas for assistance.¹¹

¹¹ TV Klan, May 9, 2007.

On May 9, *Shqip* published a story on a child with leukemia, describing the family's poverty, the necessity to seek medical treatment abroad, and asking assistance from the state and the Ministry of Health. The article closed on another sentimentally appealing note: "A 13-year-old boy needs and has to live!"¹² The frequent examples of this nature show that it is not unheard of for the media to highlight desperate cases and to rally for finding a solution.

On an even more positive note, there are also examples of "public service" that the media provide on their own initiative, without waiting for desperate cases to knock on the door. These are prevalent in the social issues sections and focus usually on education and health. For example, on March 29, *Shekulli* did a report on the Institute for the Blind, citing positive examples of teachers and students, but also addressing their need for instruments and textbooks.¹³ Similarly, there are regular announcements and news coverage of medical drugs or hospitals, which could very well be considered public service that the newspapers fulfil on their own initiative. Whether this is genuinely done with the public interest at heart or simply to increase circulation is open for debate; yet the two are not necessarily mutually exclusive.

The show that claims to be a champion of the public good, *Fiks Fare*, was also closely monitored as part of this project. Having gained prominence due to its investigative reports and some rather successful cases, *Fiks Fare* enjoys tremendous popularity. On close inspection, its methods also

¹² Besim Dybeli, "A 13-year-old Suffering from Leukemia Needs Help," *Shqip*, May 9, 2007, p.23.

¹³ Eglantina Bardhi, "Instituti i te Verberve: Apel per instrumente dhe tekste mesimore," *Shekulli*, March 29, 2007, p.11.

pose some serious ethical questions. While successfully using the law on public access to information to document its investigations, *Fiks Fare* also frequently makes use of hidden cameras, a questionable practice that underscores the imperative to balance the need for information and the right to privacy.

The most controversial case in this respect in the three months of monitoring was that of a university professor who asked to have sex with his student in order to pass her in his class. The student had enlisted the assistance of the program administration to expose the professor, and the case had been decided in her favour, which justified it as a public interest case. The hosts apologized to the professor's family before the show aired, but they said they were doing this in the name of other students that faced the same pressure.¹⁴ The footage that followed was shot with hidden cameras and showed the student discussing the matter with the professor in his office. Then they went to an empty house, where the professor clearly tried to have sex with her only to be interrupted by the door bell. The professor's face was clearly visible throughout and the day after the show aired, the college board decided to fire him.

Similar cases and outcomes have been quite common in *Fiks Fare's* history, making it a pioneer in investigative reporting, with a particular power in assisting people who ask for help. At the same time, this increasing power to produce change needs to be closely monitored in order to prevent its abuse. Ethical dilemmas should always be decided in the interest of the public, and it is only *Fiks Fare* itself, the most powerful and influential program in this respect, that can ultimately ensure its strict allegiance to the public interest.

¹⁴ "Fiks Fare," Top Channel, May 3, 2007.

Reporting on media owners' interests

Although in general no blatant ethical problems in the monitored media were detected, a lingering ethical problem remains the reporting of events or issues related to the media owners' economic interests. Given the non-public nature of these interests, it is difficult to spot them easily. During the monitoring period, the task became somewhat easier because of two developments: the introduction of a digital bill in Parliament by the government and the fight for financial control between the government and one of the main media companies, Top Media, which owns Top Channel and *Shqip*, both under monitoring. These developments affected significantly the news coverage and posed some ethical questions.

In April and May Top Channel found itself at war with the government, and more specifically the Prime Minister and the National Council for Radio and Television. This set the tone for almost all its coverage of related news. At its peak it included a few examples of outright prejudice or subjective outrage, not always labelled as an editorial. For example, during one of the numerous controversies involving the regulatory authority's decision to remove Top Channel's antenna in Shkodra for lack of license, the commentary exhibited undeniable anger when stating that: "Ledio Bianku [chair of the regulatory authority] just added another spot to his white name."¹⁵ Once a well-known lawyer with a Western leaning, he has now shown his true colours of a political servant."¹⁶

¹⁵ It's a pun for "Bianku," the surname of the chairman, referring to "bianco," white in Italian.

¹⁶ Top Channel, May 9, 2007.

It should be noted that in spite of the bias that seeped through in this particular instance, especially during the peak of the crisis, most of the time Top Channel managed to get through to the public both sides of the stories it was covering. For example, on March 7, when reporting on the U.S. State Department's report on Albania alleging continued widespread corruption, although it clearly criticized the government and stressed media freedom, Top Channel also provided views from both the ruling majority and the opposition. Similarly, the same practice was followed after the Prime Minister's speech on the media and the mafia, which singled out Top Channel.¹⁷

In general, in spite of their different angles, both TV stations managed to adhere to the basic reporting rules, with a few exceptions. An aspect that is inherently difficult to track is hidden advertisement and while both TV stations routinely announce their own important shows or programs in their prime time news editions, sometimes as leads, it is more difficult to spot other instances of hidden advertisement. One such case involved TV Klan's report on the celebration of March 14, Summer Day, and a national holiday, in Tirana. The report closed with, "the most extraordinary show is that of the Red Bull airplanes in the sky," a voice over images of airplanes in the sky, followed by a shot panning to the big Red Bull umbrellas in Tirana's main square, a sequence that was uncalled for and that took away several seconds of the news edition.

Another instance of hidden advertisement or very good PR, shared by both TV stations, was the opening of the new terminal at the Tirana airport. While the event was certainly newsworthy, the stories exceeded the reporting boundaries:

¹⁷ Top Channel, March 29, 2007.

apart from the speeches and activities, both TV stations aired long sequences of what seemed to be a promotional video by the airport management itself, with the voice-over in English clearly audible.

There doesn't seem to be a clearly visible pattern of hidden advertisement. However, given its low visibility, a monitoring of the trend and the way it can affect content in the future is certainly warranted.

Conclusions

Overall, it can be concluded that compared to some years ago Albanian media have made significant progress in improving ethical standards. In general the main criteria of professionalism, such as accuracy, balance, and impartiality are respected. However, in spite of the progress and the disappearance of several blatant errors, violations are far from over.

These violations are more visible in the most delicate situations, involving violation of privacy, intrusion into personal grief, interviewing and representation of minors, graphic representation and use of images, etc. In addition, in spite of the emerging investigative reporting and some quite remarkable successes in this area, there is no system of checks in place to control this trend from going to the other extreme, that of media arrogance and violation of privacy in the name of good journalism.

These potential violations in investigative reporting and in journalism in general become more of a threat to private life

and journalistic standards in view of the impending decriminalization of defamation. Although this is undoubtedly a significant step ahead towards media freedom and professionalism, this freedom needs to be balanced with a self-regulatory system that has yet to succeed, overcoming lack of awareness in the area and partial unwillingness to accept the authority of self-regulation.

Recommendations

The Government should take specific steps to enforce the Labour Code in media organisations and regularly monitor its implementation.

Journalists' associations, with the assistance of other civil society agents, should demand the enforcement of the Labour Code in media companies, and eventually collective bargaining.

Civil society organisations should support individual journalists whose rights are violated by media owners, state authorities or other parties.

The Government and civil society should regularly monitor and investigate allegations of violations of media freedom and independence.

Civil society organizations and journalists' associations should raise awareness of the newly revised code of ethics and facilitate the process of establishing an effective body that would supervise its implementation.

Journalists' associations should significantly strengthen the capacity for public debate and awareness of media organisations and associations, particularly through improved cooperation and by promoting journalists' rights vis-à-vis media owners and the government.

Media owners should engage in the debate on self-regulation and facilitate a genuine commitment to self-regulation as a benefit for all.

Bosnia and Herzegovina

By Irham Ceco

"The media have a right to lie"

Alija Izetbegovic, former President of Bosnia and Herzegovina in various mandates¹⁸

This witticism somewhat exemplifies the role of the media in the society of Bosnia and Herzegovina: usually used for manipulation rather than information, they are controlled rather than in control. During the long period of communist rule they were instituted as state-owned and completely dependent bulletins of the ruling Communist Party of Yugoslavia.

The thin margin of freedom gained by the end of the eighties was spent on undoing the communist regime and replacing it with "democratically elected" authoritarian nationalist parties. In hands of nationalist political elites the media were a tool for disseminating hate-speech, political propaganda and warmongering. As a result the media lost a lot of their credibility, especially among the educated, opinion-making class.

The wartime record of Bosnian media (as well as the Serbian and Croatian media, widely circulated and influential in

¹⁸Quoted from: *Alija i mladi: mediji imaju pravo da lažu*; by Emir Suljagić; Dani Magazine n.105, June 1999.

Bosnia and Herzegovina) has been a burden for the reconciliation process. Mass media are widely seen to have fomented the emotion and violence that led to the deaths of 200,000 people and the devastation of the country through nearly four years of war.¹⁹

Even though the media re-adapted to peace, their ethnocentric view is still present, and while the hate-speech may be formally pretty much gone, its impact still lasts, is not forgotten. Hence the freedom of expression needs to be controlled, and often curtailed in the name of preserving peace. However, the institutional mechanisms introduced by the international community to regulate such issues sometimes fail to make a difference between legitimate political opinion and hate-speech, between facts hard to swallow and venomous propaganda.

The aim of this work is to explore the relationship of B-H media scene with the proclaimed goals of integrating with the European Union, the influence of regulatory bodies on that process, and the potentials of media self-regulation in theory and practice. To complement the theoretical outlay of media self-regulatory system in Bosnia and Herzegovina, this work will contain findings obtained by monitoring selected media for a period of three months: March, April and May 2007.

For the purpose of *practical*, some facts need to be set out at the beginning: Bosnia and Herzegovina consists of two (dis)integrated parts, colloquially known as "entities". Larger entity, called the Federation of Bosnia and Herzegovina is a result of a complex wartime arrangement providing 10 Cantons,

¹⁹ "Campaigns in the media war between republics foreshadowed military campaigns. Verbal violence engendered physical violation" Mark Thompson; Forging War: The Media in Serbia, Croatia and Bosnia Herzegovina.

some dominated by Bosniacs (Bosnian Muslims), other dominated by Croat (Catholics), or mixed, with a (dis)balance of ethnic power. Smaller entity is called Republic of Srpska, almost exclusively Serb – populated due to brutal ethnic cleansing campaigns, and it is pretty much centralized internally.

With ethnic divisions unfortunately marking all areas of life, including the media scene, this is a country arranged in a manner as dysfunctional as it gets. Bi-partite entity division, topped up with tri-partite ethnic division certainly affects the public sphere. Hence the media are divided too and more often than not this division runs along ethnic lines, even if the newspaper crews are multiethnic themselves. Thereby the choice of newspapers for monitoring needed to be representative, but also “ethnically” balanced, reflecting the current state of affairs.

The obvious first choice fell on *Dnevni avaz*, the daily with the widest circulation in the country, and the foundation of a media and business empire: published in Sarajevo, largely targeting the audience in the capital, it is more or less overtly *the* “Bosniac” paper. As its trans-entity counterpart, *Glas Srpske* from Banja Luka, the RS capital was selected: it is a paper whose circulation is not quite as high, since the market where it competes is dominated by cheaper “localized” imports from Serbia. However, being owned by RS Government, it reflects some dominant trends in the RS journalism, and may be viewed as the “Serb” paper.

There was a dilemma whether to monitor a “Croat” newspaper too. However, since the “Croat” newspapers, regardless of their “ethnic” slant, adhere to pretty much the same standards as *Dnevni avaz* and/or *Glas Srpske*, they were

not directly scrutinized. This is not to say that Croats are any less important factor of Bosnian and Herzegovinian political equation: the point is that despite sharp differences between media across the entity border, some common typology pertaining to the issues relevant for this research may be inferred.

In much the same way, electronic media were not selected for monitoring, due to irrelevance for the subject of self-regulation: electronic media are regulated by a state agency (CRA). However, the mode of operation of this agency is set out.

Setting the standards: A perfect frame for a tainted picture

After the Dayton Peace Agreement was signed, Bosnia and Herzegovina was finally enabled to continue its democratic transition. One of the proclaimed aims, seemingly utopian but redeeming in essence, was to join the Euro-Atlantic integration. This entails joining the Partnership for Peace and eventually NATO, and joining the European Union.²⁰ The ruling elite of Bosnia and Herzegovina touts European standards as a sort of "cargo cult" in the face of a socially devastated population: even to the point of burlesque.

One of the essential, but far from spectacular steps, was the acceptance of Bosnia and Herzegovina in the Council of Europe: it was hailed as "historic", and the Foreign Affairs minister of the time Zlatko Lagumdžija labelled it as "The Birth Certificate for our country"! A country independent since 1992,

²⁰ See Luckin

which can boast a timeline of history dating back to the 10th century has certainly profited from the admittance into the international club that shaped the spirit of the European integration for decades, but it can be considered a maturity test at the best.

Yet this elation shows how cherished every step closer to “the real Europe” is among the frustrated Bosnian polity. And the membership in the CoE obliges the powers in Bosnia and Herzegovina to respect the European Human Rights standards. Such a respect is also a prerequisite for eventual EU membership.²¹ And in terms of freedom of expression, the standards set by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 should be upheld.

ECHR’s article 10 says: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”²²

The limits are defined further in article 10: “The exercise of these freedoms, since it carries with it duties and

²¹ See Nowak in Alston (ed.): “Whether or not human rights are regarded as an objective, or only as one of the basic principles of the EU, they had gradually achieved such an importance in the Union’s internal and external policies that they were proclaimed in the Amsterdam treaty as explicit preconditions for EU membership.

²² “Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.” European Court of Human Rights.

responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The media practice in Bosnia and Herzegovina, within the scope of this definition, is regulated by two major bodies: the Communications Regulatory Agency and the Press Council.

CRA and electronic media: Tightly controlled chaos

The CRA was designed for two basic purposes: to assume the role of a main nation-wide authority for technical issues such as assigning the frequencies and authorising the broadcast, and to purge the airwaves of the sulphurous hate-speech, fostering the standards of objective and impartial public information.²³ The CRA in the beginning functioned as a regulatory body set up by the international community, but it

²³ Article 1.2 “Decency and Civility” of the CRA Broadcasting Code of Practice states: “Broadcasters shall observe general community standards of decency and civility in programme content and scheduling, taking particular care to protect the interests and sensitivities of children. Language which could incite to violence, disorder or hatred must not be used. The gratuitous use of language likely to offend must be avoided.” Several local broadcasters have been penalized under the provisions of this code.

became formally a national institution in 2003.²⁴ The CRA represents a good example of the international community's initiative in establishing state-level regulatory bodies in BiH. The CRA has a wide-ranging mandate and powers, and has been a driving force in developing the broadcasting and telecommunications sector in the country.

Generally, the public broadcasting "system" is divided into two "entity" Public Broadcast Services, RTRS (Radio – TV of Republika Srpska, the Serb-dominated part of BiH) and FTV (Federation BiH TV, designed to cater for Bosniac – Croat dominated entity), and a third, nationwide PBS channel – BHTV 1. (Bosnia and Herzegovina TV). Such a division reflects the present situation and some future tendencies – the two entity-based public broadcasters are by far stronger than nation-wide BHTV 1, reflecting the division of the country along ethnic fault-lines.

What lends some strength to the BHTV 1 is the international community support to this project. However, the legal status of the three broadcasters remains perplexing in its complexity, as well as the system for funding the three, with subscription funds money changing hands and effectively creating a lot of space for free riders.

²⁴ See Bieber in Nations in Transit: "The main supervisory agency of electronic media is the Communications Regulatory Agency (CRA). It has been licensing electronic media since 2001—a process that has led to a degree of consolidation. In the last two years, the agency has issued a total of 183 licenses out of 258 applications. These licenses are automatically renewed for 10 years (2 years for public stations), unless the stations commit serious violations. The CRA is also tasked with monitoring and penalizing electronic media for hate speech and slander, and such authority appears to be having a positive effect, as the number of complaints has declined. Most cases involve defamation of persons rather than hate speech, according to the CRA."

The Press Council: Mission impossible

Unlike electronic media, print media are self-regulating (that is, they do not report to an independent supervisory body). But the Press Council of Bosnia and Herzegovina is an advisory body that aims to fill the gap. In late 1998 and early 1999 the IMC (institution that was the legal predecessor to the CRA) worked with the six journalists' associations to develop a voluntary Press Code, which would be appropriate to the local circumstances. The code was adopted on 29 April 1999 and published in all the major publications. The Council initially got an International Chair – Lord Wakeham (chair of the British Press Complaints Commission), since the Bosnians could not agree over the chairman, plus twelve members.

All of the twelve were Bosnian citizens: six representatives of the press and six lay people, including some academics. They were all nominated by the six journalists associations from both entities, who were involved from the outset. The BiH Press Council was constituted as a formal body in September 2000 and on 22 September, Lord Wakeham chaired the first meeting as International Chairman. Initial operational funding was approved by the EC and the Swedish International Development Agency (SIDA). A small secretariat was established in early 2001 and continued to develop.

After Lord Wakeham, the post of PCC Chairman was occupied by Robert Pinker, who was previously also Lord Wakeham's successor in the British PCC. Professor Pinker acted as the International Chairman of BiH Press Council for almost three years. In April 2005 the Press Council of B&H at last came to be chaired by the first local Chairman, Professor Drago Brankovic, from the Philosophy Faculty of Banja Luka. With

official forming of the new Press Council at the level of Bosnia and Herzegovina, on 13th December 2006, new Chairman of the Press Council was appointed Mr Sejad Lučkin, Editor-in-Chief of the daily "Dnevni avaz".

From 2000 till 13th December 2006, the Press Council was registered at the level of Federation B&H Entity, with the possibility to operate at the territory of the entire country. First establishers were the Journalists' Associations in Bosnia and Herzegovina.

However, today it operates across the entities, boasting a multiethnic and regionally varied staff. In practice, it resonates as a great idea, and puts Bosnia and Herzegovina, somewhat unwittingly and largely undeserved, in the position of the leading country of the region in the area of self-regulatory standards. But in practice some problems cast a shade of doubt over the effectiveness of the whole grand theoretical concept.

It is questionable since the PC has no means of enforcing its provisions. (The Press Code is voluntary, and the Press Council resolves all the possible disputes between the public and the press by using only journalistic remedies, such as: right to reply, publishing of retraction, apology or denial. Unlike the CRA mentioned above, the Press Council does not have authority to fine, suspend, close down or license newspapers and magazines.

Moreover, in a small and somewhat elitist community of journalists in Bosnia and Herzegovina, the risk of conflicting interests runs high. The question is how the members of PC bodies will react if their own home media is under scrutiny.

In this particular period, it is impossible to miss a glaring coincidence: the PC Chairman is also the Editor-in-Chief of the country's biggest and most powerful daily newspaper, *Dnevni avaz*. Much to his personal credit, it is obvious that he brought some new, much tighter standards to his newspaper which used to be widely criticized in the past for a number of ethical breaches.

However, old habits die hard, as the monitoring part of this study will show. The question is how the PC will react once a reader files a legitimate complaint against *Dnevni avaz*. Will the proverbial medic be able to cure himself?

Thorn in the eye of beholder: Media monitoring – March, April, May

***Dnevni avaz* – Hit and Run**

In March at least 11 texts containing various possible breaches of the PC Press Code were recorded. They can loosely be grouped as follows. Three texts are dubious, and probably may fall under „politically incorrect“ category, or border cases of hatespeech. These, however, are largely op-ed type articles, and could be defended and legitimized as such under the „free speech“ provisions enshrined in the constitutional and legal system of the country.

The three texts in question are „The State According to Kačavenda“, from p.3, March 4. 2007, a comment blasting a controversial Orthodox dignitary; a comment about the future of the RS entity „RS must not remain a Serb entity“ containing vitriolic remarks, published on p. 2, March 19.; and another

comment from the range, stirring up wartime emotions in a manipulative tone „Slobodan Praljak in the RS Assembly” published on p.3, March 30.

The other group constitutes code breaches in crime beat covering, such as publishing full names of suspects and other incriminating details. In March four articles fell strictly under this heading. First, „Ombudsman beats heavily his lover in an automobile” involved a hearsay about a prominent public figure published in Crime section's p.34 on March 7; „Police Seeks Nedžib Spahić and Adnan Hodžić” p. 29 on March 13; „Beaten Enver M. came back with a gun and shot the assailants” p. 29 on March 29; and gruesomely obvious „Zoran Milanović strangled his mother with bare hands” on p. 33 on March 30.

These omissions are common elsewhere, and do not necessarily reflect conscious bad journalism, but rather a wish to be „exclusive” at any cost.

However, the remaining six „contestable” articles are a story in itself. They are part of an apparent abuse of public space for a smear campaign, no holds barred. The campaign targets competing media, notably the left-oriented *Oslobođenje* daily. This daily was bought off by a local brewery tycoon Hilmo Selimović, who has been in a clash of business interest with *Dnevni avaz* for years.

In this particular period these animosities (mutual) escalated in a dirty media campaign. *Oslobođenje* published its share of potentially problematic articles. However, the scope and sort of labeling, libel and outright defamation piled up by *Dnevni avaz* upon *Oslobođenje*, its owner and its editor-in-chief Vlastimir Mijović, is unparalleled in its notoriety.

This campaign continued throughout the first week of April with two articles, and somewhat subdued later on. In the month of April, another four potential breaches in covering crime beat were found. „Dissaffected veteran demolished several offices“ was an article published on p.21 on April 1, „Trial scheduled for pervert math teacher“, doling out liberally charges for a particularly abhorrent crime to a suspect, ran on p. 21 on April 1 as well. „Dževad Šahman beaten with a rubber club when he came to collect a debt from Hećo brothers“ is another crime story with too many names disclosed while the investigation was still going on, on p. 33 on April 4; „The same policeman attacked me twice for no reason“ on p. 32 on April 20 is also a suspicious piece. Only one „politically incorrect“ op-ed comment was found on p.3 on April 2nd entitled „Criminals' Celebration“.

In May only one article implicating competition was recorded on p.9 on May 1: „Who's bothered by strong position of Rais Cerić“, accusing *Oslobođenje*, its editors and its owner of being hostile to *Rais-ul-ullamah* Mustafa ef. Cerić, Bosnian Muslims Number One cleric, and consequently „dangerous for the vital interests of Bosniac nation, and the country of Bosnia and Herzegovina“.

Although apparently referring to previously published articles in *Oslobođenje* critical of Rais and his excursions in the political realm (another common feature of politics in Bosnia and Herzegovina, but not uncommon in the region as well), the tone and the kind of accusations presented is tantamount to a judgement potentially harmful if (mis)read by, say, devout Muslims.

Crime beat ran five potentially problematic stories: „Search is still on for Mersudin Ćosović“, a detailed account of an underground murder with full name and details of a suspect disclosed, at pp.31 on May 1st; „Cab driver assaulted a colleague with a knife“ at pp.25 on May 2; „Zdenko Jovanović beaten up then strangled his mother“, at pp. 34 on May 4; „Mersudin Ćosović turned himself over to police in Užice“, about the alleged arrest in Serbia of the aforementioned gangland murder suspect, on p.31 on May 22; „Two dangerous burglars arrested in Sarajevo“ on p. 35 on May 26.

Overall, it is obvious from the sheer volume of the potential breaches found, that the Press Code sets high standards, perhaps a way too high for the current situation in Bosnian and Herzegovinian journalism. For *Dnevni avaz* is still, with all these reproaches, a widely circulated, informative and modern newspaper. Although its standards easily slide towards those of tabloid journalism, this can be said for nearly all of the worthwhile publications in the country, including its finest, such as the liberal weeklies.

Really trashy newspapers are far below *Dnevni avaz* standards – although some of the worst ones such as the daily *AS* and the weekly *Express* are actually published by Avaz Ltd. On the other hand, outside the scope of this research, and according to rumour in public, these breaches went largely undetected.

Glas Srpske – *Darkness Visible*

Not entirely to their credit, the colleagues from *Glas Srpske* are far more predictable than those from *Dnevni avaz*.

Their handling of the crime beat is largely impeccable. They are not engaged in mud-slinging competition. But they run a politically incorrect op-ed bordering on hate-speech nearly every other day! In-depth exploration of their discourse is a subject in itself, and their offensive and manipulative character may be in the eye of the beholder.

So, let us just give here a list of the titles from March throughout April.

March headlines: „Federation poisons the public” - referring to the ICJ verdict, *Glas Srpske* shows that wartime rhetoric has still not been abolished as the majority of the Federation of BiH media still frequently use terms like “genocide” and “aggression” although more than a decade has passed since the end of the war in BiH, „They call a crime by name of good will”; „Proclamation with a political background”; „Poisoned by the dark past”; „Invitation to uncertainty”; „Seeds of evil germinating”; „Wartime rider leads to darkness”; „Into the pit of hell”; „Bosniacs need sobering up”; „Creation of a new false illusion”...

April headlines: „Lifetime of pain”; „Dreaming Alija's dreams” (Accusing Bosniacs of being „deluded” by their faith in the proclaimed wartime goals of the late Alija Izetbegović, their former leader); „Serb pearl – thorn in their eye”; „They want a cemetery in the middle of town” (Vitriolic comment against the wish of Bosniacs to bury their dead exhumated from mass graves in an old Muslim cemetery by a demolished mosque; later on the RS Government forcefully intervened on behalf of

Bosniacs, helping them bury their dead properly at the spot); „Criminals cover their tracks”...

An exemplary manipulation article can also be found on p. 2 on March 9 entitled 'Abuse of religion and faith' by D.Majstorovic. It reports that Darko Trifunovic, portrayed as "leading Serb expert for international terrorism" from the Belgrade Security Faculty, in one of his recent "lectures before members of the US Congress" stated that radical Islamists from all over the world, who have been assigned in all almost all European states upon order of the terrorist network Al Q'Aida, abuse religious facilities and use them for spreading their fundamentalist-like ideas.

Reportedly, Trifunovic also "warned that Kosovo and Metohija and BiH are unfortunately brimming with persons like Talovic (Sulejman, 19-year old from BiH who killed 5 people at Salt Lake City recently) and Bektasevic (Mirsad, sentenced to 20 years prison term for planning terrorist attacks in BiH), mostly thanks to people from the top authority, who at some point in the past brought the most brutal terrorists of the present time to these regions. Hereby he refers to "Haris Silajdzic", a prominent Bosniac politician.

Although attributed to an "expert" thus fulfilling the formal requirements of the Press Code, these absolutely wild speculations presented as "serious" information are an insult to logic first, Bosniacs second. (Sulejman Talovic was Bosnian American, but his crime was much the same as earlier Columbine crimes, or a subsequent massacre by a Korean American – work of teen angst. Confounding him, a wannabe terrorist Bektasevic, and bringing them in context with a legal

and legitimate political representative is a sign of utter malevolence and lack of elementary ethics).

In May, *GS* op-ed authors spared no verbal ammo: "Croatian flash of evil"; "Images of Sarajevo Inferno"; "They seek justification for a crime"; "Head-on to the wall"; "Backed by Washington"; "Millions in the mist"; "NDH as a role-model" (NDH refers to the short-lived Nazi puppet regime of "Independent State of Croatia" which committed mass crimes against Serb population); "Massacre in front of TV camera"; "Not even children were spared"; "Bosnization and other hoaxes"; "Pain-soaked years"; "Cowardly murderers"; "Faith before life"; "Unbreakable bonds with war"; "Unforgettable Golgotha" ...

What bounds most of these articles with quite disturbing and terrifying titles, is a wish to constantly keep reader's mind ready for war, and to portray Federation politicians, Bosniacs and Croats as enemies, in a not-so-subtle manner. These articles went undetected outside its target audience and the scope of this research.

Out of sight, out of mind – what the Press Council did meanwhile

Since the Press Council reacts only upon complaints lodged by citizens, mostly individuals directly concerned with an article, irony is that of all the potentially contestable articles in *Dnevni avaz*, none was contested. Yet Zinka Hukić complained against an article entitled "Frenchmen Accuse Senad Omanovic and Zinka Hukic" published on 13 April 2007. Her complaint alleged "inability to deny statements from the text", but it was

not upheld "in accordance with protection of free informing and respect of independent editorial policy".

Other complaints included, notably, a family Puvača whose member died in an accident, and the photo of the deceased was published in *AS* and *Dnevni list* dailies. The complaint was upheld in both cases, on the count of privacy. Two complaints against *Oslobođenje* daily were lodged, over articles "Victims of Mobbing Left to Themselves" published on 3 March 2007 and "Faculty at the Car-wash" from 1 March 2007.

In both cases, PC succeeded in mediating a settlement – *Oslobođenje* published denials. A complaint by a municipal PR officer against a local *Derventski list* newspaper was not upheld. Neither was one too broad a complaint against *Večernji list*. One complaint against a petty daily *SAN* was upheld.

The most high-profile incident involved a complaint by Ms Borka Rudic, Secretary General of the Association "BH Journalists" against prominent weekly magazine *Slobodna Bosna* which ran an article claiming "Hundreds of Married Couples in B&H Would Like to Adopt Children" on 17 May 2007.

In the article, a name of a person adopting a child was published. Since her letter was addressed to the BH Press Council, without an official filing of a complaint – the Complaints Commission adopted "Decision on submitting a reminder for media on obligatory respect of the Article 11 of the Press Code – *Protection of Children and Minors*". *Slobodna Bosna* was also the target of one unsuccessful complaint lodged by a prominent politician complaining against a satirical content.

And that was, more or less, it. The work of the Press Council is commendable, if nothing else, then for its swiftness and efficiency – all these complaints were handled and resolved by July 2007. The problem, apparently, lies elsewhere – in the fact that many blatant violations of the Press Code simply pass undetected since no one reports them.

There are several possible explanations – and not the least, it is a lack of public awareness of the existence of the PC as a mechanism. Political comments laced with a dose of hate, on the other hand, probably go unnoticed since few people bother to read those offensive for their particular ethnicity comments, opting to read “their” friendly paper instead.

Conclusion

The media scene in Bosnia and Herzegovina is varied and vibrant. The standards for freedom of expression tend to develop along the lines that the membership in the Council of Europe and the aspirations for further integration into the European Union require. However, this ideal framework is often hardly applicable in reality. While a body instituted by the international community, the CRA, controls with a relative success the standards of the electronic media, thus relegating self-regulation to the level of an individual choice, it can also be noted that major broadcast media uphold decent standards of journalism.

As for the Press Council, self-regulating body instituted with the generous aid and counsel of the Council of Europe and other international bodies, it is facing some difficult tasks and challenges. Currently it functions well as a mediation service

where “concerned citizens” can lodge a legitimate complaint and count on an objective, evenhanded treatment of their case.

However, as the findings of breaches common in the media observed for the purpose of this research show, a lot of breaches go undetected. The reason is blatantly obvious: the Press Council is lacking a serious and committed monitoring service. Perhaps this would be too much of a proactive stance, but it is certainly worthy of consideration, as a possible path towards more responsible journalist standards.

Most of the violations of the Press Code can be remedied by a more careful editorial approach, and the worst breaches arise from the lack of will to implement standards. If a choice is given between circulation – raising values, such as “exclusivity”, or business interest of an owner, a sponsor or a patron, and upholding standards, standards are continuously at a loss.

One important factor is certainly that the whole concept is based on free will and mutual trust within the profession: there are no sanctions that PC can recourse to, except for “naming and shaming” the media that breach the code. Introducing some form of sanctions is, of course, dependable upon joint agreement, but it should be reconsidered in the future work of PC.

Eventually, the future success of PC in applying high standards it purports to uphold will strongly depend on its agility and flexibility in raising its profile in public, keeping up its image, but also reaching out to society in general, foremost through PR campaigns, but also via contacts with NGOs of all profiles.

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BULGARIA

By Danail Danov

Executive summary

The present report discusses the findings of the monitoring of key print and electronic media outlets in Bulgaria during the period of March-June 2007 focusing on the implementation of media self-regulation practices as a tool for better media coverage and high-quality ethical reporting. The monitoring comes some six months after a previous report was issued and tries to evaluate the impact of the recommendations made then and assess the latest developments in the media sector after Bulgaria became a full member of the European Union in January 2007.

The Bulgarian media market is highly competitive with more than 150 radio stations, over 100 television channels and hundreds of newspapers. Such a variety of outlets can hardly be monitored as a whole; however, a representative sample can reveal both predominant tendencies and major achievements and challenges. Last year witnessed some progress in the area of self-regulation, with the approval of the revised Code of Ethics by the journalists' associations and their agreement to endorse the Council of Ethics as a self-regulatory body. However, given the weak state of these very associations, self-regulation as a practice has not progressed significantly.

The attempts to decriminalize defamation have marked no progress whatsoever and due action is urgently needed, given Bulgaria's full membership in the EU and the requirement for its media to comply with the high standards of the advanced European democracies.

