

**BOSNA I HERCEGOVINA**  
Institucija ombudsmena/ombudsmana  
za ljudska prava  
Bosne i Hercegovine



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Босне и Херцеговине

The Institution of Human Rights Ombudsman of Bosnia and Herzegovina

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**SPECIAL REPORT ON THE STATUS AND CASES OF  
THREATS AGAINST JOURNALISTS  
IN BOSNIA AND HERZEGOVINA**

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Banja Luka, June 2017

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## I. INTRODUCTION

The Council of Ministers of Bosnia and Herzegovina, at its 43<sup>rd</sup> Session held on 26 January 2016, endorsed the Action Plan for Implementation of Priorities from the European Commission's 2015 Bosnia and Herzegovina Progress Report. Within the Action Plan, it was recommended to the Institution of the Ombudsman for Human Rights of Bosnia and Herzegovina (as the independent mechanism for protection and promotion of human rights in Bosnia and Herzegovina) to develop a Special Report on the Status and Cases of Threats against Journalists in Bosnia and Herzegovina (hereinafter "Special Report"). Acknowledging the importance of this issue for the exercise of human rights and the rule of law, and having in mind the role journalists play in a society, whereby they are expected to investigate and present balanced information based on verifiable facts to the public, to uncover any governmental authority's abuse of office, violations of rights and freedoms committed by any actors in a society, including unethical actions and infringements upon human dignity, the Ombudsman prioritised the development of the Special Report concerning journalists, within the framework of its preventive activities.

Through their work, journalists inform the public and provide an opportunity for the public to influence public policy-making and implementation, as well as to influence actions of all other actors in public life. Also, journalists bring to the fore issues and problems faced by a society, contribute to opening debates and create opportunities for all actors to present their stances. They then inform the public about those stances, contributing to the level of democracy and to the building of a society which tolerates and accepts other stances and opinions, and which strives towards total equality of all individuals and groups. The role of the media, and of journalists, in a society, as well as the expectations they should meet, according to Gurevitch and Blumer, include<sup>1</sup>:

- Surveillance of the socio-political environment, reporting developments likely to impinge, positively or negatively, on the development of citizens;
- Meaningful agenda setting, identifying the key issues of the day, including the forces that have formed and may resolve them;
- Dialogue across a diverse range of views, as well as between power holders (actual and prospective) and mass publics;
- Mechanisms for holding officials to account for how they have exercised power;
- Incentives for citizens to learn, choose and become involved, rather than merely followed and kibitz over the political process;
- A principled resistance to the efforts of forces outside the media to subvert their independence, integrity and ability to serve the audience.

A full exercise of the above-mentioned social role of journalists is possible, first of all, if their status in a society is regulated, and their exercise of basic rights and freedoms, including the right to safety and dignity, is guaranteed. Safety of journalists was recognised as an urgent concern for the participating states of the Organisation for Security and Co-operation in Europe (hereinafter: OSCE) because the scale of violence against journalists, including murders and attacks leading to serious injuries has grown significantly over recent years with far-reaching effects. Other means of suppressing independent news media, for example through arbitrary arrests and prosecutions, oppressive political and commercial pressures, and suffocating forms of official regulation, have

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<sup>1</sup> "Finding the Right Place on the Map: Central and Eastern European Media Change in a Global Perspective", a group of authors, edited by Karol Jakubowicz and Miklos Sukosd; page 10, publisher: Intellect Bristol, UK/Chicago, USA, 2008.

also become commonplace for journalists working within the OSCE region. Those actions also give rise to fear and insecurity among journalists and other members of the media and have a chilling effect on freedom of expression within whole societies.<sup>2</sup>

Violence, harassment and intimidation directed against journalists represent an attack on democracy itself. They have the effect of stifling freedom of the media and freedom of expression, depriving people of the ability to make informed decisions about issues that affect their lives. The safety of the media is a precondition for free media, as journalists cannot write or report freely and independently without safe working conditions.<sup>3</sup>

As the status of journalists represents just one segment of the right to freedom of expression, thus the international standards which regulate that right, as well as the practice of international bodies, first of all of committees of the United Nations (UN), of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, of the European Court of Human Rights, and of others, were used as a starting point in the development of this report.

Although there is no formal hierarchy among protected rights, the European Court of Human Rights constantly points out the dominant importance of the freedom of expression as the key foundation of democracy, which is, in that sense, essential for the protection of all other rights and freedoms enshrined in the European Convention on Human Rights and Fundamental Freedoms:

*“Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual’s self-fulfilment.”*<sup>4</sup>

In its deliberations on individual appeals lodged due to violations of Article 19 of the International Covenant on Civil and Political Rights, the UN Human Rights Committee was of the opinion that the freedom of opinion and freedom of expression were cornerstones in a society.<sup>5</sup>

The review of the situation in Bosnia and Herzegovina required, first of all, carrying out an analysis of the legal framework which regulates the following: the right to freedom of expression; the basis for the establishment and activities of the media; the rights of journalists, and mechanisms to protect those rights in case of violation. In the Special Report, special attention was paid to the segment of institutional scope of authority, having in mind the constitutional structure of Bosnia and Herzegovina.

The key issue in the research of the status of journalists, and of attacks against journalists, is what can be deemed indicators in the process of determination of rights of journalists, and of attacks against journalists, in a society. In that sense, it is necessary, first of all, to point out the facts regarding the following:

- Violence against journalists including murder, assault, intimidation and harassment, including online harassment of female journalists, torture inflicted upon journalists, particularly those dealing with investigation;

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<sup>2</sup> OSCE Safety of Journalists Guidebook, published in 2012, [www.osce.org/bs/fom/90210?download=true](http://www.osce.org/bs/fom/90210?download=true)

<sup>3</sup> Ibid, p. 9

<sup>4</sup> Lingens v. Austria, 1986, Sener v. Turkey, 2000, Thoma v. Luxembourg, 2001, Maronek v. Slovakia, 2001, and Dichand et al v. Austria, 2002. Source: Freedom of Expression: A Guide to the Implementation of Article 10 of the European Convention on Human Rights and Its Context, Centre for Law and Democracy (2013)

<sup>5</sup> See communication No 1173/2003, Benhadj v. Algeria, Views adopted on 20 July 2007; No 628/1995, Parc v. Republic Korea, Views adopted on 5 July 1996

- Defining responsibility of journalists in criminal codes through the introduction of a crime of defamation;
- Access to information, i.e. whether there is any denial of journalistic access to information and documents by public authorities, thus enabling the public authorities to act without public oversight;
- Attempts to restrict pluralism in broadcast, print and online media take various forms, ranging from preferential treatment of public media to pressure on private media;
- Coercion to release confidential sources by law enforcement and judicial authorities strikes at the heart of journalists' ability to engage in investigative reporting;
- Controlling free expression on the Internet in the name of public decency and national security;
- Restricting free expression in the name of terrorism prevention and protection of national security;
- Overreaching surveillance - usually justified in the name of national security, the blanket retrieval of journalists' data by government authorities destroys the ability of media workers to maintain confidential sources.<sup>6</sup>

The Special Report also refers to previous research on the status and cases of threats against journalists, especially focusing on the following reports concerning the rights of journalists and the attacks against journalists in Bosnia and Herzegovina:

- Indicators of the Level of Media Freedom and Journalists' Safety, December 2016;<sup>7</sup>
- Report of the European Federation of Journalists "Rights and Jobs in Journalism";<sup>8</sup>
- Report: "Under Pressure – Research Report on the State of Media Freedom in Bosnia and Herzegovina";<sup>9</sup>
- Research "Working Conditions for Journalists in Bosnia and Herzegovina – Journalists in a Gap between Devastated Media and Legal Insecurity";<sup>10</sup>
- "Balkan Media Barometer: The First National Analysis of Media Environment in Bosnia and Herzegovina, Friedrich-Ebert-Stiftung, Sarajevo 2012;
- Report of the Reporters Without Borders;
- Freedom of the Press Report<sup>11</sup>;
- 100 Primary Questions on the Rights of Media Staff in BiH<sup>12</sup>

During the review of the status of journalists in Bosnia and Herzegovina, one needs to take into account the changes in the media and in the ways of communication both in Bosnia and

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<sup>6</sup> See more: OSCE Representative on Freedom of the Media, [www.osce.org](http://www.osce.org)

<sup>7</sup> Regional project entitled Western Balkans Regional Platform for Advocating Media Freedom and Journalists Safety, implemented by national journalist associations in Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. The project was financed by the European Commission as part of the Civil Society Facility and Media Programme 2014-2015 Support to regional thematic networks of Civil Society Organisations.

<sup>8</sup> European Federation of Journalists; "Rights and Jobs in Journalism", 2016

<sup>9</sup> Under Pressure – Research Report on the State of Media Freedom in Bosnia and Herzegovina, research conducted as part of an initiative "MEDIAMANIFEST- Freedom and Responsibility of the Media"; publisher Mediacentar Sarajevo; February 2010.

<sup>10</sup> Author Radenko Udovičić, Sarajevo, February 2015. Research co-financed by the European Commission, the Civil Society Facility, Media Freedom and Accountability Programme.

<sup>11</sup> An annual report of US NGO *Freedom House* which assesses the level of freedom and editorial independence enjoyed by the media in nations and significant disputed territories around the world.

<sup>12</sup> 100 Primary Questions on the Rights of Media Staff in BiH - BiH Journalists Association  
<https://www.bhnovinari.ba/index.php?...412%3A100-prvih-pitanja...>

Herzegovina and in the world, which had a major effect on the status of journalists. The media in Bosnia and Herzegovina, as well as the media globally, went through enormous changes following the growing presence of the Internet and the promotion of online media, expanding social networks and the introduction of blogs. It is a global trend that citizens seek and receive more and more information via the Internet, and at the same time comment on and share the published content.

As the traditional mass media lost their “monopoly”, that largely affected the status of journalists. Numerous sources indicate that there has been a decrease in circulation, leading to the decrease in the number of staff editors can employ. Due to increased competition among the media, both in Bosnia and Herzegovina and globally, more and more journalists work as temporary staff or as self-employed journalists.

The status of journalists has been affected, more and more, not only by the emergence of online media, but also of social networks. Having in mind that it is difficult to define social networks, because of the dynamism of their frequent changes, we can still point out that they provide an opportunity for a social network user to create a public or a private profile (or a combination of both) within a system, to create groups, to get in touch with other persons and to share content with them (information, photographs, video footage, etc.).

As a result, an individual who, for example, has a blog, as well as profiles on social networks Facebook and Twitter, and one’s own YouTube channel, may reach out, in a very short period of time, to many more followers than some traditional media, since other social media users can share the content further <sup>13</sup>.

Being of the opinion that the real situation is best assessed through a consultative process, the Ombudsman decided to write this Special Report by using surveys and interviews to get as much information as possible on the status of journalists, and on attacks against journalists, directly, from journalists themselves, fully respecting their right to have their identity protected, from media outlets, non-governmental organisations (NGO), including journalist associations, from representatives of the academic community, from institutions constitutionally in charge of media freedoms and of labour rights, from political parties, etc. Also used in the development of the Special Report was the data in possession of the Institution of the Ombudsman. The questionnaire was posted on the Internet site of the Institution of the Ombudsman for the past few months and journalists could fill it out anonymously. The questionnaire was structured in such a way as to reflect the areas of protected rights. Any piece of information received from anyone during the research process has been included in this report.

During the development of the Special Report, the Ombudsman focused on the period of time between 2012 and 2017, also taking into account earlier cases which, according to available information, have not been resolved by the time the report was developed.

The Special Report contains terminological definitions of key terms necessary for conceptual understanding of the report.

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<sup>13</sup> As evidence of ever greater presence of social networks and of the development of journalism on those platforms, we can mention the fact that Facebook developed a platform for journalists and that it provides free journalism courses via 15-minute educational videos. <http://www.media.ba/bs/vijesti-i-dogadaji-vijesti/facebook-nudi-besplatne-kurseve-za-novinare>

## 1.1. Purpose of the Report

The purpose of this report is to ensure that problems and issues concerning the status of journalists in Bosnia and Herzegovina are understood, as one of the preconditions to safeguarding the right to freedom of expression, and to contribute to general enhancement of the degree of exercise of the right to freedom of expression, and of human rights and freedoms in Bosnia and Herzegovina. The report should ensure that key directions for institutional action are identified, with the aim of resolving problems noted in this area.

## 1.2. Terminology

A discussion on the status of journalists in Bosnia and Herzegovina implies a terminological determination as to who shall be regarded a journalist, in the sense of standards developed by international bodies. Hence the Committee of Ministers of the Council of Europe, in Annex to Recommendation No R (2000)7, states that the term “journalist” means *any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication*<sup>14</sup>.

The UN Human Rights Committee, in its General Comment<sup>15</sup> No 34, in reference to Article 19 of the International Covenant on Civil and Political Rights (Freedom of opinion and expression)<sup>16</sup>, discussed the function carried out by journalists and stated, “*Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere.*”

The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression pointed out, “*Journalists are individuals who observe and describe events, document and analyse events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole*”<sup>17</sup>

Since Bosnia and Herzegovina accepted the above-mentioned standards, this report refers to any person engaged in journalism as a profession, without requiring a certain qualification or permission by any government or any professional association for a person to be engaged in journalism. Of course, the fact that there are no legal limitations for any person to be engaged in journalism as a profession, both classical and professional, as well as for those termed citizen journalists<sup>18</sup>, does not mean that journalists do not face numerous obstacles in their work, which we tried to identify in this report.

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<sup>14</sup> Compendium of Council of Europe Legal Instruments Regarding Media; Second Improved Edition; Council of Europe – Office in Belgrade; Belgrade, 2006.

<sup>15</sup> A General Comment is a legal instrument through which UN bodies (Committees) present an authentic interpretation of an article of Convention the Comment refers to, with the aim of ensuring more efficient implementation of the Convention by Member States.

<sup>16</sup> Adopted at the 102<sup>nd</sup> Session of the United Nations Human Rights Committee, Geneva, 11-29 July 2011, Paragraph 44.

<sup>17</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank la Rue, United Nations Human Rights Council, 20<sup>th</sup> Session, 04 June 2012.

<sup>18</sup> The concept of a citizen journalist is a concept or a phenomenon in which persons, who are not professional journalists or who have no media connections, actively collect, disseminate, analyse and report news and information. The concept which, in the last few years, attracted much attention and gained in popularity, so that even major media outlets often invite citizens to send them mostly video recordings and photographs. This concept contributes to the “democratisation” of the media, but leads to questions about objectivity, about how current certain topics are, etc.

## II. LEGAL FRAMEWORK

Protection of the right to freedom of expression is guaranteed through a number of universal and regional international agreements, numerous resolutions, guidelines and other instruments issued by regional and universal international organisations. Within this Chapter, we presented the legal framework of the freedom of expression, especially the one which is obligatory for Bosnia and Herzegovina and which includes UN and regional human rights standards (standards of the Council of Europe and of OSCE), as well as the practice of international bodies regarding the implementation of those standards, and the legislative framework in Bosnia and Herzegovina, while the analysis of the situation, which includes the implementation of the legislative framework is presented in Chapter III.

### 2.1. International Standards

The importance attached to freedom of expression is not a new idea. In early modern Europe, thinkers such as John Milton and John Locke emphasized their opposition to censorship as part of the development of democratic government.<sup>19</sup> Most famously of all, the First Amendment to the United States Constitution said:

*“Congress shall make no law... abridging the freedom of speech, or of the press”.*

#### 2.1.1. United Nations Standards

The right to freedom of expression was enshrined in Article 19 of the **Universal Declaration of Human Rights** which states the following: *“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.* **The International Covenant on Civil and Political Rights** (Article 19) obliges the States Parties to ensure that no one shall be subject to interference due to one’s opinion, and defines that:

- Everyone shall have the right to hold opinions;
- This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for above carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.<sup>20</sup>

The UN Human Rights Committee, at its 102<sup>nd</sup> Session held 11-29 July 2011 in Geneva published its interpretation of Article 19 of the International Covenant on Civil and Political Rights, on freedom of opinion and freedom of expression (General Comment No.34 on Article 19). The Committee, in its General Comment stated that all States must put in place effective measures to

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<sup>19</sup> Media Legal Defence Initiative and International Press Institute, Freedom of Expression, Media Law and Defamation, A Reference and Training Manual for Europe (2015), <http://www.mediadefence.org/sites/default/files/resources/files/MLDI.IPI%20defamation%20manual.Croatian.pdf>

<sup>20</sup> Article 19, Paragraph 3 of the Covenant

protect against attacks aimed at silencing those exercising their right to freedom of expression, including journalists. In its General Comment, the Human Rights Committee identified journalists as among the groups frequently subjected to threats, intimidation and attacks on account of their activities, together with persons who engage in gathering and analysis of information on the human rights situation and who publish human-rights related reports, including judges and lawyers.<sup>21</sup> The range of those threats and attacks are identified as “arbitrary arrest, torture, threats to life and killing”. The General Comment states that all such attacks “should be vigorously investigated in a timely fashion and the perpetrators prosecuted, and the victims or their representatives receive appropriate redress. From General Comment 34 on Article 19 of the International Covenant on Civil and Political Rights:<sup>22</sup>

*“States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 [of Article 19] may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with Article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers. All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.”*<sup>23</sup>

**The 1949 Geneva Conventions**<sup>24</sup> deal with the treatment of civilians, including the treatment of journalists and other persons not directly involved in the conflict. Protocol I, in Article 79, stipulates that journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians.

**UN Resolution 21/12 of the Human Rights Council**<sup>25</sup> condemns in the strongest term all attacks and violence against journalists and expresses its concern that there is a growing threat to the safety of journalists posed by non-State actors.

**UN Security Council Resolution 1738**<sup>26</sup> reminded Member States that they had the responsibility to comply with the relevant obligations under international law to end impunity and to prosecute those responsible for attacks and violence against journalists. Also, it was emphasised once again that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and shall be respected and protected as such<sup>27</sup>.

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<sup>21</sup> OSCE Representative on Freedom of the Media, Safety of Journalists Guidebook (2012)

<sup>22</sup> Ibidem

<sup>23</sup> Paragraph 23 of General Comment 34 of the International Covenant on Civil and Political Rights

<sup>24</sup> The First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"; The Second Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea"; The Third Geneva Convention "relative to the Treatment of Prisoners of War"; The Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War" with Additional Protocols;

<sup>25</sup> Human Rights Council 21/12 Safety of Journalists, adopted on 09 October 2012, [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_res\\_21\\_12.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_res_21_12.pdf)

<sup>26</sup> UN Security Council, Resolution 1738 (2006) Protection of Civilians in Armed Conflict, 23 December 2006, S/RES/1738 (2006)

<sup>27</sup> <https://newssafety.org/uploads/Good%20Practice%20INSI%20Final%20Feb2014.pdf>

*UN Special Rapporteur of the Human Rights Council* was established in 1993 with a mandate to promote and protect freedom of opinion and freedom of expression<sup>28</sup>. This Rapporteur, in the 2012 Report, paid most attention to the rights of journalists, having in mind the increased number of journalists killed that year, as many as 104<sup>29</sup>.

### **2.1.2. Bosnia and Herzegovina in Light of UN Standards**

With the aim of promoting recommendations made by UN bodies, adopted in the Bosnia and Herzegovina reports review process on the implementation of UN conventions, the Office of the UN Resident Co-ordinator in BiH developed a Compendium of UN Recommendations (hereinafter: Compendium), upon an initiative of the Ombudsman for Human Rights, that was presented at a thematic session of the Joint Committee for Human Rights of the Parliamentary Assembly of Bosnia and Herzegovina<sup>30</sup>. In reference to the freedom of opinion and the freedom of expression, the UN Committees indicated to the authorities in Bosnia and Herzegovina how important the role of the Communications Regulatory Agency was, and especially indicated the need to fully respect its independence.

Also, concerning the freedom of the press and of the media, appropriate investigations and responses are necessary in case of violation of human rights. Ensuring and further developing the independence of the Communications Regulatory Agency is strategically necessary in this area of human rights. As in the case of the High Judicial and Prosecutorial Council, the existing legal framework needs to be strengthened through formal procedures and adequate resources for their implementation, which will serve to deter and prevent all undue political influence on the media and on the rights concerning the freedom of expression and freedom of the press<sup>31</sup>.

After the publication of the Compendium, the UN Human Rights Committee, at its session held on 14 and 15 March 2017, adopted the Concluding Observations and Recommendations on the Third Periodic Report of Bosnia and Herzegovina on the Implementation of the International Covenant on Civil and Political Rights, and noted the following:

*“The Committee is concerned that the full implementation, at both the legislative and administrative levels, of the rights enshrined in the Covenant throughout the territory of the State party is hindered due to the complexity of the State party’s constitutional structure and the difficulties of the central Government to carry out legal reforms in some parts of the State party (Articles 2 and 50).*

*The State party should ensure that the provisions of the Covenant are implemented in all parts of the federal State and within its jurisdiction, without any limitation or exception, in accordance with articles 2 and 50 of the Covenant and general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant. It should engage with stakeholders at all levels to identify ways to give greater effect to the Covenant at the federal, entity and municipal levels, taking into account that the obligations under the Covenant are binding on the State party as a whole, and that all*

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<sup>28</sup> Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

<sup>29</sup> <https://www.cpj.org/killed/2016/>

<sup>30</sup> The session was held on 07 December 2016.

<sup>31</sup> [http://ba.one.un.org/content/dam/unct/bih/PDFs/publications/Komp\\_preporuka\\_UN\\_ljudska\\_prava\\_u\\_BiH.pdf](http://ba.one.un.org/content/dam/unct/bih/PDFs/publications/Komp_preporuka_UN_ljudska_prava_u_BiH.pdf), p. 17.

*branches of the government and other public and governmental authorities at every level are in a position to engage the responsibility of the State party”<sup>32</sup>.*

Regarding the freedom of opinion and the freedom of expression, the UN Human Rights Committee is concerned about reports of harassment and intimidation of journalists, and that the media continues to be subjected to excessive influence from governments, political parties and private interest groups, and of the political and financial pressures faced by public broadcasters from the Government, which leads to self-censorship and subjective reporting. It takes note with concern that the Law on Freedom of Access to Information has not yet been fully implemented (Articles 17 and 19).

In order to implement commitments from the International Covenant on Civil and Political Rights, the following was recommended to Bosnia and Herzegovina:

*“The State party should fully guarantee freedom of expression and freedom of the press and the media, and access to information. It should thoroughly investigate all incidents of attacks on journalists and the media, and bring those responsible to justice and, if convicted, impose appropriate penalties. The State party should take measures to ensure that public broadcasting is not vulnerable to political influence”<sup>33</sup>.*

The Committee was also concerned about reports of the pervasive use of hate speech, especially in the media and on the Internet. It regretted that the legislation in place did not cover all grounds of discrimination and did not specifically address the issue of hate speech on the Internet. It also regretted that only a small number of hate crimes were effectively prosecuted (Articles 2, 20 and 26), thus the State party should:

*“...redouble its efforts to combat hate speech, including on the Internet, in accordance with articles 19 and 20 of the Covenant and the Committee’s general comment No. 34 (2011) on the freedoms of opinion and expression. The State party should also amend its legislation on hate speech so as to include all grounds of discrimination under the Covenant. Furthermore, it should investigate hate crimes and ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that the victims are provided with adequate remedies”<sup>34</sup>.*

### **2.1.3. Council of Europe Standards**

The fundamental document which protects the freedom of opinion and the freedom of expression, within the framework of the Council of Europe is the ***Convention on Human Rights and Fundamental Freedoms*** (Article 10). The freedom of expression represents one of the essential foundations of a democratic society and it is one of the basic conditions of its progress and of self-fulfilment of any individual. Within the European Convention, the freedom of expression may be viewed in two different ways, either as a separate right or as an integral part of other rights

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<sup>32</sup> Points 5 and 6 of the Concluding Observations of the Human Rights Committee, Bosnia and Herzegovina Homepage – OHCHR [www.ohchr.org](http://www.ohchr.org) > OHCHR > English > Countries > Europe and Central Asia Region Human Rights Committee Concluding observations (2017) CCPR/C/BIH/CO/3. Committee on ...Concluding observations (2012) CRC/C/BIH/CO/2-4. Committee.

<sup>33</sup> Point 38 of the Concluding Observations of the Human Rights Committee, Bosnia and Herzegovina

<sup>34</sup> Points 21 and 22 of the Concluding Observations of the Human Rights Committee

protected by the Convention (e.g. the right to freedom of assembly). One of the characteristics of the right to freedom of expression is that it is two-dimensional, i.e. it is both a personal right and a collective political right of the general public, of citizens. The freedom of expression plays a central role in the protection of other rights; hence it could be defined as the foundation of other rights and freedoms<sup>35</sup>.

The basic goal of this right is the protection from arbitrary interference of public authorities and other private individuals with the right of a person to freedom of expression. Speaking about the scope of application of this Article, one can conclude that the scope of application of the concept of the freedom of expression is very wide-ranging. Namely, it encompasses various forms of expression (political expression, commercial expression, entertainment and artistic expression) and refers not only to factual statements, but also to opinions, criticisms and value judgements. There is a wide spectrum of ways in which to exercise this right, e.g. through media, internet sites, but also through expressions such as music, clothing, graffiti etc. It is emphasised in the Convention that the right to freedom of expression shall be guaranteed to everyone, and that this right shall include freedom to hold opinions and to receive and impart information and ideas<sup>36</sup>.

The right to freedom of expression consists of three components: the right to hold opinions, the right to receive information and ideas, and the right to impart information and ideas. The freedom to hold opinions is the first precondition for all the other freedoms and it enjoys absolute protection. The freedom to impart information and opinions has great significance for the political life and the democratic structure of a country, while the freedom to receive information and ideas makes it possible for information to be collected and sought through all legal sources.

Any restrictions, conditions, limitations or any kind of interference with the freedom of expression may only be applicable to certain aspects of exercise of this freedom. It is important to note that the content of the right to freedom of expression always stays intact. Interference with the freedom of expression encompasses formalities, conditions, restrictions or penalties as are prescribed by law, which the exercise of this right may be subject to, and it is certainly necessary in a democratic society. It is necessary to point out that the authorities cannot legitimately rely on limitations not mentioned in Article 10, Paragraph 2 of the European Convention.

The legitimate goals of interference prescribed by this provision are as follows: 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.

Through the work of its bodies, the Council of Europe pays a lot of attention to the freedom of the media, and it adopted a number of documents, which should serve as instruments to Member States in the process of adoption of their legislative, administrative and other measures to ensure the freedom of the media, with the aim of implementation of Article 10 of the European Convention.

One of the more important documents certainly refers to the *Indicators adopted by the Parliamentary Assembly of the Council of Europe*<sup>37</sup> in which it invited the Member States to

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<sup>35</sup> Handbook on the Case Law of the European Court of Human Rights “Freedom of Expression and the Right to Privacy in accordance with the European Convention on Human Rights” The AIRE Centre, p. 12

<sup>36</sup> Ibid, *id.*

<sup>37</sup> Indicators to assess media freedom in Member States of the Council of Europe (Resolution 1636 (2008))

analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:

1. The right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice;
2. State officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;
3. Penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed;
4. Journalists must not be subjected to undue requirements by the state before they can work;
5. Political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns;
6. Foreign journalists should not be refused entry or work visas because of their potentially critical reports;
7. Media must be free to disseminate their content in the language of their choice;
8. The confidentiality of journalists' sources of information must be respected;
9. Exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information;
10. Privacy and state secrecy laws must not unduly restrict information;
11. Journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence;
12. Journalists must not be restricted in creating associations such as trade unions for collective bargaining;
13. Media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism;
14. Journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked;
15. Regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence which goes beyond a mere business or tax registration;
16. Media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services);
17. The state must not restrict access to foreign print media or electronic media including the Internet;

18. Media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;
19. If media receive direct or indirect subsidies, states must treat those media fairly and with neutrality;
20. Public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party-political affiliations;
21. Public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;
22. "Private" media should not be run or held by the state or state-controlled companies;
23. Members of government should not pursue professional media activities while in office;
24. Government, parliament and the courts must be open to the media in a fair and equal way;
25. There should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts;
26. Journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism;
27. National parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.

***Recommendation CM/Rec (2016)4[1] of the Committee of Ministers of the Council of Europe on the Protection of Journalism and Safety of Journalists and Other Media Actors***<sup>38</sup> was adopted on 13 April 2016 and it recommends to Member States to review relevant domestic laws and practice and revise them, as necessary, to ensure their conformity with States' obligations under the European Convention on Human Rights. This Recommendation summarises the key standards which the states should meet in order to protect journalists. The Recommendation is divided into four sections, in accordance with the areas they cover: (1) Prevention; (2) Protection; (3) Prosecution and (4) Promotion of information, education and awareness-raising on the problem of the safety of journalists.

This document fully promotes the values mentioned in the indicators which were endorsed by the Parliamentary Assembly of the Council of Europe and, first of all, recommends to Member States to ensure independence of the media and safeguard media pluralism through the constitutional and legislative framework. In accordance with that, Member States should review their criminal codes and ensure these principles through legal and administrative mechanisms.

As far as the protection of journalists is concerned, Member States should "provide effective police protection, especially when it is requested by journalists. In all cases of deprivation of liberty of journalists, their rights must be protected. Member States are urged to develop protocols and training programmes for all State authorities who are responsible for fulfilling State obligations

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<sup>38</sup> Recommendation CM/Rec (2016)4[1] of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors.  
[http://www.vzs.ba/index.php?option=com\\_content&view=article&id=2553:preporuka-cmrec-201641-odbora-ministara-dravama-panicama-o-zatiti-novinarstva-i-sigurnosti-novinara-i-ostalih-medijskih-aktera&catid=26:preporuke-vijea-evrope&Itemid=26](http://www.vzs.ba/index.php?option=com_content&view=article&id=2553:preporuka-cmrec-201641-odbora-ministara-dravama-panicama-o-zatiti-novinarstva-i-sigurnosti-novinara-i-ostalih-medijskih-aktera&catid=26:preporuke-vijea-evrope&Itemid=26)

concerning the protection of journalists. In the Recommendation, the Member States are reminded of the importance of journalistic work which is invaluable in a democratic society.

It is recommended to Member States “to provide efficient investigations, which should be conducted by independent, unbiased and objective State authorities. If the State cannot bring to justice persons who commit an attack against journalists, then it must establish a specialised independent body to conduct an investigation.”

#### 2.1.4. OSCE Standards

OSCE has taken a comprehensive approach to security that has encompassed the politico-military, economic and environmental and human dimensions<sup>39</sup>. In the field of the media, OSCE paid significant attention to this issue as the Organisation developed. Thus, in the *Helsinki Final Act (1975)*<sup>40</sup>, the conference participants jointly acknowledged, for the first time, the importance of the freedom of expression, freedom of opinion and the role of journalists in their advancement. The participating States, conscious of the need for an ever wider knowledge and understanding of the various aspects of life in other participating States, acknowledging the contribution of this process to the growth of confidence between peoples, desiring, with the development of mutual understanding between the participating States and with the further improvement of their relations, to continue further efforts towards progress in this field, recognized the importance of the dissemination of information from the other participating States and of a better acquaintance with such information<sup>41</sup>. Emphasizing therefore the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists working in these fields, they made it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State.

*The Charter of Paris for a New Europe (1990)*<sup>42</sup> signed by representatives of participating States of the then CSCE contains commitments of all the States to build a new level of co-operation based on shared democratic values, as part of which the free flow of information is crucial for the maintenance and development of free societies and flourishing cultures.

By adopting the *CSCE Budapest Summit Declaration (1994)*<sup>43</sup>, the participating States reaffirmed that freedom of expression was a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media were essential to a free and open society and to accountable systems of government. They took as their guiding principle that they would safeguard this right. They condemned all attacks on and harassment of journalists and would endeavour to hold those directly responsible for such attacks and harassment accountable.

At the *1996 Lisbon Summit*, the OSCE (formerly CSCE) participating States decided that there was a need to strengthen the implementation of OSCE commitments in the field of the media, and thus to elaborate a mandate for the appointment of an OSCE representative on freedom of the media.

*The Office of the OSCE Representative on Freedom of the Media* was established in 1997<sup>44</sup> and mandated to observe media developments in all OSCE participating States and to

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<sup>39</sup> OSCE is the largest regional international organisation established in accordance with Chapter VIII of the United Nations Charter. The specificity of this organisation is that it does not have a foundation document in the form of a legal act which the states would sign and ratify, but it functions on the basis of a large number of important documents, which are politically, but not legally binding.

<sup>40</sup> Helsinki Agreement/ Helsinki Declaration or the Helsinki Final Act is the title of a diplomatic agreement, signed on 01 August 1975 in Helsinki, Finland by the top representatives of all the European countries (except Albania, which ratified it only in September 1991), and by representatives of the United States of America and of Canada at the end of the First Conference on Security and Co-operation in Europe (CSCE), which later developed into the Organisation for Security and Co-operation in Europe.

<sup>41</sup> Section IV, Chapter II, Information

<sup>42</sup> Charter of Paris for a New Europe, adopted in 1990

<sup>43</sup> During the 4<sup>th</sup> Summit of the Heads of State and Governments of CSCE (Conference on Security and Co-operation in Europe), held on 05 and 06 December 1994 in Budapest, a decision was made that, starting from 01 January 1995, CSCE be renamed into the Organization for Security and Co-operation in Europe (OSCE).

<sup>44</sup> Established through Permanent Council Decision No. 193

advocate for and promote their full compliance in line with the OSCE principles and commitments on freedom of expression and free media. The Representative has an early warning function and provides rapid response to violations of freedom of expression and free media in the OSCE region. OSCE adopted a number of media-related documents, including the Vilnius Recommendations on Safety of Journalists (2011)<sup>45</sup>. The goal of the Vilnius Recommendations is to ensure the safety of journalists. Also, to point out the key measures to executive and legislative authorities in participating States, as well as to journalists, in order to attain that goal. Also mentioned in the Recommendations was the need to conduct swift and efficient investigations in cases of violence against journalists, to improve the national regulatory framework with the aim of ensuring media freedoms, free access to information of public importance and protection of information sources, as well as the need to establish best practices in ensuring the safety of journalists<sup>46</sup>. At the same time, it was recommended to strengthen the capacities of police officers, among other things, through trainings attended by journalists.

At the meeting of the *Ministerial Council in Maastricht in 2003*, the participating States underlined the importance of the central role of free and pluralistic media in strengthening good governance, increasing transparency and combatting corruption. *In the 2010 Astana Commemorative Declaration*<sup>47</sup>, the existing OSCE commitments were reaffirmed, and it was especially emphasised that the commitments undertaken in the field of the human dimension were matters of direct and legitimate concern to all participating States and did not belong exclusively to the internal affairs of the State concerned. The participating States valued the important role played by civil society and free media in helping them to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.

The OSCE Representative on Freedom of the Media published in 2012 the OSCE Safety of Journalists Guidebook, thus trying to provide participating States with practical instruments, in order to implement more easily and more efficiently the international standards concerning the freedom of the media, including the protection of journalists.

### **2.1.5. European Union Standards**

*The Charter on Fundamental Rights of the European Union*<sup>48</sup> guarantees in Article 11 the right to freedom of expression and information. In the Article, it is especially emphasised that the freedom and pluralism of the media shall be respected.

### **2.1.6. Case Law of the European Court of Human Rights**

The European Court discussed the issue of the right to freedom of expression for the first time in the case of *De Becker v. Belgium*, and adopted its Judgement in 1962. In the intervening fifty years, the Court issued judgements concerning this region in 1,000 cases on the basis of Article 10 of the European Convention, most often in combination with other articles of the Convention. This impressive case law reflects the dynamism of the Court and the development of its understanding of the scope and nature of the freedom of expression. Through the case law of the

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<sup>45</sup> Vilnius Recommendations on Safety of Journalists, 8 June 2011, adopted at the Conference on Safety of Journalists, held in Vilnius on 7 – 8 June 2011.

<sup>46</sup> Factsheet of the OSCE Representative on Freedom of the Media, <http://www.osce.org/fom/186381>

<sup>47</sup> *Astana Commemorative Declaration – Towards a Security Community*

<sup>48</sup> Charter on Fundamental Rights of the European Union, 2012/C 326/02, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

Court, the Convention has become a living instrument, which is interpreted in the light of today's conditions and concepts<sup>49</sup>. Also, the Court reflected on numerous occasions on the important role media plays in the sense of exercise of the freedom of expression in practice:

*“The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of public watchdog.”*<sup>50</sup>

In its judgements, the European Court emphasises that Article 10 protects not only the content of information, but also the medium through which it is imparted. Although Article 10 does not expressly mention the freedom of the press, the Court issued a large number of judgements in which it developed a body of principles and rules which gives the press a special status in terms of exercise of rights stipulated in Article 10. The press enjoys a wide spectrum of protection prescribed by Article 10, while the European Court of Human Rights indicates that *“it is not sufficient to have the freedom to receive and give information; access to technical means is equally important”*.<sup>51</sup> *Article 10 applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information.*<sup>52</sup> That protection also covers investigations by journalists and question posed during the preparation of their stories, as well as the protection of journalistic sources.

The exercise of freedoms stipulated in Article 10 of the European Convention on Human Rights, since it carries with it duties and 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. It is important to underline that there is an obligation to ensure that such restrictions must be “prescribed by law”, as well as “necessary” and for the purpose of achieving one of the aforementioned “legitimate aims”.<sup>53</sup>

As far as the need for a legal basis to exist, one could refer to the judgement of the European Court in the case of *Vgt VereinGegen Tierfabriken v. Switzerland*, dated 28 June 2001<sup>54</sup>, in which the Court recalls its case-law according to which the expression “prescribed by the law” not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects. There is an obligation under Article 10, Paragraph 2, that interference with the freedom of expression must be “prescribed by law”, similar to the obligation contained in

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<sup>49</sup> Freedom of Expression: A Guide to the Implementation of Article 10 of the European Convention on Human Rights and Its Context, Centre for Law and Democracy (2013)

<sup>50</sup> Ibid, more on the subject: *Thoma v. Luxembourg*, 2001, Paragraph 5.

<sup>51</sup> Case of *Autronic AG*

<sup>52</sup> Džumhur, J., (2015) Colliding Effects of Freedom of Access to Information and Personal Data Protection. *Social Perspective Magazine*, 2 (1). ISSN 2303-5706;

<sup>53</sup> Ibid

<sup>54</sup> Application No. 24699/94, Paragraph 52

Article 5, paragraph 1 of the European Convention, whereby any deprivation of liberty must be “lawful”.<sup>55</sup>

As stated by Article 10 of the European Convention, freedom of expression is subject to exceptions which, on the other hand, must be set strictly, and the need for any such restrictions must be set convincingly<sup>56</sup>. The adjective "necessary", within the meaning of Article 10, Paragraph 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court<sup>57</sup>.

Although Article 10 of the Convention strongly protects the press, the right to freedom of expression is not absolute, and the obligations and responsibilities which stem from it also apply to the press. The Court expressed that in the following manner: “*Because of ‘obligations and responsibilities’ commensurate with the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism*”<sup>58</sup>

Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them. This stance was presented in the case of *Sunday Times v. United Kingdom* (No 1) dated 26 April 1979, Series A, No 30<sup>59</sup>.

Information revealed by the media that fall under the scope of Article 10 of the Convention may affect the private life of a person stipulated in Article 8 of the Convention. Hence the national authorities must assess a number of factors when they decide on potentially conflicting or opposing rights and interests in terms of contentious publication of information by the media. The relevant factors when assessing the opposing rights are the following:

- Whether the information contributes to a debate which is in public interest;
- Whether the person in question is a public figure or a private person;
- Previous behaviour of the person in question;
- Content, form and consequences of publication; and
- Circumstances in which the photographs were taken.

The first aspect to be taken into account is whether a photograph or an article contributes to a debate which is in public interest. That which interests the public does not always represent a debate which is in public interest. Whether something is a topic in public interest depends on the

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<sup>55</sup> Judgement *Öztürk v. Turkey*, dated 28 September 1999, Reports 1999-VI, Paragraphs 51-57.

<sup>56</sup> Judgement *Handyside v. United Kingdom*, 07 December 1976, Series A No 24, p. 23, Paragraph 49; Judgement *Lingens v. Austria*, 08 July 1986, Series A No 103, p. 26, Paragraph 41; and *Jersild v. Denmark*, 23 September 1994, Series A No 298, p. 23, Paragraph 31, source Džumhur, J., (2015) Colliding Effects of Freedom of Access to Information and Personal Data Protection. Social Perspective Magazine, 2 (1). ISSN 2303-5706

<sup>57</sup> Judgement: *Lingens*, p. 25, Paragraph 39

<sup>58</sup> Handbook on the Case Law of the European Court of Human Rights “Freedom of Expression and the Right to Privacy in accordance with the European Convention on Human Rights” The AIRE Centre, p. 19.

<sup>59</sup> Džumhur, J., (2015) Colliding Effects of Freedom of Access to Information and Personal Data Protection. Social Perspective Magazine, 2 (1). ISSN 2303-5706

circumstances of the issue. Topics concerning political issues usually are in the interest of the general public, and a small number of limitations are allowed in such cases.

The level of protection depends on whether an individual is a public figure or a private person. In the opinion of the Court, public figures and politicians inevitably and knowingly open themselves to public scrutiny, and they must express a higher degree of tolerance. However, even a public figure may legitimately expect a degree of privacy. Regarding public figures, the Court makes a distinction between reporting on aspects of their private lives and reporting about their public personas. However, in certain special circumstances, the right of the public to be informed may also encompass aspects of private lives of public figures, especially in case of politicians.

The manner in which a photograph or a story was published and the manner in which the person appeared in the photograph or in a story represents another relevant factor. The Court will also deliberate on the scope of dissemination of the story or of the photograph, i.e. whether the publication is national or local, and whether its circulation is large or limited. The Court's stance was also that the context and the circumstances in which the photographs were taken were also important<sup>60</sup>.

It will probably be exceptionally difficult to justify some types of limitations or sanctions concerning the exercise of the freedom of expression due to the severity of the effect it may have on the exercise of that right. It encompasses the following: criminal sanctions and pre-existing ban of publication. The criminal sanctions for publication are not prohibited by the Convention, but they need to be pronounced only in "exceptional circumstances".<sup>61</sup> The Court points out that

*"...resorting to criminal punishment of journalists for alleged insults which initiate questions of public importance... should be regarded as proportionate only in very exceptional circumstances which imply the most severe attack against the rights of an individual... Taking any other stance would deter journalists from contributing to the public debate on issues which affect the life of a community and, more generally, prevent the press from carrying out its important role of a public watchdog<sup>62</sup>."*

Article 10 does not prohibit prior restraint on publication as such, but the Court pointed out that

*"(...) the dangers inherent in prior restraint are such that they call for the most careful scrutiny by the Court. This is especially so as far as the press is concerned, for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest. This danger extends to the censorship of publications other than periodicals that deal with a topical issue."<sup>63</sup>*

Relevant cases prosecuted before the European Court, which refer to Article 10 of the Convention, have been presented in more detail in Annex I of the Report.