Context

The most important documents governing the work of the media in Bulgaria are the Act on Radio and Television, the Telecommunications Act, and the Act on Copyrights and Related Rights. The first one regulates all programming aspects of the public and commercial broadcasters and their supervisory body, the Council for Electronic Media (CEM). The Telecommunications Act regulates all telecommunications activities, including the statute and functions of the Communications Regulation Commission (CRC) and telecommunications licensing. The Copyright Act establishes a separate Department at the Ministry of Culture intended to identify breaches of copyright law and impose sanctions.

In 2006 the CEM started a new licensing process, which had been virtually paralyzed by a previous Parliamentary decision to require the adoption of an overall strategy for the development of the media sector first. Though the reopening of the licensing process was met with high expectations and hopes, the lack of transparency in the licensing criteria and technical procedures, made it a hotly debated issue. The Association of the Bulgarian Radio and Television Operators (ABBRO) objected to the procedure and requested a market audit, as well as amendments to the law. They proposed that 42 radio-operators with temporary licenses should be granted

the right to continue their operation without going through the new licensing procedure. Unfortunately, the negotiations have not produced any results so far. Meanwhile, the CEM launched five competitions for TV frequencies in order to select new TV operators. At the same time, the CRC, which is required by law to automatically issue a telecommunication license once program license has been awarded, refused to proceed and in July 2006 cancelled the whole TV licensing process, arguing that Bulgaria should develop and adopt a TV digitalization strategy after 2012. This decision was obviously motivated by the EU's requirements for a 2012 'digital switch-over,' while the CEM was granting 10-year licenses that would expire in 2016. The CRC claimed that the CEM's decisions were legally void. Ultimately a stalemate was created once the Supreme Administrative Court stopped the licensing procedures. The licensing problems are further complicated by the competitive battles between the two major national commercial television operators (bTV and Nova) and the Association of Bulgarian Television Operators (ABTO), which unites major cable TV operators such as BBT, TV 7 and Diema Vision. The latter, trying to obtain national licenses, argue that they incur economic losses by being prevented from extending their networks and/or going national.

Bulgaria is the first South Eastern European country in which major media owners from the Union of Publishers in Bulgaria (UPB) have become involved in the creation and implementation of a media self-regulatory mechanism, the Code of Ethics for the Bulgarian media signed in 2005. They have also facilitated the creation of a regulatory body, the National Council for Journalistic Ethics (NCJE), which includes two standing complaints commissions. This has created great expectations for improving the quality of journalistic materials

and raising professional standards, as well as for the enhancement both of the freedom of expression and the self-regulatory practices in Bulgaria media. Moreover, the existence of such a mechanism has been seen as a means of preventing journalists and publishers from being taken to court on libel charges as easily as it was done in the past. The Code was developed under a EU-PHARE funded project managed by a consortium led by the BBC World Service Trust, while media representatives and mainly media-related NGOs took part in drafting the document. The Code was initially signed by 50 Bulgarian media representatives at a ceremony attended by the President, the then-Prime Minister and the Chairman of Parliament. The only key media player that did not sign the Code was the publishing group *Monitor*, which owns two national dailies and one weekly. This was due to personal conflicts with the management of the Union of Publishers rather than to any real opposition to self-regulation.

Besides the Union of Publishers in Bulgaria, the Code was also signed by other important media organisations in Bulgaria, such as the Association of Bulgarian Broadcasters, the Bulgarian Media Coalition, the Union of Bulgarian Journalists, and the Association for Regional Media. Dozens of media outlets also signed the document, including the main national and a number of regional newspapers, the largest commercial radio and television stations, the Bulgarian National Radio and Television networks and the National News Agency. Nowadays, additional signatures continue to pour in thus making the signing of the Code an historical event for the Bulgarian media.

The Code of Ethics of Bulgarian Media has five chapters. It opens with guidelines for supplying the public with reliable

information; then it treats the fair and legal collection and presentation of information specifically discussing the rights of children, discrimination, decency, and suicide. One of the most important chapters is the one on editorial independence, discussing the need for media to remain outside any political or commercial pressure or influence and to maintain a clear distinction between editorial decision-making and the commercial policy of the media. The relations between and within the media, which should develop in an environment of mutual respect and fair competition in order to preserve the integrity of the sector, are discussed in a separate chapter. And finally, the Code treats the parameters of what is known as public interest. It states that a publication or a broadcast is in the public interest only if it protects public health, safety, and security; helps the prevention and disclosure of serious crimes and the abuse of power; or prevents the public from the danger of being seriously misled.

The National Council for Journalistic Ethics was officially registered as a foundation in Sofia on August 5, 2005. It consists of a Foundation Board with seven members, representing the Union of Publishers in Bulgaria, the Association of Bulgarian Broadcasters, the Union of Bulgarian Journalists, the Bulgarian Media Coalition, and the Media Development Center Sofia.

The main goals of the Council, according to its Statutes, are as follows:

- To protect the right of the audience to be fully and correctly informed
- To contribute to the establishment of journalistic standards

- To contribute to the enhancement of the authority of the media
- To set up a system for media self-regulation by ensuring the implementation of a Code of Ethics and by resolving arguments between the media and the public
- To encourage public debate on issues of journalistic ethics
- To strengthen the freedom of speech, safeguard journalists' rights and protect editorial sources of information
- To support training of Bulgarian journalists in the implementation of ethical rules and standards

The Council oversaw the establishment of two complaints commissions, one for the print sector, and one for the electronic sector. These commissions are the bodies responsible for the administering of the Code of Ethics of the Bulgarian media. They consist of four journalists' representatives, four employers' representatives, and four independent members who are selected jointly by journalists and employers. They meet at least once every two months and deal with any complaints received from the public.

The ethics commissions accept complaints; mediate between the plaintiff and the media; make decisions about complaints based on rules and regulations; reprimand media that have broken the Code of Ethics; analyze and comment on the trends in the media; provide guidance concerning norms and suggest amendments to the Code of Ethics to the Board.

Public awareness of the Code is very high – all media that signed the Code have published large articles and editorials on the event and have uploaded its full contents on

their websites. In addition, the NCJE has developed its own web-site at www.mediaethics-bg.org.

It is still difficult to estimate the extent to which the Code is respected by journalists, editors, and media owners in their professional practice, but there is a clear trend of more and more journalists following the editorial standards set by it. The Code, however, needs further promotion among the judiciary system. Other stakeholders such as the advertising and PR industries are aware of the Code of Ethics, and support it. More importantly, the PR industry in Bulgaria has adopted a united ethical code that has taken the media code into account.

Over the last year the self-regulation process has gained traction; with both ethics commissions reviewing the filed complaints and issuing decisions. It will not be an exaggeration to conclude that they have been steadily institutionalizing self-regulatory practices in Bulgaria. The government and authorities at all levels have also supported the signing of the Code of Ethics and are doing their best to demonstrate neutrality and create the impression of no interference. If this is really the case is arguable, especially when it comes to regional media where self-censorship is still common and journalists sometimes refrain from criticizing local authorities in order to remain on their good side. It is a matter of great concern, especially if one takes into account the fact that the barriers to self-censorship in Bulgaria are still intact. The September 2006 research project "Strengthening the Ethical Conduct of the Media Professionals in Southeast Europe" proposed the following measures to remedy the situation:

- Complete decriminalization of all defamation or at least that against public officials
- Inclusion of the defences of goodwill, reasonable publication, and overriding public interest in the language of the law
- More training for judges and journalists
- Development of ethics commissions procedures replacing trials or at least complementing legal proceedings
- Removal of criminal responsibility for the disclosure of classified information and introduction of a public interest test

Since nothing has changed a year later it is hardly a surprise that Bulgarian media continue to practise undue self-censorship. The media monitoring carried out from March to June 2007 as a follow-up to the above-mentioned project also revealed additional problems concerning media self-regulation and the observance of the Professional Code of Ethics by the journalists.

An elaborate monitoring scheme was developed in order to ensure a representative coverage of both print and electronic media and provide grounds for acceptable conclusions and generalizations. During the research period the following media were monitored according to the following schedule:

1. **bTV**
 - prime time news at 7:30 p.m. on Monday
 - morning show at 7:00-9:00 a.m. on Wednesday
2. **Bulgarian National TV (BNT)**
 - prime time news at 8:00 p.m. on Tuesday
 - morning show at 7:00-9:30 a.m. on Thursday
3. **Bulgarian National Radio (BNR)**
 - weekly magazine program at 9:30 a.m. on Sunday

- news bulletin at 12:00 p.m. on Sunday
- 4. **Darik Radio**
 - weekly magazine program at 10:00 a.m. on Saturday
 - news at 1:00 p.m. on Monday
- 5. **Trud Daily Newspaper**
 - once a week, Saturday
- 6. **24 Chasa Daily Newspaper**
 - once a week, Wednesday
- 7. **Sega Daily Newspaper**
 - once a week, Tuesday
- 8. **Monitor Daily Newspaper**
 - once a week, Thursday
- 9. **Standard Daily Newspaper**
 - once a week, Sunday
- 10. **Novinar Daily Newspaper**
 - once a week, Monday
- 11. **168 Chasa Weekly Newspaper**

The selection includes most of the important daily newspapers without the tabloids and the avowed party publications. The monitoring was carried out in March and April 2007. The TV monitoring focused on the two main television channels, the public Bulgarian National Television and the biggest commercial TV station, bTV. It included 8 morning shows and 150 news entries for BNT and 8 morning shows and 188 news items for bTV.

The radio monitoring included 6 weekly magazine programs and 10 news bulletins of the public Bulgarian National Radio and the same number of magazine programs and bulletins of the largest private national radio, Darik.

The monitoring criteria were organized in several categories:

1. **Relevance to the public agenda:** extent to which content materials (programs, articles) cover issues of public interest or reflect 'pseudo problems'
2. **Balance in the coverage of events** taking place **in the capital** and **in the countryside**
3. Due coverage of **EU affairs and neighboring countries**
4. **Accuracy:** factual-based reporting, attribution, distinction between facts and interpretations
5. **Pluralism:** availability of all perspectives within the debate on each issue
6. **Balance:** equal weight to all perspectives
7. **Fairness:** context of stories revealed, each perspective illustrated by the best possible representative
8. **Impartiality:** equal treatment and no affiliation to one or another of the conflicting sides
9. **Language:** no professional jargon, simplistic or vague language, clichés, foul language, hate speech, or incendiary language; political correctness
10. **Good taste:** integrity, special concern for kids and minorities, treatment of guests
11. Focus on topics such as **ecology, youth problems, vulnerable social groups**
12. **Performance of the presenter/reporter/news maker:** not biased, mediating rather than intruding own opinion
13. **Genre variety:** which is the dominating one, what are the interpretative formats used and do they manipulate audiences

All the materials monitored were evaluated on a 5-point scale:

- 5 – Completely meets the criteria
- 4 – Meets the criteria
- 3 – Neutral
- 2 – Barely meets the criteria
- 1 – Does not meet the criteria

Main findings about self-regulation practices with examples

Below we discuss the most important findings of the monitoring.

As a whole it appears that the percentage of the cases in which there were violations of the Code of Ethics is relatively low.

As far as the newspapers are concerned there were only several instances of manipulative materials in which either the discussion of a particular issue was one-sided or some of the principles of decency, fairness, and the protection of children's rights were violated. Such examples appeared in two issues of the *168 Chasa Weekly*: the March 2 issue included several articles with offensive language as well as an article revealing the identity of a child, the victim of sexual abuse; while the March 9 issue ran a headline perpetuating gender stereotypes: "MRF Female Activists Arrive Late in Typical Female Fashion."

More instances violating the code of conduct were found on the pages of the *Monitor Daily* newspaper, where it appeared to be quite common to use hate words such as

"gypsy"²⁵ and to represent issues one-sidedly. For instance, the March 8 issue featured an article with the headline "Gypsies Beat Man on the Highway" (p.10) in which only the perspective of the police was given. In the March 15 issue, an otherwise well-balanced analysis of the lack in transparency in political parties financing, which creates risks for the national security, was accompanied by a picture the caption of which again used the word "gypsy" (p. 15). Other examples include the March 29 headline, "Gypsies Withdraw Complaint about Swimming Pool", and an article full of hate language, or the April 12 headline, "The Movement for Rights and Freedoms Offers GYPSIES New Deal". Another article from March 22 ran under the title, "A Strong Islamic State on the Balkans," obviously used to attract the readers' attention, but not a correct summary of the content at all.

In conclusion, although *Monitor Daily* shows solid reporting including various perspectives, its articles quite often contain pejorative words and phrases expressing negative attitudes towards certain groups in Bulgarian society.

There were only a few cases of hate language in the other newspapers: one in *24 Hours* from March 7, where the headline on page 6-7, "Nesrin Ahmed Bullies 2 Bulgarian Boys on March 3", seemed to incite hatred towards the Bulgarian Turks, and another one on p. 18: an article about the adopted Vietnamese daughter of the ex-Vice President of Bulgaria, Blaga Dimitrova, which was incredibly manipulative and one-sided.

As a whole, we can comfortably say that the newspapers monitored discussed topics of public interest, presented various perspectives, and frequently multiple ones on a topic, and used

²⁵ The Bulgarian word for "gypsy" has acquired a very negative connotation and is used as an insult. The official term for the ethnic minority is Roma.

a well-balanced and ethical language. This was especially true for the *Trud* newspaper; as well as *Sega* and *Novinar*, which had no misleading titles and only occasional PR-ing.

The monitoring of the electronic media revealed more or less similar results: generally significant topics and strong commitment to the public interest. The major weakness observed was the tendency of BNT and BNR to invite representatives mainly from the official institutions, and politicians or experts, who are not independent, rather than representatives of the civil society groups, or ordinary citizens, thus forestalling a potential strong criticism of government policies. An example was the BNR program "Sunday 150" from March 4. In contrast, the March 9 Darik Radio program "The Week" was very balanced, included multiple perspectives, and followed the public agenda with appropriate guests and ample illustration of different points of view. Even when it was not possible to hear the other side first-hand, the anchor presented it himself.

The TV monitoring revealed strong similarities in prime time news content for the two biggest television channels in the country, BNT and bTV. They both allocated an almost equal percentage of their news to events that happened in the countryside, 11% for BNT and 14% for bTV. However, as BNT's license program requirements state, it is obliged to devote no less than 15.6% of its entire news air time to regional news. Assuming that the prime time news program is an accurate representation of the total news coverage, at least during the monitoring period, it is hardly possible to conclude that BNT fulfils this requirement duly. Even worse, it lags behind bTV, which has no such requirement in its licence. The provision was clearly made to ensure that public television carries out its role

of serving the public interest; yet, BNT seems to be moving in the direction of satisfying the tastes of particular segments of society that attract more advertising revenue. As is well known, the most widely watched TV program in Bulgaria has been one of the soap operas on BNT, while its prime-time news program comes in at #6 in the ratings.

This move towards more sensational and popular content was also reflected in the topics covered by the monitored programs. Crime coverage took up a very high percentage for both television stations, 17% for BNT and 19% for bTV. This undoubtedly speaks volumes about the main problems facing Bulgarian society today. If the media are a mirror of society, then Bulgarian society is very sick and the EU is right to follow so closely the reforms in the judicial system and the internal affairs of the country. Considering also that the media are a strong agent of public opinion and civic value, however, such a major focus on crime could somehow bring about its banalization. Hence, crime coverage on television should be very carefully balanced given TV's far-reaching power in shaping public attitudes toward it. Finally, as prime time news is the time when children and the under-aged are still among the potential audience, additional attention should be paid to good taste and fair reporting.

Other trends show remarkable similarity for the good between both televisions. Such is the almost total lack of PR agendas in the news: for bTV, 99% of the news entries, and for BNT, 93.3%. The same is true for ethical violations: 99% of all news items can be classified as unbiased and only 1% as biased. An interesting development has been the necessity to have a separate category defined for news connected to the EU. The percentage for both televisions is again almost one and

the same, 10% for bTV and 11% for BNT. This can easily be explained with the very recent accession of Bulgaria to the EU.

Another noticeable trend in the program content for both BNT and bTV was the relatively low number of news entries about national politics: no more than 21% for BNT, and around 11% for bTV. This is especially significant considering that the monitoring period coincided with the elections campaign for the European Parliament. A partial explanation could be both television management teams' desire to adhere to the letter of the Radio and Television Act explicitly banning party propaganda in the news. The lower percentage of such news on bTV is also easily understandable given their clear tendency to portray "human interest" stories in the news. As part of this policy, they regularly include an item under the heading of "the good news". Further evidence in this respect is the place of the news entries in the agenda of the day – for both stations they exceeded 50%.

On the other hand, important topics such as ecology or youth issues get much less news coverage by both channels: 3% of BNT' and 4% of bTV's news is about ecology. By and large, however, a balance in the news and current affairs programs is becoming both stations' hallmark.

The only TV case during the monitoring period with a one-sided point of view was BNT's Channel 1 March 12 story about a top Sofia police officer who had resigned over a scandal with Ivan Mozhe.²⁶ Only one of the perspectives was presented and the accused police officer never appeared in the story.

²⁶ A Croat living in Bulgaria, suspected for various crimes who suddenly disappeared

Both TV stations monitored showed no examples of major violations of the principles of objectivity, decency, fairness, and equal representation.

The genre repertoire of both stations also seemed more varied and included varied formats, not only discussions and commentaries. This variety, however, was not always handled in the viewers' best interest. For instance, on BNT's Morning Show from March 21, the two hosts' performance was rather weak, including as it did an oddly compiled press review with several young scientists as guests, who were very dull and unable to catch the attention. The following reportage on two promising Bulgarian scholars was also flat and some of the interviews included badly phrased, unfocused and esoteric questions. In general, the show was not very professional, it did not follow the public agenda and included some PR interests in the news (for the Minister of Defense or the Fire Department); yet its language was very professional, with no abuses of any kind. The latter was typical for both BNT and bTV for the entire monitoring period, a rather commendable tendency.

Conclusions

Although Bulgaria has been a full member of the European Union since January 1, 2007, and is successfully completing its accession process, there are certain areas, such as the improved rule of the law, judicial reforms, control of corruption, and the increased power of public administration, where further work is needed in order to catch up with the EU standards and requirements. One would expect that the media would also focus on the achievement of these objectives of

primary importance to the public agenda. The media industry, however, seems to have veered more towards a further growth in the advertising market, an increase in commercial content dominated by “reality” shows and entertainment and an increasing concentration of media ownership, rather than towards the realization of public interest goals. What is certainly noticeable as a positive tendency is the fact that the Bulgarian media landscape is plural enough to cover a wide range of public and human interest stories and to offer a variety of approaches to them, trying to adhere to the standards and principles of ethical reporting. It seems that the self-regulation principles and mechanisms are already well known and are finding their way in old and new outlets.

Recommendations

- Devise mechanisms to diminish further the influence of media owners on editorial policy, especially in small local media outlets
- Develop an overall strategy to convince more regional media outlets to sign and adopt the Code of Ethics
- Provide more professional training in general areas such as self-regulation
- Adopt standardized minimal tariffs for payment to journalists, which will improve the quality and provide additional guarantees for editorial independence
- Implement the complete decriminalization of defamation or at least the one against public officials
- Remove criminal responsibility for disclosure of classified information
- Develop a public register of media ownership

CROATIA

By Renata Ivanovic

Introduction

In Croatia the scope of the media industry is regulated by a number of laws, which touch slightly on professional and ethical standards in journalism. The Media Act and the Electronic Media Act regulate the establishment, the ownership, and the business transactions of various media. Two other laws refer to the nationally owned media: the Croatian Radio and Television (HRT) Act and the HINA Act on the government agency, which regulates their establishment, internal organization, and business activity.

The business activity and oversight of the broadcast content of HRT and HINA is controlled under these laws by independent bodies: a committee in charge of HRT and an administrative board in charge of HINA, which have the jurisdiction to appoint the directors.

The general opinion is that in Croatia, questions of professional ethics and professional standards are regulated by journalistic codices. However, the only codex used by journalists protecting their professional rights, or citizens protecting their personal rights allegedly abused by journalists, editors, or media organizations, is the Croatian journalistic community (HND) Codex of Honour.

When seeking redress for alleged abuse of dignity or privacy, a citizen can file a formal complaint with the HND committee of honour, consisting of elected HND

representatives, who deliberate the merits of the complaint. The decision is published in the HND's monthly newspaper *Novinar*. The public notice serves as a sanction against the violation(s).

Based upon the HRT Act, the HRT committee has a larger authority to call upon and sanction possible offenders of professional or ethical standards. Committee members can ask questions about program content, and they can summon the journalist or editor in question and issue a request to the Television Directorate for sanctions.

In the last few years, the committee has exercised its authority a number of times, yet almost always for political reasons. The cases of professional violation of journalistic ethical principles and standards were few and far between. The committee comprised of eleven members representing various influential associations, not professions, doesn't monitor program content in this way. This is one of the reasons behind my project. I decided to monitor the highest-ranked socio-political talk shows on two television channels, one private, the other, public. This systematic monitoring would allow us to see for the first time if there were significant deviations from established professional and ethical journalistic standards.

In order to understand to what extent the question of professionalism and ethics in the Croatian media has been increasingly marginalized in the last ten years, it is important to mention that according to the Media Act every editorial office and media house should have a media statute. This is a decree similar to a codex which is adopted by the media owners and representatives of the journalists and which can regulate the professional and ethical standards of the editor's office. And yet, not one editorial office in Croatia has a statute! Although required by law, employers and publishers avoid the establishment of such a decree at all costs. The leadership of

HND, as the only journalistic association, has done nothing to help journalists in editorial offices to put pressure on employers and start negotiating on a statute that would legally protect their professional rights and provide protection for those whose rights have been violated.

As a result, individual journalists who are battling employers and publishers for their rights are fighting a losing battle. They often lose their jobs, some even permanently because in a small media region like Croatia, nobody wants to re-hire them.

Journalists don't even have the protection of the Journalists of Croatia Union (SNH), even though professional rights are inseparable from work rights, and even though SNH emphatically agrees with the establishment of a statute. But in certain cases the leadership of the local union may not have been active. Besides, despite the fact that the Media Act postulates that all media owners should be publicly announced, in Croatia most media owners are unknown.

Last fall, on the initiative of HND and the Croatian Helsinki Committee (HHO), an NGO, which has its own council for the media, there was a discussion about establishing a Council for the Media in Croatia. The Council, a self-regulating body, was to include representatives of the civil society, representatives of the media publishers and representatives of the profession, journalists. The publishers' representatives, who are also the owners of the biggest private media houses, have shown a great deal of resistance and have announced the establishment of a unilateral self-regulating body.

The general pattern in Croatia is that questions of possible violation of professional and ethical journalistic standards are dealt with in court. However, the courts are swamped with complaints of perjury, which in Croatia is a felony, and has a high priority. The claims of professional and

ethical journalistic violations are never investigated and the general public opinion is that they are only a means of seeking compensation for emotional distress.

What was monitored and by what criteria

In the last three months I have been monitoring the most popular television talk shows, which air daily and include guests of opposing opinions, broadcast on public television (HTV) and on the most popular privately owned television (Nova TV). The criteria used to evaluate the content varied according to the weekly or daily events covered.

TV talk shows

The TV talk show *Otvoreno* has been airing on HTV for the last three years. It was the first television show of that type to be aired on national television every day. Its format includes one anchorman–editor and studio guests (up to eight), who address current events. During the monitoring period, the anchormen–editors were Mislav Bago, a long-term HTV journalist, and Parliament correspondent, and Sanja Mikleušević–Pavić, also a long-term HTV journalist.

The competitive private commercial television Nova TV airs the similarly conceived show *Kontakt*, which was launched in February when long-term journalist, editor and anchorwoman Hloverka Novak-Srzić transferred from HTV to Nova TV. The transfer, the biggest journalistic transfer to-date, is rumoured to have cost 1 million kunas (about 150, 000 euros). Novak-Srzić was the anchorwoman and editor for *Otvoreno* on HTV, during which time the show had high ratings. The concept of the new show *Kontakt* is the same as that of *Otvoreno*—up to

eight guests in the studio deliberate upon important daily events. The two shows are in direct competition.

The third television show that I monitored was *Kontraplan*, broadcast by the public HTV, but produced privately by an ex-HTV journalist Dubravko Merlić (anchorman and editor of the show) and his production company. The show airs weekly, includes a maximum of four guests and a few prearranged TV reports, which are most frequently inspired by past statements of the guests appearing on that particular episode.

The reason for monitoring *Otvoreno* and *Kontakt* was to compare how a public television and a privately owned television handle daily events, the selection of guests and how they approach important subjects that are problematic and of general public interest. *Kontraplan* was interesting to observe in this context because it's privately produced but has exactly the same subject as the shows produced by the television houses. I was also interested in observing how HTV would handle the two shows *Otvoreno* and *Kontraplan* and if the privately produced show would discuss the issues more openly or if the anchormen would have different approaches to the selection of issues and guests.

In all three shows I focused on the way the anchormen treated their guests, what professional standards they adhered to during the deliberations of the opposing sides, and how they treated the subject matter vis-à-vis the audience. I was interested in the following:

- If they used stereotypes to get higher ratings
- If they were superficial or thorough in the elaborations of issues
- If they seduced viewers with half-truths
- If they gave a better picture of the problem or distorted it

- If they presented problems without giving possible solutions
- If they were self-critical

March monitoring results

Shows broadcast in March:

- 16 episodes of *Otvoreno*
- 15 episodes of *Kontakt*
- 3 episodes of *Kontraplan*

The themes that dominated all three shows in those weeks included:

1. Weapons trafficking in the 1990s. A question had been raised of the whereabouts of between 300 and 500 million euros initially intended to buy defensive weapons for Croatia. The only firm authorised for those transactions was RH Alan, owned by the Ministry of Defence. It operated with money from state funds, the budget, and donations by Croatian emigrants. Because of the embargo on buying defence weapons, the state allowed weapon dealers to open secret accounts abroad (about fifty of them) to which RH Alan deposited money. As early as ten years ago, they discovered that the money from the secret accounts was missing and had never been used to buy weapons.

The reason for the reopening of the issue was the launching of an investigation against Vladimir Zagorec, the director of RH Alan. Along with the now deceased former president Franjo Tuđman and the former Minister of Defence Gojko Šušak, Zagorec was the only one authorized to redistribute the funds for the weapons purchase. An all-points bulletin had been issued for Zagorec, and he was apprehended

in Austria, where his trial is taking place. Zagorec is an extremely wealthy entrepreneur today, which raises the question of how he managed to build his fortune on a state salary. Missing from the Ministry of Defence are also jewels valued at 5 million dollars, also deposited for buying weapons. Zagorec is charged with embezzling them when he was leaving his office as Director of RH Alan in 2000.

In March, *Otvoreno* aired three episodes on that issue. In the first, the discussion focused on the whereabouts of the missing jewels. The guests included former ministers of defence, representatives of the state legislature, the chief of police, who ran the 2000 police investigation of the secret accounts, and two weapon dealers. In the second episode, the emphasis was on participants in the 1990s weapons trafficking. New information about the weapons purchase was disclosed, and the weapon dealers openly discussed their business. In the third episode, the emphasis fell on whether or not Zagorec would be available to the Croatian justice system. The last two shows ignored crucial questions like the responsibility of certain people, still in government positions, who, according to the documentation presented, participated in hiding information and protecting Vladimir Zagorec. The anchorwoman was insufficiently acquainted with the issues and often interrupted the guests when they tried to present new information. One of the guests was not allowed to speak when he tried to reveal some government officials' plans to prevent the development of Croatian industry, because they could make more money from weapons trafficking than from industrial production.

Kontakt also aired three episodes on the same issue. The emphasis fell on questions like who in the Croatian government helped Zagorec and would Franjo Tuđman have been indicted in the Hague had he been alive. In these episodes the

participants repeated already known facts that the printed media had been publishing in investigative reports in the last ten years. No new answers emerged. The guests on both channels were the same: former ministers and weapon dealers, but there was no one from the acting government, some members of which were also in the government during the 1990s.

Kontraplan scored the biggest hit with the appearance of Terezija Barbarić, who produced new pieces of information on the subject for the first time publicly in an excellent comprehensive speech. A question arises why Barbarić was a guest on the privately produced *Kontraplan* but did not appear on the episodes devoted to the same issues on *Otvoreno*, or on the privately owned *Kontakt*, even though she was the most desirable guest on that topic. My assumption is that in a deal with HTV, Barbarić decided to tell her story, at the moment of the greatest interest to the public, on national TV because of its influence and gravity. But HTV wouldn't go into such a sensitive and controversial issue on a show of its own production and compromised by transferring her as a guest to the privately produced *Kontakt*, which airs in its prime time...

2. In March, *Otvoreno* and *Kontakt* aired three shows on the issue of the relationship between Croatia and Serbia and more specifically, Croatian war casualties and war compensation. The shows also raised questions about the three Croatian generals indicted in the Hague Court for war crimes after the *Oluja* operation.

Otvoreno handled the question of possible Croatian lawsuit against Serbia politically very correctly, without attempting to arouse national hate. The sensitive questions were handled delicately and argued with many facts. Even though government representatives were invited, they did not respond. Through telephone voting during the show, the public

unanimously expressed their opinion that Croatia should sue Serbia; however there were no attempts to stoop to the lower level of some of the audiences' comments.

Kontakt addressed another closely related issue: Croatian veterans' demands that Croatia sue Serbia for the abuse and murder of approximately 300 prisoners of war in Serbian camps. The episode was again restrained and full of facts. Guests, veterans' representatives and survivors of Serbian camps presented a series of new facts and made it clear that they expect the Croatian government to take legal action.

All of the other shows on both televisions dealing with the post-war situation, including problems with state boundaries with Bosnia and Herzegovina, and problems with building the bridge on the Pelješac Peninsula, which circumvents BiH to connect Croatian sea territories were treated politically very correctly. I emphasize this because previously these questions and problems had often been used to emphasize the tensions and unnecessarily heighten the nation's negative feelings toward our neighbours.

3. *Kontakt* devoted four episodes to the problem of corruption, while *Otvoreno* addressed it in only one episode, merely stating the obvious fact that corruption exists.

Kontakt investigated Vice President Jadranka Kosor's purchase of a condo from the Ministry of Defence under preferential conditions. Kosor had only recently become a member of the HDZ Party and had quickly been given the opportunity to buy an expensive apartment at a low price. *Kontakt* attempted to determine the legality of the transaction, but surprisingly did not address what had happened to the previous tenants, two brothers of whom the press had written a few years before. The brothers opposed their eviction from their childhood home and one of them committed suicide. In

my opinion, not addressing the issue was a great oversight, especially considering that the program was supposed to be comprehensive and illuminating.

4. *Kontakt* did an excellent job on other issues not part of the daily events segments, as well, for instance social services for children with Down syndrome, or workplace harassment. In two of its episodes, *Otvoreno* discussed the election campaign; it also devoted air time to the high school reform in Croatia and the country's NATO membership. However, it was apparent that the anchorman and the editor were not well prepared to discuss the problems, a situation that is rather typical for the show. Sometimes the anchormen are so lost that even the studio guest would notice it. One example in March was the discussion about the sale of *Dukat*, the biggest dairy plant in Croatia, to a French buyer by *Dukat's* majority shareholder Luka Rajić, one of Croatia's new tycoons from the 1990s. This particular transaction prompted the show to take another look at the widespread corruption during the 1990s privatisation of Croatian firms. None of these episodes, however, addressed the root of the problem, i.e. what enables ordinary citizens to turn millionaires overnight.

Radio 101 – weekly interviews

Three interviews were aired:

- one with Counsellor Miroslav Šeparović, former Minister of Justice, who was the lawyer for one of the accused generals in the Hague Court. The interview did not shed light on his conflict of interest, for which he was taken off the case, the interviewer spent too much time promoting

himself, and the audience's questions were not answered;

- one with Minister Dragan Primorac on the subject of educational reform. The minister had a great opportunity to promote himself for free in the pre-election year and the problems stemming from the introduction of the new educational system of Bologna were not discussed at all;
- one with HSS Party MP Božidar Pankratić on the issue of the *Dukat* sale and its impact on Croatia's agriculture and cattle breeding. The interview was done well and included new information and points of view.

The press

Večernji list, *Jutarnji list* and *24 sata* all published pieces on the topics above on their first pages. In general, all three daily newspapers usually feature entertainment, sports, or crime stories on their first pages. In March, they all published a series of articles on the disappearance or psychiatric patients from the hospital. They all included the escapees' full names and diagnoses without their consent. More recently all three newspapers reported the name of a murdered girl, and the murderer's initials to the objection of the readers. *24 sata* also featured a story on a psychiatric patient's suicide attempt, identifying him and the hospital without his or his doctors' consent.

Other developments

In early March the board of *Večernji list* removed long-term editor Arsen Oremović from the TV show *Ekran* on RTL. The reason was Oremović's mention of a foreign singer, who thanked her girlfriend at an awards show and his hypothetical question of how the Croatian public would react if the Croatian Prime Minister Ivo Sanader thanked his boyfriend after he received an award. The board of *Večernji list* considered the homosexual hints indecent.

Monitoring results during the month of April

Aired in April:

- fourteen episodes of *Otvoreno*
- twelve episodes of *Kontakt*
- four episodes of *Kontraplan*

The dominant issues in April for all three shows were:

1. Various legal actions and indictments, including the Hague Court indictment of the Croatian generals, Branimir Glavaš's indictment on war crimes, the pending Hague Court indictment of Croatia for war crimes committed against Serbian civilians after the *Oluja* operation and the role played by Franjo Tuđman and other state officials.

Otvoreno dedicated five episodes to those subjects. Two of them were devoted to the suit brought by the Croatian State Attorney against Branimir Glavaš, former military officer, MP and long-term Prefect of the district of Slavonija. In the early 1990s, Glavaš was indicted on two counts of war crimes against civilians in Osijek. After the verdict was overturned on appeal,

his incarceration and subsequent hunger strike for his release received intense media attention for months. When the verdict was upheld in the higher court and he was sent back to prison, he held a press conference in front of his apartment building in his general's uniform.

In the episode on Glavaš, *Otvoreno* emphasized the media coverage and critically examined the excessive media attention on one man, indicted for murder. The second episode included interviews with the wives of some of the murder victims, who had an opportunity to discuss what they themselves had suffered through for the first time on television. The episode was quite objective and did not assume the role reserved for the courts.

Kontakt, on the other hand, allowed its show on Glavaš to turn into a public trial. The anchorwoman let her guests deliver a verdict, without providing any new information.

On the subject of war and the post-war problems, *Otvoreno* devoted an episode to Franjo Tuđman's and other top military officials' role after the *Oluja* operation when most Serbs left Croatia and their houses were burgled and burned. The show asked the question: "Did the military establishment led by Tuđman have the post-*Oluja* prosecution of the Serbs as part of their military strategy?" The show aired for the first time an audio tape of the military establishment discussing the issue. The public was familiar with the tape transcript from the so-called "Brijunski transkripti", the authenticity of which had been disputed. The transcripts are part of the documentation on the basis of which the Hague Court had indicted Tuđman on charges of deliberate persecution of the Serbs in Croatia. The episode was very balanced, with all sides given equal air time.

Otvoreno's next episode dealt with the credibility of Prosecutor Carla del Ponte, who allowed Serbia to submit partial documentation on the war and at the same time

threatened Croatia with an embargo if complete documentation were not submitted. The issue was whether Croatia should sue Carla del Ponte for double standards in processing the war crimes of the two countries and again, the episode handled the subject in a balanced way.

Kontraplan also focused on Carla del Ponte and her alleged deal with Serbia, discussing Croatia's possible suit against her. In my opinion, the show illuminated the prosecutor's alleged deal with Serbia better and more professionally than *Otvoreno*.

2. Both television shows discussed the resignation of Ivica Račan, President of the Social-Democratic Party (SDP) and former Prime Minister, who was recently diagnosed with cancer. The question was how the SDP, the second strongest party in the country, which Račan had led for seventeen years, can manage without him six months before the parliamentary elections.

Otvoreno discussed Račan's possible successors and asked the viewers who they would prefer as his successor as the head of SDP, Antunović or Milanović. At the time, the SDP was not in the process of electing a new head, possible candidates had not come forward, everyone was only guessing, and more than two candidacies were expected.

In its episode on the same subject, *Kontakt* emphasized Račan's role in the political life of Croatia since 1990 following his so-called political testament and resignation as SDP's head from the hospital. When Račan died on Sunday, April 29th, *Otvoreno* aired a special, "In Memoriam of Račan", prepared in advance, with studio guests who shared political and personal memories. The dignified and very informative show celebrated the politician.

3. From the array of other current-events subjects, all three shows discussed the proposed increase in women's retirement age from 60 to 65. *Kontraplan* focused on the general issue of unemployment, while *Otvoreno* was more concerned with the status of women in society than employment and work. However, the anchormen-editors weren't sufficiently acquainted with the problems of the labour market, and the guests took over the show.

Otvoreno also discussed the impact of the agreement, which Croatia signed with the Vatican City. The show offered insightful commentaries on state funds earmarked for the Church, which is gaining influence in the country's political life. Questions were raised about catechism in the schools or the segregation of children from other religions, all issues that had not been discussed on national television for years due to the influence and power of the Catholic Church in Croatia.

Radio 101

In April all the monitored media outlets reported extensively on Ivica Račan's illness, as his cancer spread and his death became inevitable. The SDP's press office briefed the media on a daily basis very clearly and unambiguously. And yet, in the race to be the first to report the breaking news, Radio 101 reported him dead two weeks before he actually died. Several web sites picked up the news and later Radio 101 had to apologize to the public and Račan's family.

The press and other developments

Because of Račan's sudden departure from the public life and serious disease, the media reported on him daily. For a few weeks, the SDP experienced a lot of media pressure and the reporters waited outside the hospital around the clock. Račan's family and his doctors asked for his privacy to be respected. The SDP's press office asked the media to show respect and trust their information. Only then did the thirst for more news subside, the media backed down, and the reporters stopped competing for the breaking news of Račan's death. They trusted SDP's press office which did a great job and succeeded for the first time in Croatia in raising the standards of journalism. The high standards were upheld after Račan's death, during his wake and in the next month which saw the election of the new party president.

Monitoring results during the month of May

Shows aired in May:

- 18 shows of *Otvoreno*
- 18 shows of *Kontakt*
- 5 shows of *Kontraplan*

The issues dominating all three shows in May were:

1. *Otvoreno* and *Kontakt* dedicated the greatest number of episodes to Croatia's relations with Serbia and Slovenia. When the Slovenian politician Marijan Podobnik and his party published a map of Slovenija, with borders extending into Croatian territory, it became the affair of the week in all media. *Kontakt* invited Podobnik, who appealed to Slovenia's historic

rights. Other guests included highly regarded experts on historic and border issues and many politicians who used similar arguments. The sensitive issue was presented very professionally; it was illustrated with a lot of data and avoided raising national tensions.

On the same day, *Otvoreno* aired a show on the same topic, again presented in a very balanced and sensitive way. In its next show, *Otvoreno* tackled the issue of Croatia's economic ties with Serbia. It included new information about Croatian entrepreneurs' financial and other economic investments in Serbia.

Tomislav Nikolić's election as Chairman of the Serbian Parliament was the subject of two episodes of *Otvoreno* and *Kontakt*, which focused on the future political relations between Croatia and Serbia. He is a member of the Nationalist (četnik) Party of Vojislav Šešelj, and a proponent of Serbian claims to Croatian territory. Even though the re-opening of those issues could have resulted in bringing back ghosts of the past and inciting nationalistic hatred, both shows presented both sides, contacted high-ranking Serbian politicians and in general adhered to political correctness.

2. Economic subjects in light of the coming elections.

Kontakt presented a new political and economic subject, the conflict of interest for politicians who are also entrepreneurs, following the foundation of a political party and winning seats on the city government by a group of influential entrepreneurs in Split. The conflict of interest was exposed when it was revealed that the same entrepreneurs, most of them contractors, had been awarded all the major building contracts in Split. The guests on the show included representatives of the entrepreneurs and national politicians

who addressed the conflict of interest with concrete examples of political corruption in Split.

A few days later, *Kontraplan* dealt with the same issue in a show that included experts on conflicts of interests and the entrepreneurs. The experts argued that this was not just a conflict of interest but also a case of corruption and blackmail since the entrepreneurs had threatened to remove the mayor of Split if they didn't get the multimillion Split Riviera contract. The entrepreneurs defended their standpoint by insisting that, unlike politicians they know how to make money, and that gives them the right to influence the redistribution of public funds through their political functions. The anchorman was clearly biased in favour of the entrepreneurs, being an entrepreneur himself on a privately produced show.

As a result of all political parties having stressed their economic programs over their political ones during the election campaign, the television shows that I monitored in May dealt with the issue of their economic program at length and in a politically correct way. In a show that brought together representatives of the three major parties, *Otvoreno* adhered to high standards of quality and factual argumentation.

3. Račan's death and the future of his SDP party was the subject of several shows on the programs I monitored. All three engaged in a debate about the political scene after his death and on his successor. *Kontakt* invited each of the four candidates, and presented them to the public individually through an interview. *Otvoreno* also hosted all four, but through issues that had no direct connection to their competition for the position of president of the biggest opposition party in the country. For example, Tonino Picula, a former minister of foreign affairs, was invited to speak on border disputes.

Otvoreno had one show devoted to the SDP election that can be described as politically very incorrect and a glorification of one of the candidates, Milan Bandić. Even though the issue was ostensibly about the elections in Bosnia and Herzegovina (BiH), (we should note that Croatian citizens coming from BiH have the right to vote in the Croatian parliamentary elections), the episode turned into a glorification of Bandić, who comes from BiH and has a lot of supporters there. Bandić was introduced in the episode as "Superman, who sleeps only for a few hours, runs marathons, and is beloved by all. As an aside, Bandić, who is also the mayor of Zagreb, is very controversial in the SDP and did not win the SDP chair on June 2.

4. As far as non-current events go, *Kontakt* investigated the drug problem in Croatia, emphasizing the role of the judicial system and the politics involved. Along with experts on drug control and addict treatment, the show invited politician Ruža Tomašić. As an MP last year she launched a campaign for the detainment of drug dealers on one of Croatia's islands and became a national hero in the fight against drugs. The show turned into a PR campaign for Tomašić, especially when they asked the viewers if she should be elected Minister of Police. I find this unsavoury and unconstitutional because ministers are not elected but appointed by the parties who win the elections.

Other developments

1. Tanja Šimić, HTV's program director was dismissed. The ostensible reason was Rade Leskovac's outburst on the *Piramida* game show where contestants compete for the sympathies of the viewers for their points of view. Whoever wins, goes on to the next round, and the

viewers win cash. Leskovac, a nationalist, who stands for "greater Serbia," incensed the viewers, and numerous veteran associations objected. The HRT Council demanded the immediate resignation of the program director and Šimić resigned soon after. However, *Piramida* is a show produced externally and the HTV program director has no say in its content. And in fact, Tanja Šimić was put in office by the previous director; so after the election of the new director, Šimić was the first to be relieved on a rigged-up charge. .

2. In late May all printed media had cover stories on the marital problems of the trend-setting couple Vlatka Pokos and Josip Radeljak, whose private life had been the fodder of the daily press and the tabloids for a long time. Their divorce caused a media circus which went on for a number of days. Even *Otvoreno* dedicated an episode to that subject. As the soap-opera unfolded, the media frenzy centered on Pokos's underwear and fur coats, their numbers and brands. Only when the Department of Social Services and the Children's Ombudsman got involved, did important details of the couple's life become public. Radeljak has a young daughter whose mother, renowned actress Ena Begović, died when she was a month old and then he re-married. When the Office of the Ombudsman got involved, doubts were expressed that Pokos had physically and mentally abused the girl, which could have been the real cause of the divorce. The journalists who cover pop music (Pokos is a pop singer) and should have known the situation well, never raised the issue of possible child abuse.

During the period of monitoring, there emerged a positive example of the role of media in championing social causes in the case of retiree Zdravko Martinović who died of poisoning in Karlovac. He was walking his dog by the local brewery and was later found unconscious with the dog lying dead next to him. The following day the local media speculated that gases from the brewery had poisoned him. They followed the developments relentlessly until the national media picked up the story. Eventually, due to the media's efforts, it became clear that the brewery was emitting toxic gases in the local creek, and that caused Martinović's death. Arrests were made and Martinović's family is going to sue for compensation, the first Croatian suit on an ecological incident resulting in death.

Conclusion

In my monitoring process, I focused on daily television shows on current socio-political events because of their popularity and influence, as well as the opportunity to provide a comparative analysis of their professional and ethical standards.

General observations

The shows did not originate the subjects, but rather picked them up from other media; they emphasized the problem, not the solution; they did not follow up; they were not self-critical, and often dealt with bizarre details, rather than the gist of the problem.

Negative findings

The anchormen and editors did not appear to worry if they meet professional and ethical standards of journalism. Their main goal was to get higher ratings on programs that seemed a bizarre mix of facts, entertainment, and sensationalism.

Positive findings

Compared to previous years, as well as to the printed press, the quality of the television shows has increased significantly. While in the 1990s, the press was exposing the most important social, political and economic issues, it has turned to more commercial subjects now, and it is television that has started to pay attention to these important issues.

Additional observations

All the daily newspapers, even though not tabloids, have become yellower. Radio stations have also decreased the number of informative shows in favour of entertainment. Websites also emphasize pop music and odd pieces.

Newspaper sales have dropped; so has the radio audience share. Public trust in the media has diminished. At the same time, it's clear that citizens demand serious and relevant subjects from the media. So the media publishers and owners face a dilemma: how to meet the public's demand and cater to the biggest commercial advertisers. At the same time they have replaced and continue to replace experienced journalists with inexperienced, uneducated, and sensationalist ones.

Television, on the other hand, has undergone a different process in the last five years. The private Nova TV and RTL emerged as strong competitors of the national television. Nova

TV became its rival in information programs and pushed HTV to expand its coverage onto events and issues previously ignored: regional news, scientific, cultural and economic news.

Five years ago, topics like the relationship between Croatia and Serbia, possible war crimes committed by Croatian soldiers, or specific examples of political and economical corruption were a taboo on Croatian television. Due to the socio-political changes and the emergence of competition, HTV has turned its attention to those issues, a development that I consider a qualitative leap towards achieving professional standards.

Qualifications

Unfortunately, these issues are still handled superficially and often unprofessionally for a variety of reasons: lack of experienced and educated journalistic and editorial staff; inability on the part of the established television to open up to new people, ideas, and projects; lack of open public bidding for foreign-produced shows, legally a 10% share of HTV's total program time, all negotiated secretly and shrouded in corruption; and finally, political pressure on editors.

Obstacles towards higher professional and ethical standards

These include the fact that the HND's codex is obsolete and is not being applied forcefully; that editorial offices as a rule do not have their own codices, and that there is no self-regulatory body, i.e. a media council.

Additional observations

In my opinion, the main reason for the lack of influential regulatory and self-regulatory rules lies in the inefficiency of the

Croatian Journalistic Society (HND), which has not taken any steps in that direction for years. The Union of Croatian Journalists (SNH) is another obsolete organization, with no systematic plan of action in the battle for professional and workplace rights. Both the Union members and the members of HND are not satisfied, the membership is going down, and there is open discussion of impeachment of the leadership.

Recommendations

1. To my mind, only well organized guild associations like HND and SNH can do something about the raising of professional and ethical standards. In order to achieve this goal, they need to replace the obsolete legal acts and statutes, and come up with an action plan, with finite goals, for membership mobilization. Judging by wide-spread criticism, journalists themselves are eager to see changes. This year will see the election of a new HND president and the campaign has already begun. The two opposing sides are those who support the status quo and those who demand sweeping changes.
2. The Croatian Media Center ICEJ, led by Stjepan Malović and Gordana Vilović, can also play a more active role in that respect. The last few years saw ICEJ voice concerns about the degradation of the journalistic profession and its trivialization, a phenomenon equally detrimental to all members of the media: publishers, consumers and journalists. Unfortunately, these messages have generally been on the academic, theoretical level. Consequently, I believe that the ICEJ's push for the establishment of a Council for the Media has a chance. Its prerequisites include a strengthening of HND, returned trust in its ability and willingness to fight for the

protection of professional rights, and journalists' acceptance of professional and ethical self-regulation.

HUNGARY

*By Peter Bajomi-Lazar and Borbala Toth**

1. Executive summary

Recent data from a representative opinion poll as well as qualitative analyses indicate that the Hungarian journalist community continues to be exposed to both political and economic pressure. The professional performance of some of the community is questioned, as indicated by the debate following a live and extremely biased broadcast on *NewsTV* of the 'siege' of the headquarters of *Hungarian Television* in the autumn of 2006. The journalists' community is divided over political differences, and there is no wide-scale professional consensus on the standards of political journalism. Freelance journalism continues to be widespread, as a result of which many journalists are not protected by collective contracts, nor are they bound by codes of ethics or practice.

Few of the Hungarian press and media outlets have internal codes of ethics or practice; even fewer make them accessible to the general public. Those that are available are a reflection of the Anglo-Saxon standards, i.e., of neutrally objective journalism. At the same time, however, the four major journalists' associations have a joint code of ethics that bounds all journalists who are members of any of them.

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There is a clear division of labor between public service and commercial broadcasters: whereas the former focus on public interest stories, the latter tend to provide tabloid news. When, however, a major political event occurs, even private broadcasters discuss it in detail and try to cover all aspects of the story. National daily newspapers cover national and/or Budapest-based stories (with a marked focus on issues of public interest), whereas regional ones focus on local events (including both public and human interest stories).

As for the issue of political bias with regard to television and radio, none of the broadcasters studied seem to intentionally break the objectivity rule. At the same time, however, they fail to put issues into an adequate context in order to facilitate the public's decision-making in political matters.

As regards the print dailies studied, *Népszabadság* actively aspires for objectivity, while *Magyar Nemzet* does not aspire or even pretend to aspire for objectivity. In contrast, the regional dailies discussed have a neutral approach to both national and local political issues.

Journalism in Hungary is in a post-transitional phase: after decades of propaganda journalism, an effort has been made to enhance the standards of (an idealized) neutrally objective Anglo-Saxon journalism, but with partial results only. The good news is, however, that the Hungarian media landscape is plural enough to cover a wide range of public and human interest stories and to offer a variety of approaches to them.

- Possible ways to improve the current situation include
- (1) the establishment of a transparent system of government subsidies to support money losing media outlets in a politically neutral way, and
 - (2) the passing of codes of ethics and the setting up of ethics committees by press and media outlets.

2. Introduction

This paper will examine the changes in journalistic self-regulation in Hungary since the release of the 2006 report. First, it will offer a brief description of Hungary's 2007 media landscape with a focus on the professional standards of journalism. Second, it will describe the ethics codes and analyze the news coverage of selected newspapers, news sites and broadcast stations. And finally, it will make some recommendations in an effort to improve the performance of political journalism.

3. Context

Since the last report on the status of journalistic self-regulation in Hungary, no major changes have occurred.²⁷ As quantitative data released in early 2007 based on a representative opinion poll conducted among 940 journalists by sociologist Mária Vászárhelyi indicate, the Hungarian journalist community continues to be exposed to pressure: 43% of the interviewees report having experiences political, and 40%,

²⁷ The 2006 report can be downloaded at <http://www.seenpm.org/index.php?nav=ut.php&p=9> (last accessed 2007. April 23.).

economic pressure.²⁸ Similarly, qualitative analyses, such as those published by investigative journalist Éva Vajda and editor László Seres, describe repeated efforts by both the political and the business elites to interfere with editorial content.²⁹

In political terms, the past nine months were unusually intense for Hungary.³⁰ The right-wing conservative supporters of the parliamentary and the extra-parliamentary oppositional forces took to the streets on several occasions; some of the demonstrations turned violent. Of particular relevance to the status of the press and media was the 'siege' of the headquarters of the public *Hungarian Television* (Magyar Televízió, MTV) on September 18, 2006, when rioters invaded the building and occupied it for a night. The rioters' clash with the police was broadcast live by, among others, the private cable company *NewsTV* (HírTV), a 24-hour news channel associated with the oppositional right-wing conservative political parties. During the live broadcast, the reporters and anchors of the channel explicitly supported the rioters, called them 'revolutionaries', and associated their illegal action with the events of the 1956 revolution.³¹ This coverage provoked an

²⁸ Press release on February 26, 2007.

²⁹ Vajda, Éva: "Az elnök megfáradt emberei" [All the President's Men under Trial], *Élet és Irodalom*, 2007. January 5., Seres, László: "A nagy félreértés, avagy: Újságírás? Milyen újságírás?" [A Great Misunderstanding or Journalism? What Kind of a Journalism?], *Élet és Irodalom*, 2007. March 16.

³⁰ This paper was concluded in May 2007.

³¹ The event triggering the demonstrations was the publication of a speech by the prime minister earlier that year to his party members in which he admitted having lied during the spring 2006 election campaign. For more on the coverage of the demonstrations, see Lampé, Ágnes: "Hazai 'breaking news'. Az MTV ostromának képei" [Hungarian Breaking News. Pictures from the Hungarian Television Siege], *Médiakutató*, 2007. Spring.

intense debate on the standards and performance of political journalism; analysts argued that the Hungarian journalist community is in profound moral and professional crisis.³² The National Radio and Television Board (Országos Rádió és Televízió Testület, ORTT) imposed a significant fine on *NewsTV*. However, the debate proved short-lived: nine months after the event that sparked the debate, the issue is off the public agenda. All the more so as the Hungarian Journalists' Association (Magyar Újságírók Országos Szövetsége, MÚOSZ), the major professional association for Hungarian journalists, has no print publication to discuss such issues. The performance of journalists is rarely, if at all, addressed publicly.

Some of the more promising efforts to improve the performance of political journalists have also failed during the past year. The national daily newspaper *Magyar Hírlap* had employed former data protection ombudsman László Majtényi as newsroom ombudsman. After the paper was purchased by Gábor Széles, a leading Hungarian businessman and investor, in June 2006, it refused to publicize its ombudsman's report said to have criticized its coverage of the new owner's business transactions. As a result, the ombudsman quit the newspaper.³³ It needs to be added that, a few weeks later, the leading editors also left the outlet, and *Magyar Hírlap*, formerly a moderate liberal paper, turned moderate conservative. In March, 2007, Majtényi joined the liberal nationwide daily *Népszabadság*.

³² Vásárhelyi, Mária: "Katasztrófamaraton" [Catastrophe Marathon], 168 óra, 2006. October 2.; Monori, Áron: "Ja, a Hírtévé? Bocsánat!" [Oh, it's HírTV! I am sorry!], *Élet és Irodalom*, 2006. September 29.

³³ Majtényi, László and Miklósi, Zoltán: "Tulajdonosi szemlélet" [When the Owner Rules], *Élet és Irodalom*, 2006. August 24.

Public trust in the journalist community has been declining for years and is now relatively low. According to data collected by GFK Hungary on August 7, 2006, the 'index of trust' for journalists is 37%, as compared to 87% for teachers or 88% for medical doctors; only politicians have a lower index of 26%. We should also note, however, that the index of trust for Hungarian journalists is above the Western European average of 33%, but below the East-Central European one of 42%.³⁴

In short, problems with the news press and media persist. Specific reasons and developments include:

- the underdeveloped advertising and audience markets produce financial instability for most press and media outlets; as a result many of them affiliate themselves with various political forces in an effort to gain access to public resources;
- there is no wide-scale professional consensus on the standards of political journalism;
- the journalist community is divided politically, as a result of which there is no dialogue between the various 'camps' of the community, nor is there a sense of professional solidarity when encountering political or economic pressure;
- because of the lack of financial resources and information databases, investigative journalism is practically non-existent;
- journalists are overworked and typically underpaid, especially those with the regional press and media;

³⁴ See press release at <http://www.gfk.hu/sajtokozi/fr6.htm> (last accessed May 10, 2007.).

- because of the Hungarian tax system, freelance journalism continues to be widespread, as a result of which many journalists are not protected by collective contracts, nor are they bound by codes of ethics or practice;
- journalists tend to ignore conflict of interest rules, and frequently act as advisors to political parties and private enterprises;
- political pressure on editorial content abounds, both informal, e.g. phone calls, and formal, e.g. lawsuits;
- economic pressure on editorial content is widespread.³⁵

4. Self-regulation

In order to gain insight into the status of journalistic self-regulation, a variety of print, broadcast and online media outlets were selected for monitoring:

³⁵ For details, see Vajda, Éva and Ildikó Kaposi: “Etikai dilemmák a magyar újságírásban” [Ethical Dilemmas in Hungarian Journalism], in Sükösd, Miklós and Ákos Csermely (eds), *A hír értékei. Etika és professzionalizmus a mai magyar médiában* [The Value of the News. Ethics and Professionalism in the Hungarian Media], Budapest: Média Hungária, 2001.; Vajda, Éva: “Közeg és szakma” [The Context and the Profession], in Sükösd, Miklós and Ákos Csermely, *ibid.* See also Bajomi-Lázár, Péter: “Press Freedom in Hungary 1990–2001,” in Sükösd, Miklós and Péter Bajomi-Lázár (eds), *Reinventing Media. Media Policy Reform in East Central Europe*. Budapest: Central European University Press, 2003.; Bajomi-Lázár, Péter: “Hungary,” in Preoteasa, Manuela (ed.) *Media: The Business of Ethics, the Ethics of Business*. Bucharest: Center for Independent Journalism, 2005.; Bajomi-Lázár, Péter: “Hungary,” in Dragomir, Marius et al. (eds) *Television across Europe: Regulation, Policy and Independence*. Budapest and New York: Open Society Institute, vol. 2, 2005.; Gálik, Mihály: “Hungary,” in Petković, Brankica (ed.), *Media Ownership and Its Impact on Media Independence and Pluralism*, Ljubljana: Peace Institute, 2004.

- the major public Hungarian Television,
- the leading nationwide commercial television channel *RTL Klub*,
- the public Hungarian Radio,
- the leading national commercial radio station *Hit Radio* (Sláger Rádió),
- the leading left-wing liberal news site *Index*,
- the leading right-wing conservative news site *Gondola*,
- the leading national left-wing liberal serious daily newspaper *Népszabadság*,
- the leading national right-wing conservative serious daily newspaper *Magyar Nemzet*,
- and two regional daily newspapers, namely *Délmagyarország* and *Kelet-Magyarország*.

National outlets were selected for their influence and potential agenda-setting impact. The regional newspapers have only a limited impact on the national public agenda; however, they are the number one source of information in their respective counties and are typical representatives of the genre.

4.1. Television

Television channels are first and foremost regulated by the 1996 Act on Radio and Television, as modified in 2002 (hereafter referred to as the Broadcasting Act), which sets certain standards regarding news coverage. The norms imposed by the law include internal pluralism, objectivity, the separation of facts from opinions, and the service of the public, the latter implying the provision of public interest stories as opposed to human interest stories.

We should note that the law does not attach a number to the concept of internal pluralism. Practice has shown that the Complaints Commission of ORTT, which reviews complaints of controversial news coverage, considers a 50–50% division of time between two opposing sides as the norm, whereas the Monitoring Service of the same Commission, which monitors news services on a regular basis, insists that the concept implies an equal split between the government, the coalition parties, and the opposition parties. Broadcasters are, of course, unable to meet both of these conflicting norms, which exposes them to pressure by ORTT in the event of any leading political party being unhappy with their coverage.

In addition to the law, both the Hungarian Television and *RTL Klub* have their own codes of ethics and practice. That of *MTV* is longer (a total of nine paragraphs) than that of its commercial counterpart (seven paragraphs), and can be accessed on their website. In the spirit of the Broadcasting Act, *MTV* defines its mission as the protection of Hungarian language, culture, and traditions, as well as the provision of minority programming. The public station has an Ethics Committee, which reports to the Chair of *MTV* and has an advisory role. The committee members are appointed by the Chair for a three-year-term and may be recalled. The committee monitors whether the programs broadcast on *MTV* comply with the standards set by the Broadcasting Act and the newsroom code.

The code of ethics issued by *RTL Klub* stresses that journalists must consult with the editor-in-chief in the event they encounter an ethically challenging problem. The channel also has special regulations on data protection for the online fora participants on its website.

The codes of ethics of both institutions offer a detailed list of potential conflicts of interest.

4.2. Radio

The code of ethics and practice issued by the Hungarian Radio, available on its website, states that the broadcaster must present all views, tastes and genres that there are in the society. It also notes that all information must be double-checked before release. Differing views do not necessarily have to be presented in one and the same show but have to be present in the Hungarian Radio overall program.

The news director of *Hit Radio* replied to our query that the station has its own professional and ethics standards regarding the news; however, they are not available to the public or even researchers, because they are considered part of the station's professional know-how. We should note that this practice is quite uncommon.

4.3. Online outlets

Index is a member of the Hungarian Association of Online Media whose code of ethics and practice was issued in 2001 and modified in 2004; the 35 pages long code consists of seven chapters. It is important to note that the version of the code that was downloaded online on March 13, 2007, specified that it was valid until June 8, 2006. The code includes provisions regarding reliable information to the public, impartiality, precision, good taste, and the like. In addition, it

covers some concepts specifically relevant for the Internet such as banner, fora, blogs, pop-ups, and an opt-in clause.

When interviewed, the editor-in-chief of *Gondola* said that, "as far as he could remember," they had signed the code of the Hungarian Association of Online Media, but added that, "to his best knowledge," it was valid only until the end of the campaign for parliamentary elections, which took place in the spring of 2006. He was not aware of any other kind of self-regulation for the news site. The Code of the Hungarian Association of Online Media is not accessible from the webpage of *Gondola*.

4.4. National dailies

The statute of *Népszabadság* stresses reliability, factuality, and internal pluralism; its journalists must respect the expectations of both the Népszabadság Share Holding Co. and the readers. They may be members of a political movement or party, but may not take an office in them or act publicly on their behalf. "No one can be forced to take a position that is contrary to their political and moral convictions", adds the statute. A three-member committee, elected by the editors, supervises the internal freedom of the press and the collective rights of the newspaper's journalists. In addition to this, *Népszabadság* must guarantee a living wage to its employees so that they would not need to work for other daily newspapers.

Magyar Nemzet did not respond to our several queries about its self-regulation mechanisms.

4.5. Regional dailies

Délmagyarország has no code of ethics; its daily work is, as we were told, regulated by “tradition and routine.” In addition, ethical issues and questions are discussed at the morning briefings. However, a code of ethics is compiled every election year with very specific provisions on how each of the political parties will be covered. Despite their promise, the editors have not provided us with access to this code.

Kelet-Magyarország, by contrast, does have an internal code of ethics and practice, which, however, proved inaccessible.

4.6. Self-regulation: Summary

Few of the Hungarian media outlets have internal codes of ethics and practice; even fewer make them accessible to the general public. Those that are available are a reflection of the Anglo-Saxon standards, i.e., neutrally objective journalism. Two of the outlets interviewed have an ethics commission. Other means of self-regulation, such as newsroom ombudsmen, are not employed.

We should also add that the four major journalists' associations, including the above-mentioned MUOSZ, the Hungarian Journalists Community (Magyar Újságírók Közössége, MÚK), the Hungarian Catholic Journalists Association (Magyar Katolikus Újságírók Szövetsége, MAKÚSZ), and the Press Union (Sajtószakszervezet), have a joint code of

ethics that bounds all journalists who are members of any of them.

5. News coverage

In order to review the performance of the political journalists, the news coverage of some of the leading press and media outlets was analyzed on two selected days. Those days, April 2 and 4, 2007, were chosen because no major political event occurred on any of them; they were 'business-as-usual' days for the Hungarian press and media. The selected programs and editions included

- the prime time evening news show *Híradó* on the Hungarian Television,
- the prime time evening news show *Híradó* on *RTL Klub*,
- the prime time evening news *Esti Krónika* on the Hungarian Radió,
- the prime time morning news *Hírek* on the next days (April 3 and 5) on *Hit Radio*,
- the 'evening edition' of *Index*,
- the 'evening edition' of *Gondola*,
- the front page of the April 3 and 5 editions of *Népszabadság*,
- the front page of the April 3 and 5 editions of *Magyar Nemzet*,
- the front page of the April 3 and 5 editions of *Délmagyarország*,
- the front page of the April 3 and 5 editions of *Kelet-Magyarország*.

This selection of press and media outlets is, of course, not representative of the Hungarian media landscape. However, it includes the most popular national outlets, as well as two typical regional publications, which allows for some general conclusions to be drawn.

The news analysis was based on two connected normative assumptions. First, it was assumed that people make political decisions on a rational basis, i.e., the press and media need to provide them with substantive news in order to enable them to participate in the political process. Second, it was assumed that people expect objective information. In other words, *tabloidization* and *political bias* in the news were regarded as unwelcome phenomena. With this in mind, the following questions were addressed:

- (1) What is the relative ratio of human interest stories (or soft news items) and of public interest stories (or hard news items)?
- (2) What are the major news criteria as reflected in the headlines?
- (3) Are facts and opinions adequately separated?
- (4) Are all parties involved given a chance to express their views?