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<sup>60</sup> One must take into account whether the person who was photographed had given their consent for the photograph to be taken and subsequently published or it was done without the knowledge of the person or through the use of illegitimate tools. One needs to take into account the severity of intrusion and consequences of publication on the person in question. Case of *Reklos and Davourlis v. Greece*, Paragraph 40. See more: European Court of Human Rights, Practical Guide on Admissibility Criteria, Council of Europe, December 2011

<sup>61</sup> Handbook on the Case Law of the European Court of Human Rights "Freedom of Expression and the Right to Privacy in accordance with the European Convention on Human Rights" The AIRE Centre, p. 22.

<sup>62</sup> See *Cumpănă and Mazăre v. Romania*, No 33348/96, 17 December 2004, Paragraphs 111 – 124; *Sokolowski v. Poland*, No 75955/01, Paragraph 51, 29 March 2005)

<sup>63</sup> *Alinak v Turkey*, Application No 40287/98, Judgement dated 29 March 2005, Paragraph 37.

## 2.2. Legal Framework of Bosnia and Herzegovina

The constitutional and legal structure of BiH is based on competencies shared between various levels of government. Because of the complex structure of Bosnia and Herzegovina, we are obliged to include in the Report a presentation of the most important regulations in this area at State and Entity levels. On the other hand, there is no doubt that legislation in Bosnia and Herzegovina guarantees the highest level of human rights and freedoms, including the right to freedom of expression.

### 2.2.1. Constitutional Structure

*The Constitution of Bosnia and Herzegovina*<sup>64</sup> guarantees the highest level of internationally recognized human rights and fundamental freedoms<sup>65</sup>, as well as that “*The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.*”<sup>66</sup> *The catalogue of rights defined in Article 2, Paragraph 3, among other things, defines g) Freedom of thought, conscience, and religion; and h) Freedom of expression.*

*The Constitution of the Republika Srpska*<sup>67</sup>, guarantees the freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion<sup>68</sup>, as well as freedom of the press and other media of communication. Also, free establishment of newspaper and publishing houses, publishing of newspapers and public information by other media in accordance with the law shall be guaranteed, while the censorship of the press and of other public information media shall be forbidden. Public information media shall be obliged to inform the public on time, truthfully and impartially. The right to correction of incorrect information shall be guaranteed to anyone whose right or legally determined interest has been violated, as well as the right to a compensation for damage arising therefrom<sup>69</sup>.

*The Constitution of the Federation of Bosnia and Herzegovina*<sup>70</sup> guarantees the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution,<sup>71</sup> including the fundamental freedoms: free speech and free press; freedom of thought, conscience, and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including to form and belong to labour unions and the freedom not to associate; and freedom to work (Item I).

### 2.2.2. Legislative Framework

A number of laws adopted at the levels of Bosnia and Herzegovina, its Entities and District Brčko regulate issues which directly or indirectly deal with the status of journalists. First of all, that

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<sup>64</sup> Annex 4 of the General Framework Agreement for Peace in Bosnia and Herzegovina

<sup>65</sup> Article 2 of the Constitution of Bosnia and Herzegovina

<sup>66</sup> *Ibidem*, Paragraph 2

<sup>67</sup> "Official Gazette of the Republika Srpska", No 21/92 – Consolidated Text, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05

<sup>68</sup> Article 25.

<sup>69</sup> *Ibidem*, Article 26.

<sup>70</sup> "Official Gazette of the Federation of Bosnia and Herzegovina" No 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05, 88/08

<sup>71</sup> Chapter 2, Article 1

includes laws which prescribe condition for and the manner of establishment and activities of the media, oversight over their work, laws which regulate the civic responsibility of journalists, labour-related status of journalists, etc. The right to access Internet is not expressly regulated through a separate law in Bosnia and Herzegovina. However, rights guaranteed in the above-mentioned legal acts of Bosnia and Herzegovina encompass Internet as well. The main problem in Bosnia and Herzegovina is not a lack of legal regulation, but its inadequate implementation. The statistics show that the situation in the media, generally speaking, is worse today than in the past<sup>72</sup>.

When it comes to the legislative/legal framework, the Ombudsman is of the opinion that the area of electronic media is better regulated than is the case in the rest of the media, especially after the adoption of by-laws which entered into force in early 2012.

In order to understand the existing institutional solutions, it is necessary to note that the following bodies in Bosnia and Herzegovina deal with this area: the Communications Regulatory Agency of Bosnia and Herzegovina, and the Press Council, a self-regulatory body for print and online media.

### **2.2.2.1. Legislation on Communications and Information**

The area of communications in Bosnia and Herzegovina and the establishment and work of the Communications Regulatory Agency of Bosnia and Herzegovina is regulated by the **Law on Communications of Bosnia and Herzegovina**<sup>73</sup> which provides for the establishment and operation of joint communications facilities and international communications facilities. In accordance with the law, communications shall include telecommunications, radio, broadcasting (including cable television) and associated services and facilities<sup>74</sup>. In order to carry out the constitutional provisions in respect of communications, the Council of Ministers shall be responsible for policy-making<sup>75</sup>, and the Agency is in charge of regulating the area of communications<sup>76 77</sup>.

The Council of Ministers and the Agency, according to the respective competencies as set out in this Law, shall take all reasonable measures that are aimed at achieving the following objectives:

- a) The promotion of fair competition in order that users derive maximum benefit in terms of choice, price and quality;
- b) That there is no distortion or restriction of competition in the communications sector according to the Council of Ministers' sectoral policies;
- c) That efficient investment in infrastructure is encouraged and innovation promoted;
- d) That copyright and other intellectual property, as well as personal data and privacy, is protected;

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<sup>72</sup> Indicators of the Level of Media Freedom and Journalists' Safety, December 2016 <http://safejournalists.net/wp-content/uploads/2016/12/Full-BiH-BiH-Digital.pdf>

<sup>73</sup> "Official Gazette of Bosnia and Herzegovina" No 31/03, 75/06, 32/10

<sup>74</sup> Article 1 of the Law on Communications of Bosnia and Herzegovina

<sup>75</sup> The Council of Ministers shall be responsible for: a) Developing and adopting policy in line with existing legislation; and b) Determining the representation of Bosnia and Herzegovina in international forums concerned with communications.

<sup>76</sup> *Ibidem*, Article 3

<sup>77</sup> The Agency shall be responsible for: a) Regulating broadcasting and public telecommunications networks and services, including licensing, tariffing, interconnection, and defining the basic conditions for the provision of common and international communications facilities; and b) Planning, co-ordinating, allocating and assigning the use of the radio frequency spectrum.

- e) That efficient use and effective management of radio frequencies and numbering resources are ensured in accordance with the radio regulations and other recommendations of the International Telecommunication Union and with other international agreements entered into by Bosnia and Herzegovina.

The **Law on Public Information of the Republika Srpska**<sup>78</sup> was adopted in the Republika Srpska and it stipulated that public information is free and that all natural and legal persons have the right to right to engage in public information<sup>79</sup>, that public media outlets are not subject to censorship and that they are obliged to inform the public in a truthful, objective and timely manner<sup>80</sup>.

#### **2.2.2.2. Legislation on Public Broadcasters**

The issue of public broadcasters in Bosnia and Herzegovina is regulated through the Law on Public Broadcasting System of Bosnia and Herzegovina<sup>81</sup>, the Law on Radio and Television of the Republika Srpska<sup>82</sup> and the Law on Public Broadcasting Service of Radio and Television of the Federation of Bosnia and Herzegovina<sup>83</sup>.

The Law on Public Broadcasting System of Bosnia and Herzegovina (hereinafter: Law on PBS of Bosnia and Herzegovina) regulates the Public Broadcasting System in Bosnia and Herzegovina, as well as relations between the three Public Broadcasting Services and the joint legal entity within that system, and its activity and organisation<sup>84</sup>. The Public Broadcasting System in Bosnia and Herzegovina consists of: the Radio and Television of Bosnia and Herzegovina (hereinafter: BHRT), as the Public Broadcasting Service of Bosnia and Herzegovina; the Radio and Television of the Federation of Bosnia and Herzegovina (hereinafter: RTFBiH) as the Public Broadcasting Service of the Federation of Bosnia and Herzegovina; the Radio and Television of the Republika Srpska (hereinafter: RTRS) as the Public Broadcasting Service of the Republika Srpska; the Corporation of Public Broadcasting Services of BiH (hereinafter: Corporation).

The laws on BHRT, RTRS and RTFBiH should be harmonised with the provisions of the Law on PBS<sup>85</sup>. In accordance with the Law on PBS, the Public Broadcasting Services are independent in their activities, and they have editorial independence and institutional autonomy, especially in areas such as: a) determination of programme schedule; b) concept and production of the programme; c) editing and presenting news and current information programme; d) managing and disposal of property; e) employment and employee rights and obligations; f) structuring activities and internal organisation; g) preparation and implementation of the budget; h) negotiations, preparations and signing of legal acts in reference to the functioning of the Public Broadcasting Services; i) representation of the Public Broadcasting Services in legal proceedings; j) purchase, rent, sale and usage of goods and services.<sup>86</sup> From the aspect of transparency of action of

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<sup>78</sup> Law on Public Information of the Republika Srpska ("Official Gazette of the Republika Srpska", No 10/97)

<sup>79</sup> Article 1 of the Law on Public Information of the Republika Srpska

<sup>80</sup> Ibidem, Article 5

<sup>81</sup> "Official Gazette of Bosnia and Herzegovina", No 78/05

<sup>82</sup> "Official Gazette of the Republika Srpska" No 49/06, 42/10, 89/13

<sup>83</sup> "Official Gazette of the Federation of Bosnia and Herzegovina", No 48/08

<sup>84</sup> Article 1 of the Law on Public Broadcasting System of Bosnia and Herzegovina.

<sup>85</sup> Ibidem, Article 3

<sup>86</sup> Ibidem, Article 4

the Public Broadcasting System, it is important to underline Article 26 which defines the Programmatic Principles.

The **Law on Radio and Television of the Republika Srpska**<sup>87</sup> regulates the establishment and functioning of the Public Broadcasting Service of the Republika Srpska, and only in Article 19 refers to the status of employees: “*General labour regulations and the Statute shall be implemented in reference to the legal status of employees of RTRS, the conditions for the signing of a labour contract, the salaries and other remuneration.*”

The **Law on Public Broadcasting Service of Radio and Television of the Federation of Bosnia and Herzegovina**<sup>88</sup> regulates the Public Broadcasting Service of the Federation of Bosnia and Herzegovina, and especially the issues of registration and head office of the company, rights and responsibilities, activities, staff composition in accordance with the Constitution, programme services, the Statute of RTVFBiH, production capacities, archive, rights of employees in reference to the status of employees and the minimum of tasks and duties, property, basic issues concerning financing, RTVFBiH bodies, programmatic principles and banned types of programmes, percentages of various programmes, advertisements and sponsorships, election campaign advertisements, protection of intellectual property, RTV fee, manner of collection and disbursement of the RTV fee, control of fee collection and penalty provisions.<sup>89</sup> The status of employees is defined in Article 15 of the Law as follows: “*Current labour regulations and the Statute shall be implemented in reference to the legal status of employees of RTVFBiH, the conditions for the signing of a labour contract, the salaries and other remuneration*”.

### 2.2.2.3. Institutional Mechanisms

**The BiH Press Council** is, in accordance with Article 3 of its Statute, “a non-governmental, non-political and non-for-profit organization that, based on the principle of free and voluntary accession to membership of the Association, brings together its members to achieve the goals and activities determined by this Statute”. The Council is a mediator between dissatisfied reader and print and online media, it oversees the implementation of the BiH Press and Online Media Code of Conduct, improves professional standards in the press and online media, protects the public from unprofessional and manipulative journalistic reporting and, on the other hand, protects the media from political, economic and all other types of pressures which jeopardise the freedom of information and the freedom of the media. The Council consists of the Association “BH Journalists”, the BiH Association of Journalists, the Association of Croat Journalists in BiH and the RS Association of Journalists.

The **Press and Online Media Code of Conduct**<sup>90</sup> is a document adopted by all journalistic associations in Bosnia and Herzegovina and it represents a way of self-regulation of journalistic activities. Pursuant to the Code of Conduct: “*Journalists of print and online media in Bosnia and Herzegovina (hereinafter: “journalists”)* have an obligation to the public to maintain high ethical standards at all times and under any circumstances. It is the duty of journalists and publishers of print and online media to respect the needs of citizens for useful, timely and relevant information

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<sup>87</sup> "Official Gazette of the Republika Srpska" No 49/06, 42/10, 89/13.

<sup>88</sup> "Official Gazette of the Federation of Bosnia and Herzegovina", No 48/08.

<sup>89</sup> Article 1

<sup>90</sup> Adopted by all journalist associations in Bosnia and Herzegovina, at session held on 29 April 1999, in February 2005, August 2006, December 2006 and June 2011.

*and to defend the principles of freedom of information and the right to fair comments and critical journalism. Journalists shall abide by commonly accepted social standards of decency and respect for ethnic, cultural and religious diversity of Bosnia and Herzegovina. Journalists shall abide by standards of human rights defined by international and BiH acts on human rights.”*<sup>91</sup>

**The BiH Communications Regulatory Agency (CRA)** is responsible for regulating broadcasting and public telecommunications networks and services, including licensing, tariffing, interconnection, and defining the basic conditions for the provision of common and international communications facilities, and planning, co-ordinating, allocating and assigning the use of the radio frequency spectrum. Also, CRA and the BiH Council of Ministers are in charge of protecting copyright and other intellectual property, as well as personal data and privacy.<sup>92</sup>

**The RTV Programme Broadcasting Code** was adopted at a session of the Council of the Communications Regulatory Agency held on 31 January 2008 and it guaranteed that all segments of programmatic services shall respect human dignity and the fundamental rights of others, and that radio and television stations shall be free in creating and editing their programmes, while respecting the professional and generally accepted values, ethical and aesthetic standards, and they shall be responsible for the content of all the broadcast material, regardless of its source, and for professional activities of their employees.<sup>93</sup>

#### **2.2.2.4. Defamation**

Decriminalization of defamation in the legislation in Bosnia and Herzegovina was conducted under great pressure from international organisations and from journalist associations. Namely, defamation was decriminalised in the first post-war criminal codes (however, an insult remained as a separate criminal offence). Thus, there can be no criminal charges against journalists, and in such cases, one could initiate a civil procedure prescribed in separate anti-defamation laws at the level of the Entities.

**The Republika Srpska Law on the Protection against Defamation**<sup>94</sup> regulates the acceptable limitations to the freedom of expression with regard to civil liability for harm caused to the reputation of a natural or legal person by the making or disseminating of something false, while acknowledging that

- a) The right to freedom of expression, as guaranteed by the Constitution of Republika Srpska and the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitutes one of the essential foundations of a democratic society, in particular where matters of political and public concern are involved;
- b) The right to freedom of expression protects both the content of an expression as well as the manner in which it is 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;

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<sup>91</sup> General provisions.

<sup>92</sup> Ombudsman for Human Rights of BiH, with the support of Save the Children, “Recommendations to Improve the Protection of Children’s Right to Privacy in Cases of Violations by BiH Media (2012).

<sup>93</sup> Article 3

<sup>94</sup> Republika Srpska Law on Protection against Defamation (“Official Gazette of the Republika Srpska”, No 37/01)

- c) The media play an essential role in the democratic process as public watchdogs and purveyors of information.<sup>95</sup>

Similarly, the issue of civil responsibility for any harm caused to the reputation of a natural or legal person by presenting or disseminating falsehoods by identifying that natural or legal person to a third person is regulated by the **Federation of Bosnia and Herzegovina Law on Protection against Defamation**<sup>96</sup>. The following goals were to be achieved by regulating the civil responsibility:

- a) Right to the freedom of expression, guaranteed by the Constitution of the Federation of Bosnia and Herzegovina and by the European Convention for the Protection of Human Rights and Fundamental Freedoms constitutes one of the essential foundations of a democratic society, in particular where matters of political and public concern are involved;
- b) The right to freedom of expression protects both the content of an expression as well as the manner in which it is 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;
- c) The media play an essential role in the democratic process as public watchdogs and purveyors of information.

The Brčko District of BiH adopted its own **Brčko District of Bosnia and Herzegovina Law on Protection against Defamation**<sup>97</sup> which regulates, in a manner identical to Entity laws, the issue of civil responsibility for any harm caused to the reputation of a natural or legal person by presenting or disseminating falsehoods to a third person and by identifying that natural or legal person to a third person.

### III. ANALYSIS OF THE SITUATION

According to a report by the organisation “Reporters without Borders” on the freedom of the media, in 2017 Bosnia and Herzegovina was ranked 65<sup>th</sup> out of 180 countries covered by the report, while Croatia was 74<sup>th</sup>, Serbia 66<sup>th</sup>, and Montenegro was ranked 106<sup>th</sup>. In accordance with the World Press Freedom Index, which served as the basis of the Report, Bosnia and Herzegovina was described as follows:

*“This country has the world’s most liberal media freedom laws but their implementation is held back by a saturated judicial system. Defamation was decriminalized in 2003 but lawsuits are still possible. Journalists are often the targets of threats and political pressure. The situation is aggravated by the fact that the pro-government media continue to enjoy direct and indirect state subsidies.”*<sup>98</sup>

Published every year since 2002, the World Press Freedom Index ranks 180 countries according to a series of indicators: pluralism, media independence, self-censorship, legislative

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<sup>95</sup> Article 1

<sup>96</sup> Federation of Bosnia and Herzegovina Law on Protection against Defamation (“Official Gazette of the Federation of Bosnia and Herzegovina” No 19/03 and 73/05)

<sup>97</sup> Law on Protection against Defamation of the Brčko District of Bosnia and Herzegovina (“Official Gazette of the Brčko District of Bosnia and Herzegovina” No 14/03)

<sup>98</sup> <https://rsf.org/en/bosnia-herzegovina>

framework and transparency. What fundamentally characterises Bosnia and Herzegovina is its decline from 2006, when it was ranked 19<sup>th</sup>, and 2004 when it was ranked 21<sup>st</sup>.<sup>99</sup>

According to the World Press Freedom Index “the state which used to serve as an example of media freedom in the region – it was the first to decriminalise defamation and adopt the most liberal media laws in the world – is, to a degree, not such a shining example any longer. This is a reflection of the fact that, in spite of good laws, journalists in BiH are often targets of threats and political pressure.”<sup>100</sup>

The Executive Director of the Press Council, Ljiljana Zurovac, is of the opinion that “provisions must be included into media laws and economic laws which would prescribe that a web portal, which acts as a media outlet, must register and add names of its owners, of the chief editor and of journalists. In such a way, citizens would be able to know whether to believe that web portal or not, who to send a complaint to when they recognise that the Press and Online Media Code of Conduct are violated, and that will also oblige them to pay VAT and the advertising tax.”<sup>101</sup>

The OSCE Representative for the Freedom of the Media, Dunja Mijatović, stated to N1TV: “Safety of journalists is still the major threat to the freedom of the media in BiH, as well as in other participating States of OSCE, thus the fight to uproot the practice of impunity in this area is essential.”<sup>102</sup>

Finally, the South-East Europe Media Observatory identified four non-profit media outlets from Bosnia and Herzegovina - Mediacentar Sarajevo, News Magazine Buka, Centre for Investigative Journalism (CIN) and the Balkan Investigative Reporting Network (BIRN) – as positive examples of good practices and of media integrity. According to them “for a number of years, these organisations protect and promote values of public service in journalism.”<sup>103</sup>

### **3.1. Status of Journalists in Bosnia and Herzegovina**

In the report of the European Federation of Journalists entitled "Rights and Jobs in Journalism"<sup>104</sup>, in the Labour Rights for Journalists chapter, they mentioned surveys conducted in the Republic of France and the Kingdom of Belgium pointing towards trends of decline in professional income, deteriorating working conditions, and emergence of new forms of employment relationships and unclear contracts<sup>105</sup>. To conclude, if such trends were registered in countries with bigger and more stable economies, we can only imagine what the situation is in Bosnia and Herzegovina, and such instances can only be more pronounced.

On the other hand, in the report entitled "Under Pressure – Research Report on the State of Media Freedom in Bosnia and Herzegovina", Mediacentar Sarajevo presented its report concerning violations of journalists' labour rights. The most frequent cases of violations concern the payment of salaries (43% of responders), working hours (39% of responders) and general working conditions (33% of responders), while violations of other labour rights are not so frequent<sup>106</sup>. Among other

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<sup>99</sup> In 2004 and 2006, the Report covered 167 countries.

<sup>100</sup> <http://ba.n1info.com/a93863/Vijesti/Vijesti/Slobodni-pad-medija-u-Bosni-i-Hercegovini.html>

<sup>101</sup> Ibid, Ms Ljiljana Zurovac, Executive Director of the Press Council to N1 TV

<sup>102</sup> Statement to N1TV, dated 03 May 2016

<sup>103</sup> <http://ba.n1info.com/a93863/Vijesti/Vijesti/Slobodni-pad-medija-u-Bosni-i-Hercegovini.html>

<sup>104</sup> European Federation of Journalists; "Rights and Jobs in Journalism", 2016

<sup>105</sup> Ibid, p. 22.