5.1. Tabloidization

5.1.1. Television

On April 2, the headlines on *RTL Klub* included a story on the 'pancake killer', motorcycle accidents, and a countryside church that had been painted red (i.e., the color of the Hungarian Socialist Party). In addition to this, the commercial

channel covered a wide range of soft news (the show included a total of 19 news items in 23 minutes); indeed, none of them had anything to do with parliamentary or party politics. The headlines on the Hungarian Television included the ongoing—and highly debated—reform of the health care system, an upcoming rise in petrol prices, a new ruling in Brussels forbidding allergenic hair dyes, and the canonization process of John-Paul II. In addition, it covered extensively parliamentary and party politics (such as the passing of some new legislation, and changes in the chair of the Free Democrats Association, a total of 21 news items in 29 minutes). There was a partial overlap between the news covered by the two channels. Five stories appeared on both: the rising petrol prices, the healthcare system reform, the Solomon Islands tsunami, the British troops captured in Iran, and the canonization process for John-Paul II.

On April 4, the headlines on *RTL Klub* included the resignation of Lajos Molnár, Minister of Health, the drowning of a three-year-old boy, the consumer protection agency's control over meat stores (since Easter was coming), and the birth of a tapir baby in a Hungarian wildlife reserve. The leading story was covered in depth, with details about the healthcare system reform and Molnár's possible successors. The rest of the news (the show included a total of 18 news items in 27 minutes) covered such issues as consumer protection, river pollution, alternative heating resources, a report on the release of the British troops captured by Iranian forces, and some brief reports from the United States and Iraq, as well as a few soft news pieces. The headlines on the Hungarian Television included but two items: the resignation of the Minister of Health and the release of the British soldiers. More than half of the show (16 minutes out of 29) was devoted to the resignation,

providing a very detailed background. The rest of the news covered various issues (the show totaled 13 news items in 29 minutes) such as the release of the British soldiers, demonstrations at the Soviet war memorial in Budapest, some activities of the consumer protection agency, the aftermath of the tsunami, and the drowning of the little boy. Again, the news on the two channels overlapped partially, including the resignation of the Minister, the activities of the consumer protection agency, the release of the British soldiers, and the drowning of the three-year-old boy.

5.1.2. Radio

On April 2, the headlines on *Esti Krónika* on the Hungarian Radio included the Hungarian hospitals signing a new contract with the National Health Care Budget, Suzuki's recall of recently sold cars, the rise in petrol prices, and a story on the bird-flue infected chickens imported from Hungary to the UK. The show covered a total of 14 news items in 28 minutes; i.e., two minutes were devoted to each news story on the average. In addition to the headlines, *Esti Krónika* also reported on a number of other hard news items, including parliamentary and party politics, foreign affairs and climate change. The headlines of the morning news program on *Hit Radio* on April 3 included a story on household gas consumption and pricing, a traffic report from Budapest, and a story on former football star Maradona's drug rehabilitation. The show covered a total of 9 news items in 13.5 minutes, i.e., 90 seconds per news item on the average. In addition to the headlines, *Hit Radio* also reported on some issues around the health care system reform, the forthcoming Easter holiday, the importance of consumer protection, and the Maradona story.

On April 4, the headlines on *Esti Krónika* included the resignation of the Minister of Health, the release of the British soldiers; and the ongoing political conflict in the Ukraine. There were 10 news items in nearly 30 minutes. The Minister's resignation was discussed in detail; the remaining news, including both domestic and foreign stories, covered public interest items only, such as the major oppositional party calling for the resignation of the National Election Commission chair, the building of a new government district in Budapest, and the news from Iran, the Ukraine, as well as the Czech Republic. On April 5, the headlines on *Hit Radio* included the resignation of the Minister of Health discussed in detail, the traffic jam in Budapest, and a story about Victoria Beckham. The rest of the news items regarded everyday life, e.g., the selling of train tickets during the Easter holiday.

5.1.3. Online media

On April 2, the leading news items on *Index* included a report on that day's parliamentary work, and a number of stories: a lawyer who spent over HUF 10 million to say goodbye to the resigning chair of the Free Democrats' Association on outdoor posters; one million Hungarian citizens living without social security; guards controlling passengers' tickets at underground exits; and ORTT giving additional grants to its staff. On the same day, *Gondola* ran a story suggesting that the ongoing privatization of hospitals was promoted by the Church of Scientology behind the scenes, as the opposition had suggested, an article remembering John-Paul II, whose canonization was under way, as well as a guide to cultural programming during the Easter holiday. Other news that received less coverage included the situation of the Roma

community in Hungary and a scandal regarding a chocolate sculpture of Jesus Christ. In addition, the front page of *Gondola* included several opinion pieces, clearly separated from factual reports.

On April 4, the leading news items on *Index* included the resignation of the Minister of Health, the opposition call for the chair of the National Election Commission to resign, a story on the future government district in Budapest, a speed record by the French TGV-train; a protest against the Soviet war memorial in Budapest, and a fire in a Budapest bar killing one person. On the same day *Gondola* focused on the resignation of the Minister of Health, a suspected corruption case involving the new chair of the Free Democrats' Association whose investigation the opposition had urged, a comics exhibition and, separated from the news above, an editorial on the chair election of the Free Democrats' Association.

5.1.4. National dailies

The front page of the April 3 edition of *Népszabadság* reported on three stories: the health care reform, the formation of a new coalition government in Romania, and the easing of legal criteria for company incorporation. In addition, it included 'headlines' on the future of the Hungarian Coalition Party in Slovakia,³⁶ a design exhibition in Budapest, an analysis of the performance of the Hungarian media, as well as the 're-birth' of a Hungarian motorcycle company. The front page of the April 3 edition of *Magyar Nemzet* reported on the health care reform, the suspicions of corruption against the new chair of the Free

³⁶ Slovakia, Hungary's northern neighbor, has a relatively huge Hungarian minority; in recent years, tensions between the two countries have grown.

Democrats' Association, the ongoing debate on gas supply to Hungary, the canonization process of John-Paul II, and the growing debts of the Hungarian population. It also offered 'headlines' on the background of the recent chair election in the Free Democrats' Association, the future of the Hungarian Coalition Party in Slovakia, a price increase of bath passes, a potential environmental threat coming from Austria, and recent developments in the government crisis in the Ukraine. The news agendas of the two serious national newspapers overlapped partially with both covering the health care reform and the future of the Hungarian Coalition Party in Slovakia.

The front page of the April 5 edition of *Népszabadság* reported on the resignation of Lajos Molnár, Minister of Health, and possible scenarios for the health care reform, as well as the release of the British soldiers captured by Iranian forces. It offered 'headlines' on the parliamentary opposition criticizing the National Election Commission, threats regarding private security companies' employees, the potential impact of European agricultural policy on Hungary, the Polish-Russian crisis, and the renovation of some museums in Budapest. The front page of the April 3 edition of *Magyar Nemzet* reported on the resignation of the Minister of Health, the release of the British soldiers, an unfavorable professional evaluation of several European banks, including Hungarian ones, and a delay in the construction of the planned government district. It also offered 'headlines' on a speech by Viktor Orbán, head of the bigger opposition party, the growing unrest in the streets of Kiev, the development of the Hungarian 'Silicon Valley', the financial troubles of the Hungarian Writers' Association, the issues surrounding the directorship of the theater in the city of Szolnok, and the extended validity of 'Hungarian identity

cards'.³⁷ The agendas of the two newspapers overlapped partially in that both covered the resignation of the Minister of Health, the release of the British soldiers, and the crisis in the Ukraine.

5.1.5. Regional dailies

On April 3, the leading news items in *Délmagyarország* included stories on a girl found with her veins slashed, medical centers checking social security cards, the market opening on *Saint Stephen Square* in the city of Szeged, traffic and road news, the dangers of ham consumption during the Easter holiday, a strike threat at a local factory, and the Budapest Travel Exhibition where the site of Szeged was evaluated the highest. On the same day, *Kelet-Magyarország* covered an amendment to the law on sexual harassment, the program of the (local) National Theater, a football championship in the city of Nyíregyháza; the rise in petrol prices, and a cancelled concert in Nyíregyháza.³⁸

On April 5, the front page of *Délmagyarország* reported on the resignation of the Minister of Health, ways to manage money, a massive lay-off in the city of Vásárhely, the drowning of the little boy, and electronic bicycles gaining popularity. Mention was also made of the director of the National Theater of Szeged, a resigning sportsman, and a local robbery. On the same day, *Kelet-Magyarország* covered the resignation of the

³⁷ The last conservative government in Hungary, headed by Viktor Orbán, issued such cards to Hungarian nationals living in neighboring countries; this card is, first and foremost, of a symbolic value as it does not provide its holder with substantial rights in Hungary.

³⁸ Szeged and Níregyháza are the administrative 'capitals' of the two newspapers' respective counties.

Minister of Health; a review of a theater premiere from the night before, the modification of bus and train schedules for the spring holidays, and a drawing competition in a primary school in Nyíregyháza, illustrated by a huge photo in the middle of the page.

5.1.6. Tabloidization: Summary

On the basis of the two days, two conclusions can be drawn regarding tabloidization in the broadcast media. First, the news criteria that the various television channels and radio stations abide by vary: the Hungarian Television and the Hungarian Radio focus on 'important' events, while *RTL Klub* and *Hit Radio* on negativity and oddness, i.e., the public media outlets were not tabloidized, whereas their commercial counterparts were.³⁹ When, however, a major political event, such as the resignation of the Minister of Health, occurred, even private media outlets discussed it in detail and tried to cover all aspects of the story. Second, of the four stations, only *Hit Radio* displayed signs of tabloidization in the sense that the other ones covered every news item at considerable length: the average time that they devoted to each news item was over one minute.

The online media outlets discussed offered a mixture of hard and soft news items, with *Index* more tabloidized than *Gondola*. In fact, *Index* has the unusual but very popular habit of presenting news stories under sensational titles yet treating them seriously; i.e., this outlet tends to use the language of the youth. Also, *Index* is more concerned with traditional news

³⁹ We should also note that RTL Klub covered more news from the countryside than the Hungarian Television.

values without respect to the potential political implications of the various news items, whereas *Gondola* tends to promote the issues of the right-wing conservative political agenda.

As regards print daily publications, none of the four outlets bears marked signs of tabloidization; their news and word selection is not sensationalist, and their articles are quite lengthy. The profiles of the four newspapers differ significantly in that national outlets cover national and/or Budapest-based stories with a pronounced focus on public interest, whereas regional newspapers focus on local events, including both public and human interest stories. Another thing to point out is that *Magyar Nemzet*, the daily associated with the political opposition, focused on negativity, and made an effort to promote the right-wing conservative political agenda with such issues as religion and the life of the Hungarian diaspora abroad.

5.2. Political bias

5.2.1. Television

On the first day of observation, *RTL Klub* did not cover parliamentary or party politics; therefore the question of political bias is irrelevant. On the second day, when a major domestic political issue occurred, all political sides involved were interviewed. *RTL Klub* did not comment on the reported events.

The Hungarian Television was largely different in that it widely covered parliamentary and party politics; when doing so, it reported on opinions from both the major coalition and the leading oppositional party. We should note, however, that the editors of this channel understood objectivity in a very narrow,

and arguably obsolete, way: they did report on conflicting opinions, but they did not try to put these opinions into context, i.e., they did not help the viewer decide which of the two conflicting positions was closer to reality. The Hungarian Television did not comment on the reported events.

Finally, the two channels' perspectives were very different: *RTL Klub* used that of 'the man in the street', while the Hungarian Television, a more intellectual one. In other words, *MTV* tended to rely on credible sources while *RTL Klub* was more eager to give voice to 'laymen.'

5.2.2. Radio

On the two days of observation, the Hungarian Radio sought to cover issues from all possible perspectives ranging from that of 'the man in the street' through the various political parties to the respective minister. Just as the time devoted to the average news item on *Hit Radio* was significantly shorter than that on the public station, fewer of the people involved were given the chance to express their views. Neither of the two radio stations commented on the issues covered.

5.2.3. Online Media

On *Index*, all political parties were given a chance to express their views on current issues. The homepage did not offer any opinion articles but linked to them. *Index* did not normally comment on the reported events, however, it used a youthful and quite frequently sarcastic language, indicating a critical stance toward politics and politicians on all issues.

Gondola, by contrast, did not really seek objectivity. All of its leads started with the position of the right-wing

conservative forces, and the pictures it used as illustration portrayed figures from the opposition even if the article actually dealt with the government. Opinion articles were accessible on the homepage, but were typographically separated from the (slightly opinionated) news.

5.2.4. Serious national dailies

As far as political bias goes, significant differences can be detected in the news coverage of the left-wing liberal *Népszabadság* and the right-wing conservative *Magyar Nemzet*. First of all, the former tried to use a neutral tone in both its titles and word choices, while the latter used strong evaluative adjectives; e.g., it referred to the health care system—in the very title of an article—as a ‘sinking boat’. And second, *Népszabadság* tried to report on all relevant opinions, whereas *Magyar Nemzet* gave priority to oppositional sources.

5.2.5. Regional dailies

Both *Délmagyarország* and *Kelet-Magyarország* were barely interested in national news and focused on local issues, unless an event of major importance, such as the resignation of the Minister of Health, occurred. Even then they concentrated on how that would affect their regions. These newspapers have a *de facto* monopoly in their respective circulation areas and hence try to address all audiences. As a result, they either avoid political issues, do not comment upon them, or treat them in a neutral way.

5.2.6. Political bias: Summary

On the days of observation, none of the television and radio stations monitored broke the rule of objectivity. At the

same time, however, all four failed to put the issues in an adequate context in order to facilitate the public's political decision making, except for the resignation of the Minister of Health, which was covered in detail.

The online news outlets discussed in this paper are not objective in the traditional sense of the term: *Index* offers a critical approach to all political parties and politicians, whereas *Gondola* is overtly biased in favor of the right-wing conservative forces.

As regards the national print dailies, it seems fair to conclude that *Népszabadság* strives for objectivity, while *Magyar Nemzet* does not and does not even pretend to. In contrast, the regional dailies discussed approach both national and local political issues in a neutral way.

6. Conclusions

Arguably, journalism in Hungary is in a post-transitional phase: after decades of propaganda journalism, an effort has been made to enhance the standards of (an idealized) neutrally objective Anglo-Saxon journalism, but with partial results only. First, few of the outlets discussed in this paper have institutionalized such standards by way of adopting binding codes of ethics or setting up ethics committees. And second, the unspoken norms of neutrally objective journalism are every now and then ignored. The good news is, however, that the Hungarian media landscape is plural enough to cover a wide range of public and human interest stories and to offer a variety of approaches to them.

7. Recommendations

Any shortcomings of the Hungarian print press and broadcast media are likely connected to the small size of the advertising and audience markets, i.e., insufficient revenues from politically independent resources, as a result of which some of the news outlets have to seek the protection of various political parties or the government of the day in search for financial resources, distributed through such informal ways as advertising by state-owned companies. It follows that possible ways to improve the current situation would include:

- the establishment of a transparent system of government subsidies for the press that would support money-losing outlets in a politically neutral way, i.e., will correct for market imperfections, and
- the passing of codes of ethics, the setting up of ethics committees, and the employment of newsroom ombudsmen by press and media outlets in an effort to improve contact with the audiences and regain public trust, as a result of which their financial position, and hence political independence, could be improved.

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MACEDONIA

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Executive summary

There is an ethical crisis in journalism in Macedonia and non-professionalism abounds in the work of media outlets.

This report shows that a large number of media are violating the Code of Ethics. Despite the fact that the majority of journalists' organisations have adopted the Code of Conduct which follows international standards, many work practices exhibit disrespect of professional and ethical norms.

The media market in Macedonia is rather fragmented. The number of media outlets is too high in comparison to the population and the economic potential of the country. Currently, there are 126 commercial broadcasters, eight of which function nationally (five television channels and three radio stations), and 118 operate locally (51 television channels and 67 radio stations). In addition to the commercial media, there is also the national public broadcasting service, which includes the Macedonian Radio and Television with three television channels and three radio stations.

The various forms of influence the media experience are largely determined by the ownership structure. Powerful local companies or individuals affiliated with some political or industrial group are behind the major national television channels, while the local broadcasters are usually at the mercy of individuals, who often follow their own entrepreneurial

interests. The print press market is also highly fragmented; there is pluralism, at least in terms of quantity. There are 12 daily newspapers, about 15 weeklies, ten biweeklies, 20 monthly magazines, 21 periodicals and 21 children's magazines in Macedonia. Nine dailies are published in Macedonian and three in Albanian. The total circulation of all daily newspapers published in Macedonia is approximately 80,000-100,000 copies.

Broadcasting is regulated by the Broadcasting Act, while no special law governs the print press. A 2005 study commissioned by the Association of Journalists in Macedonia revealed that most journalists are poorly paid and only a few media outlets, e.g. *TV Telma* and the dailies *Dnevnik*, *Utrinski vesnik* and *Vest*, pay health insurance and retirement benefits to the full amount of the salary.

The types of influence that various interest groups and their owners have been exerting on the media over the years can be divided in two categories: internal, i.e., by the owner, and external, i.e., by political parties, advertisers or other interest groups.

The crisis of journalism in Macedonia escalated in early 2006, when the "Fabrika" affair was exposed. Suspicions that a group of journalists had secretly been paid by a public relations firm to provide spin control for government ministers and other officials, caused uproar.

The Association of Journalists' reputation among journalists is weak because it is perceived as preoccupied with its own issues and as having done nothing to promote professionalism and journalistic standards in the past few years.

In 2001 it adopted its Code of Conduct, but major media outlets do not have codes of ethics or other instruments of self-regulation such as ethics commissions, newsroom ombudspersons, etc.). The Code of Conduct of the Association covers almost all important issues, yet it is quite short and declarative and cannot be a guide for conduct in practical situations.

Last year's report, which focused primarily on the general situation in the media and its most important problems, did not result in any positive follow-up. The question of media self-regulation remains open and unsolved, although the Macedonian Institute for Media initiated a couple of conferences and training sessions. The only positive sign is the fact that the Association of Journalists has recently formed a new Council of Honour as a special organ charged with implementing the Code of Conduct, and its first steps are encouraging.

During the Sofia workshop earlier this year, the Macedonian media selected to be monitored two or three times a week, included the news programs on two TV-stations, *Kanal 5* (Channel 5), and *TV Sitel*. The reason for the selection lies in the fact that they are both owned by active politicians. Behind *Kanal 5* is Mr. Boris Stojmenov, former Minister of the Economy, and President of the VMRO-Makedonska Party, currently in opposition. *Sitel TV* is owned by Ljubisav Ivanov-Zingo, leader of the Socialist Party, which is a member of the governing coalition, led by VMRO-DPMNE, and MP in the Macedonian Parliament. The general idea was to monitor whether the owners' political affiliations will have an impact on the way their media inform the public about current issues.

In addition, two weekly magazines, *Nedelno Vreme* and *Fokus* were also included. At the time of the Sofia workshop, they had the highest circulation in the country. Even though this is no longer the case, they are still among the most popular.

Finally, we included the crime pages of five daily newspapers. These are usually criticized by NGOs, human right experts and foreign experts about their violation of basic human rights, like the right to privacy, as well as for their sensationalism.. During the May 2007 UNICEF seminar in Ohrid, for instance, Hongwei Gao, Head of the UNICEF Office in Skopje, openly suggested that the media in the country are not doing enough to protect children who are the victims of family, psychological, or sexual abuse. Often the media in Macedonia reveal children's identity even in cases of suicide or murder.

Context

Macedonia gained its independence in 1991. The country was spared from the inter-ethnic violence that raged elsewhere on the Balkans following the break-up of Yugoslavia in the early 1990s, but it came close to a civil war a decade after independence. In early 2001, Albanian rebels staged an uprising, demanding greater rights for the Albanian minority. The support of the EU and NATO enabled the country's leading politicians to strike a peace deal. Under the Ohrid agreement, the Albanian fighters laid down their arms in return for greater recognition of the Albanian minority and its rights within the undivided state. The recognition of ethnic-Albanian rights was formalized in amendments to the constitution approved by Parliament in late 2001. Ethnic Albanians account for about a

quarter of the population, which is estimated at about two million. Major religions are Christianity and Islam.

In November 2005, the European Commission recommended Macedonia as a candidate country for EU membership. In July 2006 the centre-right VMRO-DPMNE party won the parliamentary elections, with 44 seats out of 120. Nikola Gruevski, leader of the VMRO-DPMNE was named Prime Minister, and after the general elections, he formed a coalition government with the Democratic Party of Albanians and three smaller parties. The main opposition parties are the Social Democratic Union of Macedonia (SDSM), and the the Democratic Union for Integration (DUI).

The number of media outlets in Macedonia is too high in comparison to the population and the economic potential of the country. Currently, there are 126 commercial broadcasters, eight of which function nationally (five television channels and three radio stations), and 118 operate locally (51 television channels and 67 radio stations). In addition to the commercial media, there is also the national public broadcasting service, which includes the Macedonian Radio and Television with three television channels and three radio stations.

The public also has access to a large number of foreign programmes distributed on 65 cable networks. The large number of media outlets and the unfavourable economic environment are the main reasons why business conditions in broadcasting remain difficult and why there are only few profitable private broadcasters.

The various forms of influence the media experience are largely determined by the ownership structure. Powerful local companies or individuals affiliated with some political or industrial group are behind the major national television channels, while the local broadcasters are usually at the mercy

of individuals, who often follow their own entrepreneurial interests. This is clearly evident in the ownership data for the five national television channels in Macedonia:

(1) The leading television channel on the national level *AI*, is owned by Velija Ramkovski, an influential Macedonian businessman, owner of several trade companies, who also owns the daily newspaper *Vreme* and who recently founded a new political party, the Party for Economic Reconstruction;

(2) Behind *Sitel*, the national television channel coming in second in audience ratings is the company RIK Sileks, owned by the businessman and politician Ljubisav Ivanov-Dzingo, the leader of the Socialist Party, which is now part of the governing coalition.

(3) Half of *Kanal 5*, the third most influential national television channel, is owned by Pecatnica BS Company, a printing house. Its owner is the son of businessman and politician Boris Stojmenov, a former minister in the VMRO-DPMNE's (Internal Macedonian Revolutionary Organisation - Democratic Party for Macedonian National Unity) Coalition Government, and current leader of the VMRO Makedonska Party. Mr. Stojmenov's party opposes the current government. The other 50% of *Kanal 5* is owned by the company Metalsivas, a silent partner.

(4) Behind the *Telma* television channel is the company Makpetrol, which deals in crude oil and oil products. It is owned by a very influential businessman.

(5) Finally, the fifth national television channel *Alsat M*, which broadcasts a mix of mainly Albanian-language programming, but also news in the Macedonian language, is owned by the businessman Vebi Velija, who owns the satellite television channel *Alsat* in Albania.

The print media are not subject to any regulation or defined licensing procedures. They are only obliged to register themselves as legal entities in the respective court registers. The print market is also highly fragmented, and there is pluralism, at least in terms of quantity. There are 12 daily newspapers, about 15 weeklies, 10 biweeklies, 20 monthly magazines, 21 periodicals and 21 children's magazines in Macedonia. Nine dailies are published in Macedonian and three in Albanian. The total circulation of all daily newspapers published in Macedonia is approximately 80,000-100,000 copies.

Dailies are not very diverse in terms of content or format. Tabloids like *Dnevnik*, *Vest*, and *Vecer*, have the biggest circulation and sales, but more serious analytical newspapers like *Utrinski vesnik* are very popular with the political and the business elite. Until recently, the private print outlets were primarily owned by individuals or smaller groups of journalists mainly recruited from the ranks of the state newspaper publishers. Some of the dailies, e.g. *Vest*, and *Utrinski vesnik* were affiliated with big business groups even before 2003.

In 2003, the German media group WAZ entered the Macedonian market by purchasing the three leading dailies *Dnevnik*, *Utrinski vesnik*, and *Vest*, the first big foreign media acquisition in Macedonia. Fears that WAZ might negatively influence the editorial policies of the newspapers it bought have proved unfounded. While editorial policies may have changed, there is no evidence of untoward ownership pressure, and each WAZ newspaper has improved its technical quality and design. In addition, the market remained open for new competitors: in two years, four new dailies appeared, *Vreme*, *Vecer*, *Biznis* and

Spic. However, until recently the WAZ publications dominated the market with a combined circulation of around 50,000. They also received the major advertising share. Nowadays, *Vreme* and *Spic*, which is free, are competing successfully with the WAZ editions, but only because of their own affiliation with the television channel *A1*. When clients buy advertising space on *A1*, they are also offered, as part of the 'package,' advertising space in *Vreme and Spic* at much lower prices.

Code of Conduct

As mentioned above, the Code is rather general and declarative but some of its main principles are still violated by the media. Here are 6 principles of the Code that are most often violated.

7. The journalist shall respect the privacy of every person, except in cases when this is contrary to the public interest. The journalist is obliged to respect personal pain and grief.

8. Reporting on accidents, natural disasters, wars, family tragedy, sickness, and court procedures must be free of sensationalism. In legal matters reporting, all parties should be presumed innocent until proven guilty. No verdict should be suggested.

9. The journalist must not interview or photograph children under 16 years of age without parental or legal guardians' consent, unless this is in their best interests. The same applies to people of special needs, who are not able to give informed consent.

10. The journalist shall not knowingly create or transmit information that jeopardizes human rights and freedoms; shall not use hate speech; and shall not encourage discrimination of any sort: based on nationality, religion, gender, class, language, sexual orientation, or political convictions.

15. The journalist must use accepted and respectful language. Foul language is antithetical to professionalism.

16. The journalist shall defend the reputation and dignity of the profession, foster mutual solidarity and difference of opinions; and shall not misuse the media for personal vendettas.

Weekly magazines *Fokus* and *Nedelno Vreme*

The *Fokus* Weekly, one of the oldest in the country, enjoys the biggest circulation. In the past years the owner, also its frequent editor-in-chief, and the journalists were very often quite critical of the government and most of the political parties, the business elite etc. During the period of monitoring, *Fokus* published a number of articles which directly violated the principles of the Code of Conduct of the Journalists' Association. Defamation, libel, and direct insults against individuals or political parties and organizations and companies are typical. Terms used to describe domestic and foreign politicians and journalists included "Nazi fascist," "prostitute," "criminal," etc.

In the May 4 article "Burning Forests and Schools, SDSM Aims to Destabilize Government," *Fokus* declared MP Ivan Anastasovski politically irrelevant because he was "a

representative of the category of transitional political prostitutes.” In the same article it claimed Trifun Kostovski, Mayor of Skopje, “is in the category of political speculators...”

On May 11, *Fokus* published an article under the headline, “EU’s Racist Policy Towards Macedonia”, and claimed that Eric Meyer, a Dutch MP in the European Parliament was a Nazi because of his report on Macedonia. “Although his historic report is essentially full of Nazi Fascism ... the media in Macedonia have described Eric Meyer as a Dutch leftist and a Macedonian supporter. I can’t help but wonder what a modern European Nazi fascist who doesn’t support Macedonia looks like, if this is what a modern leftist looks like.”

In the same issue, *Fokus* published another article called “SDSM Media Police Censor State Media” in which it accused a few media outlets of blindly following the opposition parties SDSM and DUI. The article referred to the *Utrinski vesnik* daily is an “ultra SDSM daily,” to *Kanal 5 TV* as “a new SDSM TV”, and also claimed that “Alsat TV owned by Vebi Velija is a media and financial sponsor of Ali Ahmeti (the leader of DUI)”.

On March 16, the front page and the editorial of *Fokus* announced that President Branko Crvenkovski needed a medical exam, because he might be addicted to cocaine and whisky. “After all this, who will believe Trajkovski and Gligorov’s¹ accidents? The former was killed, and the latter nearly died, while the Prime Minister of this country was out of his mind.”

¹ Late president Boris Trajkovski died in a plane crash in 2004 near Mostar, Bosnia and Herzegovina. Former president Kiro Gligorov was injured in a car bomb attack in Skopje in 1995.

On April 13, *Fokus* described the Englishman David Jennings as a thief and a bandit, because he had said that, "It is a good thing for Macedonia that in the Hague there is a suit against the former minister of interior and one other person for war crimes." "At the conference dedicated to the Hague Tribunal, we had the opportunity to hear Jennings, introduced as an expert. What kind of expert he is we don't know, but according to his statement about the Ljuboten² case, we know that the guy looks much more like a criminal, a thief, and a 21-century bandit, than an intellectual and an expert in whatever field," *Fokus* wrote.

On March 2, *Fokus* published a story in which it called the vice president of DUI, Teuta Arifi, a renaissance teacher with dehumanized Nazi terrorist visions. "Ambassador Fuere probably thinks that it is easier for an uncivilized scum to lead the country, than to be in opposition. Whatever the case, it is good for Ali Ahmeti, Fazli Veliu, Rafiz Aliti, and above all, the renaissance teacher with dehumanized Nazi terrorist visions, Teuta Arifi, to take a course on civilization from the same people who made them and who created them as a problem for us in Macedonia, the British."³

On June 1, *Fokus* published a story under the headline "Terrorist Cell in Macedonia," in which it denounced the DUI as a terrorist cell and its leader Ali Ahmeti as a terrorist. "What is important to remember is that for the second time in seven years, Macedonia finds itself hostage to a pre-existing terrorist

² Former MOI Ljube Boskoski and police officer Johan Tarculovski are currently on trial before the Hague Tribunal on charges of war crimes during the police action in the Ljuboten village in 2001.

³ Mr. Erwan Fuere is the EC Ambassador in the Republic of Macedonia. Ali Ahmeti, Fazli Veliu, Rafiz Aliti and Teuta Arifi are senior officials of the DUI opposition party which originated from the paramilitary organization NLA.

cell; hence the instability in the country... Ali Ahmeti is no longer simply a terrorist social democrat; he is also a terrorist sponsored by the "democratic West'."

During the same period, there were no signs of defamation or libel against persons or organisations in the other monitored weekly, *Nedelno vreme*.

Crime sections of the daily newspapers *Dnevnik, Vest, Utrinski vesnik, Vreme and Vecer*

Between March 1 and May 31, the crime sections of the daily newspapers *Dnevnik, Vest, Utrinski vesnik, Vreme* and *Vecer* routinely violated at least three principles of the Code of Ethics: Principle 7 ("The journalist shall respect the privacy of every person, except in cases when this is contrary to the public interest. The journalist is obliged to respect personal pain and grief."); Principle 8 ("Reporting on accidents, natural disasters, wars, family tragedy, sickness, and court procedures must be free of sensationalism. In legal matters reporting, all parties should be presumed innocent until proven guilty. No verdict should be suggested."); and Principle 9 ("The journalist must not interview or photograph children under 16 years of age without parental or legal guardians' consent, unless this is in their best interests. The same applies to people of special needs, who are not able to give informed consent.")

All newspapers regularly identify people as 'junkies' or drug addicts and publish their full names, even when no formal charges have been filed or the people have died of overdose. For example, on May 26, both *Vest* and *Utrinski vesnik* reported that "Jose and Vesna M. from Strumica were arrested for drug

use in the kindergarten yard. *Vreme* also identified them as a married couple. On the same day *Vreme* ran a piece on Igor Spasevski, a drug-addict from Veles, who had committed suicide, including details about the suicide and his motives.

On March 11, all newspapers ran a story on Boban Trajcević who died of a heroin overdose. *Vest*'s headline was, "Dead from Heroin on Son's Birthday."

Suicides and other family tragedies often received sensationalist treatment. On May 23, *Vest* had a story on Zarko Tomic, a suicide, called "Man Jumps off Bridge after Breakfast with Parents" accompanied by his picture. On May 15, it ran a cover story on a suspect who had had an epileptic attack during a court appearance and had injured himself.

Children's basic rights are also often violated by the newspapers. On May 14, *Utrinski vesnik* published a story on four-month-old Leonardo Bajrami who had died of bronchitis, speculating abuse was to blame. On May 16, *Dnevnik* ran a story about 16-year-old Omer Asani, who had died while taking a shower. On March 13, all newspapers covered the story of a 9-year-old girl who had slept in the same bed with her dead mother for 9 days. On the first day, only the mother's name was published but later the girl's full name was also made public. On April 23, *Utrinski vesnik* reported that one-year-old Mario Manev had died after swallowing a plastic cup. Probably the most serious violation of the Code of Ethics was the May 9 cover story in *Vest* about 13-year-old Naum Temov who hanged himself because of his poor grades in elementary school. *Vest* also published his picture.

Very often newspapers do not respect the principle of presumed innocence. They frequently publish the names of people who are not even charged, let alone tried. Reporting on police arrests and charges against alleged criminals is often sensationalist. For instance, on May 31, all the papers reported that Professor Vanco Kolev had been arrested on suspicion of bribery, after he had been caught with 200 euro allegedly received from a student. All papers published his full name and a picture. On May 29, all papers published the full names of 14 people suspected of involvement in an alleged human trafficking operation. Besides their names, the newspapers also revealed information about their homes and families. On May 12, *Dnevnik* reported that Ramiz Asani and Naim Asani were arrested on suspicion of murder and published their pictures. All the newspapers featured this story suggesting that the 'murderers were arrested'. On May 8, *Utrinski vesnik* and other newspapers reported on the arrest of 14 police and customs officers on suspicion of corruption and included their names and pictures. On April 27, *Utrinski vesnik* published the names of Azir Kangurov and his daughter after he was found guilty of sexually abusing her. On May 26, *Vecer* reported on the arrest of 20-year-old Fatmir Jasarov on suspicions of sexual abuse of a 13-year-old girl.

***Sitel* and *Kanal 5* TV stations**

There are clear differences in the way *Sitel TV* and *Kanal 5 TV* inform the public about government policies. Considering the political affiliations of their owners, their different approaches come as no surprise; however we can only speculate whether the owners influence the journalists and editors directly. During the three months of monitoring *Sitel*

reported favourably on the government policy, *Kanal 5*, generally negatively.

For example, on March 5, *Sitel* reported that the employees of the bankrupt state-owned companies, who had been demonstrating against the government in front of the Parliament, had ended their strike and dispersed. In contrast, *Kanal 5* stated the police had used force against the protesters and had forced them to leave the streets. The same day *Kanal 5* also commented that the government's project for self-employment was unsuccessful, while *Sitel* devoted the beginning of its prime time news to interviews and statements from two cabinet members, one state secretary, and one ministry spokesman and also had an interview with Tito Petkovski, leader of the NSD Party from the coalition in power.

On March 12, *Kanal 5* opened the news with the defence industry employees' and the gynecologists' protests against the respective government policies. *Sitel* included a short piece on the topic only 40 minutes within its news coverage. The anchorman spent the first 10 minutes criticizing the former Prime Minister Vlado Buckovski, and concluding that new Prime Minister Nikola Gruevski's policy is very "wise."

On March 22, *Kanal 5* declared that Prime Minister Nikola Gruevski had sent Foreign Minister Antonio Milososki on a useless tour of Macedonian villages, while Greek Foreign Minister Dora Bakoyani was lobbying in the U.S.A. against Macedonia. *Kanal 5* also reported that according to Macedonian legal experts, the government is making unlawful arrests and is mistreating its political opponents. *Sitel*, on the other hand, announced that the government had been very successful in its

fight against corruption, and its campaign to attract foreign investments.

On March 23, *Sitel* opened the news with 7 stories on the government. The first two stories were interviews with Prime Minister Nikola Gruevski in which he criticized the opposition, mainly the SDSM. In the third one, journalist Liljana Gjorgjieva⁴ criticized the mayor of Gostivar, a member of another opposition party, DUI. In general, during the monitoring period, *Sitel* regularly provided extensive coverage of its owner MP Ljubisav Ivanov, especially of his speeches in Parliament.

Kanal 5 was the only national TV station to provide sustained and detailed coverage of the protests of the employees in the BS Company owned by Boris Stojmenov, the station's owner. The station criticized the Tax Department's decision to shut down this company.

Kanal 5

The coverage of the government's exercise of power and policies targeted a number of current events. Most of the pieces were consistently critical. Even though the presentation was primarily factual, most reports were generously augmented with commentaries and opinions. The station was critical of the Government as a whole (March 5, 2007), as well as of individual ministers (March 6, 22, and 26, 2007). The strongest criticism was directed towards the healthcare sector, with the blame for the "chaos" going at the government and its attempts at reform, seen by *Kanal 5 TV* as "a failure" (March 8 and 9,

⁴ During the period of the monitoring, Liljana Gjorgjieva was also working as a spokesperson for the Department for Airport Services, whose director is a member of the DPA, the ruling party of the Albanians in Macedonia, opposed to DUI.

2007). As far as the "strained relations" with Greece are concerned, the government was criticized for its "unpreparedness" to react to the Greek provocations (March 8 and 14, 2007). In certain cases; the facts were evaluated negatively, especially those referring to the government (March 19 and 30, 2007), and occasionally they were interpreted and evaluated prior to being properly presented (March 28, 2007).

April

Kanal 5 TV aired the greatest number of articles dedicated to government policies and exercise of power. The editorial office was critical of the current government activities in all areas of the social and political life (April 2 and 11, 2007). This station dedicated a lot of air time to the personnel changes in the Secretariat for European Affairs. Although the reports presented the views of both the government and the opposition, it was still evident that the statements and views of the opposition, i.e. SDSM President Radmila Sekerinska, were given priority (April 3 and 10, 2007). During this period, the station criticized strongly Minister of Health Imer Selmani (April 2 and 16, 2007), called a "trouble-maker" (April 23, 2007); Prime Minister Gruevski (April 28, 2007), and to a lesser extent, Minister Gligor (April 11, 2007).

In general, the editorial office presents the facts correctly. However, there is a notable tendency to evaluate and interpret facts in the story lead, which suggests an attempt to impose a certain perception of the reported events (April 2, and 27, 2007, item No. 3)⁵.

⁵ NGO Info Center, Media Mirror- Media monitoring in Macedonia

Sitel

The explicitly positive opinions, as well as the huge number of pieces on the government speak of a positive bias towards its policies and representatives. A great number of pieces were structured as commentary/reports due to the emphatically opinionated and/or suggestive character of the general and editorial leads.

In its reports, *Sitel* generally presented the views and positions of the parties involved neutrally with equal air time. The most explicit opinions on individual subjects were expressed in the editorial leads. In some cases, although the actual piece presented multiple views, the lead focused on one of them, directly or indirectly favouring a single party. Such favourable positions were usually reserved for the government or its officials and offices. So, in a report on a meeting of the government coalition partners, the anchor emphasized the efforts of the Prime Minister and the Ministers from VMRO-DPMNE to get close to the people; in a segment on the reasons for Gruevski's absence from Berlin (as presented by party spokesperson Bocevski) and SDSM's criticism of the Prime Minister, the anchor criticized SDSM's reaction; in a review of the play "Tito," the anchor defended the Minister and the Ministry of Culture as "clear of any wrongdoing", with the letter having been "planted" on the Minister.

In April 2007, *Sitel TV* covered almost all government activities and initiatives, sometimes in multiple pieces, in order to promote and strengthen its positive public image. An example was the multiple segments on the high public ratings of the government and the Prime Minister. *Sitel TV* presented a positive view of the government, expressed through the sheer amount of coverage and the generally positive assessment.

Sometimes, the positive view was constructed through repetition, as in the case of the favourable opinion polls. The station said it was "unique and interesting" that after nine months in office, the government's ratings were still rising and emphasized that Gruevski's was "the highest rating of any Macedonian politician ever, but also the highest public approval of a Prime Minister anywhere in the region." In addition, it suggested that the rising public ratings of DPA should motivate DUI to return to Parliament. Even though the tone was generally moderate, an exception was the strongly positive opinion of "Societe General" and the emphatically negative, malicious views on Stojan Andov ("provincial teacher", "son-in-law of a communist official", "comical character"), whose statement on who should be covered by lustration was compared to a satirical sketch.⁶

Conclusions

Generally, there is an ethical crisis in Macedonian journalism and non-professionalism in the work of media outlets. Numerous analyses and surveys show that in the area of broadcasting media, the owners use their media outlets to promote their own businesses or the political sides they are affiliated with. In the print media, the violations during the monitoring are not new; they are known both to the public and the journalists' associations charged with promoting the Code of Conduct in all the media. That no one in the country reacted to the breaches of the Code of Ethics is most discouraging.

⁶ NGO Info Center, Media Mirror- Media monitoring in Macedonia

Our report shows that a large number of the media are violating the Code of Ethics. Despite the fact that the majority of the journalists' organisations have adopted the international Code of Conduct, in practice, professional and ethical norms are not respected.

Although the Code of Ethics includes almost all important issues of journalistic ethics and professional standards, it is quite short and declarative and therefore cannot be a guide for conduct in practice. Individual media outlets have no self-regulatory documents, statements, declarations, etc., which would serve as practical guidelines for journalists in resolving everyday work problems. Almost no media outlet has a code of ethics of its own.

The Association of Journalists' reputation among journalists is weak, mainly because it has not done anything to promote professionalism and journalism standards in the last few years. Considering the deep crisis of journalism in Macedonia, the Association's lack of action is even more bewildering. It has acted half-heartedly, if at all, in the cases of journalistic bias. For example, it did not react at all when in 2004, the public service broadcaster forced journalists to look for commercial sponsors, while its reaction over the "Fabrika"⁷ affair remained unnoticed.

The Council of Honour is a special organ of the Association, established in April 2001, and charged with implementing the Code of Conduct. It is composed of five members, representing journalists from different media. Although it has taken a few positive steps, when the entire

⁷ The crisis in Macedonia's journalism escalated in early 2006, when the "Fabrika" affair was exposed.

association has a bad reputation, it cannot be very influential. Recently there have been a few positive signs after the Association appointed a new Council.

There are also a few objective reasons for the Council's passivity. Its members are volunteers, professionally engaged in some of the media outlets. They do not have time for any major engagement in the Council; hence they only deal with complaints submitted to them. In principle, these can be submitted by any individual or institution; however the low number of complaints received suggests that the public is not very familiar with the Council's work. Because of insufficient funds, there has never been a campaign for raising public awareness. The Council cannot impose sanctions on journalists who have violated the code of ethics, only reprimand them. Its decisions are publicized only by some media, and those who have been found in violation, are not always willing to advertise them.

Other forms of journalistic self-regulation are almost non-existent. There is no professional journal for the discussion of controversial cases; and debates on ethical and professional issues are very rare.

Generally, it must be mentioned that the media are not free of political or other types of pressure. They are still seen as instruments for political, economic and other goals. At the same time, the market environment is unfavourable for those media outlets that want to be independent and rely on funding from commercials only. Additional problems are created by the lack of quality undergraduate education for journalists and of efficient legal mechanisms for the protection of autonomy and independence of media outlets, as well as of self-regulation. The Code of Conduct includes all professional and ethical

standards, but does not provide enough practical guidelines. What is more, few media outlets have their own self-regulatory documents.

Recommendations

- (1) It is essential to establish a strong and independent self-regulatory body, such as a Press Council with comprehensive membership: publishers, journalists, and citizens. The principle of self-regulation should be initiated and widely affirmed in the media outlets, which should adopt declarations and other documents obliging owners not to interfere in the editorial policy.
- (2) Assistance is also necessary in union organisation. There is no independent journalist trade union; journalists belong to a broader trade union, the GIFIH (Trade Union of Graphical, Information, Film, and Publishing Workers and Paper Production in the Republic of Macedonia). This is important because, without improving the socio-economic status of journalists they cannot be expected to feel secure in pursuing their profession.
- (3) Further education should be provided for journalists, both as part of the professional education institutions and in the form of in-house training in the media outlets.

MOLDOVA

By Nadine Gogu

Executive summary

Sixteen years after Moldova re-gained its independence, explicit forms of state censorship are no longer common practices in the Republic of Moldova. Nevertheless, the Moldovan press is under different forms of political and economic pressure that can lead to ethical principles' violation and self-censorship which, in turn, can affect the media's ability to serve as a watchdog over government activities.

This study focuses on the media behaviour assessment in terms of compliance with self-regulation principles and ethical standards, which enhance media capacity to cover public agenda in a balanced and objective manner. The report presents the main findings of a three-month media monitoring. Ten major Moldovan print and broadcast media outlets were monitored mainly to establish the degree to which they applied self-regulatory mechanisms in journalistic practices. The monitoring focused on identifying cases of violations of ethical principles, as well as an analysis of current reporting patterns that affect media performance, and compromise their ability to provide balanced and accurate information on diverse issues.

Overall, the monitoring results have shown that most monitored media are still learning how to provide balanced and objective coverage and comply with ethical principles. The report highlights some possible causes and presents best

practices from the monitoring period. Based on the results, recommendations for improvement are presented at the end.

Current media situation

A free and independent press plays a crucial role in a society going through transition, by serving both as a source of fair, balanced and unbiased information and as forum for debate and political expression.¹ Information and communication are crucial in covering the political process, in shaping public opinion and guiding society towards democracy² and the special role of news media in this process is to tell citizens what they need to know so that they can make educated decisions on their self-governance.³ Nevertheless, Moldova does not have an adequate institutional framework that encourages diverse viewpoints or a tradition of covering the democratic process in a balanced and objective way. According to the latest Media Sustainability Index, released by IREX, accurate reporting is rather an exception than a rule in the Moldovan media and the quality of the Moldovan journalism needs serious improvement.⁴

The current media situation is the result of the changes following the democratic reforms in the 1990s. Moldovan media gained more freedom and, subsequently, slipped toward sensationalism and irresponsible journalism. Thus, nowadays journalists seem to ignore the fact that freedom of speech carries with it not only liberties, but also obligations and

¹ Webster, 1992. Building Free and Independent Media

² Lange and Ward, 2004. The Media and Elections

³ Eliot, 2003. Maintaining Media Ethics

⁴ IREX, 2005. The Development of Sustainable Media in Europe and Eurasia. Media Index 2005

responsibilities. They seem to ignore the central function of the media which is to inform the public of significant facts and events, so that people can make informed decisions when participating in decision-making processes.

With few exceptions, in Moldova there are no media outlets that would be considered unbiased and objective in terms of political news reporting. Political partisanship is indeed common practice among Moldovan journalists. These claims are supported by the results of a national survey conducted at the request of the Independent Journalism Center in 2003. According to this survey, 81.8% of respondents (media professionals) believed that journalists in Moldova were engaged to a considerable extent in political partisanship at the expense of the principles of free journalism. The survey also revealed that 17% of journalists in Moldova were insufficiently familiar with the Code of Professional Ethics, 39% accepted tasks incompatible with the professional principles of journalism, and only about half (52%) of them disagreed that journalists engage in political partisanship.⁵ There is anecdotal evidence, indicating that some Moldovan media managers confuse the Code of Ethics and the Labour Code, which they cite when dealing with ethical dilemmas; moreover, some managers claim that they use the "European code" whenever they need ethical guidance in their journalistic activities.

Self-regulation in Moldovan media

Self-regulation and adherence to ethical principles and standards are among the major prerequisites for the media to successfully serve as a watchdog in new democracies.⁶ It is

⁵ Current Problems of the Media in Moldova, 2003

⁶ Bertrand, 2001. Media Accountability Systems for the Mass Media

seen by most experts as an important tool for safeguarding media independence, promoting higher professional standards, enhancing professionalism in the field and establishing forms of media accountability. Through codes of conduct and high professional standards, self-regulation contributes to boosting editorial freedom, blocking external interference and endorsing self-financing.⁷

Unlike Western democracies, where self-regulation in media is an established practice, self-regulation in Moldovan media is still at an early stage. As the majority of Moldovan media are not able to cover their publishing expenses, they look for, and accept, financial support from different external sources: the government, political parties, and businesses. The European Parliament report on media concentration in Europe describes this Moldovan phenomenon as independent sponsored media.⁸ Since the goal of most of the Moldovan media is to satisfy the "sponsors" rather than the readers, there arises the question of media's responsibilities to society. Moldovan journalists deviate from journalistic standards and fail to achieve journalism's main goals of serving society by telling the truth, providing fair and balanced reporting, and striving for independence.

Nevertheless, according to the latest opinion polls, Moldovan news media remain among the institutions that the public trusts the most.⁹ Hence, it is very important for Moldovan journalists to realize the importance of self-regulation in the media and to comply with ethical standards and principles.

⁷ Ibid, 2001.

⁸ Hrvatin, 2005. Media Concentration: How Big a Threat to Pluralism and Independence?

⁹ Barometer of Public Opinion, 2006.

Moldovan media are subject to the Code of Professional Ethics of Journalists that contains provisions on accuracy, fairness, and balance in media coverage and sets out standards of journalistic ethics. It applies to print and broadcast media, state and private outlets, and can also be applied to online outlets.

A monitoring body, the National Council for Professional Ethics for Journalists, was established under the provisions of this code. Although its role is to monitor the manner in which the Code's norms and ethical principles are observed, the Council pays little attention to issues concerning standards of professional self-regulation and their observance by journalists in Moldova. It does not have any executive prerogatives, its basic function being that of mediating disputes and taking positions in cases of code violations; for instance, a radical measure is to expel the offending journalists from the Union of Journalists of Moldova.

Unlike print media, solely self-regulating through this code, radio and television stations are under the scrutiny of the Supervisory Council and are regulated by the Audiovisual Coordinating Council, which can issue warnings, apply fines, and even withdraw licenses.

The Code's basic provisions concern accuracy, fairness, and balance, urging the press to be impartial, treat all sides equally and provide the public with all relevant information for decision-making. But the Code does not provide specific guidance on how to impartially present controversial stories. The document lacks regulations which would establish efficient

tools and mechanisms to reach the avowed goal.¹⁰ As experts note, “the inefficiency of the self-regulation tools in the Republic of Moldova is due to the non-involvement of the self-regulation bodies in the establishment and maintenance of a dialogue” among media stakeholders.¹¹

Other self-regulatory mechanisms include the Producers’ Code of Principles, Standards and Recommendations of the National Public Institution Teleradio-Moldova; media monitoring conducted sporadically by non-governmental organizations, and analyses by media experts published in newspapers and specialized print or on-line publications. However, there is no special forum to discuss ethical problems on a regular basis. Individual journalists provide such a forum themselves, for example by writing special columns on the topic. The National Council does not engage all stakeholders within the media community: publishers, owners, editors, journalists, as well as the public.¹²

Moldovan media outlets do not have internal self-regulatory systems, such as ombudsmen or independent readers’ representatives. There is no culture of complaints in Moldova; in most cases *letters to the editors* serve as a means of expressing readers’ gratitude for the content provided, rather than as a means of pointing out gaps in reporting.

Fairness and balance are the most difficult concepts for journalists to deal with¹³. Usually, reporters influence these

¹⁰ Pirtac, 2006. Country Report in Media Self-Regulation Practices and Decriminalization of Defamation in the Countries of Southeast Europe.

¹¹ *ibid*, 2006.

¹² *ibid*, 2006.

¹³ Frost, 2000. Media Ethics and Self-regulation.

elements of the story; they are the first and often the final gatekeepers who decide what sources to use and what information to include. Therefore, it is very important to raise public awareness and encourage journalists to meet the standards of balanced reporting, an important element in new democracies. It is also important to remind journalists that they are accountable to society. Citizens have the right to accurate information, without undue interference from public authorities or the private sector. The job of Moldovan news media is to become a government watchdog and provide a public forum for discussion and alternative views.

In this context, it is worth mentioning that newsroom practices of media institutions, especially those related to the self-regulating mechanisms that would ensure fairness, balance, and good-quality journalism, have not been comprehensively researched and need further examination.

Methodology

Our monitoring was conducted between March 1 and May 31, 2007. We used qualitative content analysis to evaluate the fairness and balance of a series of newspapers and TV stations. Besides identifying the more frequent violations of ethical standards and political biases, the monitoring focused on media coverage of controversies, crime and corruption.

The news media outlets were selected, monitored and analyzed according to the following criteria:

- Circulation/audience impact (national or local).

Rationale: There is a direct positive relationship between the audience size/circulation figures and impact of media outlets on

shaping public opinion. The larger the number of people exposed to a certain message, the larger the impact of the media outlet on certain segments of society.

- Form of ownership (public or private). *Rationale:* Public media are funded by public money and have the obligation to give a complete, accurate, impartial, balanced, and objective overview of political, economic, social, and cultural developments in the Republic of Moldova. Private media also have an ethical obligation to present a variety of viewpoints and to cover important issues on the public agenda.

- Language (Romanian or Russian). *Rationale:* Beside Romanian media, there are media published and broadcast in Russian, a language used in Moldova not only by Russian natives, but also by Bulgarians, Gagauz, Ukrainians, and some Romanians.

Six of the most popular newspapers with nationwide circulation (based on their audience reach¹⁴) and four regional and national TV stations were selected for analysis:

Print media:

Saptamana: private, weekly, Romanian

Novoie vremia (NV): private, weekly, Russian

Jurnal de Chisinau (JC): private, two issues a week, Romanian

Moldavskie vedomosti (MV): private; two issues a week, Russian

Moldova Suverana (MS): private; four issues a week, Romanian

Nezavisimaia Moldova (NM): private; four issues a week, Russian

Broadcast media:

¹⁴ Estimates are based on the study “Audiența presei scrise în Moldova,” (Print Media Audience in Moldova), which was done by IMAS Inc. in October 2004.

Moldova 1(M1): public, national coverage, Romania and, Russian

NIT: private, national coverage; Russian and Romanian

PRO TV: private, regional coverage; Romanian and Russian

TV7: private, regional coverage; Romanian and Russian.

Monitoring schedule:

M1: Tuesday-Thursday: evening newscasts; Friday: *Buna seara* ("Good Evening") talk show

NIT: Tuesday-Thursday: evening newscasts; Saturday: *Maxima* (analytical show)

PRO TV: Tuesday-Thursday: evening newscasts; Monday: *In profunzime* ("In Depth"), talk show

TV7: Tuesday-Thursday: evening newscasts.

Rationale: The majority of events such as meetings, press conferences and other activities conducted by government agencies, international bodies, and NGOs, which contribute to media agenda setting, are usually conducted Tuesday through Thursday. Press conferences, which serve as major sources of information for many journalists, are also organized during these days.

Issues selection:

We looked at stories reflecting debates on the most important current events issues on the public agenda. All important stories of public interest, as well as those involving controversies, crime, and corruption were identified and analyzed. Besides highlighting the more obvious violations of ethical standards and political biases, the monitoring focused on the way journalists tackled controversial issues.

Rationale: It is well known that the media have the power to influence what issues the public considers important. News coverage of important political and social topics helps inform people about issues and problems that may affect them, and thus shapes public opinion. According to journalistic standards, while covering controversial subjects, journalists must consider ethical standards and provide a fair and balanced coverage by presenting all conflicting perspectives.¹⁵

Research method:

The fairness and balance of media coverage was assessed through qualitative content analysis. The researcher looked at important issues on the public agenda and the manner in which they were covered/non-covered by the monitored outlets.

Materials were analyzed according to the following criteria for objective news reporting: accuracy and fairness, balance and attribution of sources, pluralism, impartiality and objectivity, language and hate speech provisions, rules on protection of vulnerable people, duty not to assume the guilt of the accused, i.e. presumption of innocence. The researcher also looked at the articles/news placement in newspapers and newscasts as well as their headlines.

Main findings

Throughout the monitoring period, the following general patterns emerged:

¹⁵ Fico, Sofin, and Dragger, 2007. Fairness and Defamation in the Reporting of Local Issues.

- Three different approaches to news coverage among public and private media: direct or indirect bias toward the government; bias toward certain political parties; or attempts to provide fair and balanced reporting.
- Most media did not pay enough attention to issues of public interest.
- Most media gave preference to “breaking news” provided by wire services at the expense of their own news.
- Local staff news differed from medium to medium; a certain unfair and unbalanced coverage was observed: in many instances, only one side was presented, or when both sides were presented, one was given greater coverage.
- Some media *filtered* the news, covering only those events favourable to a certain political party or the government.
- No major investigations of important crime and corruption cases were registered; almost all stories involving crime and corruption were based predominantly on information provided by the Press Center of the Interior Ministry.
- Based on the observations above, we conclude that the monitored media have not yet applied self-regulatory mechanisms sufficiently.

Fairness and balance

Fairness and balance are among the central concerns within the social responsibility, professional performance, and public credibility of the press.¹⁶ If specific points of view are

¹⁶ Fico, Ku, and Sofin, 1994. Fairness and Balance of Newspaper Coverage of the U.S. in the Gulf War.

given more attention than others, their salience will increase and thereby affect the public debate. To be fair and balanced, stories should include all sides, especially in controversial issues, and treat them equally.

The monitoring results have shown that Moldovan media are still learning how to provide a balanced and objective coverage and comply with the ethical principles espoused by them. Generally, the media monitored during March-May 2007, fall in three categories: those biased toward the government, those biased toward certain political parties, and those attempting to cover all sides in an objective and balanced manner.

Fairness. Overall, most media performed well in terms of fairness, with many of the stories including both sides of a controversy. Nevertheless, the trend was to allot considerably more time to one side only.

Some newspapers attempted to provide the readers with information that would help them create meaning and formulate their own opinions. However, there were also cases of including only one source of information, namely one that favoured the parties supported by the publication (*MV, NV, MS, NM, Saptamana*). Still, the news about and the analyses of such issues as economic austerity and the immigration problem, were written in accordance with the principles of fair reporting (*NV, MV*).

All print media monitored included stories promoting businesses and politicians, without clearly marking them as advertisement. Public media tended to broadcast news in

favour of the government and most of their stories were based on official sources of information.

The practice of *filtering* the news, i.e. covering only events favouring the ruling party and excluding differing viewpoints, is still present in some media. For instance, on May 3, national TV stations *M1* and *NIT* ignored the news of the trial of the former Head of Intelligence and Defence Minister Valeriu Pasat, which captured not only the local, but also the international public attention, when the Supreme Court returned the criminal case to the Appeals Chamber for review. Also on May 3, the joint statement signed by international organizations and embassies on the unfavourable media climate in Moldova was not covered by *MS*, *NM*, *M1* and *NIT*. On May 29, *M1* and *NIT* did not cover the parliamentary discussion following the excessive force used by the police against journalists, the arrest of *PRO TV* reporters, and the seizure of the DTV videotape on March 27. These media did not cover the press conference of a group of European parliamentarians and the Central Election Commission's note about President Voronin's involvement in the election campaign, either. This selective coverage was also common among print media.

Interestingly enough, talk shows like "Buna seara" (*M1*) and "In profunzime" (*PRO TV*) differed from newscasts, their hosts observing all norms and rules of responsible journalism. Invited participants were selected in a fair and balanced manner and represented the government, the Parliament, the political parties, the society, the business community, churches or international organizations, depending on the nature of the topic.

Most news programs on JC, TV 7, and PRO TV can serve as examples of best practices, since they were produced in accordance with the general criteria of objectivity and fairness.

Balance and pluralism. According to the journalistic standards, news reports should be rigorously verified and sourced. Information should be published/broadcast only if it is confirmed by two independent sources. The role of sources is to provide a more fair and balanced coverage of different issues.

However, multi-source stories were rare during the monitoring period; materials were based mainly on one source of information even in cases in which more context was clearly needed. The *rule* was to present allegations against one side without presenting its response (*MV, MS*). In cases where several sources were quoted, the space allotted to one side was significantly larger than that given to the other. The sources cited were not diverse and journalists tended to base their stories on information disseminated within press events, rather than on their own journalistic enterprise. In this context, it is worth mentioning that in pro-government media, most stories were based on press communiqués issued by official press services; whereas images of the President, the Premier and the Speaker dominated the visuals (*MS, NM, M1, NIT*).

Overall, our findings indicate that most news reports during the monitoring period were unbalanced. Equal coverage in both broadcast and print media was the exception rather than the rule. Some media gave preference to the viewpoints of government representatives or strategic policy advisers; even stories containing sources from both sides tended to favour the ruling party (*MS, NM, M1, NIT*). The news stories analysed did not specify whether the authors had made any attempts to

contact the opposing side. Exceptions in this respect were *PRO TV* and *JC*, which explicitly stated when their journalists had not been able to contact the other side of a controversy.

There were also stories with no cited sources of information, which made the news confusing and raised questions about the authenticity of the information. Interestingly enough, *Saptamana* was the only medium that paid little attention to controversial issues throughout the monitoring period, perhaps because news was not its most popular genre.

The analysis of public media newscasts revealed a certain discrepancy between the people's real problems and the topics covered by *Moldova 1*. It tended to focus primarily on successful activities of the president's office, the government or Parliament and tended to ignore important public issues, such as poverty or corruption. The news included reports on parliamentary debates, but did not provide equal air time to the arguments of the government and the majority faction on the one hand and the opposition, on the other. In most cases, the objects of criticism were not given a fair opportunity to respond. The same was true for *NIT*. By watching the news, a non-informed viewer might have concluded that there are no problems at all in Moldova. Some media did strive to ensure a balanced and accurate coverage by quoting all sides involved in a controversy and presenting news of public interest (*JC*, *NV*, *PRO TV*, *TV7*).

Impartiality and objectivity

According to widely accepted standards and codes of ethics, news should be impartial and objective, presenting only facts and clearly separating facts from opinion. News reporting

should not support one political party, or religious or ethnic group at the expense of another.

Overall, the news coverage in the media monitored lacked objectivity. Both the public and the private media were partial when covering events directly or indirectly related to government agencies or political parties. The only exceptions were *PRO TV*, *TV 7*, *JC* and, partially, *Saptamana*, which presented more or less impartial information.

Some media tended to praise the government for its economic and social achievements and to discredit the opposition parties (*M1*, *NIT*, *MS*, *NM*). Other media outlets adopted a clear anti-communist and anti-government position, supporting other political parties (*MV*, *NV*). Stories based on interviews presumably undertaken at the reporters' initiative were one-sided, which did not help the public to create meaning and form an informed opinion about the political, economic, and social situation in Moldova.

Our findings revealed that different media outlets approached the same issues differently. Source selection was a clear indication that the goal was to *embellish* or *downgrade* certain topics. A case in point is the coverage of the presidential initiative on economic liberalization. *M1*, *NIT*, *MS* and *NM* focused only on the positive aspects of the proposed strategy, whereas *JC*, *MV*, *NV*, *PRO TV* and *TV 7* provided their readers/viewers with analyses that included criticism of the initiative. *Saptamana* allotted insignificant space to this issue, publishing only two short commentaries.

The monitored news media did not clearly separate facts from opinion. In many cases, journalists presented information

through their own perspective, expressing their own opinion about an event. Some opinion pieces were rather aggressive and targeted specific persons. Even though the Code of Ethics provides for opinions to be “subjective by their mere nature”, they “should be subject to honesty and ethics when they are expressed”.¹⁷

The situation was slightly different in broadcast media. In their newscasts, most TV stations strived for separating facts from opinion. Nevertheless, certain news segments were somewhat partial and subjective, as well as biased in favour of the government and the ruling party (*M1, NIT*).

Language

Responsible journalism means not only getting the facts right, but also employing a fair and appropriate language. Exaggerations and indecent language, such as pejorative terms or labels to describe people or organizations, may result in defamation suits. As a rule, journalists should refrain from contemptuous remarks and use language that would not offend anybody’s feelings and would not serve as a basis for suing the media. With few exceptions, the language used by the print media under observation was appropriate and tolerable. They followed their obligation to “avoid using unconditionally insulting expressions which may cause moral or physical injury”.¹⁸ Nevertheless, in some cases a violent and intolerant language that challenged the limits of decency was employed in editorials and opinion pieces. For instance, since the very beginning of the monitoring period, MS almost invariably published opinion pieces against other journalists and public figures. Two months later, it was sued for defamation.

¹⁷ Code of Professional Ethics, 1999

¹⁸ Ibid, 1999

TV stations avoided indecent language, with the monitored newscasts and shows serving as best practices in this regard.

Protection of vulnerable population segments

Overall, in cases in which minors, victims, and their relatives were employed as sources of information, journalists observed their right to privacy. Only few cases were registered when pictures of minors were taken and broadcast clearly without their consent, for instance when the children in an orphanage, covered their faces to avoid being shot (*M1*, May 29), or when potential victims of human trafficking were shown in a piece on the arrest of two suspected traffickers (*M1*, May 29), or when the full name of a human trafficking victim and her place of residence were revealed (*NM* and *MS*, March 13).

Presumption of innocence

Objective reporting and the presumption of innocence are key-elements for ensuring fair trials in a democratic society. Therefore, journalists need to act responsibly and not violate the presumption of innocence or pre-determine a court decision.

The media coverage of crime and corruption during the monitoring period varied from case to case, but the general tendency was to base stories on information and images provided at the conferences of the Press Center of the Interior Ministry. The same data and the same images were used in news produced and published by different media. Only a few cases of journalists starting their own investigations based on their own sources of information were observed. Almost all stories gave the full names of suspects, as well as their age and

places of residency. Some publications included images, but since there were no captions, it was impossible to determine whether these were of the accused or not. TV stations also broadcast images of people under arrest, in some cases in handcuffs.

Article placement and headlines

Materials placement in print media and news bulletins is an indicator of the topic's importance. By leading a newscast with a piece of news or placing it on the front page, the media emphasize its importance. Headlines also play a special role in capturing the readers' or listeners' attention and communicating an issue's importance.