<sup>106</sup> Under Pressure – Research Report on the State of Media Freedom in Bosnia and Herzegovina, research conducted as part of an initiative "MEDIAMANIFEST- Freedom and Responsibility of the Media"; publisher Mediacentar Sarajevo; February 2010, p. 29.

things, it was stated in the report that the most vulnerable category of staff is that of young journalists employed for the first time ever, often without any contract<sup>107</sup>.

In a publication entitled “Working Conditions for Journalists in Bosnia and Herzegovina – Journalists in a Gap between Devastated Media and Legal Insecurity”<sup>108</sup>, in a section concerning working conditions and salaries in the media, majority of journalists pointed out that their salaries were relatively low in comparison to their public scrutiny, but that they were aware of BiH economic reality. In reference to the exercise of rights of journalists and their long-term unemployment, this publication presented the following prominent observation which coincided with the findings of the above-mentioned report entitled “Under Pressure – Research Report on the State of Media Freedom in Bosnia and Herzegovina”: *“In the media circles in BiH there is a long-standing view that “if you want to be a volunteer forever, go to media outlets”. Of course, this is an exaggeration, but it is based on a fact that many young journalists used to work for years as volunteers while they waited to be hired.”*<sup>109</sup>

“Journalists are facing the issue of being forced to seek protection of their rights before courts”<sup>110</sup>, and as it was pointed out in the “Balkan Media Barometer”<sup>111</sup>: *“Journalists are often employed under uncertain working conditions”*.

The change of a labour status does not necessarily mean that a person’s rights are violated, but it could be assumed that a certain number of journalists would seek more stable and safer jobs, for the purpose of stability of employment and of exercise of other rights (pension insurance, etc.). Although there is no verified information on that matter, it is a fact that a large number of journalists left this profession during the last 10-15 years, and today they work as spokespersons, advisers, etc. Indirectly, that can have an effect on the quality of the media, if they face major brain drain of professional and technical staff. Of course, there are other examples<sup>112</sup> showing other practices, but we think that certain shining examples should not show the wrong picture about the real situation faced by numerous journalists.<sup>113</sup>

Also, we must not forget the importance of educational institutions for the development of journalism (higher education institutions), trainings offered by professional associations, various seminars and publications, as well as professional work, and the public must have a clear stance regarding journalistic tasks and challenges. A journalist faces an everyday challenge of whether to play a neutral role or a role of a participant in a society, whether to concentrate on the news item/information or to interpret and comment on it in accordance with professional ethics. However encouraging an idea that a person would “become” a journalist, and would act as such in a society

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<sup>107</sup> Ibid, pp. 29 and 30.

<sup>108</sup> Author Radenko Udovičić, Sarajevo, February 2015. Research co-financed by the European Commission, the Civil Society Facility, Media Freedom and Accountability Programme.

<sup>109</sup> Ibid

<sup>110</sup> Association BH Journalists stated that in 2013 they had assisted a female member of the Association in reference to proceedings lodged due to unpaid overtime, 2013 Report, Item 14.

<sup>111</sup> Balkan Media Barometer: The First National Analysis of Media Environment in Bosnia and Herzegovina, Friedrich-Ebert-Stiftung, Sarajevo 2012

<sup>112</sup> For example, in 2015, a media outlet was proclaimed a most desired employer, according to information published on the klix.ba web portal: <http://www.klix.ba/biznis/posao/al-jazeera-balkans-najpozeljniji-poslodavac-u-2015-godini/150424126>

<sup>113</sup> Association BH Journalists stated that in 2016 they had assisted a female member of the Association in reference to calculation of pre-war and post-war years of employment for the purpose of retirement, and sent letters to daily newspapers which failed to respect labour regulations in reference to that Association member, 2016 Report, Item 5; also in 2016, a lot of newspaper staff were laid off because the print edition of a daily newspaper was discontinued.

after watching several videos which should provide education, would be, it opens many questions, including questions about subjectivity, lack of professionalism, etc.<sup>114</sup>

In the past, when we discussed the status of journalists in traditional mass media, there was no dilemma that their employees were journalists. However, with the emergence of new technologies, we face practical questions, for example whether a blogger who has approximately a hundred regular followers, a relatively small number of people, can call himself or herself a journalist, whether that person could be accorded protection as a journalist, in what way, etc. How to assess whether their work had social importance and function previously exercised by traditional mass media? Which body should do that and on the basis of what authority, without itself jeopardising their rights? To draw that line might seem unimportant at this moment, but it deserves thorough analysis, especially if we come to discuss in the future, in Bosnia and Herzegovina, the need to introduce new criminal offences in the existing criminal codes such as, for example, preventing journalists from exercising their professional tasks, attacks against journalists in the course of exercising their professional tasks, causing severe bodily injuries or murder of a journalist during their exercise of their journalistic duties<sup>115</sup>.

The emergence of the new media, internet platforms, and social networks, certainly provides a higher degree of media freedoms, but also carries new challenges. One of those challenges is certainly an effort to publish a piece of information as soon as possible, due to the pressure of numerous other media outlets. If a journalist working in an online media outlet thinks that he or she must inform the public about a certain piece of information or stance as soon as possible, the question is how much he/she is ready or able to prepare the information which is published, or has an opportunity to reformulate, enhance or retract parts of information prior of making it available to the public<sup>116</sup>. Of course, the fact that the media face great pressure from their competitors and the need to publish information does not absolve journalists of professional obligation to adhere to standards of journalistic ethics and of the need to also take into account the rights of other persons, i.e. it does not absolve journalists of an obligation to recheck the received information, even published information, at a later date, and to add new details and correct information.

It is unquestionable that one cannot speak of a democratic society dedicated to the rule of law if it does not guarantee and does not protect the freedom of opinion and the freedom of expression, and if there is widespread impunity for crimes against any segment of society. The role of journalists in a society is to investigate and point out abuses carried out by all levels of government, as well as violations of rights and freedoms committed by all actors in a society, unethical actions and infringements upon human dignity. The journalists inform the public through their work, and provide an opportunity to the public to influence public policy-making and implementation, as well as to influence the actions of all other actors in public life. Through their work, journalists bring to the fore issues and problems a society faces, contribute to the opening of a debate, to the opportunity for all actors to present their stance and thus to inform the public by contributing to the level of democracy in a society, to building a society which tolerates and accepts other stances and beliefs, and strives towards complete equality of all individuals and groups.

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<sup>114</sup> Ibidem.

<sup>115</sup> As stated in the conclusions of the “Report on Freedom of Speech and State of Media Freedom in Bosnia and Herzegovina” adopted at the 63<sup>rd</sup> Session of the Council of Ministers of Bosnia and Herzegovina, held on 07 July 2016.

<sup>116</sup> As stated by the European Court of Human Rights in the case of *Fuentes Bobo v. Spain*, Application No 39293/98 dated 29 February 2000, Paragraph 46.

Journalists cannot carry out the above-mentioned tasks and professional obligations if they are not protected from attacks, pressures and threats in a society.

Similarly, National Human Rights Institutions point out violations of rights and freedoms in a country, informing relevant bodies and the public, with the aim of strengthening and promoting good governance and the rule of law. In that sense, cooperation with the media, i.e. with the journalists is important for the general work of the National Human Rights Institutions<sup>117</sup>. Also, National Human Rights Institutions assist journalists in their work, ranging from the implementation of the Freedom of Information Act to the protection of journalists' rights. A defamation lawsuit is certainly not a threat per se, but if the case law does not reflect the case law of the European Court of Human Rights, and the awarded amounts of compensation for the defamation of honour of plaintiffs become a major burden<sup>118</sup>, that can lead to certain topics in a society not being discussed in public, because they can lead to lawsuits and subject media and journalists to large expenses. Of course, that does not absolve journalists of the need to verify information and to provide an opportunity, in accordance with their professional obligation, to the persons the information refers to address the matter and provide their answers.<sup>119</sup>

The status of journalists in a society requires a comprehensive analysis of all the elements which affect their work in any way. This research is targeted, first of all, towards an analysis of the legal framework which regulates the work of journalists, but also the exercise of their economic and social rights; safety of journalists, including attacks against journalists and the prosecution of those incidents. The research encompassed relevant ministries at all levels of government in charge of regulating media freedoms, ministries in charge of exercise of economic and social rights, political parties represented in the Parliamentary Assembly of Bosnia and Herzegovina,<sup>120</sup> and relevant Offices of the Prosecutor.

The Questionnaire<sup>121</sup> consisted of the following questions:

- Those concerning the assessment of the legal framework regulating the work of media outlets, the structure and organisation of their work and the labour status of journalists;
- The most frequent legal basis of journalists' employment in media outlets (permanent/temporary contract, consultancy, volunteer contract, or some other basis).

We received responses from: the BiH Ministry of Justice<sup>122</sup>; the Government of the Republika Srpska, General Secretariat, Information Section, Public Relations Bureau<sup>123</sup>; Government of the Federation of Bosnia and Herzegovina<sup>124</sup> (responses forwarded from: the FBiH

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<sup>117</sup> For example, the Institution of Ombudsman uses the information from the media to register most ex officio cases every year.

<sup>118</sup> For example, in Judgement No AP 1678/12, dated 08 December 2015, the Constitutional Court of Bosnia and Herzegovina concluded that awarding compensation in individual amounts for each plaintiff (ranging from BAM 1,000 to 5,000) was proportional to the level of infringement of their reputation, and to the gravity of infringement of courts into the freedom of expression with this measure, and was of the opinion that the appealed decisions had been made in accordance with Article 10 of the European Convention on Human Rights. Without going into the details of this specific case, regarding the sides in these proceedings and the degree of violation of rights, a question arises of how even a compensation in an amount of BAM 5,000 may affect the survival of a small media outlet with small revenues.

<sup>119</sup> Judgement of the European Court of Human Rights in the case of *Ion Carstea v. Romania*, dated 28 October 2014, Application No 20531/06, Paragraph 35.

<sup>120</sup> <https://www.parlament.ba/Content/Read/26?title=Strankeikoalicije zastupljeni PSBiH> accessed on 19 June 2017

<sup>121</sup> The Questionnaire is presented in Annex II of this Report.

<sup>122</sup> Letter of the BiH Ministry of Justice, No 06-07-14-1615/17, dated 3 March 2017.

<sup>123</sup> Letter of the Government of the Republika Srpska, General Secretariat, Information Section, Public Relations Bureau, No 04.3/053-1113/17, dated 21 February 2017.

<sup>124</sup> Government of the Federation of Bosnia and Herzegovina, letter No 04-05-197/2017, dated 09 February 2017.

Ministry of Transport and Communications<sup>125</sup> and the FBiH Ministry of Labour and Social Policy<sup>126</sup>; the Government of Tuzla Canton,<sup>127</sup>; the Government of Bosnian Podrinje Canton<sup>128</sup>; the Government of Posavina Canton<sup>129</sup>.

Only two parliamentary political parties responded to the questionnaire they received: *Hrvatska demokratska zajednica* (HDZ) and *Srpska demokratska stranka* (SDS).

All the Offices of the Prosecutor responded to the questionnaire they received in reference to the prosecution of cases of attacks against journalists.

A very important segment of this research is certainly the stance of journalists themselves and of their professional associations who received the questionnaires<sup>130</sup>, including the opportunity provided to any journalist on the web page of the Institution of the Ombudsman to present his or her stance. The Ombudsman received responses from the Association “BH Journalists”<sup>131</sup> and from the Communications Regulatory Agency.<sup>132</sup>

The most important research findings are presented below, through an analysis of responses to questions regarding the legal framework, labour status of journalists and attacks against journalists.

### **3.1.1. Assessment of the Legal Framework**

The answers we received indicate that there are differences of opinion within executive authorities in Bosnia and Herzegovina in reference to the legal framework which regulates the work of media outlets, the structure and organisation of their work and the labour status of journalists. While the stance of the Ministry of Justice of Bosnia and Herzegovina is that “*there exists a modern legal framework, which regulates the status of the media, including the status of journalists*”, the stance of the Government of the Federation of Bosnia and Herzegovina is that “*the legal framework is completely insufficient, fragmented, inadequate and, in general, unsatisfactory*”. In its response, the Government of the Republika Srpska, General Secretariat, Information Section, Public Relations Bureau, presented the legal framework which regulates the issue of activity of media outlets in the Republika Srpska, without going into an assessment of the legal framework.

The stance of cantonal governments (of the Tuzla Canton and of the Bosnian Podrinje Canton) is that the legal framework established good foundations to inform the public in a fair, correct and, first of all, objective manner, and that international organisations, primarily OSCE, contributed to that with their activities. The Government of the Tuzla Canton indicated that “*one of the problems journalism in Bosnia and Herzegovina is facing is the lack of definition of educational background necessary to work as a journalist*”. The Government of the Posavina Canton pointed out “the importance of normative regulation of local media outlets, whose statutes and rulebooks

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<sup>125</sup> Letter of the FBiH Ministry of Transport and Communications, No 02-49-258/17, dated 13 February 2017.

<sup>126</sup> Letter of the FBiH Ministry of Labour and Social Policy, No 03-34/11-408/17, dated 24 February 2017.

<sup>127</sup> Letter of the Government of Tuzla Canton, No 02/2-10-3808/17, dated 15 February 2017.

<sup>128</sup> Letter of the Government of Bosnian Podrinje Canton, No 03/I-49-255-3/17, dated 06 March 2017.

<sup>129</sup> Letter of the Government of Posavina Canton, No 01 -VI-27-22-1/17, dated 15 February 2017.

<sup>130</sup> Questionnaires were sent to the following organisations: Association of Court Reporters, Association of Private Radio and TV Stations in BiH, BIRN Bosnia & Herzegovina, Centre for Investigative Journalism, BiH Association of Journalists, Media Plan Institute, Mediacentar, OSCE Mission to BiH, portals for journalism students, CRA, Association of Croat Journalists in BiH, Association of Publishers, RS Association of Young Journalists, RS Association of Journalists, Association BH Journalists, BiH Press Council, on 07 February 2017.

<sup>131</sup> Letter No 01-38/16, dated 11 April 2017.

<sup>132</sup> Letter No 03-29-952-2/17, dated 10 April 2017.

are adopted by founding institutions, most frequently municipalities, which opens the issue of financing, especially the role and participation of the cantonal level of government in the creation of the legal framework and financing of local media outlets.”

Although the number of received answers is limited, regarding the legal framework which regulates the status of the media, including the status of journalists, those answers indicate that there is no clear stance regarding an adequate legal framework, especially pointing out the status of local media outlets. The responses indicate that there is a need for a comprehensive analysis of the normative framework which regulates the issue of the status of the media, from the aspect of international standards, including the issue of founders (public or private), and in reference to the territorial level for which the media outlet is established (local).

Similar stances were expressed by political parties which provided the answers. Thus, the HDZ is of the opinion that *“the work of media outlets is not completely regulated, including the structure and organisation of their work and the labour status of journalists”*, while the stance of the SDS is that *“the legal regulations concerning the work of the media are scattered in numerous acts. The main problem begins with the process of implementation of those legal regulations, especially in the work of the Public Broadcasting Service...”*

### **3.1.1.1. Standpoint of Executive Authorities**

Original standpoints of executive authorities in terms of legislative framework regulating media status are as follows:

- There is a contemporary legal framework regulating media status, including that of journalists, and we are of the standpoint that Bosnia and Herzegovina has regulated the media sector well, but the mentioned framework needs to be fully implemented.<sup>133</sup>
- The legal framework is incomplete, fragmented, inadequate and basically insufficient. To a certain extent it includes issues concerning the work of the RTV system and service in BiH, FBiH and RS, including, accordingly, certain by-laws, statutes and other general documents.<sup>134</sup>
- The legal framework regulating the work of media in Republika Srpska is defined by the Law on the Radio and Television of Republika Srpska<sup>135</sup>, Law on Public Broadcasting Service<sup>136</sup>, Law on Communications<sup>137</sup>, Law on Public Broadcasting System<sup>138</sup> and rules passed by the BiH Communications Regulatory Agency (CRA). The BiH Press Council has also passed a Press and Online Media Code. When it comes to the work of the Public Broadcasting Service of Republika Srpska (RTRS), as a public company founded by Republika Srpska, its legal framework has been defined by the Law on the Radio and Television of Republika Srpska.<sup>139</sup> Structure, manner of work and organisation of other

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<sup>133</sup> BiH Ministry of Justice, Act No: 06-07-14-1615/17 of 3 March 2017

<sup>134</sup> Government of FBiH, Act No: 04-05-197/2017 of 9 February 2017

<sup>135</sup> Official Gazette of RS, Nos. 49/06, 73/08, 42/10, 89/13 and 44/16

<sup>136</sup> Official Gazette of RS, Nos. 92/05 and 32/10

<sup>137</sup> Official Gazette of BiH, Nos. 31/03, 75/06, 32/10 and 98/12

<sup>138</sup> Official Gazette of BiH, Nos. 78/05, 41/09, 32/10, 71/10 and 51/15

<sup>139</sup> Current regulations on public companies, business entities and their registration are applicable upon issues which are not regulated by this Law, referring to registration, business operations and activities of RTRS, unless they are in contravention of this Law, Law on Public Broadcasting System of BiH and Law on Public Broadcasting Service of FBiH. The law defines that the programme broadcast by RTRS should serve public interests and must be in harmony with professional standards, regulations and rules set by the BiH CRA. In addition, in terms of the structure and organisation of work, the mentioned Law defines programmatic principles of information, independence and legal status of RTRS, status of employees, sponsorships, funding manners, mandatory corrections to

media outlets in Republika Srpska have been regulated by the Law on Communications, Law on Public Information<sup>140</sup>, rules passed by the BiH CRA, general regulations on companies and registration of business entities and regulations on employment relations.<sup>141</sup>

- The legal framework regulating the work of media outlets in Bosnia and Herzegovina has set a solid ground for a fair, correct and, primarily, objective public information. However, lack of definition of education qualifications for journalists is one of the problems that the BiH journalism faces. In addition, lack of a proper chamber of journalists that would protect journalists and journalism as a profession, on one hand, and act as corrective institution, on the other hand, is also a problem.<sup>142</sup>
- Thanks to the efforts invested, primarily, by journalists and the international community in Bosnia and Herzegovina in the period from 1996 onwards, a significant number of rules have been passed and a variety of recommendations and declarations has been implemented protecting the work and freedoms of journalists, freedom of expression and information and fundamental human freedoms. In that regard, particularly prominent is the contribution of the OSCE in terms of enhancement of BiH journalists' work conditions, achieved through supporting the adoption of certain state-level regulations and implementing various declarations and recommendations for protecting journalists, passed at the EU level.<sup>143</sup>
- The legal framework regulating media outlets in Posavina Canton is based upon their Statutes and Rulebooks.<sup>144</sup> The existing legal status through which the municipalities, as founders, regulate their rights is good, but funds obtained through grants at the cantonal level would be more sustainable as a funding source and would ensure stability of the work of these media outlets and the cantonal authorities should be involved in the structure and organisation of their work and legal status of journalists, but they should not interfere with the work of radio outlets.<sup>145</sup>

### 3.1.1.2. Standpoint of Political Parties

The Ombudsman Institution of Bosnia and Herzegovina has sent a query to all political parties and coalitions represented in the BiH Parliamentary Assembly<sup>146</sup> in their 2014-2018 mandates in reference to their stance on the status and observance of rights of journalists in BiH. Original standpoints of two political parties, HDZ and SDS, which responded to the query (eleven parties and coalitions did not respond) in regard to the legal framework regulating the media work are as follows:

- Neither the work of media outlets nor the structure and work organisation and legal status of journalists has been fully legally regulated. Most of the media outlets (electronic, print or

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false information, appointment of directors, steering board etc. The RTRS Activity Report is considered by the RS National Assembly, in line with this Law

<sup>140</sup> Official Gazette of RS, Nos. 19/93, 25/93, 18/94 and 1/94

<sup>141</sup> RS Government, General Secretariat, Information Sector/Public Relations, Act No. 04.3/053-1113/17 of 21 February 2017

<sup>142</sup> Tuzla Canton Government, Act No: 02/2-10-3808/17 of 15 February 2017

<sup>143</sup> Bosnian Podrinje Canton Government, Act No: 03/I-49-255-3/17 of 6 March 2017

<sup>144</sup> Media outlets in the Posavina Canton area (three local radio stations: Radio Orašje, Radio Odžak and Radio Preporod) exercise their rights in the manner in which it is regulated by the founding municipalities. Through the Ministry of Education, Science, Culture and Sports of the Posavina Canton, their work is occasionally funded, but mostly to settle their debts to agencies regulating the work of radio outlets in BiH. Other media outlets covering the Posavina Canton are not paid by the Posavina Canton Government for their information services

<sup>145</sup> Posavina Canton Government, Act No: 01 -VI-27-22-1/17 of 15 February 2017

<sup>146</sup> <https://www.parlament.ba/Content/Read/26?title=StrankeikoalicijezastupljeneuPSBiH>

Internet portals) do not adhere to basic ethical rules by presenting a range of unverified and incorrect pieces of information to public, hiding behind the freedom of speech.<sup>147</sup>

- Legislative framework that regulates the media work has been 'scattered' within several laws. The main problem is the implementation of these laws, particularly, in connection to the RS Public Broadcasting Service, which serves rather as a supporter of the ruling party, implementing these laws selectively. One of the main problems is also the lack of transparent ownership of certain media outlets and the lack of legislation to regulate founding, organising, ownership and manner of work of online portals.<sup>148</sup>

### 3.1.1.3. Standpoint of Journalists' Associations

In its response to the query, the BiH Journalists' Association pointed out that the BiH Constitution, Entity Constitutions and that of Brčko District guarantee the highest level of human rights and freedoms, including the right to freedom of expression. Moreover, the freedom of expression has also been guaranteed by the BiH Law on Communications, BiH Law on the Public Broadcasting System, BiH Law on the Public Broadcasting Service, FBiH Law on the Public Broadcasting Service, RS Law on the Public Broadcasting Service, RS and FBiH Defamation Laws, BiH, FBiH and RS Criminal Codes and Freedom of Access to Information Acts. Legislative framework regulating media work is generally of good quality. The problem lies in its implementation. In 2016 BiH dropped on the 'Reporters Without Borders' World Press Freedom Index scale, ending 68<sup>th</sup> at the global level. This reflects the fact that journalists in BiH, despite very good laws, have been frequently under threat and political pressure.<sup>149</sup>

According to the BiH Journalists' Association, the legal framework regulating media work has not been sufficiently defined and regulated fully in the interest of journalists and the media. The main problem in BiH lies in the fact that there are a large number of lawsuits against media outlets and journalists and that fines pronounced to media outlets and journalists are too high. Defamation laws should explicitly prescribe the maximum sentence for a media outlet or journalist convicted of defamation. Though the contents of defamation laws largely resemble the European standards, it is not the case in practice, and despite the fact that the laws prescribe urgent resolution of these cases, the proceedings are still very slow. Another problem is also that courts have not yet harmonised the case law in terms of proving emotional pain. Some courts do hear court experts for that purpose, but others do not. It should be noted that certain courts interpret legal provisions literally, especially in cases of establishing passive legitimation.

The Association further indicates that *'Media legislative framework has been seriously threatened by the Preliminary Draft Freedom of Access to Information Act of BiH for it may terminate the existing rights in the area of access to information and is in conflict with international standards. One of the reasons includes the lack of a law on transparent ownership of media, which needs to be passed. It is also necessary to establish a mechanism for transparent media funding from public budgets, which is key to preventing political media clientelism and preserving media freedoms. There are no standards in place on releasing online media ownership data, where many media outlets have not been registered at all, causing difficulties in proving ownership and,*

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<sup>147</sup> Response of the HDZ 1990 of 13 February 2017

<sup>148</sup> Response of the SDS, No. 05-3-217-02/17 of 24 February 2017

<sup>149</sup> Act No: 01-38/16 of 11 April 2017

*eventually, in court proceedings instigated against online portals.*<sup>150</sup>

According to the BiH Journalists' Association '*Media legislative framework deteriorated in 2015 after the RS National Assembly had passed in February 2015 the Law on Public Peace and Order defining public order offences and sanctions thereto. In spite of heavy criticism and negative reaction by public and journalistic and international organisations fighting for freedom of expression, the RS National Assembly adopted the mentioned Law which defines public space too broadly to include the internet. A primary challenge for the media community is the adoption of a law that would regulate advertising at state level and define ownership of media outlets. The work of media outlets, their structure and work organisation are regulated by the Law on Public Broadcasters, but their structure and work organisation are in a very bad shape due to their difficult financial situation, threatening the very existence of all of their employees. They are additionally affected by the lack of political will of the authorities which should solve the problem of funding public broadcasters, but they have not found yet a suitable model to regulate this situation. In regard to other media outlets, they have been regulated by rulebooks and rules defined by the BiH CRA, but none of them have been observed in reality.*'<sup>151</sup>

### **3.1.2. Status of Journalists**

An assessment of the position of journalists is significant in terms of establishing the circumstances that affect or may affect their efficiency in work. Their position involves both the legislative framework and its implementation, relations between journalists and media outlet owners, and also reactions by supervisory bodies through which the state authorities take measures in case of journalists' rights' violation. In their responses, the executive authorities have focused on the legislative framework which regulates the rights of journalists, primarily emphasising labour laws and employment relations.

The economic position of journalists suggests that **journalists should possess adequate employment contracts with sufficient social protection to avoid any threat to their impartiality and independence. There is no official statistics on the economic and social status of journalists. On the basis of the available** (partial and imprecise) data, one may conclude that journalists have been the main victim of the media system transition in the past decade. They do not have the economic and social protection they should have in order to successfully perform their vital social roles. Journalism today is a low-prestige, high-stress, underpaid, uncreative and profession without prospects, which many professionals would gladly abandon if they had any alternative.<sup>152</sup>

In line with labour laws and collective bargaining agreements, in addition to the right to work, regular wage and health and retirement insurance, media workers are also entitled to annual leave bonus, public transportation compensation, daily, weekly and annual leave, trade union, collective bargaining and social dialogue with employers through elected representatives of trade

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<sup>150</sup> Official letter of the BiH Journalists' Association, No: 01-38/16 of 11 April 2017.

<sup>151</sup> Ibid

<sup>152</sup> Indicator 11 – Protection of Labour and Social Rights, <http://www.nuns.rs/codex/Mediji-u-demokratiji/Zastita-radnih-i-socijalnih-prava-novinara.html>

unions and journalists' associations, as well as to organise strikes and other legally defined forms of expression of workers' discontent.<sup>153</sup>

### 3.1.2.1. Standpoint of Executive Authorities on Journalists' Employment Status

In their responses, the executive authorities have stressed the following:

- The issues of the employment status and protection of workers' rights has been regulated by documents at the level of BiH, FBiH, RS and BD BiH. The Law on Work in BiH Institutions regulates the employment status of employees in the institutions of BiH, whereas the Law on Civil Service in Governmental Institutions of BiH regulates the employment status of civil servants in the institutions of BiH. The employment status of other employed workers, including media workers, is regulated by entity labour laws. It is also additionally regulated by general and special collective bargaining agreements.<sup>154</sup>
- The employment status of journalists has not been adequately regulated. It has been defined only within a general legal framework including labour laws and other laws in this area to the extent to which the media outlets' work allows.<sup>155</sup> The FBiH Labour Law<sup>156</sup> is applicable upon the employment status of journalists, as well as relevant by-laws including Rulebook on Contents and Manner of Keeping Record of Employees and Otherwise Hired Workers<sup>157</sup> and Rulebook on Delivery and Keeping Record of Collective Bargaining Agreements.<sup>158</sup> The General Collective Bargaining Agreement for the territory of FBiH<sup>159</sup> is applicable only upon certain employers and employees, in line with Article 142 of the FBiH Labour Law, prescribing that a collective bargaining agreement is binding for signing parties and for parties who joined at a later stage. Although Article 143 of the mentioned Law provides for a possibility of extending the general collective bargaining agreement to include employers that are not members of employers' associations, a decision on the extension has not been passed yet for the FBiH territory, therefore it remains binding only for the signing parties including the FBiH Employers' Association and the BiH Association of Independent Trade Unions, in accordance with Article 142 of the mentioned Law. A new industrial collective bargaining agreement for graphic design, publishing and media industries, as far as we know, has not been signed yet. However, according to Article 118, Paragraph 1 of the FBiH Labour Law, an employer that employs more than 30 workers must pass and publish a rulebook that regulates wages, work organisation, job classification, special requirements for entering into an employment agreement and other issues of relevance to employers and workers, in line with the law and collective bargaining agreement. Having in mind the above said, all mentioned documents are of relevance to the employment status of journalists and to the structure and work organisation of journalists, which means that an appropriate legal framework exists.<sup>160</sup>

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<sup>153</sup> BiH Journalists' Association – First 100 questions on the rights of media workers in BiH, December 2010, pgs. 18-19.

<sup>154</sup> BiH Ministry of Justice response

<sup>155</sup> FBiH Government responses: FBiH Ministry of Transport and Communications, FBiH Ministry of Labour and Social Protection

<sup>156</sup> FBiH Official Gazette, No: 26/16

<sup>157</sup> FBiH Official Gazette, No: 92/16

<sup>158</sup> FBiH Official Gazette, No: 76/16

<sup>159</sup> FBiH Official Gazette, Nos: 48/16 and 62/1

<sup>160</sup> FBiH Government responses: FBiH Ministry of Transport and Communications, FBiH Ministry of Labour and Social Protection

- The FBiH Labour Law, as a general regulation, adequately regulates employment rights and obligations of all workers including media workers<sup>161</sup> in terms of education, professional training and development, work hours, holidays and leave, safety, wages and contributions, expiration of employment agreement and right to form trade unions.<sup>162</sup> In addition, there is a Law on Strike<sup>163</sup> in place, regulating in greater detail the right of workers to strike.
- The employment status of journalists in Republika Srpska has been defined by the RS Labour Law.<sup>164</sup> This Law regulates their employment relation and rights, duties and responsibilities stemming from it, and other relations of employed workers in any field in Republika Srpska, unless otherwise stipulated by special laws. Having in mind that employment relations of journalists in any type of the media are not defined by a special law, the Labour Law is applicable upon them, and therefore, the status of journalists may not be considered special or different from that of workers in any other field. Inspection oversight in the area of employment status has been performed by the Labour Inspection Unit at the RS Inspectorate, in line with the Inspection Law.<sup>165</sup> The Labour Inspection Unit has not established any special status or position of journalists different from that of other workers, during their regular inspection activities in line with the Annual Inspection Plan and special inspections on the basis of requests filed by natural and legal persons in terms of the employment rights of workers employed by publishing and printing agencies or media outlets. In the context of these inspections, it is important to note that the inspection controls do not involve only journalists, but all staff employed, because media outlets hire a large number of technical and other staff. Other status-related issues concerning this profession in terms of professional training and professional development are regulated by general acts in the same manner as those concerning other professions. On an individual basis, they are regulated by special employment agreements which journalists enter into with their employers. Having in mind that the RS Constitution guarantees the freedom of forming trade unions (Article 41), journalists may exercise that right unhindered, while the Ministry of Labour, War Veterans and Disabled Persons' Protection keeps record of such organisations, in line with the Rulebook on Registering Trade Unions.<sup>166</sup>
- In terms of the employment status of journalists, from the aspect of the Tuzla Canton Government, the institution overseeing the work of the Tuzla Canton Radio and Television, on behalf of the Tuzla Canton Assembly as its founder, we are of the opinion that their employment status is at a satisfactory level. The Rulebook on Job Classification in the mentioned media outlet precisely defines requirements for each journalistic position, work hours, time off, paid and unpaid leave, etc. Wages are also defined and paid regularly as are all taxes and contributions. All obligations defined by employment agreements are met and all workers have a registered and recognised trade union.<sup>167</sup>
- Status-related issues in terms of employment rights and obligations of journalists have been adequately regulated. Concerning education, professional training and professional development, lack of funds is always an obstacle, which is why the media sector stagnates.

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<sup>161</sup> FBiH Ministry of Labour and Social Policy

<sup>162</sup> For each right, relevant FBiH Labour Law provisions are cited

<sup>163</sup> Official Gazette of FBiH, No: 14/00

<sup>164</sup> RS Official Gazette, No: 01/16

<sup>165</sup> RS Official Gazette, Nos. 4/10, 109/12, 117/12 and 44/16

<sup>166</sup> RS Government, General Secretariat, Information Sector/Public Relations

<sup>167</sup> Tuzla Canton Government

Only volunteers who have studied journalism and similar sciences are hired by radio stations within the Posavina Canton Government's Project of Hiring Volunteers in Civil Service Institutions.<sup>168</sup>

- Rights stemming from the employment agreement of journalists in BiH have been defined by existing laws applicable upon all other sectors, so one may conclude from the aspect of law that these issues have been regulated in an adequate manner.<sup>169</sup>

### **3.1.2.2. Standpoint of Political Parties on Journalists' Employment Status**

The Croatian Democratic Union is of the standpoint that employment status-related issues of journalists in BiH have not been adequately regulated, emphasising as follows:

- Journalists are frequently persons who are not educated or qualified, lacking experience and possibilities for professional development;
- In principle, journalists are not limited by work hours and most of the media outlets do not compensate them for overtime work;
- The job of a journalist is very demanding and people need time to go on leave; however, employers frequently fail to meet their needs;
- Journalists are rarely protected by employers or editors-in-chief;
- Journalists are underpaid;
- Upon expiration of the employment agreement, employers often hire other persons instead of them, so most of the journalists live from day to day, without any certainty and on the verge of existence;
- Journalists have the right to be members of trade unions, but very often those trade unions do not protect their basic human rights.

The Serb Democratic Party also believes that these issues have not been regulated appropriately and that journalists are in the same position as most of the workers in this country which has lost its middle-class population, and that any talks about normal standards are pointless. The basic feature of the status of the majority of media workers is instability. Journalists and media workers increasingly become employed on the basis of atypical and unstable employment relations involving temporary jobs or service contracts. A certain percentage of journalists still have steady jobs, but most of them 'jump in' to join temporary projects at the same time. That is, of course, influenced by new technologies used by media nowadays and new ownership structures, which, in many cases, resort to all kinds of solutions to cut the cost and increase profit.

### **3.1.2.3. Standpoint of Journalists' Association**

The employment status of journalists is regulated by the Labour Law and there are no separate regulations for journalists, which brings us to another problem – lack of Law on Media Outlets. The Banja Luka Journalists' Club has launched an initiative for the introduction of reduced years of service for journalists.<sup>170</sup>

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<sup>168</sup> Posavina Canton Government

<sup>169</sup> Bosnian Podrinje Canton Government

<sup>170</sup> Official letter of the BiH Journalists' Association, No: 01-38/16 of 11 April 2017

## **Employment Agreements**

The fact is that the vast majority of journalists do not have adequate employment agreements or wages in accordance with their qualifications and workload and that they work without any ‘papers’ or are hired for a temporary period. Some of them have been working for years without any kind of employment agreement, hoping they might get permanent jobs one day, though, without any means of achieving that whatsoever. According to a research conducted by the BiH Journalists’ Association, between 34% and 40% of journalists has been working without an adequate employment agreement. Those with adequate agreements have not been protected sufficiently. In some media outlets, journalists are paid minimum wages and employers pay their taxes on the basis of those minimum amounts. The rest of the money is received by journalists personally in cash, instead of having it paid on their bank accounts. This way of payment is very common in Bosnia and Herzegovina. Many employers use this way of payment to be able to pay lower cost of taxes and contributions. According to the BiH Journalists’ Association, many journalists work ‘under the table’ (undeclared work). Journalists do not talk about this in public fearing for their jobs. In general, this is a frequent phenomenon in privately-owned media outlets.<sup>171</sup>

## **Trade Union Formation**

The right to forming trade unions in Bosnia and Herzegovina has been defined and guaranteed by entity laws and constitutions. In Bosnia and Herzegovina, we have separate trade unions at the entity level and in the Brčko District. Within the Public Broadcasting Service of BiH, two trade unions are active, which, sadly, do not co-operate, according to both trade unions' presidents. In addition to these trade unions, there is the officially oldest trade union – The Trade Union of Printing, Publishing and Media Workers – receiving journalists, amongst others, as members. Most of the privately-owned media outlets do not have trade unions. Even in rare cases when they have trade unions, the membership is minimal. Workers in privately-owned media do not believe that trade unions can bring any changes in their interest. Therefore, they reluctantly form trade unions and note that they are subject to strong pressures if they become members of the Trade Union of Printing, Publishing and Media Workers .<sup>172</sup>

## **Right to Wage**

In general, there is a problem in Bosnia and Herzegovina of lack of respect for workers’ rights, including for those of journalists. All employment agreement rights are constantly violated. Wages have not been paid in their full amounts, and they are also very low in local media outlets. According to the BiH Journalists’ Association, the average wage of journalists in local media outlets ranges between 200 and 500 euros, while it amounts to 700 euros in public broadcasting services and to 900 euros in privately-owned media outlets<sup>173</sup>.

## **Independence of Journalists**

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<sup>171</sup> Ibid

<sup>172</sup> Ibid

<sup>173</sup> Ibid

Media newsrooms are formally separated from owners, but the owners exert a large pressure upon newsrooms. Censorship and self-censorship are part of journalists' daily work. This problem exists mostly in privately-owned media outlets, but also in other media outlets. Journalists accept censorship out of the fear for their jobs. The fear is often even stronger, because they are not protected by adequate employment agreements.<sup>174</sup>

### **Other Rights**

Other rights are also violated, such as the regularity of wages and their amounts, contribution payments, length of annual leave, overtime work and work during holidays payment, annual leave bonus payment and payment of contributions in the interest of workers. According to the RS Printing and Media Workers Trade Union, these rights have been violated more frequently and at a larger scale in cases in which media workers have not formed trade unions and have no means to fight together for their rights.

According to employees of public broadcasters, their situation is extremely bad. Many journalists do not even have social protection. In many cases, even journalists who have signed employment agreements have not been protected sufficiently. This does not limit to privately-owned media. It is also common in public broadcasters. However, the situation is much worse in privately-owned media outlets, especially in smaller ones.

Identified reasons for such an inefficient observance of rights include unclear definitions of work rights, prominent inclination of employers to care only about their personal gain and their inclination to nepotism, as well the inefficiency of institutions that should oversee labour laws' implementation.

Interviewed media workers have emphasised low wages, threats of losing jobs, mobbing, frequent overtime work, articles (which are not written by them) that they must sign as authors, censorship and similar problems as the most frequent forms of pressure exerted upon them.

In terms of their work hours, leave and time-off, their rights have been regulated by labour laws. However, journalists' annual leave frequently depend upon on the sheer will of editors-in-chief or owners of media outlets.<sup>175</sup>

Work and technical conditions vary individually. In stronger positioned privately-owned media outlets those conditions are much better, but they are at a very poor level in public broadcasters due to their extremely poor financial situation.

Most of the media outlets have been politically affiliated, favouring a particular political party. Political news mainly resembles standpoints and interests of media outlet owners. This is much stronger in terms of lower level of authorities in smaller local communities, where the pressure exerted upon local media outlets is much stronger, limiting their independence and possibilities for an open communication with politicians. The public perceives local media outlets as politicians' spokespersons. Practices at entity and state levels differ, because every political option has its own sources and media outlets promoting the politics pursued by a particular political

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<sup>174</sup> Ibid

<sup>175</sup> Ibid

### 3.1.3. Attacks against Journalists

According to the Safety of Journalists Guidebook:<sup>177</sup> *National governments are called on to take the necessary steps to protect the physical safety and security of journalists who face threats of violence. That obligation calls for coordinated and consistent State policies and practices. It is necessary to ensure that national laws, administrative and judicial systems protect and promote freedom of expression and safeguard the lives and professional rights of journalists. Elected politicians and all who hold high office are called on to demonstrate their unequivocal commitment to respecting press freedom and the safety of journalists. Politicians and officials should not abuse their status by speaking in a derogatory or insulting way about journalists or the media. Such language, when used by leading public figures, can encourage extremists to view journalists as targets to be silenced or attacked. Senior political leaders therefore have a special responsibility not to use intemperate or inappropriate language.*

#### 3.1.3.1. BiH Prosecutor's Offices Information

With the intention to evaluate the efficiency of protective mechanisms in case of attacks against journalists, the Ombudsman Institution of BiH has sent an official letter to all prosecutor's offices in Bosnia and Herzegovina requesting information on registered cases of attacks against journalists for the period of 2012 - 2017. The prosecutor's offices have expressed a high level of readiness to co-operate on this request, although our request has been treated, in several cases, as a matter subject to the Freedom of Access to Information Act<sup>178</sup>, which is contrary to Article 25 of the Law on the Institution of Human Rights Ombudsman of BiH. This Law obliges all institutions to co-operate with the Ombudsman Institution. In terms of the data we have requested, different answers have been provided, as follows:

##### **a. Inability of managing the database per profession of an injured party, witness or any other participant in the process**

The judicial content management system (CMS) does not provide for any possibility of recording cases of attacks against journalists in BiH separate from other cases. The mentioned system serves for recording data and documents of prosecutorial and judicial processes including reports, criminal charges, case trial stages, rulings, suspects, accused, injured parties and all other data relevant to cases, but there is no possibility at all for recording attacks against journalists separately, because professions of persons are not entered, only personal details needed for the work on cases. It means that there is no way in which we can find out about the percentage of and details to the cases tried before this Prosecutor's Office, in various stages of trials in accordance with the FBiH Criminal Code, involving journalists as injured parties. In spite of our good intentions to contribute to this report, we are really unable to include data on these cases, solely for technical reasons.<sup>179</sup>

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<sup>176</sup> Ibid

<sup>177</sup> Safety of Journalists Guidebook 2012, Office of the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe [www.osce.org/bs/fom/90210?download=tru](http://www.osce.org/bs/fom/90210?download=tru)

<sup>178</sup> Prosecutor's Office of the Western Herzegovina Canton, File No. A:123/17 of 17 February 2017

<sup>179</sup> Prosecutor's Office of Tuzla Canton, File No: A-I-22/17 of 14 February 2017

A similar response has been provided by the District Prosecutor's Office of Doboj<sup>180</sup>, which notes that their Office does not keep record of professions of injured parties.

The FBiH Prosecutor's Office<sup>181</sup> has stated in its response that it does not conduct independent investigations and raise charges and that it has jurisdiction only for representing cantonal prosecutor's offices before the Supreme Court of FBiH in terms of appeals filed against cantonal first-instance decisions, because the adoption of the FBiH Law on Courts of 12 July 2005<sup>182</sup> suspended the first-instance jurisdiction of the FBiH Supreme Court<sup>183</sup>. In its response, the FBiH Prosecutor's Office has indicated that the '*FBiH Criminal Code*<sup>184</sup> does not prescribe an 'attack against a journalist' as a separate criminal offence, therefore none of the cantonal prosecutor's offices in the Federation of BiH has a possibility to deliver the requested data, having in mind that criminal records are kept only under the criteria such as the name of a criminal offence, name of an injured party, name of a perpetrator if known, type of sanction, etc.'