Our investigation revealed that almost all news about the government and the president in *NM* and *MS* received front or second page coverage. A number of the monitored newspapers placed controversial materials on their front pages (*MS*, *NM*, *NV*, *MV*). Some TV stations traditionally started their newscasts with reports on government activities (*M1*, *NIT*).

Most of the headlines during the period of monitoring were concise and relevant to the issues. However, in some cases, they were confusing, ("Alegeri, nunti mari si lautari" – "*Elections, Large Weddings and Fiddlers*" in Saptamana of May 25), or made up of the headlines of press releases (*The President/Prime Minister/Speaker Visits Country or District X*" or "*Voronin/Tarlev/Lupu Meets with Official Y*").

Interestingly enough, some stories published in *MS* and *NM* were accompanied by identical pictures (e.g. on March 22, 23, and 25, pp 2-3), most likely because the same photo reporters was employed by both.

Conclusions

Our findings show that, with few exceptions, the media under analysis are *obsessed* with political elites at the expense of issues of real concern to the people. Many critical issues such as human trafficking, corruption, and poverty are ignored by the journalists, who are more interested in supporting or discrediting various political parties and their leaders.

Based on these findings, we can conclude that the situation has not changed much since last fall, when the “Media Self-Regulation Practices and Decriminalization of Defamation in the Countries of Southeast Europe” Project issued its recommendations on media self-regulation. A possible explanation might be the fact that, because of the short time period, the printed version of the report has not yet been widely distributed. Also, the recommendations referred to legislative changes, which take time.

Several steps were taken in this respect. NGOs drafted a Freedom of Expression Bill, which was publicly debated. A working group of state representatives and judges, as well as NGO members, was created in Parliament in order to discuss the proposed bill. Another bill on journalists’ accreditation was introduced and referred to committee for review. Several NGOs conducted seminars for judges on the application of the European standards on freedom of expression. Also, Art. 16 (8) of the Civil Code regarding the right to honour, dignity, and professional reputation was completed with provisions on the payment of punitive damages stressing the concept of reasonable compensation amounts. Further, during the recent election campaign, the media were monitored by local NGOs,

which, experts note, had a positive impact on the media performance.

In this researcher's opinion, the main impediment to media self-regulation in Moldova lies in the media dependence on external funding. Inability to cover publishing expenses results in external pressures, which in turn leads to self-censorship. Trying to please their sponsors, reporters and editors become over-zealous gatekeepers and compromise their duty to serve society by a fair and balanced coverage; they write what they are told without distinguishing between truth and propaganda. Thus, a *vicious circle* is created: less fairness and balance result in fewer readers; low readership leads to lower profits, lower profits result in greater dependence on external financial sources, which in turn affects fairness and balance.

Another impediment is presented by the limited access to information, as well as the reporters' low pay. This explains their lack of initiative and interest in investigative reporting. In such conditions, the Code of Professional Ethics may seem irrelevant and may be ignored by many media professionals. Further, there are media professionals who are simply not familiar with its provisions and do not refer to it when dealing with ethical problems.

Recomendations

A series of complex steps are needed in order to eliminate these obstacles.

- Support for independent media in their efforts to become financially independent through strengthening their

managerial potential. The financial and in-kind support from international donors and local professional organizations would help Moldovan media become independent of external pressure and be an effective watchdog over the government.

- Increased public awareness of the crucial role media accountability plays in ensuring its freedom; identification and promotion of best practices and strategies in self-regulation, as well as setting up of media standards like fair competition, transparency of ownership, etc.
- Dissemination of previous recommendations about the improvement of self-regulatory mechanisms among all stakeholders.
- Access to information by improving local legislation and raising its standards to a European level.
- Additional training on investigative reporting skills, thereby increasing both the quality and quantity of press reports on controversial issues.
- Media monitoring on a regular basis. *Media critiques*, through scientific assessment of performance, would contribute to media accountability to society and ultimately to increasing their role in the democratic process.
- Ethical guidelines that would help journalists preserve their freedom and independence and remain accountable to citizens.
- Increased influence of the National Council on Professional Ethics. It has to carry sufficient weight so that journalists feel obliged to observe its decisions.
- Public debate on the necessity of establishing a press council in Moldova. Self-regulation at the individual level

is important; nevertheless sector-wide self-regulation would have a more powerful impact.

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MONTENEGRO

By Petar Komnenic

Introduction

At a referendum last May, Montenegro, a small Balkan state of about 700,000 citizens, opted for independence, exiting the state union with much larger and dominant Serbia. Political tensions and strife followed the referendum and the first year of independence. The political friction between the supporters of the independence those who prefer a co-existence in a union with Serbia continued after the May voting. The main issue of contention is the proposed new draft of the Constitution, supposed to mark the new Montenegrin reality.

Key disagreements center, as expected, on issues of identity: the name of the official language (Serbian or Montenegrin), the position and treatment of the Serbian Orthodox Church and the Montenegrin Orthodox Church, and the future national legislation. Arguments surround the issue of whether a state should be defined nationally, as the Serbian majority insists or, civically, as the governing political parties and minorities claim.

After the independence, media segments affiliated with one of the opposing sides were left to co-exist. Despite their obvious biases, the majority of media outlets in the post-referendum period have been focusing their attention on important issues, researching and analyzing the performance and shortcomings of the authorities and concentrating on economic issues that had been neglected in the past.

Changes are particularly noticeable in some pro-independence media outlets, which, unburdened by the national independence cause, have returned to the main social problems ignored in the past in order not to overshadow the project of Montenegrin independence and its proponents. The greater research focus on previously ignored subjects is also a positive development.

Changes of course also bring new problems, especially in the area of media self-regulation and ethics. The quest for the most sensational story and the market share competition often result in professional code violations and divergence from established norms.

Overview of self-regulation

The issue of self-regulation in Montenegro is, as typical for other transitional societies, fairly new. Until recently, the attention was exclusively focused on the termination of state control over and party pressure on journalists. During the years of the fight against the party control for media freedom, professional responsibility for the published materials was often neglected. In the absence of transparent professional standards and ethics, mistakes were justified in the name of a higher cause, and the reputation of and trust in the profession fell victims to unprofessional and biased reporting.

The situation was additionally exacerbated by the deep division over the national status of Montenegro in the years leading to the Referendum. This resulted in a clear media bias, with journalists prepared to overlook the shortcomings of

political parties, politicians, or public officers as long as they were on the “right” side according to the editorial board. Articles and reports on the members of the opposing group often violated professional regulations and ethics.

A few years ago, the profession of journalism received legal regulation. The existing Montenegrin Constitution guaranteed freedom of speech, and in 2002 a set of media laws were adopted, ostensibly providing admirable working conditions. The Code of Montenegrin Journalists was adopted the same year. It was reassuring that the whole media community, despite its political differences, participated in the creation of this document and its basic guidelines. The Code was also supported by all of the journalists’ associations, the members of which held different political positions and had had difficulties negotiating. The Media Institute of Montenegro played an important role in this process.

The Code states that journalists are obliged to respect truth, persistently seek to uncover it and constantly bear in mind that the public has the right to know. They are obliged to accept facts as the absolute truth, to place them in an appropriate context and to prevent their misuse. This document also stipulates that journalists are to use professionally honest and legal methods of data acquisition. Exceptions are allowed only in cases when these methods have proven insufficient, while the information is of great public value. The Journalists’ Self-regulatory Body (NST), which oversees the work of the press and electronic media, is in charge of monitoring the compliance with the professional and ethical guidelines in the Code. NST includes various journalists’ associations’ representatives. It has a Board of Directors and a Council. The Board is a legal entity, while the seats on the Council, according

to the Statute, are occupied by journalists' associations' representatives and five prominent media professionals.

The Council comprises two sub-committees, which monitor the work of the electronic media and the press. They also review citizens' complaints about Code violations. That is to say, NST acts upon individual complaints and monitors compliance with the Code. Any citizen can file a complaint, even if no damage has been done to him/her, provided that the complaint is not anonymous. There are no financial sanctions against the media found to be in violation of the Code; the offending media house and the journalist are "reprimanded" at a special NST press conference which serves as public notice if the media house refuses to acknowledge its infraction and does not publish a correction and an apology.

Changes from last year

Unfortunately, the activities of NST have not improved since last September's report; on the contrary the situation has even worsened. The Council did not hold meetings for almost half a year, and its work was literally "frozen" after some individuals resigned because of other professional obligations and inability to perform their duties.

No monitoring of the electronic media and press was performed during this period, nor were citizens' complaints reviewed. About a month ago, the incomplete Council met again, but a large number of press associations did not send new representatives to replace the ones that had left. Therefore, NST is in a transition phase. Even though only half of the eleven members attended the meeting, they agreed to

work on a new Rulebook, which would define the members' methods and responsibilities in monitoring the work of the press and the electronic media. This internal document has not been officially adopted yet.

The Council's total inactivity in enhancing and supervising professional standards additionally complicates the introduction of self-regulatory principles in the media community. It provides an excuse for those who have been, from the very beginning, questioning this body's credibility and refusing to cooperate. It seems unrealistic at this time to hope that , in time, the media community would accept NST as a "professional adjudicator."

Nevertheless, a significant percentage of Montenegrin media houses have been recently trying to raise their professional standards, enhance the research process and offer information that is as objective as possible. This tendency is primarily the result of the media market growth, increased competition and increased audience awareness and desire for truthful and up-to-date information.

Standards, however, depend not only on the professionalism of editorial boards, but also on uniform regulations and bodies that would ensure their application. Therefore, it should be concluded that the Montenegrin media community has not made significant progress compared to last September and is not governed by principles and regulations that are binding for all journalists, regardless of which editorial office they are working for.

Press and electronic media monitoring

For this report, the following print and electronic media were monitored for three months: the private television stations In and Montena, the news agency Mina and the National Television of Montenegro, as well as the two most popular daily newspapers, Dan and Vijesti, and the weekly political paper Monitor.

Montena television's weekly political talk show enjoys some of the highest rankings. It covers current affairs, with its trying to book representatives of opposite sides. Its easy-going populist tone has made the show quite popular with all segments of the population. Despite numerous complaints about its unusually long duration, sometimes upwards of 3 or 4 hours, the show's popularity warrants its inclusion in this study.

The private In channel, which recently celebrated its 5th anniversary, was included in the study because of the great popularity of its news programs and the *Living Truth* talk show. The host of the show engages in dynamic discussions with public and political figures. He is not a moderator, rather his role is to present views and arguments in opposition to the guest's. While such an approach has raised complaints from viewers who disagree with the political opinions expressed by the host, the show is very popular. According to the latest polls conducted by the Center for Democracy and Human Rights (CEDEM), the ratings of Television In surpassed even those of the National Television, until recently, watched by the largest number of the Montenegrins.

Mina is the only news agency in Montenegro, which explains why it was included in the monitoring. The National

Television of Montenegro is constantly criticized by the opposition, certain media analysts and segments of the non-government sectors, who claim that, despite its formal transformation, the political parties in power that have had direct and formal impact on the editorial policies still exercise their influence.

Podgorica's newspapers *Dan* and *Vijesti*, dailies with the largest circulation, were also included in the monitoring. *Dan* is a legacy paper established under the orchestration of Belgrade's late dictator, Slobodan Milosevic. It was installed by Belgrade's regime in Montenegro with the help of the Montenegrin pro-Serbian parties. Because of this affiliation, the daily was full of xenophobic messages and hate speech, targeting minorities in Montenegro. As such it was the main reading material for a significant number of citizens, hoping for a preservation of the national union with Serbia.

From its very beginning, *Dan* criticized harshly the governing Montenegrin parties and the official policy of Podgorica, which in the late 1990s distanced itself from Milosevic with an eye towards independence. When in 2004, *Dan's* editor, Dusko Jovanovic, was assassinated in an ambush on the doorstep of the editorial department, the opposition claimed this was a political assassination. Only one person has been charged with the crime and the investigation is still ongoing. Motives and possible hired assassins have not been identified.

The daily *Vijesti* has been pro-independence since its beginning, although for several years it was viewed as too favourable to the authorities in Podgorica. After the ownership changes and the involvement of the international concern WAZ,

Vijesti became the most-widely read Montenegrin daily, known for its incisive criticism of both the government and the opposition.

The first and only Montenegrin weekly, *Monitor*, has enjoyed an oppositional and anti-war reputation since the early 1990s. During the wars on the Balkans, because of its pacifist message and open preferences for Montenegrin independence, the magazine was often targeted by the warmongering authorities, allied to Slobodan Milosevic and Belgrade.

Several years prior to the independence referendum, *Monitor's* influence had drastically dropped, due to its tolerance for other mistakes by the authorities pursuing independence, perceived as the higher goal. After the Referendum, this leniency subsided and the paper is now focused on the investigation of economic and political problems hampering the development of Montenegrin society.

Identified cases of self-regulatory guidelines violations

As mentioned above, with the lack of a guild authority in charge of supervising the work of Montenegrin media and identifying cases of professional and ethical standards violations, editorial departments are setting standards themselves. Despite the obvious improvement in comparison to the past when the Montenegrin media space overflowed with hate speech, and false and politically orchestrated information, serious violations still occur.

One of the most obvious editorial and journalistic violation of the code of ethics occurred on March 11 on the central news program of the National Television, which insulted the religious feelings of the followers of Islam. When discussing the rate of suicides in Montenegro, the program asked why the rate of suicides is allegedly statistically lower in those regions where the majority of the population is Muslim and one of the guests, neuro-psychiatrist Todor Bakovic explained that the reasons should be sought in the Quran, which, he stated, "does not preach compunction, nor remorse for the sins committed". By broadcasting this piece, the editor and the National Television directly violated the principles of the Journalists' Code, which explicitly forbid the distribution of hostility and hate "towards persons based on their religion, ethnicity, nationality, sex, physical inadequacies, religion or political orientation". The Code specifically prescribes that journalists must be especially "attentive as not to encourage ethnic hate, when reporting on findings and occurrences containing the elements of ethnic hate. Journalists are obliged to respect other states and nations."

The Meshihat, the highest religious and administrative body in the Islamic community in Montenegro, called the program, "an open provocation directed towards the followers of Islam, hurting the deepest religious feelings of over 100,000 of Islam's followers in Montenegro". Numerous human-rights NGOs also denounced the program, as did other media which found this professional error shocking. The National Television did not even apologize for it; only an excerpt of the Islamic religious community press release was read during a central news program.

Lack of professionalism is only one problem facing the National Television. The opposition circles and the NGOs in charge of monitoring and improving media professionalism still perceive Radio Television of Montenegro as a lackey of the authorities. Similar observations were included in the 2006 Freedom House Report. In its recently distributed report, the international NGO claims that Radio Television of Montenegro either favours the authorities or remains neutral on a daily basis. The Report includes the following observation, "public stations do not lead with the news of the day, but with leaders' statements." Observations that public service is still subservient to the political authorities and focus is placed on promoting non-important governmental activities instead of the issues of public interest, directly conflict with the Code's guidelines that, "journalists' mission is to be critical observers of those in power in the society, politics, and economy."

In some cases, the public service outlet chose to cover up information not convenient for state officials, thus violating the public's right to know. After certain public figures in Montenegro expressed vigorous opposition to the International League of Humanitarians' proposal to award prizes for peace and humanitarian work to high-ranking functionaries of the governing Montenegrin Democratic Socialist Party, because of their participation in the early 1990s war, the National Television of Montenegro completely ignored their press conference, but covered more than adequately the positions of the governing party and its high-ranking members.

Vijesti's decision to publish a classified document by the National Security Agency presented to members of the Parliamentary Security Board by the Agency's director triggered another debate on professional ethics standards in the media

community. The document contains NSA's operational data on alleged criminal cliques in Montenegro, on the city and regional level, including the names of those suspected of criminal activities by the secret police. After the publication, a number of the individuals in question filed libel suits against *Vijesti* and the National Security Agency, claiming that the secret police had identified them publicly as criminals without due evidence. Although Article 21 of the Media Act in Montenegro explicitly states that "journalists or media are not responsible if, in their course of work, they acquire or publish information presenting a national, military, official or business secret, if there is a public interest," it remains to be seen whether *Vijesti's* editorial decision will prove to have been correct.

Unfortunately, with the lack of an adequate guild organization, it is Montenegrin courts that will decide on the issue, reviewing the charges brought on by the individuals whose names have been mentioned in the disputed document. In this particular situation, the Journalists' Code does not provide guidelines since it covers only reporting of ongoing investigations and court proceedings. However, the guidelines do offer some suggestions, inasmuch as some of the individuals mentioned in the NSA secret report do not even have police records: "When reporting on investigations or trials, journalists must respect the assumption that everyone is innocent until proven guilty, and must not, by any means, prejudice the outcome of the trial," the Code reads.

The majority of the press and electronic media do not pay due attention to the families of the deceased when reporting on accidents and natural disasters. It is often the case that these crimes or accident reports include pictures of the accident, showing the victims' bodies. This practice is directly

opposed to the Code, which states that, "accident victims and their families must not be brought into a situation of repeated suffering due to media exposure."

A case of malicious use of a photograph in another context, albeit with same sensationalist intentions, was observed on the pages of the opposition paper *Dan*. On its cover page, it published a picture of former Prime Minister Milo Djukanovic adjusting his suit, in which he appeared to be touching his genitals. Similar presentation practices are explicitly forbidden by the guild's rulebook. "Journalists have to accept the facts as the absolute truth, place them in an appropriate context and prevent their misuse, regardless of format."

Right before publishing this report, we learned that a still inactive journalists' self-regulatory body had received a complaint from the president of Podgorica's Higher Court, claiming his reputation had been tarnished by the weekly *Monitor*, which had stated that he and another judge had been under illegal surveillance by the prosecution. *Monitor* published the court's official complaint but claimed it had been following the public interest in pointing out the misuse of secret surveillance measures by the prosecution and the police, for which it had one official and several unofficial sources. NST is yet to deliberate the case.

Despite certain cases of code violations, the majority of Montenegrin media are striving to present different points of view on the topics they cover. It is also worth noting that some media outlets, especially the daily *Vijesti* and the weekly *Monitor*, are attempting to present serious investigative subjects. Unfortunately, the lack of personnel, the need to

cover current issues, and the continuing financial instability of the majority of media houses precludes the sustained coverage of investigative topics, which, besides professional engagement, require time and money.

Conclusions and recommendations

The main obstacle to establishing unique and universally accepted self-regulatory guidelines is the media community's unwillingness to set up a body that would diligently and systematically analyze published materials and publicly sanction Code violations.

The usual animosity and vanity of the editorial offices in some media houses was downplayed during the production of the Journalists' Code of Montenegro, which was unanimously adopted. However, no further progress has been made; nor has there been any good will to enable the functioning of a body that would identify and sanction violations on a comprehensive media community level.

Although professional guidelines exist on paper, professional criteria are being determined by the free judgment and estimates of the editorial teams, which adjust program and press content according to their own tastes. As a result, the dissatisfied individuals seek redress in the courts, which are left to walk the fine line between professional journalism and professional abuse. In such a context, the possibility for professionals to judge their fellow professionals is lost.

Despite having tolerated unprofessional media for a number of years, the public has recently taken action. Its

criteria are increasingly improving and citizens, as indicated by the numerous polls, are starting to appreciate media outlets which offer comprehensive information and to ignore certain traditionally widely-read or viewed media, because of their bias, ignorance, or political directives.

In such an environment, those media outlets that wish to remain self-sustainable are slowly returning to issues of everyday importance to the people overwhelmed by politics. In the competitive climate, there exists a danger of certain media outlets leaning towards sensationalism and favouring financial interests over ethics.

The only way to create an acceptable self-regulatory framework in Montenegrin journalism is by raising the awareness of editors and media house owners of the necessity to adhere to a common, already accepted Journalists' Code. The first step has to be the concurrent establishment of a Journalists' Self-regulatory Body, respected by all editorial departments.

Next, NST must prove worthy of its role, and contrary to its practice so far, start identifying cases of Code violations. Until such a practice is established, where the word and the judgment of such a body represent a greater sanction than those of the courts, self-regulation in Montenegro will remain only wishful thinking.

ROMANIA

By Iulian Comanescu

1. Executive summary

In the spring of 2007, several issues related to the Romanian media came to the public attention. During 2006 and 2007, at least two controversial Romanian billionaires, called "moguls" or "oligarchs" started investing heavily in media outlets, and another one, Dan Voiculescu, the founder of the Intact/Antena group, was in the middle of some public incidents, each concerning journalistic ethics and practice. President Basescu has continued his campaign against the alleged attempts of the oligarchs to "politically control" Romania, via their media "empires" and influence on the political scene. The blackmail buzz related to Romanian media became public in a spectacular way, with the so-called "Gazeta" case, when several managers of a small Transylvanian print media group were imprisoned on corruption charges.

In this climate, no professional association has a really authoritative and uncontested voice. The most prominent one, the Romanian Press Club, is considered by some an expression of the status quo in the Romanian media, tolerating some unethical practices. The two ethics codes that exist in Romania are not authoritative enough among professionals; besides, some of their principles have been openly questioned by at least one high-profile journalist.

Media ownership transparency is also only partially resolved; while libel and defamation decriminalization was repealed by the Constitutional Court at the beginning of 2007.

Further action by some of the existing channels and some new ones, is needed in order to bring Romanian media up to normal professional standards.

2. Context

2.1. Romania and the Romanian media

Romania is a country of 21,6 million inhabitants, with a GDP of 98,57 billion USD.¹ The Romanian media is roughly divided in five big groups, two with a strong foreign participation, and three Romanian-owned:

- **Ringier Romania** publishes 16 print titles, including the daily with the highest circulation, *Libertatea*; it holds a 25% share in the Romanian Dogan TV operations, which began with the launching of the Kanal D entertainment TV station. The involvement of Ringier in the print media market takes up over 50% of the circulation in various sub-markets, such as the general information newspapers or TV guides. Ringier's position on the market is not violating the anti-trust laws in Romania.
- **MediaPro/CME** is managed by the Romanian media maverick Adrian Sârbu and owned, in 95%, by Central European Media Enterprises, the Lauder family television venture in Eastern Europe. It also owns the most

¹<http://www.worldbank.org.ro/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/ROMANIAEXTN/0,,menuPK:287320~pagePK:141132~piPK:141109~theSitePK:275154.00.html>

successful TV station, Pro TV, and the third commercial TV station, Acasă TV; as well as an average-size print division, including a respected and profitable business newspaper, *Ziarul financiar*, and the *Gândul* newspaper, managed by Romania's most famous journalist and the president of the Romanian Press Club, Cristian Tudor Popescu. While Sârbu holds a 5% share of the TV channels and the rest is owned by CME, the situation is reversed for the other media outlets.

- **Intact/Jurnalul** is a Romanian company owned by the controversial Romanian businessman Dan Voiculescu, active in the field of energy, also the leader of the small Conservative Party (PC) and a former informer of the Communist secret police (Securitate). Some of its divisions are nominally owned by Voiculescu's daughters and collaborators. Voiculescu and his family control the second most successful commercial TV station, Antena 1, three other TV stations, the *Jurnalul național* newspaper, *Gazeta sporturilor* (sports daily) and some other print outlets, along with a radio station.
- **Realitatea-Cațavencu** is owned by Sorin Ovidiu Vîntu, another top Romanian billionaire, whose name is still tied to the crash of a very popular investment fund (FNI) in 2000-2001, through transformation into a Ponzi (pyramid) scheme, where the firsts on the list got their investment back with a good profit margin, while more than 200,000 investors lost their investments. Vîntu controls three niche TV stations and various publications he took over in 2006, including the *Academia Cațavencu* political satire weekly.
- **Adevărul Holding** belongs to Dinu Patriciu, an oil mogul with a strong involvement in Rompetrol, and publisher of two newspapers, *Adevăru* (quality) and

Click! (tabloid), and an intellectual weekly, *Dilema*, with plans of expansion on the TV market.

The last three media owners have been singled out by civic organizations and right-wing politicians, including Romania's president Traian Băsescu, as „oligarchs” or „moguls” and are suspected of political influence attempts via their newly built empires. Both Realitatea-Cațavencu and Adevărul Holding consist mainly of titles and television stations taken over by Vîntu and Patriciu after the 2004 elections, when the Democratic Party leader Traian Băsescu won the presidential office on a program of anti-corruption promises.

In addition to the „Big Five” on the Romanian media market, Edipresse-AS, a joint venture between the Swiss group and Axel Springer, is a successful magazines publisher, and Sanoma-Hearst and Burda also have extended operations. SBS is present with two TV stations and two successful radio stations. Lagardere owns two radio stations and has some plans for two TV channels.

The local press is divided between small provincial investors, with the increasing involvement of EMI Deutschland (ARBOmedia) and Inform Media (Austria). Sârbu is also the owner of several local titles.

The public television and radio include four TV stations, two national radio stations and several regional radio studios and televisions.

The total circulation of the daily newspapers in Romania is close to 900,000 distributed copies, while total TV viewership is around 3,000,000 on normal days, during prime-time.

2.2. Legislation

Romania is among the countries with a rather relaxed legislative framework in terms of media. Freedom of speech is guaranteed by the Constitution in standard terms, in art. 30, according to which no publication can be prohibited. The limits of the freedom of speech include discrimination, public violence, obscenity, and hate speech of various kinds. In legal terms, responsibility for the information or the artistic work lies with the author and the editor.

While the broadcast media are regulated by the Audiovisual Act (504/2002), there is no specific print media law. The Audiovisual Act concerns various aspects of TV and radio broadcasting in Romania, such as the responsibilities of the regulatory authority, the National Audiovisual Council (CNA), some ethics aspects, and anti-trust provisions.

Libel and defamation were recriminalized by the Constitutional Court in early 2007, when it declared unconstitutional Parliament's previous decision to decriminalize them (art. 205-206 of the Criminal Code).² The situation provoked the concern of the OCSE, expressed in a March 29 report by Miklos Haraszti, the organization's representative for the freedom of the press.³ According to Haraszti, Romania's Constitutional Court decision is "a step back in achieving a favourable work environment for the Romanian press".

² http://www.ccr.ro/decisions/pdf/ro/2007/D062_07.pdf - motivation of the decriminalization law out ruling.

³ <http://avadani.hotnews.ro/osce-ingrijorata-de-reintroducerea-insultei-si-calomniei-in-codul-penal.html> - "OSCE, îngrijorată de reintroducerea insultei și calomniei în Codul Penal" (OSCE, worried by the reinclusion of insult and libel into the Criminal Code"), by Ioana Avădani, director of CJI, on her blog at HotNews.

Romania's antitrust and unfair competition laws are considered "broadly in line with the common law" by the EU.⁴

2.3. Journalists' and owners' associations, specialized NGOs

The landscape of Romanian media organizations is rather sparse. Two owners' associations, for the national and the local press, are rather high-profile, and one of them, the Romanian Press Club (CRP), has also a journalists' department. The significant NGOs are the Independent Journalism Centre (CJI), the Media Monitoring Agency (MMA), the Romanian Center for Investigative Journalism (CRJI), and the Convention of Media Organizations (COM), an informal structure of various media associations.

2.3.1. The Romanian Press Club

CRP is the most visible and controversial media organization in Romania. It was founded in the autumn of 1997⁵ as a private club by Mihai Tatulici, a controversial TV moderator also active during the last years of communism. Until the 2004 elections, when the right-wing DA (Justice and Truth) coalition won the elections replacing the socialists off the Social-Democratic Party (PSD), the Romanian Press Club had been representing mainly the owners' interests. After the elections, it was publicly criticized as non-representative and protecting the self-centered interests of several prominent newspaper directors of the old generation in both the commercial and editorial fields. *Adevărul* a newspaper run until March 2005 by Cristian Tudor Popescu, President of the CRP,

⁴ <http://europa.eu/scadplus/leg/en/lvb/e12108.htm>, EU Summaries of Legislation.

⁵ <http://www.pressclub.ro/crp/index.html>, "Despre CRP" ("About the CRP"), Romanian Press Club site.

allowed its journalists to look for advertising deals while doing their investigations. Actual deals were struck.

The situation reached an impasse in August 2005, when CRP's Council of Honour suspended one of its members, the Ringier-owned *Evenimentul zilei* newspaper, after it published an editorial called „The Great Nothing”⁶, critical of the CRP. According to *Evenimentul zilei*, CRP had been excessively tolerant of questionable ethical conduct such as the so-called „advertising without an A” system, including the publication of some advertorials printed with the newspapers' typefaces and layout, and with not even a sign of advertising, in prominent CRP members' newspapers. Another issue raised by *Evenimentul zilei* was the blackmail previously mentioned in a press release of the Romanian branch of the International Advertising Association, as a method for obtaining advertising contracts..

After various attempts to make the CRP attractive to young journalists, in November 2006, Cristian Tudor Popescu resigned from the president's office, blaming the transformation of journalists into “soldiers of fortune” and the 2005-2006 huge investment in media by the so-called oligarchs or moguls, businessmen with a checkered past, often under investigation.⁷ Popescu walked out only to successfully rerun for president in February 2007, and successfully initiate the separation of the Journalists' Department and the Owners' Department into two

⁶ „Marele nimic” („The Great Nothing”), by Ovidiu Nahoi, „Evenimentul zilei”, August 23, 2005.

⁷ „Cristian Tudor Popescu a demisionat din Clubul Român de presă” („Cristian Tudor Popescu Has Resigned from the Romanian Press Club”), by Bety Blagu, HotNews.ro, November 26, 2006, accessed at http://www.hotnews.ro/articol_60329-Cristian-Tudor-Popescu-a-demisionat-din-Clubul-Roman-de-Presa.htm.

separate organizations.⁸ On the date we accessed the official site of the CRP, the former included fewer than 100 (94) members out of a total of several thousand journalists in Romania⁹.

2.3.2. The Association of the Local Press Owners

Formed in October 2004, The Association of the Local Press Owners (APEL) included at the time of this report's writing, 23 editors from the local Romanian press, publishing 40 titles.¹⁰ APEL has taken a position in the controversial issue of "state advertising," with some newspapers accusing the former socialist government of unethical distribution of advertising funds, based on the so-called "lowest bid," In total disregard for the unanimously accepted criteria of GRP or CPT, small titles had been supplied with hefty funds for vague and ineffective advertising campaigns, while also expressing positive political views about the socialist party and its government.

APEL also has taken a position on the great delay of payments at Rodipet, the state-owned distribution company, and has brokered a system of syndicated columns by several well-known journalists from Bucharest newspapers, such as Traian Ungureanu, Cristian Ghinea, and Simona Fati, for its members.

⁸ "Cristian Tudor Popescu a fost reales preşedintele CRP" („Cristian Tudor Popescu Has Been Reelected President of the CRP”), „Ziarul financiar”, February 12, 2007.

⁹ <http://www.pressclub.ro/membri/jurnalisti.html>, the list of the journalists in the Romanian Press Club, The Journalists Department – counting only 94 persons at the date of accession (June 11, 2007).

¹⁰ <http://www.apelro.ro/infoapel/apel.primii.din.presa.pdf>, „APEL – Primii din presa locală” („APEL – the leaders of the local press”), presentation of APEL on the official site.

2.3.3. The Romanian Broadcast Association

The Romanian Broadcast Association (ARCA), formed in 1990, includes 63 broadcasters who own a total of 228 radio and TV stations¹¹. Among other things, it has been involved in the modernization of the 1992 Broadcast Act, which resulted in the 504 Broadcast Act and in a public debate about the Geneva and Stockholm plans. ARCA also proposed revisions to the Romanian cinema and copyright laws, which became law articles, and promoted the “television without frontiers” EU directive. In cooperation with the national regulatory body, the National Audiovisual Council (CNA), ARCA has set up a self-regulatory code.

2.3.4. The Centre for Independent Journalism

Established in 1994, The Centre for Independent Journalism is the authority in terms of training courses and other forms of professional improvement, with over 10,000 participants in its various offerings, ethical conduct, freedom of speech, and free access to information, It was one of the main promoters of the 2001 Free Access to Public Information Act.¹² Among its latest projects are a journalistic training program for young Roma (January 2007), and the launching of a Romanian media index (www.Mediaindex.ro), in October 2006, with a special emphasis on media ownership in Romania.

2.3.5. The Media Monitoring Agency

Also formed in 1994, the Media Monitoring Agency (MMA) has functioned as an extension of the *Academia*

¹¹ <http://www.audiovizual.ro/englishversion.htm>, „Romanian Association for Audiovisual Communications”, presentation of ARCA on the official site.

¹² http://www.cji.ro/index.php?option=com_content&task=view&id=12&Itemid=34 – „Cine suntem” („Who we are”), on the official site of CJI.