#### **b. No Registered Cases of Attacks against Journalist for the 2012 – 2017 Period**

Prosecutor's Offices of Canton 10, Western Herzegovina Canton, Una-Sana Canton, Central Bosnia Canton, BiH Prosecutor's Office and District Prosecutor's Office of Trebinje have notified the Ombudsman Institution that they have no record of cases of attacks against journalists.<sup>185</sup>

#### **c. Information on Registered Cases of Attacks against Journalists for the 2012 – 2017 Period**

The District Prosecutor's Office of Bijeljina<sup>186</sup> has responded that only one case of an attack against a journalist has been recorded in the 2012 – 2017 period. It involves threats to the BN Television cameraman, Srđan Veljo, expressed by a court police officer who tried to seize the cameraman's camera and prevent him from filming an eviction.<sup>187</sup> The District Prosecutor in charge of this case has been conducting investigation to verify the allegations of the report filed by the Bijeljina Public Security Centre.

The Prosecutor's Office of Canton Sarajevo has indicated in its response<sup>188</sup> that, according to the official record of this Prosecutor's Office, two cases have been recorded as attacks against journalists for the 2012 – 2017 period. The first one is the criminal case No. T09 O KT 008022914, initiated on the basis of the report of the Ministry of Interior of Canton Sarajevo dated 25 December 2014, on account of the criminal offence of violent behaviour defined by Article 362 of the FBiH Criminal Code, exerted against Namik Vatrenjak. The case is currently in the stage of report. The second case is the criminal case No. T09 O KTA 011039917, initiated on the basis of the report of

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<sup>180</sup> File No: A-39/17 of 14 February 2017

<sup>181</sup> File No: A-97/17 of 07 March 2017

<sup>182</sup> Official Gazette of FBiH, No: 38/05, 22/06 and 63/1 O

<sup>183</sup> Official Gazette of FBiH, No: 19/03

<sup>184</sup> Official Gazette of FBiH, Nos: 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11 and 59/14

<sup>185</sup> Prosecutor's Office of Canton 10, File No: A-117/17 of 14 February 2017; Prosecutor's Office of Western Herzegovina Canton, File No: A:123/17 of 17 February 2017; Prosecutor's Office of Una-Sana Canton, Bihać, File No: A-147/17 of 15 February 2017; Prosecutor's Office of Central Bosnian Canton, Travnik, File No: A-71/17 of 16 February 2017; Prosecutor's Office of Bosnia and Herzegovina, File No: A-69/17 of 17 February 2017; District Prosecutor's Office of East Sarajevo, File No: 2-1/17 of 23 February 2017; District Prosecutor's Office of Trebinje, File No: 2-1/17 of 23 February 2017

<sup>186</sup> File No: IT-7/17 of 14 February 2017

<sup>187</sup> The Prosecutor's Office received the Bijeljina Public Security Centre report that the alleged attack took place on 30 June 2016 in Bijeljina during the eviction from the apartment of the person with the initials G.T.

<sup>188</sup> File No: A-148/17 of 17 February 2017

the FBiH Ministry of Interior of 20 January 2017, on account of the criminal offence of inciting national, racial and religious hatred and strife and intolerance defined by Article 163 of the FBiH Criminal Code, exerted against Duška Jurišić. The case is currently in the stage of report.

The Prosecutor's Office of the Herzegovina-Neretva Canton in Mostar<sup>189</sup> has stated in its response that this Prosecutor's Office has registered four (4) cases of attacks against journalists for the 2012 - 2017 period, currently in the following stages: *One case has been completed by a final decision and a fine has been pronounced, one case has been completed by an order on non-investigation, one case has been completed by an order on investigation suspension and one case has been under investigation in connection to an attack against a journalist's property.*

District Prosecutor's Office of Banja Luka<sup>190</sup> has received a total of nine reports of cases in which journalists have been injured parties (victims). All those cases involve threats against journalists, that is, criminal offences of security breach defined by Article 169 of the RS Criminal Code. In four of those nine cases charges have been raised, while in two other orders on investigation suspension have been issued and in two cases orders on non-investigation have been issued. One case has not been completed yet and has been under investigation.

On the basis of all responses provided by prosecutor's offices in Bosnia and Herzegovina, it can be concluded that criminal codes do not prescribe specifically a criminal offence of an attack against a journalist. It is clear that journalists cannot be considered persons of authority, but it does not exclude an obligation to consider a possibility of defining attacks against journalists as a separate criminal offence, primarily because of their important social role of ensuring public information as a vital element of freedom of expression.

The responses also indicate that no record is kept on professions of injured persons, witnesses or other participants in a process. In terms of a wider insight into certain social phenomena and prevention of negative trends, it is vital to ensure keeping record of all data necessary for establishing a profile, not only of perpetrators but also of injured parties.

In spite of the fact that some prosecutor's offices have insisted on a lack of a possibility of establishing profiles of injured parties, a certain number of them has delivered exact indicators of registered cases of attacks against journalists, which testifies of their differing approaches.

### **3.1.3.2. BiH Journalists' Association Information**

According to the Free Media Helpline in Bosnia and Herzegovina, journalists are often subject to discrimination. In the past couple of years, the Helpline has registered 15 cases of discrimination against journalists on various grounds.<sup>191</sup> Journalists are also subject to physical attacks, and according to the BiH Journalists' Association, a total of 266 such attacks has been registered in the 2012 – 2017 period. Below is the breakdown of attacks per year.

#### Breakdown of Attacks against Journalists for the 2012 – 2017 Period

<b>Year</b>	<b>No. of Attacks</b>
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<sup>189</sup> File No: A-159/17 of 17 February 2017

<sup>190</sup> Ibid

<sup>191</sup> Ibid

2012	47
2013	45
2014	37
2015	60
2016	64
2017	13

Having in mind the size of this country and its number of media outlets, journalists have been facing a large number of defamation lawsuits - around 300 lawsuits on an annual basis.<sup>192</sup> Currently, we have 173 cases of defamation in progress. According to the Free Media Helpline, 100 defamation lawsuits are filed in average on an annual basis.<sup>193</sup> Indemnification fines pronounced by courts usually range between BAM 500 and 20.000. The largest number of them range between BAM 2000 and 5000.<sup>194</sup>

Statistically, journalists in Bosnia and Herzegovina are very often subject to different forms of attacks. Since 2013 onwards, a total of 217 media outlets, media institutions and journalists' organisations have been attacked. Amongst them are the Federation TV, BiH Radio and Television, Oslobođenje Daily Newspaper, BN Television, Dnevni avaz Daily Newspaper, Nezavisne novine Daily Newspaper, Republika Srpska Radio and Television, Klix online portal, Buka online portal, Tačno.net online portal, Sarajevo Television, Communications Regulatory Agency, Press Council, BiH Journalists' Association and the Goražde Radio and Television Trade Union.<sup>195</sup>

Such attacks often go uncondemned by the institutions and judicial authorities of BiH. There are even cases in which a journalist, being a victim, is actually labelled as a person who attacked the freedom of a person who committed a crime and was subject to media reporting. According to the Free Media Helpline, institutions do react, but insufficiently. There are initiatives by the Ministry of Human Rights and Ministry of Justice to improve and upgrade criminal codes in BiH and to develop internal procedures for protecting journalists and freedom of expression as one of the fundamental human rights. The OSCE Mission to Bosnia and Herzegovina has issued Police and Journalists' Guidelines informing the police about the rights and proper treatment of journalists and outlining for journalists their responsibilities in dealing with the police. These Guidelines have not yet triggered any amendments to laws that would bind police to introduce a special treatment of journalists and the media as well as their adequate protection.<sup>196</sup>

### **3.1.3.3. Ombudsman Institution Information**

Appeals submitted to the Ombudsman Institution very often indicate that defamation lawsuits are used by the representatives of authorities to prevent or discourage the release in public

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<sup>192</sup> BiH Journalists' Association, File No: A-159/17 of 17 February 2017

<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup> Ibid

<sup>196</sup> Ibid

of the texts they disapprove.<sup>197</sup> Civil proceedings instigated per those lawsuits of politicians against the media are completed much faster than they usually last and the relevant judicial authorities do not submit adequate explanations to the Ombudsman Institution of BiH, which is why the Recommendation, No. P-229/13 has been sent to the Basic Court in Banja Luka. We have not received any response whatsoever.

The Ombudsman Institution is concerned over the fact that courts in their decisions, ordering journalists and the media to indemnify any damage to politicians, do not take into account the practice of the European Court of Human Rights which requests a higher level of threshold in cases of media reporting on the property possessed by public figures and which allows the public to be informed about certain aspects of private lives of public figures, if relevant and useful.<sup>198</sup>

In a number of cases<sup>199</sup> journalists have addressed our Institution to complain about threats they receive on account of articles they publish, as either freelancers or media employees. We would like to point out in this report that there is no adequate reaction by the relevant authorities, which can introduce harsher sanctions to send a strong message that any attack on journalists in the course of their duties shall be subject to the same repercussions as any such attack against any officials in the course of their duties.

A precondition needed for the efficient work of journalists, especially in terms of promoting and strengthening investigative journalism, is unimpeded access to information possessed by public authorities. Every natural or legal person has the right of access to the mentioned information, for it represents the public good and the public authorities have an obligation to release them to public and enable every natural person to request changes or submit remarks. The Freedom of Access to Information Act in Bosnia and Herzegovina requires that public authorities establish a procedure to assist the public in finding out what kind of information is held by public authorities and how to come into their possession. The analysis of complaints received<sup>200</sup> indicates that, in spite of our recommendations and warnings, decisions in first- and second-instance procedures have been delayed and lacking legally prescribed elements (rationale or remedy), and that there is an ever-growing trend by public authorities of denying access to information by referring to personal data protection or commercial interests of third parties, without applying any public interest tests. The Institution of the Human Rights Ombudsman of BiH hereby states with concern that public authorities have been denying access to information in their decisions by referring to confidential commercial interests of third parties. Rationales of those decisions do not clearly confirm if all legally prescribed actions have been taken in line with the Freedom of Access to Information Act, which requires that a public authority must immediately notify a third party in writing of any confidential commercial information arising from a request for access to information and warn the third party that a particular information shall be released in public, unless the third party responds in 15 days and provides reasons for withholding it on account of confidentiality.<sup>201</sup>

As a consequence, all this has been preventing journalists from doing their job and denying the public its right to be informed adequately and timely, which is a prerequisite for the rule of law and good governance.

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<sup>197</sup> Complaint filed by BUKA Magazine of 04 May 2017, No Ž-BL-05-319/17, Complaint filed by Slobodan Vasković of 16 May 2012, No Ž-BL-06-340/12

<sup>198</sup> See European Court of Human Rights, *Mladina d.d. Ljubljana vs Slovenia (2014)* and *Colombani et al. vs France (2001)*.

<sup>199</sup> Ž-BL-05-815/16 and Ž-SA-06-881/16

<sup>200</sup> Ž-BL-05-798/16 and Ž-BL-05-45/17

<sup>201</sup> Ž-SA-05-130/16, Rec No. P-89/16 of 13 May 2016

The BiH Ombudsman Institution received over the past years complaints referring, among other things, to situations in which supervisory and managing boards in public media, by frequently changing programmatic schemes or responsible staff<sup>202</sup>, concepts or certain shows, interfere with the work of journalists.<sup>203</sup> The BiH Ombudsman Institution has investigated the mentioned cases and issued a recommendation to the employer in one case<sup>204</sup>, and monitored the implementation of an interim court measure in the second case. Our Institution has also, upon implementing the relevant procedure<sup>205</sup>, assessed the speech delivered by the newly-elected mayor as inappropriate and unacceptable and strongly condemned all attacks against and all forms of inappropriate behaviour towards journalists and all media workers as well as all attempts by the authorities and politics to influence their editorial policies.

That is why it is necessary to monitor and supervise the work of supervisory and managing boards of media outlets in terms of the Law on Ministerial, Governmental and Other Appointments, and, in co-operation with workers' associations and trade unions, to work on the protection of their rights.

#### **3.1.3.4. Other Information**

We will pay a special attention to the cases of attacks against journalists, having in mind their great importance. These cases do not involve only the damage to the physical integrity of an individual or a breach of a law, but they also send a clear message to journalists and the public as a whole. Journalists are thereby sent a message that if they report in the manner in which it may be unacceptable for an individual or group, they will suffer the consequences, at the same time, leaving the perpetrators unpunished. If the wider public realises that attacks against certain public figures may go unpunished, it will understand this trend as a lack of the rule of law, whereas public figures may become afraid to present their views in public.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, emphasises the following<sup>206</sup>: *An attack against a journalist is not only a violation of his or her right to impart information, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights respectively. Indeed, without respect for freedom of expression, and in particular freedom of the press, an informed, active and engaged citizenry is impossible. An attack against a journalist is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy.*

Upon reviewing ongoing cases of the BiH Journalists' Association<sup>207</sup>, in connection to physical attacks and threats against journalists, the following cases may be singled out as indicative:

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<sup>202</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2014, Item 33

<sup>203</sup> The journalists filed complaints with the Ombudsman Institution, registered under Nos: Ž-SA-06-870/10 and Ž-SA-06-481/12. In one of those cases, the complainant settled with the employer and ended the case, and in the other case the journalist eventually resigned and started working for another media outlet.

<sup>204</sup> Ž-SA-06-870/10, Rec No. P-15/11

<sup>205</sup> Ž-LI-05-109/17, Rec No. 117/17

<sup>206</sup> Report by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Human Rights Council, 20<sup>th</sup> session, 04 June 2012, Paragraph 54

<sup>207</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2016, FMHL cases from the previous period which are still ongoing

- In the case of threat that took place on 27 March 2010<sup>208</sup> in front of several witnesses in a public area, a known perpetrator publicly threatened the life and physical integrity of a journalist. It is indicative that the relevant prosecutor's office has never passed a decision in this case. The Ombudsman Institution has not conducted an investigation on its own and relies on information provided by the BiH Journalists' Association;
- The next case refers to a physical attack exerted by an unknown perpetrator on 25 January 2014<sup>209</sup> against a journalist who is also a director of a foundation and an activist. The identity of the perpetrator has never been established. We should note that our Institution has also conducted an ex officio investigation of this case<sup>210</sup> initiated on the basis of information gathered from the media. We have requested that the relevant police administration inform us of actions they have taken.<sup>211</sup> The BiH Journalists' Association states that there is a possibility that the attack has been related to the activities of the foundation managed by this journalist. This case raises the issue we have already mentioned of who may be considered a journalist, in which capacities and when and where does the work of a journalist stop, what if other persons and the public in general still consider him or her a journalist and how can we precisely establish the motive of the attack. We have to take into account that the motive may not be linked necessarily to any activity that a journalist carries out at a particular point of time, but that he or she may also be perceived as a symbol. This, certainly, raises the question if in these cases we can claim that an attack is linked with the fact that the person is a journalist, though he or she may not have been performing his or her journalistic assignments at the time of the attack.
- We will also reflect briefly on an issue that the Ombudsman Institution encounters in its work in the field of discrimination prohibition, in line with the Law on Prohibition of Discrimination<sup>212</sup>, and that is discrimination on the basis of assumption. In the above case, the question is if someone may be attacked on account of assumption of being a journalist in the same way as someone may be discriminated on any other grounds. Another issue that may arise in practice is if another person, for example, a family member, close friend or associate may be subject to an attack because of his or her connection to a journalist. The question is how to establish a motive in this case. (The Law on Prohibition of Discrimination does establish discrimination against persons associated as mentioned above)<sup>213</sup>.
- The third case is the case of a physical attack that took place on 18 December 2014<sup>214</sup>, with a known perpetrator and also in front of several witnesses; however, the relevant prosecutor's office has not yet decided upon it.

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<sup>208</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2016, FMHL cases from the previous period which are still ongoing, No. 1

<sup>209</sup> Ibid, No. 4

<sup>210</sup> Case registered by the Ombudsman Institution under No. Ž-SA-06-106/14

<sup>211</sup> The Ombudsman Institution, after conducting an investigation of the case in question and collecting necessary information from the relevant police administration about all investigation activities that they have carried out, has closed the case. We are aware of the fact that resolving certain criminal cases may last for years due to objective circumstances and that a certain number of criminal cases may never be solved.

<sup>212</sup> Official Gazette of Bosnia and Herzegovina, Nos. 59/09 and 66/16

<sup>213</sup> See the Opinion of the European Court of Justice in the case No. C-303/06 of 31 January 2008, issued by independent lawyer Poiates, in relation to discrimination against persons who are associated with persons with disabilities

<sup>214</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2016, FMHL cases from the previous period which are still ongoing, No. 5

Certain cases characterised as physical attacks by the BiH Journalists' Association are disturbing having in mind that public executive and legislative officeholders are mentioned as alleged perpetrators<sup>215</sup>. In such cases, in addition to legally prescribed sanctions if their responsibility is established in terms of having committed attacks against journalists, condemnation by a wider public is also necessary.

The 2015 Human Rights Watch Report: A Difficult Profession describes a case of a TV news crew which was physically attacked in October 2011 while filming a story. On that occasion, the journalist was forced to contact her editor due to inadequate reaction by local police officers. The editor had to contact the police officers' superiors at the local police station to force them to react. The journalist stated afterwards in an interview for the Human Rights Watch that the local police reluctantly agreed to receive them in the police station and take their statements. Proceedings were initiated against two perpetrators eight months after the attack<sup>216</sup>.

The Recommendation of the Committee of Ministers of the Council of Europe, No. CM/Rec (2016)4, adopted on 13 April 2016 in relevance to the protection of journalism and safety of journalists and other media stakeholders<sup>217</sup> emphasises the importance of effective investigations, as follows:

*'Investigations must be effective in the sense that they are capable of leading to the establishment of the facts as well as the identification and eventually, if appropriate, punishment of those responsible. The authorities must take every reasonable step to collect all the evidence concerning the incident. The conclusions of the investigation must be based on thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate. State authorities are also obliged to investigate the existence of a possible link between racist attitudes and an act of violence. The relevance of gender-related issues should also be investigated.'*

However, regardless of the fact that cases are tried and sanctions are pronounced, the BiH public should condemn any conduct that may harm anyone's dignity and prevent from performing any professional duties.

### **Online Attacks and Threats**

The Ombudsman Institution of BiH would like to draw the attention of the public to certain alarming trends which may be linked to the growing number of online media and expansion of social networks. According to the BiH Journalists' Association, a certain number of media has been exposed to online attacks through website hacking and blocking.<sup>218</sup> The Internet has enabled an easier communication and information spreading and, as we have stated earlier, undermined the "monopole" of traditional mass media. However, it has also enabled individuals or groups to take actions that use to be accessible only to the authorities (in exceptional cases and procedures prescribed by law). In the past, only the authorities could suspend or prevent distribution of certain

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<sup>215</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2013, Nos. 1 and 38

<sup>216</sup> Human Rights Watch "A Difficult Profession: Media Freedom under Attack in the Western Balkans", 2015, pgs. 15-16

<sup>217</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016806415d9#\\_ftn1](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806415d9#_ftn1), Paragraph 19

<sup>218</sup> According to the BiH Journalists' Association, five such attacks were registered – two in 2014 and 2015 respectively and one in 2016

information by a certain media outlet. Today, with easily accessible technologies, a much larger number of individuals or groups is able to do that.

Individuals or groups, who wanted in the past to prevent traditional mass media from distributing certain information, having at their disposal court procedures to protect their rights or to break the law by threatening or attacking journalists, can do that today by hiring other individuals in Bosnia and Herzegovina or abroad to carry out online media attacks.

Human Rights Watch in its report entitled “A Difficult Profession: Media Freedom under Attack in the Western Balkans”, describes an example of an online portal that needed several days to restore its website operations after three cyber-attacks.<sup>219</sup>

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pointed out, as follows<sup>220</sup>: *The Special Rapporteur is deeply concerned by harassment of online journalists and bloggers, such as illegal hacking into their accounts or monitoring of their online activities.*

The UN Educational, Scientific and Cultural Organisation (UNESCO) in its publication entitled: “*Building Digital Safety for Journalism - A Survey of Selected Issues*”<sup>221</sup> describes twelve types of attacks against online media<sup>222</sup>, including: surveillance and mass surveillance; software and hardware exploits without the knowledge of the target; phishing attacks<sup>223</sup>, fake domain attacks; MITM attacks<sup>224</sup>, DoS and DDoS attacks<sup>225</sup>, website defacement; compromised user accounts; intimidation, harassment and forced exposure of online networks; disinformation and smear campaigns; confiscation of journalistic work product, and data storage and mining.

Numerous media outlets, both in BiH and abroad, and governmental, non-governmental and international organisations have been exposed to these threats. However, we have to take into account that these types of online attacks may become an effective method of closing down online media, having in mind that they might face insufficient funding during the period of their inoperability.

### **Threats via Social Networks**

One of the problems that journalists have been increasingly facing is harassment via social networks. The BiH Journalists’ Association indicates that from 2013 onwards nine cases of threat or harassment and insult were registered. Out of that number, six cases involved women as victims. We have to note that these numbers are, most certainly, higher, having in mind that many of them have not been reported.<sup>226</sup>

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<sup>219</sup> Human Rights Watch: “A Difficult Profession: Media Freedom under Attack in the Western Balkans”, 2015, pg. 51

<sup>220</sup> Report by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Human Rights Council, 20<sup>th</sup> session, 04 June 2012, Paragraph 63

<sup>221</sup> UNESCO, *Building Digital Safety for Journalism - A Survey of Selected Issues*, 2015

<sup>222</sup> Ibid, pgs. 20-21

<sup>223</sup> Phishing is a set of activities used by unauthorised users to send fake emails and websites in an attempt to trick them into revealing confidential personal data.

<sup>224</sup> “Man in the Middle” attack is when a perpetrator gets in the middle of communication to eavesdrop or impersonate

<sup>225</sup> “Denial of Service” and “Distributed Denial of Service” attacks are distributed attacks of denial of services in which multiple compromised computer systems attack a target, such as a server, website or other network resource, and cause a denial of service for users of the targeted resource. The flood of incoming messages, connection requests or malformed packets to the target system forces it to slow down or even crash and shut down, thereby denying service to legitimate users or systems

<sup>226</sup> Threats or other behaviours that insult the dignity of journalists are shared within a closed group on social networks and the person to whom those threats refer cannot be aware of them objectively.

The conference organised by the OSCE Representative on Freedom of the Media devoted to online threats targeting women journalists<sup>227</sup> has noted that women journalists experience three times more harassment of any form than their male colleagues<sup>228</sup>. Motives for that should be considered in every individual case. The OSCE Representative on Freedom of the Media publication entitled “Countering Online Abuse of Female Journalists”<sup>229</sup> underlines that online harassment may have different motives and forms, which is why different prevention and intervention strategies must be developed.<sup>230</sup> Those motives and forms may be the following:

- General intimidation aimed to stop a particular journalist from pursuing a particular story; an attempt to discontinue a particular journalist from covering an entire beat; a means of discouraging a media organization from pursuing a story or set of stories. Such online intimidation of female journalists may strike a sexualized or gendered tone, but the aims are typically strategic self-interest and/or political.
- In other cases, online threats of journalists may represent antisocial or interpersonal offensive acts by an individual with no strategic aims other than psychologically or physically hurting someone who happens to be a journalist. Some offenses may be explicitly sexualized or gender-based forms of aggression. Some may represent cyber-bullying.<sup>231</sup>
- Other threats may represent a form of workplace aggression committed by a co-worker or boss. These events may take the form of explicit gender discrimination or sexual harassment.

The issue of women journalists’ harassment must be viewed in the context of gender equality and combating stereotypes that women have been facing for years, having in mind that certain views and behaviours, pushed on the margins through enormous efforts, have been returning to the public space via social networks. For example, the BiH Journalists’ Association mentions three cases of threats and online abuse targeting women journalists in 2016.<sup>232</sup>

The mentioned cases are the indicator of problems which women encounter when working in public spaces. In one case, a woman journalist experienced insults to her dignity, physical appearance and profession, because she had brought into question health institutions’ work in one of her stories.<sup>233</sup> In another case, a woman journalist received threats of death or physical attack, because she commented in a satirical manner on her face-book profile the relation between religion and public space, as well as the issue of identity.<sup>234</sup> In the third case, a woman journalist who commented an election campaign on a local online portal received death threats.

In all of these cases we notice the absence of public debate, denial or any attempt of discussion about or attitude towards these cases. Moreover, we witness online persecution of those who think differently.

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<sup>227</sup> Held on 17 September 2015 in Vienna, entitled: “*Digital Threats Targeting Female Journalists*”

<sup>228</sup> <http://www.osce.org/fom/179486>

<sup>229</sup> New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists, OSCE, 2016

<sup>230</sup> Ibid, pg. 48

<sup>231</sup> Cyber-bullying may be defined as use of information and communication technologies for a deliberate, frequent and hostile behaviour of individuals or groups with the intention of inflicting harm on another person. One of the most harming effects of cyber-bullying is the fact that it happens online without time or space restrictions, keeping the victim constantly exposed to it.

<sup>232</sup> Free Media Helpline, Register of Media Freedom and Journalists’ Rights Violation in BiH, 2016, Nos. 35, 39 and 43

<sup>233</sup> The woman journalist filed a complaint with the Ombudsman Institution, registered under No. Ž-SA-06-922/16. The case is under investigation

<sup>234</sup> The woman journalist filed a complaint with the Ombudsman Institution, registered under No. Ž-SA-06-881/16. A decision has not been passed yet

The BiH Journalists' Association also mentions a case of threat and mobbing experienced by one of the women news editors at one of the BiH public broadcasters.<sup>235</sup> It is important to note that it indicates that social networks serve to colleagues at work for "horizontal mobbing"<sup>236</sup> and harassment.

The importance that the public must attach to online abuse of women journalists and to issues arising from it was underlined in the OSCE Representative on Freedom of the Media publication entitled "Countering Online Abuse of Female Journalists"<sup>237</sup>:

*Stereotypes and prejudices about what is and what is not appropriate for women to say, do, or wear did not appear online all of a sudden -all were apparent in mainstream media a long time ago. But the Internet has blurred the boundaries between private and public, professional and non-professional, entertainment and news. Consumers are becoming producers, which affects the traditional media power structures with regard to content regulation: it is often not clear who should take responsibility for what is said and published online.*

*The crucial question is where to draw the line between freedom of expression and misogyny that encourages violence? The idea that technology would provide a shield from gender-based violence and discrimination now appears as a Utopian dream. The cyber world is not a safe haven. On the contrary, it is a dangerous and violent labyrinth for both men and women and for female journalists in particular. The nature of their work, the vulnerability of their positions and fragile job security make them easy targets for those who do not comprehend that freedom and equality cannot survive if the half of the world population live and work in a fear and danger.*

In further consideration of online threat and abuse, one must analyse the current practice of prosecution. For example, the BiH Journalists' Association mentions a case from 2013 when a foreign citizen was threatened by a face-book group on account of satirical comments published on a portal<sup>238</sup>.

There is a concept of declaring non-jurisdiction if a case involves a foreign citizen, especially if we have in mind the fact that the countries of former Yugoslavia are still largely connected through public space, not only due to lack of language barriers (except the media from Slovenia and Macedonia), but because in all of these countries mutual news and shows are more or less watched and print read.

The fact that certain persons threaten a journalist who is a foreign citizen (unless, of course, the context of those threats constitutes grounds for criminal prosecution) cannot alone constitute a ground for investigation.

The above cases indicate that it is necessary to consider the best possible ways of responding to various phenomena which have or may have a negative character on social networks. At the same time, we certainly have to take into account that social networks have their own standards and

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<sup>235</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2016, No. 11. According to the BiH Journalists' Association, the case was closed at a later stage upon her own request

<sup>236</sup> Horizontal mobbing appears amongst work colleagues or workers at similar positions in a work environment

<sup>237</sup> New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists, OSCE, 2016, pg. 11

<sup>238</sup> Free Media Helpline, Register of Media Freedom and Journalists' Rights Violation in BiH, 2013, No. 16

procedures<sup>239</sup>, which allow individuals more freedom than they use to have in the time of the “monopole” of the traditional media.

The authorities in BiH must find a balance between encouraging and supporting rights to freedom of expression, on one hand, and restrictive measures of preventing harassment, hate speech, discrimination and other harmful behaviours, on the other hand. This was underlined as its case law by the European Court of Human Rights, stating that Article 10 of the European Convention on Human Rights does not protect solely<sup>240</sup> “*the information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broad-mindedness without which there is no democratic society.*”

When considering initiation of criminal proceedings in regard to views expressed via a particular social network or when considering individual cases, it is necessary to take into account both the freedom of expression and the wider context within which certain views are expressed.<sup>241</sup>

These issues should be considered not only in the context of a more efficient processing of threats and attacks against journalists, but also in terms of other persons who experience the same or similar situations.

### 3.1.3.5. Protection against Defamation

One of the issues arising from the journalistic profession are defamation lawsuits and whether defamation lawsuits filed against the media and journalists may also be used as a means of exerting pressure upon them to avoid reporting on certain topics or physical or legal persons.

There are three laws on protection against defamation in Bosnia and Herzegovina<sup>242</sup> and there are no major differences among them. They have been in effect from 2001 in Republika Srpska, from 2002 in the Federation of BiH and from 2003 in the Brčko District of Bosnia and Herzegovina, respectively. These laws have completely decriminalised defamation making Bosnia and Herzegovina the first country in Europe to have achieved that. The laws have been drafted in line with recommendations of the Council of Europe and standards of the European Court of Human Rights. A complete decriminalisation of defamation means that criminal proceedings are completely excluded as well as a possibility of pronouncing fines or prison sentences to journalists, editors or media outlet owners.<sup>243</sup>

These three defamation laws in Bosnia and Herzegovina do not define the lowest and the highest indemnification amounts; instead, they define two conditions which the court must take into account, as follows: (1) *indemnification must be proportionate to the damage inflicted upon the injured party's reputation and is established solely for the purpose of damage compensation,*

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<sup>239</sup> For example, the ‘Face-book’ social network applies ‘Community Standards’ to regulate multiple issues, including users right to expression, harassment, direct threats, etc. <https://www.facebook.com/communitystandards>

<sup>240</sup> Handyside vs. United Kingdom, 1976, quote from the Human Rights Handbook: Freedom of Expression, A Guide to the Implementation of Article 10 of the ECHR; Monica Macovei, published by the CoE, Sarajevo 2002, pg. 15

<sup>241</sup> For example, a relevant prosecutor’s office in the United Kingdom when passing a decision shall not criminally prosecute a person who has expressed inappropriate views on the ‘Twitter’ social network about other persons’ sexual orientation (<http://blog.cps.gov.uk/2012/09/dpp-statement-on-tom-daley-case-and-social-media-prosecutions.html>) taking into account a broader context in which the person expressed his or her views

<sup>242</sup> Law on Protection against Defamation of Republika Srpska (Official Gazette of Republika Srpska, No. 37/01), Law on Protection against Defamation of the Federation of BiH (Official Gazette of BiH, Nos. 19/03 and 73/05), Law on Protection against Defamation of the Brčko District of BiH (Official Gazette of the Brčko District of BiH, No. 14/03)

<sup>243</sup> BiH Journalists’ Association – First 100 questions on the rights of media workers in BiH, December 2010, pg. 5

additionally binding the court to take into account (2) *if the amount prescribed by the court may lead to major financial loss or bankruptcy of the injurer*. Most of the defamation indemnification amounts pronounced in BiH range between BAM 1000 to 5000. The highest amounts pronounced in exceptional cases totalled to BAM 20.000.<sup>244</sup> The BiH Journalists' Association states that one television station and one weekly newspaper complained in the past on account of major expenses they had in defamation lawsuits<sup>245</sup>.

The Ombudsman Institution of BiH has addressed the High Prosecutorial and Judicial Council of Bosnia and Herzegovina (BiH HJPC) requesting data on the number of defamation cases for the previous and current years. The BiH HJCP has responded.<sup>246</sup>

According to their response, in 2015 the courts of BiH received 263 defamation lawsuits and in 2016 as per 21 October 2016 they received 226 defamation lawsuits. However, these data alone cannot serve as an indicator of whether certain physical or legal persons in BiH abuse these lawsuits<sup>247</sup> as a strategy to demotivate reporting on certain topics.

Certain discrepancies are visible at some courts in terms of caseload. For example, the 2016 report shows that certain first-instance courts covering smaller municipalities have more cases than first-instance courts covering much larger municipalities and areas. It may indicate that in certain places certain physical or legal persons are more inclined to filing lawsuits, not in terms of protecting their subjective rights, but for the purpose of discouraging reporting on certain topics.

One of the problems existing in Bosnia and Herzegovina is the implementation of legal frameworks. 'Reporters Without Borders' emphasise in connection to the position of Bosnia and Herzegovina in the World Press Freedom Index (68<sup>th</sup> place out of 180 countries) the following<sup>248</sup>: *'This country has the world's most liberal media freedom laws but their implementation is held back by a saturated judicial system. Defamation was decriminalized in 2003 but lawsuits are still possible. Journalists are often the targets of threats and political pressure. The situation is aggravated by the fact that the pro-government media continue to enjoy direct and indirect state subsidies.'* Noticeable in public and journalistic profession is the attitude that certain topics should be avoided for various reasons, which in turn might irreversibly harm the human rights and democracy development.

The text written on the occasion of the World Press Freedom Day on 2 May 2016<sup>249</sup> and published on the Mediacentar Sarajevo website, reads that political pressure and economic status are the main obstacles to media freedoms. It includes, among other issues, statements of journalists, as follows:

*People are increasingly afraid of expressing their opinions about any issue. They are afraid to express their opinions of certain topics in public fearing from lack of public understanding and condemnation, no matter how banal a topic may be.*<sup>250</sup>

(...)

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<sup>244</sup> Ibid, pg. 11

<sup>245</sup> Free Media Helpline, Registers of Media Freedom and Journalists' Rights Violation in BiH for 2013 and 2014, No. 34, Slobodna Bosna Weekly Magazine Sarajevo and Alternative Television Banja Luka

<sup>246</sup> The HJPC response registered under No. 06-12-2807-2/2016 of 21 October 2016, received by the Ombudsman Institution on 25 October 2016

<sup>247</sup> Notwithstanding the grounds or potential outcome, aimed at diverting from reporting on certain topics

<sup>248</sup> <https://rsf.org/en/bosnia-herzegovina>

<sup>249</sup> <http://www.media.ba/bs/magazin-novinarstvo/politicki-pritisci-i-ekonomska-nesigurnost-najvece-prepreke-slobodi-medija-u-bih>

<sup>250</sup> Ibid, journalist Almir Panjeta

*Due to economic or financial uncertainty, both journalists and media outlet owners may start compromising in order to survive. There is nothing worse for the freedom of media than such compromises. Actually, I think that the freedom of speech and journalism ends where a compromise starts.*<sup>251</sup>

Unless the BiH authorities manage to efficiently enforce laws protecting journalists' rights and stop the convergence of negative trends of physical threats and attacks, online attacks and abuse and other forms of pressure, many journalists will find themselves in a situation in which they will avoid reporting on certain topics.

The Council of Europe describes in its publication entitled "Human rights and a changing media landscape"<sup>252</sup> the situation of "self-censorship" in which journalists find themselves after a series of threats and pressures exerted upon them and after constant stress and feeling of insecurity:

*"There are many journalists who stop writing critically on issues of importance. Often, we do not know why. Apart from threats of physical harm, there are other, less visible forms of violence which can silence a journalist. There are countless situations where there are no bruises, no explosions and no lost lives; violence that creeps in more quietly, that is impossible to point out, is impossible to address directly. What can be done when a journalist stops writing because someone has asked if they knew where their son or daughter was at the time? Or if they want to see their family again?*

*This is psychological violence which results in trauma. Although less spoken about, it affects journalists every day. It can manifest itself in various ways, including intimidation, harassment or threats. You are intimidated for example if you are persistently followed by security agents, or if your home or editorial office is being watched, or if you are warned against doing something you have the right to do – such as writing an article that will expose wrongdoings in society. You can be harassed in person, over the phone, or in e-mails sent to you. All such cases have one thing in common – you do not know if, or when, these threats will become a reality. But they can make you fearful for your safety or for the safety of your loved ones."*

It is evident that the promotion of and strengthening the freedom of expression and speech falls within the responsibility of all stakeholders in Bosnia and Herzegovina at all levels. The mentioned measures must be initiated by the highest levels of authority through all public institutions, non-governmental sector and journalists themselves. Without the involvement of all of them, it is impossible to reach the desired level of democratic development.

#### **IV. CONCLUDING CONSIDERATIONS**

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<sup>251</sup> Ibid, journalist Rubina Čengić

<sup>252</sup> Council of Europe, December 2011, Chapter 1: Protection of journalists from violence; by Dunja Mijatović, pg. 27

The freedom of the media is the key element to any democratic development that adheres to the basic human rights standards. In Bosnia and Herzegovina, we currently have a large number of media outlets operating, starting from the public broadcasters,<sup>253</sup> numerous television and radio stations owned by cantons or local self-government units, through commercial television and radio stations, print media, online portals, local branches of global media networks<sup>254</sup> to other media outlets and bloggers. The significant growth of media outlets has not contributed to a better status of journalist. Quite contrary, journalists have found themselves in a very unstable and insecure labour market, resulting in an environment which is increasingly worsening.

Regardless of the fact that the BiH and entity legislative frameworks are largely harmonised with the international standards (e.g. defamation decriminalisation, high level of constitutional and legal guarantees for freedom of expression, regulated access to information, etc.), individuals linked to the media and the wider public often testify that those regulations are not implemented in reality.

Of course, professional commitments that journalist have, significance of their work and public expectations must not exclude the significance of their work ethics. Only in that way journalists can preserve the dignity of their profession and the reputation it deserves. A journalist who adheres to journalistic ethical standards has the right to expect from the authorities to be protected against all attacks and threats.

The BiH Journalists' Association and the Press Council, with the support of the *Civil Rights Defenders* have drafted during 2010 the so-called Shadow Report for Bosnia and Herzegovina, on the basis of an in-depth analysis and the CoE's Media Development Indicators<sup>255</sup>. This Report indicates that the development of the BiH society with high democratic standards is an obligation for Bosnia and Herzegovina, as it is for all countries members of the Council of Europe.

According to the Press Council "the authorities in BiH, from the municipal to local level, have not expressed any interest in the Indicators or the assessment of their implementation in the country or the constitutional readiness for the protection of the freedom of expression and basic human rights of journalists and media workers"<sup>256</sup>. The media market in Bosnia and Herzegovina is fragmented and saturated having, according to the Shadow Report for BiH, "nine daily newspapers, six news agencies and professional journalists' associations, as well as a complex public broadcasting system of electronic media."<sup>257</sup>

One of the Indicators (CoE Resolution 1636/2008) is that the media outlets should have editorial independence from the owner, for example, through agreements with owners on code of conduct, with the aim of preventing the owners from interfering with editorial activities or compromising impartial journalism. Public electronic media must also be protected against political influence in their daily editorial activities.

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<sup>253</sup> Radio and Television of BiH, Radio and Television of FBiH and Radio and Television of Republika Srpska

<sup>254</sup> For example, Al-Jazeera Balkans and N1

<sup>255</sup> In order to facilitate the assessment of the freedom of the media in member countries, the Council of Europe's Parliamentary Assembly adopted Media Development Indicators, on the basis of which it is possible to assess the freedom of the media in member countries. The EU MPs have also endorsed a special document entitled Recommendation 1848 referring to the Resolution 1636/2008, recommending the member countries to assess by themselves the degree of the media freedoms in their countries, on the basis of the 2008 Media Development Indicators

<sup>256</sup> The Ombudsman Institution of BiH, Recommendations for the Improved Protection of Children's Privacy When Violated by the Media in Bosnia and Herzegovina, pg. 37

[http://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2013020406523264bos.pdf](http://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013020406523264bos.pdf)

<sup>257</sup> The BiH Journalists' Association and Press Council, supported by the *Civil Rights Defenders* in 2010, Shadow Report for BiH, on the basis of an in-depth analysis with the application of the CoE's Media Development Indicators

According to the 2012 document of the Ombudsman Institution entitled “Recommendations for the Improved Protection of Children’s Privacy When Violated by the Media in Bosnia and Herzegovina”, there is a large discrepancy, on one hand, between the opinion of NGO’s that took part in the development of this document and the academia, on the other hand, who is directly involved in the educational process of journalists.<sup>258</sup> In its 2012 Recommendations, the Ombudsman Institution expressed its concerns over the Press Council’s assessment that the work conditions of journalists are very poor and unfavourable and that their wages are low and irregular, and that they frequently work within an undefined employment status.

Lack of collective bargaining agreements in the area of journalism largely contributes to the difficult status of journalists. In this context, we must remind of the decision of the FBiH Supreme Court, No: Rev-794/04 of 06 September 2005, reading that “the employer must not avoid its obligations stemming from the FBiH Labour Law, Articles 69 and 111, referring to salary payment, contributions and other payments, on account of a difficult financial situation”. This decision also reads that: “Collective bargaining agreements are a direct source of workers’ rights within their employment status, as it clearly stems from Article 11 of the FBiH Labour Law”. This, of course, means that an employer cannot arbitrarily deny any of the rights of an employee on account of any circumstances arising within a company. Only employees on the territory of the Federation of BiH are entitled to this important right defined by the mentioned decision of the FBiH Supreme Court.

Further in the Report, the Ombudsman Institution of BiH points out the key issues concerning the position of journalists and, on the basis of the mentioned Indicators, issues recommendations to relevant authorities to improve their position and ensure the application of international standards regulating this area.

#### **4.1. Legal Framework**

- The Ombudsman Institution notices that the relevant authorities in Bosnia and Herzegovina and Entities have partially implemented the recommendation of the CoE Parliamentary Assembly prescribing that the right to freedom of expression and information in the media should be guaranteed by national laws. The normative framework that regulates the media status in Bosnia and Herzegovina and its Entities has been largely consolidated with international standards: defamation decriminalisation, high level of constitutional and legal guarantees of freedom of expression, legally regulated free access to information, etc. Nevertheless, a conclusion may be drawn that the authorities, political parties and journalists themselves believe that there is still room for the improvement of the legal framework regulating this area.
- Despite a number of laws, journalists in Bosnia and Herzegovina are frequently exposed to political threat and pressure. Statistics show that the media status is generally at a lower level today compared to earlier years, which stems from the inadequate implementation of laws regulating the media.
- Electronic media, compared to other media types, has been much better regulated, particularly, through the set of by-laws that took effect in early 2012.