Cațavencu magazine, subsequently turned into a press group, until mid-2006, when the company was taken over by the controversial Romanian businessman Sorin Ovidiu Vîntu, one of the „moguls” of the Romanian media. Turned into an independent NGO shortly after, MMA continued publishing its case studies and other studies, taking part in various Phare programs, and expressing various public positions as an authority on media ethics.

2.3.6. The Romanian Centre for Investigative Journalism

The Romanian Centre for Investigative Journalism is a co-founder and affiliate of the Global Investigative Journalism Network. It champions primarily a well-founded investigative journalism in the Romanian press. A core of experienced journalists is involved in various activities which aim to improve the professional quality of the Romanian media.

2.3.7. The Convention of the Media Organisations

An informal gathering of around 30 media associations, The Convention of the Media Organizations (COM) has been involved in virtually all activities of its members. Among its projects were two public debates, “The Media and their responsibility towards the audience” (May 2006) and “To what degree are the Romanian media corrupted?” (December 2006).

2.3.8. The MediaSind Trade Union

An affiliate of the International Federation of Journalists, MediaSind is the main trade union of the Romanian media, and a partner in the National Labour Agreement. It has taken various positions defending journalists’ rights.

2.4. Ethical and conduct codes in the Romanian media

While broadcasters' activity is regulated by laws and by decisions of the National Audiovisual Council (CNA), at least two ethical codes have been promoted by CRP and COM for print media. Although new media in Romania are proliferating, there is virtually no accepted conduct code for internet publishers, in spite of a self-regulation attempt by some members of a Romanian bloggers' club, Netoo.

2.4.1. Broadcasts are regulated by the law

The Audiovisual Act (504/2002) includes several provisions regarding journalistic ethics, cultural diversity and fair competition¹³. The interference of the authorities in the journalistic process is forbidden; editorial independence is guaranteed, as is confidentiality of sources. Alcohol and legal drugs advertising is regulated, while there is an obligation of the media owners to disclose their personal identity, in contrast to print media. Some further regulation is achieved by Decision 187/April 3, 2006¹⁴ of the CNA, including provisions about minors' protection, the right of reply, corrections, human dignity, the right to one's own picture, correct information, and pluralism.

2.4.2. Print self-regulation

The first ethical code was drafted by the Romanian Press Club in 1999, followed by the "Journalist Statute", including an ethics code of the Convention of the Media Organizations in 2004. The two codes have similar provisions as other self-

¹³ <http://www.srr.ro/despre/legi/audiovizual.htm>, The Audiovisual Law, no. 504/July 11, 2002, on the Romanian public radio site.

¹⁴ <http://www.cna.ro/reglementari/decizii/d18706.html>, Decision 187/April 3, 2006, on the CNA site.

regulatory acts in most of Europe, regarding the standard obligations and rights of journalists. There are also certain differences between the two. The COM code places a special emphasis on some actual issues in the Romanian press, such as the separation of opinion from information, the public interest defined broadly than the authorities' interpretation, confidentiality of sources as an obligation, professional malfeasance, copyright of journalists' work, the possibility to decline assignments including the attempt to obtain advertising deals or sponsorship¹⁵. Obviously, such a provision couldn't have made it into the CRP ethics code, since the Club is formed by owners accused in the past precisely of mixing business with journalistic practice. The other ethical code stresses the interdiction of any commercial agreements with authorities or companies that might affect journalists' impartiality and independence, and includes a stricter framework for the right of reply.

The CRP ethical code also has an appendix favouring the members of the Club: if a certain publication receives some information regarding the right of reply not published by another member of the Club, it is obliged to submit it to the CRP's Council of Honour.¹⁶

No matter what the differences between the two codes may be, the bigger issue is their implementation. Willingness to observe the CRP ethics code is a prerequisite for membership, but in spite of a wide representation of the media owners in Romania (35 publishers including the biggest players on the

¹⁵ http://www.cji.ro/index.php?option=com_content&task=view&id=35&Itemid=58, the COM Statute of Journalist and Ethical Code, on the CJI site.

¹⁶ <http://www.pressclub.ro/crp/cod.html>, the CRP Ethical Code, on the CRP site.

market), the code is hardly known in the newsrooms, which primarily follow personal and unwritten rules.

2.4.3. Internet self-regulation attempts

Self-regulation of the internet is a thorny issue in any country, especially after the advent of the Web 2.0 phenomenon, where the content consumers also become content producers (prosumers), with little, if any, expertise in terms of copyright, separation of opinion from information, libel and defamation etc. Parts of the code of conduct are everywhere in site owners' and ISPs' disclaimers, but self-regulation is practically non-existent.

In late 2006, Netoo, an informal Romanian bloggers' club, discussed a conduct code proposal. In spite of including only a small set of several common-sense basics, the proposal was rejected with very critical comments by the majority of influential bloggers, most of them with no traditional public communication experience.

Following concerns of the Romanian authorities about discrimination, hate speech and racism on Romanian websites, the Media Monitoring Agency was founded on November 9, 2006. It is a round table with representatives from several specialized state agencies, ISPs and NGO's¹⁷. Regulation of all the issues was left to ISPs.

¹⁷ <http://comanescu.hotnews.ro/anti-discriminare-pe-net.html> - „Anti-discriminare pe Net” („Anti-discrimination on the Internet”), November 17, 2006.

3. Main findings: Specific issues

Several transformations and public debates between March 1 and May 31, 2007 reveal some interesting aspects in terms of adhering to journalistic and business ethical laws, codes and unwritten rules by the Romanian media. An in-depth media monitoring report has been provided to the author of this study by Monitoring Media¹⁸, a Romanian company specialized in monitoring both print media and broadcast stations.

3.1. The Jurnalul național newspaper vs. the public television

In March 2007, *Jurnalul național*, the 2nd most popular newspaper, published a series of articles highly critical of the economic situation in the public television (TVR). The first one, called „TVR Goes Bankrupt”, claimed that the channel had a lot of unpaid bills and was unable to pay its personnel, in spite of consistent bank loans. TVR’s president and general director, Tudor Giurgiu, demanded his right of reply, denied the newspaper’s allegations and speculated that the source of the information published by *Jurnalul* was Sabina Petre, former CEO of TVR dismissed for disciplinary infractions. Petre had become a manager in *Jurnalul*’s publishing company, Intact-Jurnalul, controlled by one of the so-called oligarchs, Dan Voiculescu, and his family. The whole confrontation was interpreted as a political fight for the control of the public television between Romania’s president, Traian Basescu and his supporting party, PD, and their opponents. *Jurnalul*’s series of articles was assumed to be an attempt to destabilize public television, and especially Rodica Culcer, the news director, targeted by the socialists (PSD) for having refused their honorary president, Ion

¹⁸ Site at www.monitoring.ro

Iliescu, the right of reply. Culcer is regarded by the president's supporters as a competent journalist and news manager, while his opponents, including the socialists, the liberals and *Jurnalul's* owner's small party, the PC, are critical of his performance. Giurgiu, TVR's president and general director, considered to be connected to the anti-presidential liberals, asked for Rodica Culcer's dismissal. On May 4th, Giurgiu resigned, claiming he was "unable to guarantee the editorial independence of the public television in the future."

3.2. The "Gazeta" case

On March 24, the last three journalists and media managers in the "Gazeta" group were released from preventive arrest, charged with blackmail. Liviu Man, Aurelian Mureşan and Ioan Otel, the president of the "Gazeta" network, consisting of several low-circulation titles published in Transylvania, had been arrested by special troops at the end of 2006, after several businessmen from Cluj, the headquarters of the group, had filed complaints of intimidation and blackmail. The whole story seems to have had political connotations. The president of the Democratic Party (PD), which supports Romania's president, Emil Boc, is known as one of the speakers in a suspicious phone call transcript; while a PD MP, Daniel Buda, has been subpoenaed as a witness for the prosecution. After his release, Liviu Man complained to the press that he had been asked by the prosecutors to supply compromising information about the president of the PD and Mr. Buda.

3.3. The "Freedom of the press in Romania" MMA report

On May 3, the "Freedom of the Press in Romania" report was published. Its conclusions were quite pessimistic. The attacks and threats against journalists have increased. Mircea Toma, the director of the Media Monitoring Agency (MMA) said

Romania's EU accession on January 1, 2007 is a step back in terms of freedom of the press. "The authorities have been careful until the accession. We can expect the worst from now on," Toma said. Among the threats to journalists are:

- Libel and defamation recriminalization.
- The political undertone of the Public Television and Radio Administrative Councils was the result of a law which was not revised by Parliament, despite the numerous objections by citizens and opinion leaders.
- The "Gârleanu & Oancea" case: some time in 2006, two local correspondents of some national newspapers acquired a CD-ROM of classified military information. Although they treated the sensitive information carefully and wrote about the leak rather than about the actual CD-ROM content, charges were filed against them and at the time of writing, the case has not been resolved.
- The corruption charges in the "Gazeta" case.

3.4. The Traian Ungureanu case

A famous columnist and writer, Traian Ungureanu, has been the subject of an interesting debate concerning journalistic ethics. At a certain point in late February 2007, Ungureanu started publishing a series of columns in the *Cotidianul* newspaper criticizing what he considered the fake "impartiality" and "ethics" of the Romanian press. The public stand-off between Basescu & the democratic party and the "rest of the world" was seen by Ungureanu as a confrontation between the progressive forces and the "oligarchic diaper" that Romania had become. Ungureanu claimed that political involvement was allowed in the Romanian press, where there was a decisive battle to be fought between the corrupted forces and the reformers, represented mainly by the president. "We owe this aspiration to idiocy precisely to the ones that should

enlighten us and resist: the journalists.” Ungureanu openly took the position of an active supporter of President Bănescu; since he had been nominated as Romania’s ambassador to the United Kingdom, this raised questions about the altruistic character of his presidential support. The whole debate continued during the month of March 2007. Ungureanu’s nomination was rejected by the specialized Parliamentary commission.

3.5. An oligarch vs. his daughter’s employee

On May 2, Gabriela Firea, an Antena 3 moderator, invited Monica Macovei, former Minister of Justice, considered a symbol of the anti-corruption campaign initiated by the “Justice and Truth” alliance after the 2004 elections, to her daily talk-show. Their discussion was abruptly interrupted by Dan Voiculescu, one of the Romanian billionaires and media moguls. Although Antena 3 is technically operated by a company owned by Voiculescu’s daughter, Camelia, he is the founder of the so-called Intact/Jurnalul group, and also the leader of the small PC (conservative party), considered an opponent of the anti-corruption campaign, in spite of a tentative alliance with the “Justice and Truth” campaigners in early 2005.

During the telephone conversation, Voiculescu used expressions considered offensive both by the National Audiovisual Council (CNA), the regulatory body of broadcasters in Romania, and the President of the Romanian Press Club, Cristian Tudor Popescu. In a reply to the letter sent by the CNA, Voiculescu accused it of a witch hunt and stated that all media have the right to draft their own editorial policy.

3.6. Other significant incidents

- President Bănescu has often accused some of the big Romanian media owners of attempts to influence the

public opinion via their media groups, the last being in late February. The 'oligarchs' control' theory became a political theme in the campaign for the suspension referendum, launched in mid-April. After he had asked the "oligarchs" to "take their hands off the political control of the country" at the end of February, on May 10, during the election campaign, Băsescu came out with a „list of the oligarchs,” including Vociulescu and Patriciu, two big media owners, and other high-profile politicians. He left out Sorin Ovidiu Vîntu, another big and controversial media owner, previously accused of similar practices, explaining that Vîntu's media outlets made no apparent attempts of propaganda against the anti-corruption campaign.

- On March 10, it was announced that Bogdan Ficeac, the former editor-in-chief of *Romania liberă*, had become the advisor of Dan Voiculescu, the well-known politician, businessman and media mogul.
- On March 21, Sorin Roșca Stănescu, the director of *Ziua*, testified in front of the Misuse Commission of the Romanian Senate, on a past incident. In 2005, President Basescu had claimed he had been blackmailed by Roșca Stănescu, who had threatened to „destroy” him in case a very hard-line approach was taken by the Romanian judiciary in the Rompetrol-Patriciu case. Roșca Stănescu claimed the president himself had tried to threaten Patriciu, the controversial owner of Rompetrol and a liberal leader, at a previous time when they had been close friends. „He asked me to keep him [Patriciu] in formaldehyde, to get him drunk to the point he won't be able to interfere with the liberal party.”
- On February 12, 2007, Cristian Tudor Popescu was re-elected president of the Romanian Press Club (CRP),

after having resigned from the same position several months before. No other member of the CRP ran against Popescu, a development debated throughout March and April. One young Romanian columnist, Costi Rogozanu, accused Popescu of "demagogy" in a piece published on April 21 in the *Cotidianul* newspaper: "The journalistic scene would only benefit if C.T. Popescu and others from the old generation became politicians."

- On April 3, the MediaSind trade union protested against one of *Gardianul's* journalists having been coerced in a trial. According to MediaSind, Alecu Racoviceanu had been blackmailed by some DNA (Anti-Corruption Department) prosecutors.
- At the beginning of May, Victor Roncea, Head of the Foreign Affairs department at the *Ziua* newspaper, was asked by Sorin Roșca Stănescu, the director of the publication, to resign. Roncea claimed he was let go because of his support for the president, expressed frequently in the newspaper during the referendum campaign. The Convention of the Media Organisations took Roncea's side, but after several weeks Roncea apparently made peace with Stănescu and returned to *Ziua*.
- On May 10, during the referendum campaign, the Conservative Party released an alleged proof of the president's collaboration with the former secret police (Securitate) at a press conference. It was an interview with a former inspector at a Navy institution in Constanța, conducted by Dan Constantin, second in command in the *Jurnalul național* management,. Because the interview was not published by *Jurnalul* or any other of Voiculescu's media, the CRP stated its use was unethical.

- On May 19, President Bănescu was spotted shopping at a supermarket, by an Antena 3 reporter, Andreea Pană. Nagged by her insistent questions, Bănescu took her camera phone, only to send it back several days later. Some files had been erased, but one in which the President was complaining to his wife of the “gut” of the “stinking gipsy” (Andreea Pană) was preserved. The transcript made it into the international press, while the Romanian media started a debate both on Bănescu’s racist language and Pană’s pushy behaviour.

4. Conclusions

In view of the various incidents and developments mentioned above, the Romanian press seems to be affected by various ethical frailties, among which are:

- Corruption/blackmail allegations, up to the point of public scandal (the “Gazeta” case and Bănescu’s allegations about Roșca Stănescu)
- Political bias, apparent in Intact/Antena (Voiculescu) media.
- Mixing opinion and information; distorted reporting seems present in most of the investigative journalism pieces, such as the *Jurnalul* vs. the public television campaign.
- Lack of an esteemed professional organization that would be able to outline standards and guidelines of journalistic ethics and practice
- Lack of the above-mentioned standards and guidelines, in spite of the two ethical codes which were formally approved by various press organizations

- A fuzzy legislation, including the decriminalization and recriminalization of libel and defamation at the beginning of the year.

5. Recommendations

Keeping in mind all of the above, there are several directions of action for the civil society:

1. A public debate concerning journalistic ethics. Points of view such as Ungureanu's "involvement" thesis are to be discussed until a real consensus is reached, so that there is no difference between the standard and the actual practice.
2. A debate about the limits of the owners' involvement into the editorial policy of their media outlets, possibly followed by specific regulations.
3. A stronger and more universal theoretical foundation for the information vs. opinion separation in the Romanian press; this is not necessarily an ethics issue, but it underlies most of the ethical incidents in the Romanian press.
4. A joint effort from NGOs, professional associations and trade unions to make most of the legal provisions, self-regulating documents and other professional material publicly available. The most suitable form of publication is probably the Internet.
5. Further collaboration with the Romanian Press Club, by encouraging the CRP to develop its "Journalists' Department" into a representative body.
6. Involvement of younger journalists into the self-regulation process, having in mind the large number of professionals in their 30s or 40s that have been

- appointed as editors-in-chief or in some other management position during the last years, but hardly take any initiative in the field.
7. A permanent/cyclical approach to the debate about online self-regulation, due to the presence of hate speech and the possibility that Romanian authorities will take the initiative in the area, partially to comply with EU standards.
 8. A better 'watchdog' system for various cases where journalists are involved, to provide more than protests.
 9. Further pressure from the civic society for the disclosure of print media editors' identity, which is unregulated by the law, in contrast to the broadcast arena.
 10. Ethics and other professional training offerings from various professional associations and NGOs, especially for the local media, where sometimes even the standard regulations and procedures are hardly known.
 11. Pressure for libel and defamation decriminalization, which can still happen through various legislative mechanisms, although Romanian authorities have missed some opportunities.
 12. Continued lobbying for a non-political structure of the Administrative Council of the public television and radio. The various legislative projects, including some civic organizations initiatives, have not yet been discussed by Parliament, leaving room for to the interpretation that the political class is not interested in real independence for the public broadcast companies, especially after the very recent appointment of a socialists' president, Alexandru Sassu, as the president and general director of the public television.

SERBIA

By Klara Kranjc

Executive summary

The media reform in Serbia has made a slow progress over the last six years, facing numerous problems that accompanied the drafting of new legislation and its later implementation. A wide range of electronic and print media currently operates in Serbia, including several broadcasters with national coverage, numerous radio stations and local newspapers. However, the competition has not brought about an increase in quality, as sensationalism, abundance of unverified information, discrimination and hate speech pervade the Serbian media. Even though the journalists' associations harmonized their codes of professional conduct, due to the lack of implementation and sanctioning mechanisms, the progress in this field is still very slow.

The subject of the current three-month study of the print and electronic media was the respect of ethical standards and the journalists' code in Serbia. The study focused on the national daily newspapers with the largest circulation, including *Politika*, *Blic* and *Kurir*, and prime time informative programs aired on the Public Broadcasting Service (RTS) and highest-rated commercial television station TV Pink. The study also included the Radio Station Fokus, one of five radio stations with national coverage in Serbia.

Both qualitative and quantitative content analyses were conducted, using precise and previously set methodology. The most frequently observed forms of violation of the journalists' code are reported here with explanations of the causes and effects on the profession. The study will present a summary of the current state of affairs in the most influential Serbian media as far as adherence to professional standards goes, keeping in mind their impact on the public opinion and the development of a civic society in Serbia.

Context

Since the beginning of the democratic changes in Serbia on October 5, 2000, the pace of media judicial regulation has been very slow and fraught with numerous difficulties, including the lack of political will. The authorities have refused to fully abandon their control over the media and have demonstrated lack of desire to regulate the media scene in accordance with European standards. The inefficiency of the legislative and executive authorities and the lack of political will have resulted in many years of stalling of the establishment of independent regulatory bodies in the broadcasting and telecommunication fields. Even though the Broadcasting Act was adopted in 2002, the Republic's Broadcasting Agency (RRA) as an independent regulatory body was not fully established until 2005, following a series of controversial events and two amendments to the law. The RRA was expected to rapidly and efficiently regulate the Serbian broadcasting scene, but the implementation of the most important provisions of the Broadcasting Act did not start until early 2006. The Agency announced the first official competition for broadcast licenses in January 2006, as the state

broadcasting service RTS formally became the public broadcasting service of Vojvodina and Serbia in May 2006. Because of these developments, codes of ethics in Serbia could not have been addressed earlier, as they have only recently appeared in discussions.

Several worrisome incidents from the last three months of monitoring illustrate the state of affairs in the media and the position of journalists in Serbia. An attempted murder of the *Vreme* weekly journalist Dejan Anastasijević, death threats to the Chairman of the Independent Journalist Association of Vojvodina Dinko Gruhonjić, and an attempt of local power-wielders to halt the distribution of the *Status* magazine present the position of the media and journalists who are fighting for professionalism and truth and dealing with the past. Dragan Kojadinović, Minister of Culture and the Media at the time, when commenting on Dejan Anastasijević's attempted murder, advised journalists and reporters "not to live in ground floor apartments and the elite parts of the city, for their safety at these locations is compromised and jeopardized." However, he refused to address his role as minister and the role of the government in this matter. Aside from reported attacks on the media and journalists, March, April and May were also marked by the following events: the election of the new government, the delivery of verdicts and sentencing of the assassins of late Prime Minister Zoran Đinđić, and a campaign launched by the right-wing Serb Radical Party (SRS) to rename a street, slated to become the Zoran Đinđić Boulevard, after Ratko Mladić, the most wanted Hague fugitive charged with the 1995 Srebrenica genocide.¹

¹ The dispute is of major symbolic relevance. The street in question has so far been called the AVNOJ Boulevard (AVNOJ, short for the Antifascist Committee of Peoples' Liberation of Yugoslavia), which symbolizes the resistance of the guerrilla

Given that the Press Council is still non-existent and that the Radio Broadcasting Agency² pays no attention to the manner of reporting, numerous violations of the code of journalistic ethics, sensationalism, speculation and hate speech, have been detected in the work of the print and electronic media. Unlike television stations incorporated in the ethics violation analysis, whose coverage of the events was proper for the most part, the Radio Station Fokus repeatedly violated not only professional ethics, but fundamental human rights as well, e.,g. hate speech prohibitions. As for the print media, the most frequent ethics violations were found with the daily *Kurir*.

As far as the electronic media are concerned, a public debate on the proposed Code of Professional Conduct for Broadcasters was launched in early June 2007. The draft aims at "promoting moral values in the electronic media and contributing to accurate, timely, objective and unbiased reporting in Serbia." It was drawn up by the Ethics Committee of the Republic's Broadcasting Agency. Certain provisions of the Code are envisioned as mandatory for all broadcasters, while others would pertain to public broadcasting outlets only. However, journalists' associations have made several objections to the draft. The Independent Journalists' Association of Serbia (NUNS) believes that the Code should not be legally binding on the grounds that something that represents rules of professional conduct cannot be mandatory by nature. On the

and antifascist forces during World War II. The democratic parties in Parliament suggested that it should bear the name of Zoran Đinđić, a symbol of democracy and reforms in Serbia. However, right-wing parties led by the Serb Radical Party insist that the Boulevard be named after the Bosnian Serb General and Hague fugitive Ratko Mladić, charged with war crimes committed in Bosnia, whose arrest is necessary for Serbia to continue Stabilization and Association talks with the EU.

² RRA – RADIO Broadcasting Agency. Further in the text: RRA

other hand, the Journalists' Association of Serbia (UNS) stresses that with the adoption of the Code, the RRA Council would have immense authority, and its members will be vested with powers "similar to those of the Inquisition." Following the ongoing public debate, the RRA is expected to adopt the Code of Ethics.

Progress in this area has been made by the two journalists' associations which adopted a joint code of ethics. NUNS Executive Board adopted the Code of Journalists of Serbia in October 2006, as the UNS followed suit at the end of December 2006. The Code thereby has become a valid document. The Code of Journalists envisages the establishment of a Court of Honour and a Media Council. Courts of honour existed prior to the adoption of this Code, but were inefficient. It has therefore been concluded that additional self-regulatory mechanisms were necessary. However, the Media Council which is supposed to monitor the implementation of and compliance with the Code of Journalists has not been established yet. The Ministry of Culture has applied for international monetary support, since a prerequisite for funds from this year's state budget for the maintenance of the self-regulatory body for print media, was its formation by June 2007, which has not happened yet.

The right to access information of public importance is essential to every open and democratic society, as citizens can oversee the public administration and monitor the state's budget spending. The effective implementation of the Free Access to Information of Public Importance Act is the best way of preventing abuse of power and curbing corruption. Even though Parliament ratified the bill into a law, its implementation in most cases is still lagging behind. According to the Commissioner for Information of Public Importance, the

governing bodies violate the procedure in 90% of the cases. What is even more alarming is the fact that those charged with implementing the Free Access to Information of Public Importance Act have poor knowledge of its procedures. The Commissioner's investigation also revealed that 90% of all complaints resulted from authorities' being silent on various issues, and the remaining 10% from denied access to information of public importance. In order to secure full implementation of the Act, it is necessary to adopt a law on data secrecy and personal data protection. The Act's provisions pertaining to a state, official, business, or any other secret, contain only general definitions of these terms, which is why it is imperative to pass a separate law on data secrecy to avoid autocracy, legal insecurity, abuse, and the concealing of individual and group interests which might otherwise occur. It is interesting to note that a survey sponsored by the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), conducted in 26 legal institutions in four Serbian cities, including Belgrade, Kragujevac, Niš and Novi Sad, in the period between October 2006 and May 2007, showed that some headway in the Act's implementation had been made, but that Serbian legislation was still in need of a law on data secrecy and a law on state secrets.

Main findings on self-regulation with examples

Some of the electronic and print media we selected for the monitoring project in March-May, 2007, were chosen for their influence, geographical coverage, and ratings. The Public Broadcasting Service (RTS) and the commercial TV station Pink are the highest rated channels in Serbia, hence they were targeted for content analysis. RTS Newscast at 7:30 p.m., the

highest rated info-political program in Serbia, and TV Pink's National Newscast that follows, were monitored two days a week, on Tuesdays and Thursdays because Tuesdays are the busiest days in the work of state institutions since the government convenes Thursdays to make important rulings. In the case of dramatic events and important incidents, we monitored the above-mentioned TV stations regardless of days of the week. As for the print media, we selected *Politika*, *Kurir* and *Blic* as the national daily newspapers with the largest circulation, different concepts, and a large influence on the public opinion. Their content was analyzed on a daily basis in their entirety. For radio broadcasters, we chose the Fokus Radio Station licensed by the RRA for national coverage at its 2006 competition along with 4 other commercial radio stations. Even though no official ratings of the Serbian radio stations has been done, Fokus was included in the analysis because the Independent Journalists' Association of Serbia (NUNS) had demanded that the RRA react to flagrant and daily violations of journalistic ethics on that radio station. Its live morning show³ that begins at 9:30 and ends at 12:00 was the subject of this analysis.

The RTS, a prior ringleader in violating professional standards and spreading religious, racial and national hatred in the 1990s, has, over the recent seven years, at least in that segment of the program, undergone serious changes. Even though the transformation from a state-controlled media outlet to a public broadcaster began a long time ago, and is still going on the three-month content analysis reveals that the code violations are sporadic and extremely rare in the RTS informative programs. However, it is evident that state bodies,

³ Its well known that the radio is regarded as a morning medium, since the ratings are highest in the morning.

first and foremost the Serbian government, still exert influence on the editorial concept, For example, when Serb Radical Party activists pasted mock street signs with Ratko Mladić's name on May 26 on the Belgrade street that was to be renamed after Zoran Đinđić, the prime time RTS newscast did not include it as the first headline. Instead, it began the newscast with a report on the future status of Kosovo, which contained a summary of earlier statements of Serbian and international politicians without any new developments whatsoever.

The RTS reporter gave a trustworthy account of the Ratko Mladić street signs incident, without making personal comments and evaluation, but, unfortunately, without offering an analysis of the possible consequences of such actions. He failed to mention whether pasting posters of the most wanted Hague fugitive was against the law, or whether it had anything to do with the incitement of religious, racial, and national hatred, given that the act glorified the name of a man accused of the harshest crimes against humanity and of genocide. Even though this is not an example of a direct violation of the code of ethics, Serbian citizens that pay a public broadcasting service fee, were in this case denied very important information.

RTS's reporting on trials, legal procedures and the fight against organized crime is mostly conducted properly, with respect for the presumption of innocence. However, during its coverage of the attempted murder of *Vreme* weekly journalist Dejan Anastasijević, the reporter at the scene of the incident, revealed that two bombs planted at the window seal of the prominent journalist's apartment had detonated and gave the full address. Bearing in mind that Dejan Anastasijević is a professional investigative journalist that has been covering organized crime and war crimes cases for years, the publishing

of his family home address can be regarded as a harsh violation of the Code of ethics and as an infraction against his privacy. Even though the reporter clearly did not do it on purpose, he was nonetheless negligent and violated essential professional ethics norms by informing the entire country where the man whose job it is to investigate the darkest side of the Serbian society lives.

One of the frequently violated rules on RTS is the rule of protecting the rights of children, and every journalist's obligation to modify his/her questions when covering events of personal pain and trauma. However, an RTS journalist, reporting on the 8th anniversary of the deaths of numerous civilians during the 1999 NATO bombing campaign in the town of Surdulica, was interviewing a child whose father had died that day, and after noting that the boy was eight when the sad incident occurred, he then asked the boy if he had been "sad when his father died." Aside from the fact that the question was completely irrelevant, the minor's privacy and protection were jeopardized.

In early March 2007, a Roma party protested against a statement on an RTS report that "people who steal copper cables were usually of Roma ethnicity." A reporter was giving an account of the theft of copper cables at a train station and said that the police had told him that Romas from local settlements were usually to blame. Arbitrary remarks that stereotype an entire nation do not contribute to the creation of a multiethnic tolerant society, but lead to the widening of the ethnical gap between the Roma and other communities. It should be recommended that the RTS does not air unsubstantiated information, keeping in mind of course that even information from unofficial sources can be accurate and

reliable.

Television Pink did not have an information program in the 1990s but seven years ago it introduced its prime time National Newscast. The concept of this information program is somewhat different from similar shows seen on other TV channels. It has a rotating editorship, and the editors are also the anchors. They often offer opinion pieces with personal comments and analysis of current events. The program is 45 minutes long and features numerous studio guests, including politicians, analysts, commentators and even strippers. Stripper Sanja Tigrica appeared on the show on June 1, on the occasion of the opening of the Belgrade Erotic Fair, and the host made quite a few lascivious comments.

Violation of journalist ethics is rarely seen, but during our three-month survey we observed a few instances. The most frequent form of violation is non-compliance with the rule that every journalist is obliged to hear the position of both sides in a story, consult as many sources as possible, and let them state their views. This rule was most violated in reports on workers' strikes and protests. On April 5, a Pink journalist was reporting on the police union's announcement of an impending strike, with the union leaders making numerous accusations against police chiefs, including nepotism, incompetence, and corruption. The journalist, however, did not even try to get the other party and check the strikers' allegations. They remained unsubstantiated and the viewers were left to draw their own conclusions.

TV Pink newscasts often contain what is known as hidden advertising, even though the Code clearly stipulates that every form of commercial advertising, as well as political

propaganda that is not clearly marked as such, is considered a serious violation of professional standards. The editors of the National Newscast apparently do not pay much attention to this. During the monitoring period, for instance, the Commercial Bank's offer was aired in the form of a news report, without explaining whether it was a commercial or an infomercial. In that sense, a commercial was masked as a news report, but the journalist failed to mention other banks, or make comparisons to similar offers in order to inform the public of their diversity and competitiveness. Instead, he favoured and advertised one bank only. Hidden advertising in information programs usually entails big advertisers and the TV station's major clients. Perhaps, fearing it might lose its sponsor, the TV station meets all of its advertising wishes thereby breaking the professional code. TV Pink, for instance, included on one of its National Newscasts a report on a Lav Beer competition, the winner of which was awarded a Peugeot and was shown urging viewers to drink Lav Beer and win a new car just as he had done.

Nonetheless, our monitoring analysis recorded positive examples of good reporting on this television station, as well. Respecting the rights and protecting the identity of a child, an alleged victim of domestic abuse, the editor tried to look into the problem rather than the individual case and to present the position of society and competent state bodies. The Newscast aired a report on a thirteen-year-old girl molested by her father who had been detained but subsequently released from custody. Besides the girl, the show had two other under-age children, potential victims of domestic abuse. An expert studio guest explained how to prevent such situations, how to isolate the abuser, and which state agencies are authorized to deal with those cases. By following the rule of not harming children by publishing their names, pictures or footage of their faces,

residencies, etc. recognizable surrounding, the editor managed to present a serious issue and detect a key problem the state has to handle in order to protect children efficiently.

Radio Fokus is a private commercial radio station licensed nationally for eight years. Its website proclaims it is "a radio in Serbian" whose motto is "No Cheering." Our analysis shows that the station is violating professional standards on a daily basis, openly advocating certain political opinions and promoting hate speech. The website describes the two-and-a-half-hour long live show "On Air", hosted by journalist Uglješa Mrđić, as an "informative-political live show." Its concept is as follows: the host presents a topic, and the listeners are free to call in and state their opinions on the matter, with frequent studio guests who almost invariably advocate a hard-line nationalist stance. Our monitoring revealed that this radio station openly promoted the policy, standpoints, and officials of the Serb Radical Party, whose opinions the show's host regards as facts. The host allows and even encourages the listeners to openly insult the political adversaries of the Radicals, make threats and use hate speech in reference to journalists and media houses that investigate organized crime and war crimes. The listeners are allowed to glorify people charged with the harshest crimes, as in the instance of one of the perpetrators found guilty of having assassinated Prime Minister Zoran Đinđić, who was called "a true hero of the Serbian people." Comments like, "too bad Ratko Mladić did not do a better job in Srebrenica," "we have to take up arms in Kosovo to teach the Albanians a lesson," and "RTV B92 journalists are traitors, villains, and enemies" are also common.