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<sup>258</sup> The Ombudsman Institution of BiH, supported by *Save the Children*: Recommendations for the Improved Protection of Children’s Privacy When Violated by the Media in Bosnia and Herzegovina (2012), pgs. 37 and 38

- Ensuring further development of the independence of the Communications Regulatory Agency of BiH is strategically important. The existing legal framework should be reinforced with formal procedures and adequate tools for their implementation, which would serve as a deterrent and prevent all inappropriate political pressures against the media and rights involving the freedom of expression and press.
- In order to regulate the press and online media in Bosnia and Herzegovina and its Entities, adequate media laws should be adopted.
- Having in mind that one of the CoE Parliamentary Assembly recommendations suggests that the CoE member countries should ensure that “ownership of the media and economic influence should be transparent”, it is potentially possible to establish and define mechanisms by future media laws that would ensure transparent media funding from public budgets, which is key to preventing political clientelism and preserving the freedom of the media.
- The media-related legal framework is seriously threatened by the Preliminary Draft Law on Free Access to Information of BiH, which might terminate the existing rights in the area of free access to information and is in contravention of international standards.
- Standards on disclosing data on the ownership of websites of online media do not exist and a large number of online media have not been registered at all, which makes it difficult to prove their ownership and which might cause problem in potential court proceedings lead against them. The Ombudsman Institution is of the standpoint that adequate legal provisions have to be drafted that would prescribe mandatory registration for online web portals functioning as media outlets, which would lead to introducing an impressum of owners, editors-in-chief and journalists. In this manner, citizens would be able to trust web portals or, in case they breach codes of ethics for press and online media, file complaints.

#### **4.2. Employment Status of Journalists**

- According to the BiH Journalists’ Association research, between 34% and 40% of journalists in Bosnia and Herzegovina work without adequate employment agreements, while those who have those agreements are not sufficiently protected.<sup>259</sup>
- The Ombudsman Institution is of the standpoint that journalist working form the media in Bosnia and Herzegovina should have adequate employment agreements and social protection in order to be able to remain impartial and independent. In this way, the CoE Parliamentary Assembly recommendations would be implemented.
- Journalists in certain media outlets do not have economic and social protection which they need for a successful fulfilment of their important social role.
- The work of a large number of media outlets and their structure and organisation are very poor due their difficult financial situation. Particularly troubled are public broadcasters due to the lack of political will needed for resolving their financial difficulties (according to workers in public broadcasters, many of them do not have employment agreements or social protection). The situation is bad also in the private sector, especially in smaller media

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<sup>259</sup> BiH Journalists’ Association, file No. A-159/17, of 17 February 2017

outlets.

- Most of the privately-owned media does not have trade unions. Even in rare cases when they do have them, membership is minimal. Workers in private media do not believe that trade unions can bring changes and that journalists who join them are exposed to enormous pressure.
- Although newsrooms are formally separated from owners, the owners of some media outlets very frequently exert pressure over their newsrooms, which is why censorship and self-censorship are part of the activities of a certain number of journalists.
- In certain media outlets, other rights of journalists are violated, such as regularity and amount of salary, unpaid contributions, inadequate annual leave, overtime work payment and work during holidays, summer holiday bonuses and other workers' rights. The data of the RS Press and Media Trade Unions indicate that "the rights of journalists are violated more often and to a larger degree in the absence of trade unions, which disables them to fight together for their rights".
- The identified reasons to inefficient application of labour law include unclear formulation of employment rights, expressed inclination by employers to care only about their financial status and their expressed inclination to nepotism when employing, as well as inefficiency of institutions that should monitor the labour law application.
- Lack of collective bargaining agreements at certain media outlets complicates the status of journalists to a large extent.

### **4.3. Threats and Attacks against Journalists**

- Except for the data kept by the BiH Journalists' Association, there is no official record in Bosnia and Herzegovina that should be kept by the public authorities on the number and types of threats and attacks exerted against journalists. Therefore, the Ombudsman Institution of BiH has faced aggravating circumstances in drafting this Report.
- It is undoubtedly very difficult to draft a situation analysis and prevention plan for increasing the level of protection of journalists without complete and precise record-keeping. An aggravating circumstance is also the versatility of attacks and threats to which the journalists are exposed as well as formal criminalisation of acts without a prior thorough analysis.
- The process of information collection on the number and types of threats and attacks against journalists is of great importance for analysing the problem and designing the best solutions. We are aware that a retroactive collection of information would be inadequate, but we believe that Entity governments and government of the Brčko District and their respective ministries of interior should commence in the following period a process of collecting accurate information on threats and attacks exerted against journalists. Involving journalists' associations and civil society in this process, through regular joint meetings, would certainly improve the final outcome.
- The judicial content management system (CMS) does not provide for any possibility of recording cases of attacks against journalists in BiH separate from other cases because

criminal codes do not prescribe an ‘attack against a journalist’ as a criminal offence. That is why several prosecutor’s offices were unable to respond to our request for information.

- The Ombudsman Institution of BiH notices that the judicial authorities have no record of injured parties, witnesses and participants in court cases in terms of their profession, which would certainly be useful in regard to extensive oversight of certain social phenomena and prevention of negative social trends.
- Inadequate application of the Freedom of Access to Information Act at all levels in Bosnia and Herzegovina prevents journalists from having an unimpeded access to information. These laws serve as a tool to journalists and simplify their access to information in the course of reporting about topics of public relevance.
- A growing number of online media and expansion of social networks have led to an increased number of attacks via Internet by hacking and blocking webpages. Journalists have been increasingly abused and harassed via social networks. It is particularly alarming that women journalists have been increasingly exposed to this type of attacks and to a larger degree than their male colleagues. Motives of attacks most frequently resemble an intention to destimulate a journalist from publishing a story or piece of information or an intention of sexual harassment or other type of gender-based harassment and cyber-bullying.

## V. RECOMMENDATIONS

1. It is hereby recommended to the Ministry of Justice of RS, Ministry of Justice of FBiH and the Judicial Commission of the Brčko District of BiH to consider:
  - Defining an attack against a journalist as a criminal offence in criminal codes or as a serious criminal offence of attacks against an official person on duty;
  - Defining an attack against a journalist as a separate public safety offence in public safety laws.
2. It is hereby recommended to the High Judicial and Prosecutorial Council of BiH to consider:
  - Upgrading the existing CMS in the manner in which to ensure entering data on victims, witnesses and parties to the case with the aim of keeping record of profiles of individuals exposed to certain types of criminal offences as well as of those of perpetrators.
3. It is hereby recommended to Centres for Training Judges and Prosecutors of Republika Srpska and Federation of BiH to consider:
  - Within their judges and prosecutors initial training and professional development programmes, organising training sessions specifically about the importance of processing criminal offences against journalists. The training should include

experiences and best practices sharing, with the participation of international organisations, NGOs and journalists, when necessary.

4. It is hereby recommended to the BiH Ministry of Security, RS Ministry of Interior, FBiH Ministry of Interior, Police of the Brčko District of BiH and cantonal ministries of interior to consider:
  - Within their police officers' professional development programmes, organising training sessions specifically about the importance of processing criminal offences against journalists. The training should include experiences and best practices sharing, with the participation of international organisations, NGOs and journalists, when necessary.
5. It is hereby recommended to the BiH Council of Ministers, RS Government, FBiH Government, Government of the Brčko District of BiH and cantonal governments to consider:
  - Initiating regular meetings or contacts with civil society organisations to share information in this field, with the participation of relevant ministries of security and ministries of interior.
6. It is hereby recommended to relevant ministries at the BiH Council of Ministries, RS Government, FBiH Government, cantonal governments and departments of the Brčko District of BiH to consider:
  - Organising regular meetings and gatherings and establishing contact points with journalists' organisations and associations, at which those organisations and associations would be able to point out cases of political and other pressures exerted upon journalist to relevant ministries.
7. It is hereby recommended to the BiH Ministry of Justice, RS Ministry of Justice, FBiH Ministry of Justice, Judicial Commission of the Brčko District of BiH, cantonal justice ministries, centres for training judges and prosecutors in RS and FBiH and journalists' associations to consider:
  - Organising regular topical conferences to invite representatives of academia, judges, lawyers, experts, journalists and other interested parties with the aim of evaluating and consolidating current case law in protection against defamation. As necessary, to consider involving representatives of international organisations and NGOs.

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## ANNEX I – EUROPEAN COURT CASE LAW

### *Hachette Filipacchi v France (2007)*

French weekly Paris-Match published an article covering the murder of Prefect Claude Érignac. The article included the photograph of the Prefect's body on the ground, taken just moments after his murder. French courts instructed Paris-Match to publish the statement clarifying that the photograph was published without the approval of the family of Claude Érignac adding that the family believed that the publication of such photograph was an act of invasion of privacy.

Publisher which presented its Application, complained to the Court that the requirement to publish such statement presented violation of its right to freedom of expression. The Court believed that such requirement presented interference with the freedom of expression of the publisher which submitted the Application, and subsequently deliberated to ascertain whether such interference was warranted. The Court believed that the interference aimed at accomplishment of one of the legitimate goals specified under the provisions of Article 10, Paragraph 2, specifically to “protect the rights and freedoms of others”.

It was also noted that the key issue was to determine whether the measure was “necessary in a democratic society”. The Court determined that the local courts pronounced the most lenient restrictive sanction possible under the French Civil Code with reference to the rights of the entity which submitted the Application. Accordingly, the Court determined that interference of the local courts with freedom of expression of the Applicant was justified and that no violations of Article 10 occurred.

### *Von Hannover v Germany (2012)*

This case referred to publication of considerable number of photographs of Caroline von Hannover, oldest daughter of the Prince Rainier III of Monaco, in German magazines. Following the proceedings, she initiated before the German national courts for publication of these photographs, she submitted the Application to the Court complaining that the state did not provide sufficient protection of her private life and image. The Court approached these issues with the intent to weigh the protection of the Applicant's private life against the freedom of expression guaranteed under Article 10. On the one hand, the Court highlighted that the freedom of expression included publication of photographs. On the other hand, the Court found that this issue referred to the area in which the protection of rights and reputation of others was of particular importance. The majority of conclusions made by the Court were based on its analysis of rights stipulated under the provisions of articles 8 and 10. Specifically, the contribution of publication of photographs or articles in the press to the debate of public interest represents a decisive factor in the process of assessment of the rights stipulated under Article 8, in contrast to the rights stipulated under the provisions of Article 10. The Applicant did not hold any public office, and the photographs related solely to her private life (and to very personal and even intimate information of importance to the Applicant) and have in no way contributed to public debate. The Court stated that such deliberation required specific interpretation of the provisions of Article 10. The Court also looked into the importance of the context in which the photographs were taken – without knowledge or approval of the Applicant, and therefore concluded that it could not completely disregard the harassment that many public figures

have to endure in their everyday lives. The Court believed that the public had no legitimate interest in knowing the Applicant's whereabouts and her behaviour in a private setting, even when she was present at venues which could not always be described as secluded and despite the fact that she was well known to the public. The Court then found that the protection of private life was guaranteed under Article 8 and that it encompassed social dimension too, rather than just narrow family circle. Even the persons that are well known to the general public have to be able to have "legitimate expectation" that their private life would be protected and respected, particularly in the light of emerging communication technologies. The Court unanimously concluded that the right of the Applicant to private life was violated, because the authorities failed to protect her from harassment from the press.

*Gaweda v Poland (2002)*

The Applicant, Józef Gaweda, is a Polish citizen whose request for registration of a periodical under the title: "The Social and Political Monthly – A European Moral Tribunal" was rejected by Bielsko-Biala Regional Court. In accordance with the provisions of the Press Act and the Ordinance of the Minister of Justice on registration of periodicals, which prohibits registration of periodicals the titles of which are "in conflict with reality", the Court deemed that the title of the magazine should be relevant to its content.

The title proposed by the Applicant indicated that a European institution was established in Kety, which was untrue and misleading. Katowice Court of Appeal rejected the appeal of the Applicant to the initial decision. After a while, the Applicant addressed the Regional Court and requested to register another periodical, under the title: "Germany – A-Thousand-Years-Old Enemy of Poland", which was also rejected. The court deemed that the proposed title was in conflict with reality, adding that it concentrated unduly on negative aspects of the Polish-German relations, which created an unbalanced picture of the relevant facts. Both appeals of the Applicant against these decisions have been rejected. The Applicant complained that, by refusing to register the titles of these periodicals, Polish courts have effectively prevented him from publishing them. He cited Article 10 of the European Convention on Human Rights.

The European Court found that requesting that the title of a periodical include truthful information represented inappropriate restriction of freedom of the press. The title of a periodical does not represent a statement as such, since its principal purpose was to set the periodical apart on the press market, for its current and prospective readers.

The European Court found that the interpretation adopted by the Polish courts introduced a new criterion, which could not be inferred from the particular legal text (Article 20 of the Press Act). The European Court concluded that, since the law was not formulated precisely enough to enable the Applicant to modify his behaviour, the restrictions imposed upon him were not stipulated under the law within the framework of the substance of Article 10 of the European Human Rights Convention. The Court has therefore concluded that Article 10 of the Convention had been violated.

*Tammer v Estonia (2001)*

The Applicant, Enno Tammer, published the interview with another journalist Üla Russak, while he worked as a journalist and editor of the Estonian Daily, Postimees, with reference to publication of memoirs of Ms. Vilja Laanaru without her consent.

The text written by Mr. Russak covering the story of Ms. Laanaru was published daily in Eesti Päevaleht starting on 1 April 1996. During the course of the interview of 3 April, published in

Postimees daily, the Applicant said to Mr. Russak: “Apart from that, don't you feel that you have made a hero out of the wrong person? A person breaking up another's marriage (“abielulõhkuja”), an unfit and careless mother deserting her child (“rongaema”). It does not seem to be the best example for young girls”.

Ms. Laanaru initiated proceedings against Mr. Tammer, claiming he had insulted her with his question directed to Mr. Russak. The City Court ruled that the Applicant was guilty of the criminal offence of defamation. The Applicant complained that his right to freedom of expression, guaranteed under Article 10 of the European Human Rights Convention, had been violated.

The Court pointed to the assessment of domestic courts with regard to the nature and choice of words used under the particular circumstances and expressed the view that the Applicant could have expressed his criticism while refraining from using offensive words. The Court did not believe that it was proven that the use of the contested expressions with regard to private life of Ms. Laanaru was justified on the ground of public interest nor relevant to any issue of public importance. The Court found that no violations of Article 10 occurred.

*Colombani et al v France (2001)*

In November of 1995, Le Monde periodical, where Mr. Colombani served as the Editor-in-Chief, published an article written by Mr. Incyan, covering the confidential version of the report of Geopolitical Drugs Observatory (OGD) on production and trafficking of drugs in Morocco. Among other things, it was claimed in the article that the scope and expansion of production of Cannabis “made Morocco a serious contender for the title of a world’s leading Hashish exporter. The headline was followed by a sub-heading that read: “King Hassan II’s entourage implicated by confidential report”. The Moroccan King filed an official request to the French Minister of Foreign Affairs asking that the criminal proceedings be instituted against Le Monde periodical. Mr. Colombani and Mr. Incyan were accused of insulting a foreign head of state. Paris Criminal Court acquitted them on 5 July 1996. The King of Morocco and the prosecutor appealed against such decision of the court. Paris Appellate Court found the Applicants guilty of insulting a foreign head of state. Citing Article 10 of the European Human Rights Convention, the Applicants complained that their right to freedom of expression had been violated. The Court noted that, unlike the accused in defamation proceedings, the persons accused of having insulted a foreign head of state had no right to defend themselves by presenting evidence that their claims were truthful. The Court also noted that it was likely that the application of Section 36 of the “1881 Act” (Freedom of Press Act of 29 July 1881), conferred a special legal status on heads of State, shielding them from criticism solely on account of their function or status, irrespective of whether the criticism is warranted, which amounts to conferring on foreign heads of State a special privilege that cannot be reconciled with modern practice and political conceptions. The European Court concluded that, due to the special nature of protection granted under the Freedom of Press Act, it was likely that the criminal offence of insult of a foreign head of state would result in violation of the freedom of expression, without meeting any “pressing social need” capable of justifying such a restriction. The Court considered that there was no reasonable relationship of proportionality between the restrictions placed on the Applicants’ right to freedom of expression and the legitimate aim pursued. Accordingly, it held that there had been a violation of Article 10 of the Convention.

*Mosley v the United Kingdom (2011)*

The Applicant, Max Rufus Mosley is the former president of the International Automobile Association, non-profitable association promoting the interests of automobile associations and users world-wide, who was also in charge of Formula 1 races. In March of 2008, the News of the World, published on its front page an article headline: “F1 boss has sick Nazi orgy with 5 hookers”. The web site of the magazine featured an edited video clip, in addition to still photographs which were also posted online. On 4 April 2008, Mr. Mosley initiated proceedings against the magazine, claiming invasion of privacy. In addition, he also sought an injunction to restrain the News of the World from making available on its website the edited video. On 9 April, the High Court, refused to grant an injunction because the material was no longer private by reason of its extensive publication in print and on the Internet. In the proceedings before the High Court for invasion of privacy, the Court found that the posted images contained no Nazi connotations. It was therefore found there was no public interest in publication of the images and instructed the magazine to indemnify the Applicant.

Mr. Mosley cited articles 8 and 13, noting in his Application to the European Court that, regardless of the damages awarded, he was still a victim of violation of Article 8 of the Convention, because the News of the World was not legally required to notify him of its intent to publish the material referring to him, which would have afforded the Applicant the opportunity to apply for an injunction prior to publication. The European Court expressed the view that the publication in question have caused unwarranted invasion of privacy for Mr. Mosley. The Court concluded its deliberations by recognising that private lives of individuals who live under a close scrutiny of the public have become very lucrative commodity for certain media outlets. Although such information is mainly circulated for entertainment rather than for education purposes, there is no doubt that the protection granted under Article 10 of the Convention was used. The protection granted to the media could be superseded by the requirements stipulated under Article 8, if the information in question is of private and intimate nature and when there is no public interest in its publication. Regardless of the potential positive effects that could have been accomplished for the individual case of Mr. Mosley, given the fact that prior notification would inevitably affect political reporting and serious journalism, in addition to also affecting sensationalistic reporting relevant to the case of Mr. Mosley, the Court maintained that any restriction imposed to the press should be approached with due caution. The Court found no violation of Article 8 on the part of the United Kingdom.

*Mladina d.d. Ljubljana v Slovenia (2014)*

The Applicant, Mladina D.D. Ljubljana, is a Slovenian private company and a publisher of a weekly magazine called Mladina. The Applicant published an article covering a parliamentary debate concerning adoption of the Law on legal recognition of same-sex relationships. In the article, the behaviour demonstrated by a parliamentarian who imitated homosexual men using effeminate speech and gestures was described as a typical behaviour of a man who had sustained “a cerebral bankruptcy”. The parliamentarian brought proceedings against the publisher before Ljubljana District Court claiming that the article caused damage to his honour and reputation. The Court subsequently ruled that the parliamentarian’s claims should be recognised to some extent, and the publisher was ordered to pay damages to the parliamentarian. The Applicant complained that the decisions of the national courts violated its right to the freedom of expression granted under Article 10 of the Convention. The European Court highlighted that, given his role as a politician, the

parliamentarian in question was expected to be able to withstand harsher criticism, especially considering his own controversial behaviour demonstrated during his participation in the debate. The European Court ruled that interference with the rights of the Applicant granted under Article 10 was not necessary in a democratic society and therefore represented violation of the Convention.

*Lavric v Romania (2014)*

The Applicant, Elena Lavric, was a public prosecutor in Romania who initiated separate criminal proceedings before local courts against A.B. for making false statements and for destruction of property. Once the ruling was made, a journalist A.S., serving in a daily newspaper circulated across the country, wrote and published two articles with reference to professional activities of the Applicant pertinent to the criminal proceedings she initiated against A.B. In his articles, the journalist alleged that the Applicant fabricated evidence against A.B., claiming that A.B. should not have been convicted. The Applicant initiated defamation proceedings against A.S. claiming that the publication of his articles damaged her reputation and dignity. A.S. was subsequently found guilty of defamation and fined, which led both him and his newspaper to file an appeal against the judgement. District Court accepted the appeal and found the journalist not guilty of defamation.

The Applicant cited Article 8 of the Convention and argued that the published articles resulted in violation of her right to protection of reputation and dignity. The European Court highlighted that the scope of acceptable criticism afforded to the press was broader when the debate focuses on issues of public interest or on public figures. In this particular case, the disputed articles focused on professional activities of the Applicant during her service as the Public Prosecutor, who was to be considered a civil servant and an officer of the judicial system. The highest domestic court found that the contested claims made by A.S. were equivalent to character judgments. The European Court was not convinced that such assessment was justified and instead believed that the claims were based on facts, serious in nature and capable of inflicting damage to the Applicant's reputation. For those reasons, the European Court concluded that the articles published by A.S. exceeded acceptable limits applicable to debate of public interest. Taking into account the special gravity of the claims made in the article, the European Court concluded that the reasons that the highest domestic court cited with reference to protection of freedom of expression of A.S. and his newspaper were insufficient to supersede the right of the Applicant to protection of her reputation. Therefore, for the reasons specified here, the Court found violation of Article 8 of the Convention.

Finally, in the case of *Fatullayev v Azerbaijan (2010)*, the European Court consistently upheld the view that the principle of presumption of innocence has been violated if a public official who is connected to the person accused of a criminal offence expresses the opinion that the person is guilty of such offence before his or her guilt has been proven before the court, in accordance with the law. The statement of the prosecutor made prior to issuance of the ruling encouraged the public to believe the Applicant was guilty before his guilt was proven in accordance with the law. For those reasons, the Court found violation of Article 6, Paragraph 2 of the Convention.