The weekly *Vreme* and B92 journalists are often targeted by this radio station. After the assassination attempt on Dejan

Anastasijević, death threats to his newspaper colleague Miloš Vasić were sent via Radio *Fokus* frequencies. The host, playing the freedom-of-the media card, allowed the listeners to demand Vasić's execution, and deaths to those who did not think like them. They commented on and provided an arbitrary and inaccurate interpretation of Vasić's statements on a TV B92 program about Anastasijević's attempted assassination. The goal was to prove that he should be banned from speaking in public or simply "be removed from the scene". In this way, Radio *Fokus* joined the ranks of those endangering the lives of journalists and the profession of journalism as a whole. The Independent Journalists' Association of Serbia (NUNS) called upon the authorities, first and foremost the RRA, to react to the public lynching and death treats Radio *Fokus* was directing against Vasić. The respective bodies have not replied. During the monitoring period, Radio *Fokus* violated a series of provisions of the Broadcasting Act, the Public Information Act and callously broke the Code of Ethics on a daily basis.

As far as the print media are concerned, our analysis revealed that the daily *Kurir* was also violating the ethics code on a daily basis. On the average, over 50 articles a month were found to disregard completely the standards of the journalistic profession. The most drastic example in the last three months was the publication on the front cover of explicit pornographic images of folk singer Sanja Stojanović under the large headline of, "Porno Grand." At the end of the accompanying piece, the daily shared with its readers that an entire footage of "Sanja in action" along with oral sex scenes was available on its website.

Kurir's approach to information and reporting is most often sensationalist. Bombastic headlines frequently do not correspond to the content of the article. In early March 2007,

for instance, the front cover featured a headline "Nun with Slit Throat Found in Train Car", but in fact the author was only speculating as to the nun's cause of death. On the following day, the story continued with an article called "Three Albanians Throw Nun off the Train", with the following lead: "Nun Serafima, found next to the railway with a broken neck, was last seen alive in a train compartment she shared with three Preševo Albanians." The author insisted that the nun had been murdered, even though there was no evidence to substantiate such claims, and ignored the investigative judge's statement that the death had probably been accidental. The case was additionally complicated by the speculations that the nun was murdered by Albanians, pejoratively referred to in the text as "Shiptars" in order to deliberately lead readers into the conclusion that "evil Albanians kill Serbs."

Kurir often allocates inappropriately large amount of space to people convicted for serious criminal offences or to those charged with war crimes. Under the headline "*Kurir* Exclusive," the daily reported that Milorad Ulemek Legija, first charged in the trial of Prime Minister Zoran Đinđić's assassins, "will soon move to a hotel," as well as that his murder conviction in the 1990s in the so-called "Ibarska Magistrala" case, i.e. the assassination of top opposition party officials, was the result of a "forged statement": The piece was called "Forgery", and subtitled "Legija and four other members of MUP Special Operations Unit (JSO) were found guilty in the Ibarska Magistrala murder because of a statement by Dušan Maričić which he himself refused to sign." The author clearly took the side of those convicted for most serious criminal offences and downplayed the judicial verdict.

When the political parties were negotiating the formation

of a new government, *Kurir* regularly published pieces about the course of the talks coming from “anonymous, unofficial, and reliable sources” with daily speculation of who would be in charge of particular portfolios. Another example of a sensationalist front cover article is the one on the Chief Hague Prosecutor Carla Del Ponte and her unyielding vengeance behind the search for Ratko Mladić in downtown Belgrade right before the swearing-in of the new government in the Serbian Parliament. The piece was called, “Revenge”, with the lead ran, “By ordering the search to capture Mladić, Carla Del Ponte wanted to thwart the formation of the government and spite Vojislav Koštunica and Dragan Jočić.” The author had no support for this argument whatsoever but went on to say, “*Kurir* has found that the Hague Prosecution tip that Mladić was hiding in the Deligradska Street was not based on operative data, but on Carla Del Ponte’s wish to take her revenge on Prime Minister Vojislav Koštunica and Interior Minister Dragan Jočić, since in her opinion, they are to blame that her tenure would end in the fall of 2007 without the biggest beast in the cage.” It seems as if the editorial staff of *Kurir* pays almost no attention to the code of ethics, but unlike countries with developed democracies where tabloids mull over whether the information that might bring charges and punitive damage suits is actually worth publishing, the Serbian tabloids have no such dilemma whatsoever, since their actions are hardly ever sanctioned.

The daily *Blic* offers brief news and vital analytical topics. It is one of several Serbian media that raise important issues and whose journalists practice investigative journalism. The Code of Ethics is seldom violated. The number of violations per month is under 10 on the average. They occurred mostly in relation to the new government formation as articles were

based on anonymous sources. During this time, representatives of all negotiating sides rarely went public with official statements, which partially explained the media's reliance on anonymous sources. Some *Blic* pieces with unnamed or anonymous sources proved false. One headline ran "Deadline for Government is May 10", when it was actually May 15. Speculations about prospective members of the government and portfolio distributions mentioned in the same piece also turned out to be incorrect.

Besides the use of uncorroborated information, other examples of code violations in *Blic* include non-compliance with the "presumption of innocence principle." For example, one headline read, "Dean's Son Rigs Exams", while the subtitle clearly stated this was a speculation based on unconfirmed information: "*Blic* has learned that Novak Pirić, 25, son of Kragujevac Law Faculty Dean Sveta Purić who was arrested earlier on corruption charges, was detained yesterday on suspicion of having falsified an exam certificate." *Blic* also sporadically published advertisements hidden in the form of a news flash or report, without explaining that the piece in question was an advertisement.

The daily *Politika* is the oldest newspaper in Serbia. It used to serve the regime and promote war propaganda during the 1990s, severely violating professional ethics. However, *Politika* gained back the public's trust and enjoys a reputation as one of Serbia's most sober, learned and analytical newspapers, despite its tendency to remain close to the governing establishment. This, however, does not influence *Politika's* reporting, so it can be concluded that of all the print media under analysis, it adheres to the Code of Journalists' Ethics the most. During our three-month monitoring, we

observed code violations mostly in the 'Chronicle on Tragic Events' section. Even though journalists are obliged to respect the rights and dignity of crime victims, disabled persons, and other vulnerable groups, the daily published an article called, "Pop Businessman Beats up Priest's Wife", and included the victim's full name and surname in the subtitle, unaware of how it might reflect on her life: "Sanja Simanić will for now remain in the hospital to receive treatment and will seek shelter in the Safe House in Šabac afterwards." The presumption of innocence was also violated on several occasions, as for example in the piece called "Son Stabs Father to Death", with the following lead: "Neighbours found the body of Đurica Popov. His son Ivica Popov has been named suspect and is currently on the run." Generally speaking, violation of the Code of Professional Ethics can rarely be detected in *Politika*, typical for its professionalism and responsible conduct.

Conclusions

On the basis of the three month monitoring of the selected media, we conclude that violations of the Code of Professional Ethics occur every day, and that the journalists' associations and the Republic's Broadcasting Agency still lack the means to solve the problem. The Serbian media continue to violate fundamental human, civil, and minority rights. It is not simply a matter of non-compliance with professional standards. The violations require not only censure from the media, but the reaction of the governing institutions and judiciary bodies tasked with implementing laws pertaining to the media, as well as human, civil, and minority rights. The most drastic example of professional misconduct and the abuse of media space is Radio *Fokus*. If we add two related norms according to which a

journalist is obliged to respect the privacy, dignity and integrity of persons he/she is reporting about, and that every defendant is innocent until proven guilty, it becomes clear that the journalists violating these rules are seriously endangering basic human rights. With that in mind, these offences have an immense moral weight, as well.

A pronounced tendency towards sensationalism and its political instrumentalization is one of the key “ailments” of the Serbian press, particularly the tabloids. The provision against sensationalism and the publication of unfounded accusations, libel, rumours, and hear-say, is most often violated by *Kurir*, one of the Serbian newspapers with the largest circulation, and consequently immense potential influence. Thus, a large number of people become accustomed to reading insufficiently substantiated stories often based on hear-say, instead of focusing on objective information on politics, economy, culture, and other fields of interest. Journalists and media do not share the same amount of responsibility, but it is obvious that there is a strong tendency to infringe on fundamental human rights in the race for an audience share.

Serious reasons for concern are presented also by the publication of stories that have not been substantiated by at least two sources. Furthermore, journalists reporting on contentious issues, often fail to hear and cover both sides of the story, even neglecting to mention if one side has refused to comment. It has become common in Serbian media, particularly in the press, to cite “a source who spoke on condition of anonymity” as the main source for a story. The exact wording varies from one newspaper to another, but the essence remains the same. A legitimate yet rarely used journalistic form in today’s global journalism has become prevalent in Serbia.

Authors and editors disregard the fact that the majority of “information” attained in this way seldom prove to be anything more than arbitrary speculations devoid of any factual underpinning. This behaviour is certainly supported by the lack of compliance with the Free Access to Information of Public Importance Act on the part of state bodies.

Our analysis reveals that the economic and political interests of publishers and broadcasters often affect the editorial policy in a way that may result in inaccurate, biased, incomplete, and untimely reporting. Even though any form of commercial advertising, as well as political propaganda that is not clearly marked as such, is considered a serious violation of professional standards, the Serbian media are often in violation on those counts, as well.

On the basis of the above-mentioned findings, we conclude that the continuous monitoring of the media is a very important factor in striving to ensure respect for the basic rules of journalism. The formation of the Media Council, the adoption of the Code of Professional Conduct for Broadcasters and a control over its implementation, along with the strict implementation of the Broadcasting Act, the Public Information Act and the Free Access to Information of Public Importance Act can smooth the path of professionalism on the media scene in Serbia.

Recommendations

- The Government and other state bodies have to adhere to and provide implementation of the Free Access to Information of Public Importance Act.

- It is necessary to adopt a law on personal data protection.
- It is necessary to adopt a state secrets law.
- Strict implementation of the Public Information Act, which entails sanctions for hate speech and the incitement of religious, racial, and national hatred in the media. Sanctions should come from the judiciary, state bodies, and the media itself.
- Political and economic pressure on the media needs to be eradicated.
- The RRA has to exercise control over the broadcasters it has licensed.
- The Code of Professional Conduct for Broadcasters and control over its implementation need to be adopted, with an emphasis on journalists' associations' standpoints on the matter.
- Efficient promotion of harmonized Codes of Journalistic Ethics of both journalists' associations registered in Serbia (NUNS and UNS)
- An urgent formation of a Media Council which would oversee the implementation of the Code.
- Close attention on the part of journalists and the public to the importance of professional standards in the development of the whole society.

SLOVENIA

By Brankica Petkovic

1. Executive summary

With its comprehensive media regulation, including strict rules on the right of reply and correction, and with the almost two decades of existence of the journalists' self-regulatory body, the Journalists' Court of Honour, and taking into consideration its EU membership, Slovenia could be seen as a stable and developed media society. But on the local or even national level, the political instrumentalization of the media is still considerable, both in the private and the public sector, contributing especially in recent years to permanent conflicts and crisis. It is the consequence of non-transparent interests behind investments in news media, hidden networks of business and political interests and a system which enables the political elite in power to control major resources, including the private news media. In the period of our project, March - May 2007, political confrontations through instrumentalization of the media surfaced in several cases, including the investigation of the state security and information agency SOVA. Therefore, the majority of our findings and case studies refer to issues of state secrets and protection of sources, and to issues of accuracy, fairness and balance. There are also positive developments in media self-regulation in the broadcasting media sector in Slovenia. Following the 2006 media law changes, television programs are introducing internal ethics rules for broadcasting of content which is not appropriate for children and minors. At

the same time, RTV Slovenija, a public station, is introducing an ombudsman for the first time to deal with complaints and comments from the public.

2. Context

Approaching its presidential elections in late 2007 and parliamentary elections in late 2008, Slovenia is becoming the playground of numerous political conflicts dominated by information war, including the use of secret service data.

According to Sandra B. Hrvatin and Lenart J. Kučič,¹ the state in Slovenia has a unique influence on the media since the media privatization led to a greater, not weaker, political pressure. For over a decade now, the state has been carefully safeguarding its stakes in media companies thus sustaining the political influence of future governments. This ostensibly 'silent' and 'unproblematic' owner that has never worried about the profitability of its investment has in fact been protecting the "added value" of politics/opinions of its media holdings. Media ownership is of course, not just any kind of ownership. In media companies where state funds and state-controlled companies are among the stakeholders, the political aspect of media ownership affects the relationships between the supervisory boards, management boards, editors-in-chief and the employees. Since the state has significant ownership in some of the largest advertisers such as the telecommunication and insurance industries, the interconnectedness of politics,

¹ See their study on media ownership in Slovenia published within the Media for Citizens Project of the Peace Institute in 2006 at <http://mediawatch.mirovni-institut.si/media4citizens/>.

media ownership, and media content is also manifested through the pressure exerted by advertisers.

In 2004 the parliamentary elections brought in power a coalition of center-right political parties led by the Slovene Democratic Party (SDS), which replaced a center-left coalition led by the Liberal Democrats (LDS), the major political force in Slovenia for 12 years. Ever since the 2004 elections, the media debate in Slovenia has been in the center of the political and public life. Since the new leading party SDS considered the media biased in favour of the left-center parties, immediately after coming to power, it announced sweeping media sector regulation changes. As a result of the 1990s privatization process, significant state ownership in the media had been established through para-state funds, state (co)-owned banks and companies, which enabled a "take-over," as well as changes in management and editorship in the main news media. At the same time, some unfinished reforms and consolidation of the public RTV Slovenia made it an easy target of the "take-over."

After the changes in the law governing RTV Slovenia, its new governing structure was established primarily through the Parliament and the government. State subsidies aimed at media pluralism were redefined through the changes in the Mass Media Act in 2006 to target mostly news media and to give decision-making powers to a committee appointed by the Minister of Culture charged with reviewing how balanced the media applicant report on politics, especially on the ruling parties and the opposition, is. Stricter rules on the right to reply were introduced, including detailed description of where and how the reply should be published and a stipulation that the editor-in-chief is to reply to each request within 24 hours.

The new media regulations were adopted without political or public consensus. For instance, the referendum on the 2005 law on RTV Slovenia posted 51% of the votes for and 49% against. In preparation of for the media regulation changes, there was no public debate, consultation and consideration of comments provided by Slovenian and international experts. Political and ideological confrontations have become most obvious and most severe through media regulation changes.

The politically motivated takeovers of the main news media prompted a number of media professionals to leave the controlled media for those outlets outside the control of the ruling political elite. It is significant that most of the "sheltered" media are owned or co-owned by foreign media corporations (Austrian, American and Swedish). Some of them have managed to post profits by attracting the best journalists from the controlled media. The competition between news media outlets has gone beyond the usual forms because it is affected by political divisions. In some cases the competition is inspired by the fight for media independence from political control. It is significant, for instance that in 2007 the new Saturday supplement *Objektiv* of the daily *Dnevnik*, not controlled by the government, is published and promoted under the motto "Freedom of public speech."

3. Introduction: Media self-regulation developments in 2006/2007

There exists a media self-regulatory body, an ethics council under the official name of the Journalists' Court of Honour, within the Association of Journalists and the Trade

Union of Journalists. For almost two decades, it has been contributing to the promotion of professional journalism standards in Slovenia through the implementation of its code of ethics and a review of complaints. The ethics council consists of nine journalists elected for four years by the Assembly of the Association of Journalists and the Trade Union of Journalists. Several attempts in the past years to establish a press council in Slovenia with representatives of not only the journalists, but also the publishers, the broadcasters, and the public have failed mostly because of the resistance of the journalists and their organizations, including the Journalists' Court of Honour. According to a published report, between July 2005 and November 2006, the Court received 37 complaints, 20 of which proceeded to review, in 9 cases of which journalists or editors were found in violation of the code of ethics. All opinions of the Court are on its website (<http://www.razsodisce.org/razsodisce/razsodisce.php>), some of them are also published by the media. In the first half of 2007, according to the website (accessed on June 11, 2007), the Journalists' Court of Honor has reviewed 6 cases.

Among the print media in Slovenia only the financial daily *Finance* has introduced its own code of ethics following provisions by the Market Abuse Directive of the European Union.

3.1. Broadcasting media self-regulation developments

There are new developments in the self-regulation of broadcasting media in Slovenia. Within the scope of the protection of children and minors, the 2006 amendments to the Mass Media Act, introduced provisions, according to which each broadcaster of television programs in Slovenia had to establish ethical rules (i.e. a code of ethics), which would define criteria

and conditions for broadcasting programs not appropriate for children and minors, and internal complaint procedures available to viewers who wish to complain on the implementation of the rules.

At the same time, in October 2006 the Supervisory Council of the public service broadcaster RTV Slovenia adopted a new Statute, Article 13 of which introduces an ombudsman to deal with complaints and comments from viewers and listeners. Following Article 13, in June 2007, the Programming Council of RTV Slovenia adopted regulations on the establishment and functions of the ombudsman. According to these regulations, the ombudsman will be appointed by the General Manager based on public competition while his operations should be independent from the management or governing bodies. He will act reactively and proactively (based on individual complaints and on his own initiative) based on programming standards; his decisions should be respected by the programming staff; he should report regularly to the Programming Council and the General Manager about his findings, and should have access to programming to inform the public about his work. It is expected that the ombudsman of RTV Slovenia will be appointed by the end of 2007.

3.2. Implementation of the right of reply and correction

When reviewing media self-regulation developments in Slovenia, it is important to note that in the sphere of regulation there are provisions in the Constitution and in the media law, which address the issue of professional and ethical media behavior through the introduction of the right of reply and correction in print, broadcasting and electronic (internet) media. The regulation was amended in 2006 to introduce even stricter provisions on the location of the reply and correction in

the media, the turn-around time, etc. The provisions have been criticized by the media community and media experts since they contribute to the pressure on the media and editors from various centers of power, mostly state bodies, political parties and the biggest corporations, whose PR offices regularly send requests for correction and reply. To demonstrate how the latest provisions on the right of reply and correction serve the wrong purposes, on April 18, 2007 the weekly magazine *Mag* published a correction by the former Prime Minister, which refers to *Mag's* editorial from April 11. According to the law, the correction has to be published in the same place in the magazine, consequently this one was published as an editorial but instead of the picture, editorial and signature of the editor, there was a picture, the correction and the signature of the former Prime Minister.

On the other end of the spectrum is the case of teacher Vladislav Stres who complained about a report aired on the POP TV's weekly magazine *Preverjeno* on September 9, 2003 and which he believes portrayed him unfairly. POP TV didn't publish his correction in 2003 as he was requesting it immediately, and he filed a complaint with the District Court, which affirmed that a correction had to be published. POP TV filed an appeal with the Second Level High Court, which overturned the decision of the District Court. Finally, after more than three years of court procedures, the Supreme Court confirmed the decision of the First Level Court on March 15, 2007. Despite the detailed court decision and a detailed media law provision, the correction wasn't published in accordance with them: it was done at the end of the weekly magazine *Preverjeno* on May 15, but only in writing on the TV screen, providing no possibility for a viewer to understand what the correction was about and no satisfaction for the teacher who had fought for so long, appealing for help

from the media inspector and various civic society organizations in his attempt to achieve a lawful and sensible implementation of his right of reply and correction. The case has been a real challenge for regulators, broadcasters, human rights and citizens' organizations in terms of establishing good patterns and practices for corrections in broadcast media, especially on TV.

4. Monitoring and main findings

In the period March– May 2007, we monitored selected news media, and their current events pages and programs to check how ethical rules were followed, and what kind of violations and best practices could be identified. In print media, we have focused on two daily newspapers, *Delo* and *Dnevnik*, and two weekly magazines, *Mladina* and *Mag*. We reviewed current events pages (news and comments) once a week for daily newspapers and once a month for weekly magazines. The two dailies selected represent the strongest competitors among serious daily newspapers and recently, have come to represent two sides of the political scene: while *Delo* was taken under the control of the capital and individuals close to the ruling coalition of center-right political parties, *Dnevnik* is creating and providing space for voices critical of the ideas and measures of the ruling coalition. The same is valid for the weeklies: since late 2006, *Mag* has been part of the *Delo* publishing group and is thus controlled by individuals and capital close to the ruling coalition, while *Mladina* is generating critical voices.

Among the broadcasting media, we focused on the prime time news editions of the two main television channels with national coverage: *Dnevnik* of TV Slovenija, a public service broadcaster, and *24ur* of POP TV, a channel owned by the

biggest private commercial broadcaster. We monitored one edition per week for each news program. We also monitored weekly magazines of both televisions which provide mostly human interest stories, but also report on current events: *TV Tednik* of TV Slovenija and *Preverjeno* of POP TV. These weekly magazines we reviewed once a month.

We also spot-checked the free weekly newspaper *Žurnal* because of its high circulation and the news edition of the third TV channel with national coverage: *Svet* of Kanal A (whose broadcaster is the same as the one for POP TV) which was introduced in February 2007 with a rather tabloid reporting style.

Considering the format, the time limitations, and the purpose of the report, we will focus on qualitative analysis and provide case studies (examples) of typical ethics problems and violations in the selected media in Slovenia from March to May 2007.

4.1. Dealing with state secrets and protection of sources

In the period of monitoring there was a major political scandal concerning the work of the state security and information agency SOVA. Since late March when *Dnevnik* published a report claiming that the Government had secretly been inspecting the premises of the agency, checking documents and databases, the case has been dominating the news. *Dnevnik* has been playing a rather controversial role, disclosing as it is information which could compromise the legal and political grounds of the government coalition to inspect SOVA. Other media, especially those close to the government, have been following the story, too, trying to provide counter information and arguments. Through the reports on the

government inspection of SOVA, the media escalated the political dispute which goes back to the ideological and historical divisions in the nation. The most relevant professional and ethics question with regard to the reporting on SOVA concerns the extent to which the information provided is serving the public interest and not only the interests of different political parties and groups to compromise or eliminate their rivals in a pre-election period.

The specific ethical problems have most often been connected to the anonymous sources for the breaking news about SOVA and its inspection by the government. The problem of disclosing state or official classified information has also been addressed. For instance, on April 4, 2007 *Dnevnik* (p.2) wrote that, "*unofficial information* is coming constantly", that it could "obtain more precise data, because they are still *unofficial*", that "three weeks ago we checked with three sources which are reliable and are not connected with each other on information which we can publish with high certainty". On May 24 2007, on its cover page *Dnevnik* had a headline, "Unofficially: SOVA's Efficiency Decreases By Half", referring to "unofficial information" and mentioning that the questions about the issue have been addressed to SOVA, but "as we expected they don't want to disclose any official data". Along with the same article which follows on page 2, there is a picture of one of SOVA's secret locations, disclosed by the government MPs after *Dnevnik* published a report without providing the address, that unauthorized persons from the Prime Minister's office had entered the building during the government inspection. In the article *Dnevnik* wrote "that it will be *most probably* sold", that according to "*unofficial sources* from SOVA" old partners don't trust the agency any more, and that *official answers* from SOVA say "we don't give out any information" (*Dnevnik*, May 24,

2007, page 2). In earlier attempts to receive explanations from the office of the Prime Minister, *Dnevnik* had received no information except a note that the affairs are *protected by provisions on classified state information* (*Dnevnik*, April 11, 2007, page 1).

According to the Code of Ethics of the Association and Trade Union of Journalists in Slovenia, journalists are allowed to refer to anonymous sources if there is no other possibility. Journalists can also refuse to disclose sources. When deciding to publish unofficial information which can't be confirmed by an official source, journalists have to indicate that in the article. Since newer and newer developments have come in the wake of the SOVA case, it is still too early to predict whether and to what extent professional and ethics standards will be challenged in front of the Journalists' Court of Honour or eventually even in the courts.

4.2. Accuracy, fairness, and balance

In the political battles around SOVA, there has been an attempt to compromise four members of the parliamentary committee for control of the security services from the opposition parties by labeling them "collaborators of the communist-regime secret service". A journalist of TV Slovenija, a public service broadcaster, has published the report and the names of the MPs in the news edition on April 24, 2007. Three of the MPs immediately denied the accusation, the fourth, the Leader of the Slovenian National Party, remained silent. Among its first provisions, the Journalists' Code of Ethics stipulates the necessity to check the accuracy of the information before publishing it; this provision is followed by the one about fairness, especially for strong accusations against individuals or

organizations, and then journalists' obligation to obtain the reaction of the accused before publication.

However, the media reality in Slovenia is that through various channels (ownership, governing bodies, personal ties), the government and the ruling parties have a profound influence on most national news media. It has become totally predictable which media and journalist will publish in favor of the government and which will criticize it, often regardless of any ethical provisions about accuracy, fairness, or balance. For instance, the secret government inspection of SOVA was presented by the pro-government media as "normal" and accusations about the use of SOVA's documents for political purposes and disqualifications of political rivals as "silly" (*Delo*, March 24 and 31, 2007).

4.3. Attribution

During our monitoring we identified a problem with attribution in media reports on the Middle East and global security issues. For instance, in a description of the bomb attacks in Algeria *Delo* referred to "Islamic extremists", "extreme Islamists", "extreme Islam groups," etc. (April 12, 2007). Many analyses of media discourse in reports on Islam, Muslims and terrorism after September 11, 2001 have indicated the controversial ethical and moral implications of using these attributes and terms uncritically.² Such generalizations as the attribution of stereotypical personal or behavioral traits to all members of a specific group or as the attribution of the specific trait of some individual or the action to the group as a whole or

² See for instance, the book *Collateral Language, A User's Guide to America's New War*, edited by John Collins and Ross Glover. New York University Press, New York, 2002.

to all similar events, is often a language technique used by the media to report about minorities.

As part of its Media for Citizens Project, in February 2006, the Peace Institute monitored 15 national and local media outlets in Slovenia and their coverage of Muslims, Roma and gays and lesbians.³ Especially significant were the findings about media reports on Muslims since that was the period of the Prophet Mohamed's cartoons. The findings are relevant for reports about conflicts in the Middle East and about security issues in the world during our monitoring period: the absence of context and the generalizations which use general attributes establish an image of Islam and Muslims as violent and radical.

4.4. Protection of children, privacy, and use of visual material

Violence in schools is the subject of an increasing number of media reports in Slovenia. The weekly magazine *Preverjeno* of POP TV reported on the topic on April 10, 2007 with an interesting range of speakers, including kids. Ethically controversial was the use of visual materials with many images of violence among children and between them and teachers. Some of the images had been taken by mobile phones, while others had most probably been done to illustrate the problem, but it was not clear what was real and what was a re-enactment. Some violent images were repeated several times, and kids in some situations could clearly be recognized.

Another weekly magazine, *TV Tednik* of TV Slovenija from April 12, 2007 used controversial visual material to illustrate a report on the changes in the insurance system when

³ See the study made by Roman Kuhar within the Media for Citizens Project of the Peace Institute at <http://mediawatch.mirovni-institut.si/media4citizens/>.

injuries are the result of drinking. Images of drunk people in embarrassing positions with clearly visible faces abounded.

4.5. Sensationalism

When reporting on the SOVA affair, there were elements of sensationalism in serious news print and electronic outlets. For instance, TV Slovenija's reporter used a visual to describe as a kind of breaking news how he was secretly following the MPs van on its way to the SOVA headquarters in his March 23 report.

Another type of sensational language appeared in the daily *Dnevnik* through its daily promotion of the tabloid *Direkt* published by the same publishing house. Big advertisements with sensational titles such as "She Strangled me in Front of our Kids", "We are Publishing Naked Pictures of Singer...", "Slovenian Monster to Languish in Prison for 40 Years" appeared every day in the serious daily newspaper, causing confusion and distrust.

A unique sensational and patronizing reporting style has been introduced through the new TV news edition *Svet* of Kanal A, a commercial TV channel owned by the same broadcaster as POP TV. The news edition began in February 2007. In its news or reporting announcements it uses phrases like, "I have identified a dirty mess", "Somebody will have to take responsibility for this" (April 4, 2007). It is probably not surprising that the production team of the news edition *Svet* has along with journalists, a "dramaturgy editor" and a "creative producer." However, these present concerns about ethics standards.

4.6. Online comments

Traditional news media in Slovenia have mostly switched from developing online forums to providing blogs by their journalists or giving the opportunity to their readers, viewers, or listeners to develop blogs. The daily *Delo* has started publishing short comments from its online users' short comments which are made by readers to the article on p. 3 of the printed version along news reports and current events stories. It is an interesting way of bringing the readers' voices and language into the most prestigious sections of the newspaper; but it can also be misleading since the authors of the comments are anonymous or appear under their nicknames yet their quotes get equal billing with news reports done and signed by journalists. Information about votes by readers from *Delo's* web site about certain topics appear in the same section of the newspaper. For instance on March 1, 2007 there was a big title "Majority for Resignation of Minister Podobnik" referring to votes of 485 readers, visitors to the web page.

4.7. Public opinion polls

Public opinion polls about political parties or leaders' support have often been used by news media in Slovenia. Some of them develop their own surveys, others engage various agencies. In the monitoring period, it is interesting to note that the passionate division between pro- and anti- government media, the most salient feature of the media landscape in Slovenia was also supported by the use of public opinion polls. On March 17, 2007, *Dnevnik*, which is in the anti-government camp, published public opinion poll results on its second page under the headline, "Social Democrats Lead SDS." SDS is the ruling party led by Prime Minister Janez Janša, and the Social Democrats are the biggest opposition party led by Borut Pahor. The sidebar headline proclaimed, "Pahor Soars Ahead of Janša." *Dnevnik* indicated that it was reprinting results

published the same day by weekly magazine *Mladina*, another news media outlet critical of the government.

On the other hand, on April 28, 2007, *Delo*, controlled by pro-government groups, published the results of an opinion poll on its second page under the headline, "SDS Again in the Lead," referring to the news published on the Prime Minister's website, which quoted an opinion poll ordered by his office.

5. Conclusions

Although changes in government legitimately result in changes in public policies and distribution of public resources, the effect of the 2004 change of the government in Slovenia after 12 years of power for the left-center coalitions, and especially its effect on the media sector, is far beyond the usual. In 2007, a year of presidential elections and a year preceding the parliamentary elections, the effects of the de facto take-over of the news media by the ruling coalition after the last elections are becoming more and more obvious and compromising for the political elite but also for media executives and professionals who take part in the political instrumentalization of the media.

The situation impacts media practices and ethics. The most important case in the news during the monitoring period was the reporting on the secret government inspection of the state security and information agency SOVA. The media reports included a reconstruction of the purposes of the inspection, the publication of classified information and an interpretation of the impact of the inspection. Given the political circumstances and the instrumentalization of the media, journalists in Slovenia are

facing many challenges for their professional and ethical standards, both in the case of SOVA, but also in a whole range of other cases of political reporting. These challenges include the ability to keep one's distance from sources, to cope with materials offered to compromise political rivals, and to insist on the ethical rules of accuracy and fairness.

In such a situation, influenced also by the delay of the agreement between media publishers and broadcasters on the one side and journalists on the other, about social and professional rights and measures to protect journalists' and editors' autonomy, it is difficult to expect that new forms of media self-regulation on the national level such as a press council will be introduced soon. It was our first recommendation in the 2006 report on media self-regulation in Slovenia, but given the circumstances, it would be difficult to achieve a consensus and trust between competitive media publishers and broadcasters, or even more so between their representatives and the representatives of the journalists' associations to move towards a joint self-regulatory body such as a press council.

6. Recommendations

Public debate followed by concrete actions should be urgently introduced to formulate media reforms in Slovenia through regulation and self-regulation. The goal is to establish a truly transparent and free media market, especially in the news media sector, which would at the same time allow and sustain independent and quality public service media with support from carefully distributed public funds. The media reform should aim for the release of media ownership and

media management from state and political ties, a transparency of interests in the media business, a revision of the media subsidies system and the right of reply provisions, and the introduction of various regulatory and self-regulatory measures to protect autonomy, the social and professional rights of journalists and editors as well as to enforce the implementation of ethical standards in the media.

It is necessary to launch a comprehensive public campaign led by journalists, citizens' organizations and those publishers and broadcasters who want to join the initiative for media reforms. Although it is difficult to expect that the political elite in power will follow the initiative in the election year, it is important to discuss and elaborate key reforms in the near future.

Although we still consider our recommendation to establish a joint, strong, and effective media self-regulatory body in Slovenia with representatives of publishers and broadcasters, journalists and the public, a priority, we understand that under the circumstances, given the number of publishers and broadcasters having been instrumentalized by the political elite, without an open discussion and media reforms, it can be used as a weapon against media freedom.