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Events

2 Sep 2016

"Reporting on media work during the pre – election period" workshop held in BiH cities

Reporting on media work, during the pre – election period should be based on ethics, professionalism and also based on providing information to citizens of BiH. Journalists should resist political manipulations in order to, above anything else, keep, preserve and sustain their own integrity and professional dignity. These were just some of many messages sent abroad during the workshops held in [Srebrenica](#), [Banjaluka](#), [Čapljina](#) and [Tuzla](#). workshop. Besides, children misuse, hate speech and approximate and poor investigating and survey of general public opinion have been separated and classified as some of the greatest challenges and problems in reporting about media work in BiH during the pre – election campaign.

Editorial

Protection of journalists' sources has been one of the key conditions for free work of journalists and media staff, including the public right to get and receive information regarding all events regarded as interested to general public and has also been the condition for the creation of democratic - based society. Protection of journalists' sources in BiH, besides European Convention on Human Rights and Freedoms defines the Law on Protection against Defamation at the level of both territorial Entities in BiH, prescribing thus that journalists are entitled to keep the source identity confidential, unrevealed and unexposed.

However, the case of police raid and confiscation of personal property at Klix premises (local internet web site) in December 2014 only proved that law provisions have since become pointless in cases where governing authorities decide to confront unbiased and inapposite journalists and media houses. The Klix case and the protection of journalists' sources field should be observed generally, in terms of Freedom of Expression and the field of the protection of journalists' rights in BiH, which is on a very low level as frequent assaults and attacks against journalists, including threats directed against journalists, political and economic pressures imposed on media houses only support this thesis. Minimum number of court cases has been settled by judicial decisions either. Mentioning the Law on Protection against Defamation has in reality become a tool for having media houses under pressure by imposing high penalties on them and by ignoring the mediating aspect in court cases related to defamation, as defined by Article 8 of the Law on Protection against Defamation

Media freedoms and liberties have constantly been subjects to protection within both, European and world boundaries. In 2011, the Parliamentary Assembly of Council of Europe passed the resolution requesting the governments of certain countries to protect journalists' sources which should represent the fundamental condition for journalists and public rights to receive information regarded as public events. Resolution also outlined that Parliamentary Assembly of Council of Europe expressed their concerns because the governing authorities throughout Europe had been constraining and compelling or at least attempted to constrain and compel journalists to reveal the identities of their sources.

Public interests which justify the releasing of important information are crucial in protecting journalists' sources. Public interests, that is, exceptions of public interests in certain cases have not been precisely and unambiguously defined in law provisions which represented danger for accomplishing the protection of journalists' sources, but also the protection for journalists releasing confidential information. Consequently, it has become important to launch wider debate regarding this specific issue. This E – bulletin edition shall cover this issue through articles/texts written by Nihada Jeleč, investigator – analyst with the Investigation Center of the Parliamentary Assembly of Bosnia and Herzegovina, Borislav Vukojevic, senior assistant at the Faculty of Political Sciences in Banjaluka, Nenad Gvozdic, a solicitor and Harun Iseric, member of the Association of Law Students in Sarajevo and co-author of the research of the Council of Europe on the protection of journalists' sources.

Adis Šušnjar, BH Journalists Association

Protection of journalists' sources in BiH

By: Nihada Jeleč

Protection of journalists' sources represents one of the key foundations and basis of media freedoms and liberties and without this media, serving as public control tool for democratic society, media freedoms and liberties might as well be buried, which would certainly have negative impact on journalists and their abilities to provide public with accurate and reliable information. This represents the core of the Council of Europe's document, including the verdict passed by the European Court of Human Rights, regarding the protection of journalists' information sources.

Journalists' rights to protect information sources deriving from the right to freedom of expression, is not protected by the provisions of the Constitution of Bosnia and Herzegovina, including Constitutions in both Entities (Federation of Bosnia and Herzegovina and Republic of Srpska, hereinafter Entities) and not protected by certain legal provisions either. Constitutional commitment, in regards with venerating all rights and freedoms / liberties, particularly concerning media staff and journalists, can be seen through related, relevant and associated parliamentary documents, such as the Declaration

Events

30 Aug 2016

Rezek Namurah, Palestinian ambassador to BiH visits the Association of BiH Journalists

Rezek Namurah, Palestinian ambassador to BiH was the guest of the Association of BiH Journalists. During this meeting, the hosts and the ambassador discussed about the future cooperation between the Palestinian and Bosnian journalists, including the discussion about the recent case of the arresting of Omar Nazzal, a Palestinian journalist.

26 Aug 2016

Maureen Cormack, USA ambassador to BiH visits the Association of BiH Journalists

Maureen Cormack, USA ambassador to BiH was the guest of the Association of BiH Journalists. The ambassador was informed about the situation of media liberties and freedoms in BiH, including journalists' safety and she supported the work by the Association of BiH Journalists.

on Free Journalism, passed by the House of Peoples of the Parliament of the Federation of BiH in 2008. This Declaration covers the issue of certain proceedings and processes, aimed to deny the rights of public to be provided and receive information, covering all relevant and current social affairs and issues in BiH, including all types of pressures put upon journalists in allowing them to perform their professional duties and the increasing trend of limiting journalists' freedoms and liberties in the process of informing the public.

Bosnia and Herzegovina is one the first countries in the region that, in 2001, abolished the defamation as criminal act/deed from the criminal legislative and passed laws on the protection against the defamation on both Entity levels. Two years after this, identical Law was passed in Brcko District. In terms of normative, this represented a significant step forward regarding the protection of media freedoms and liberties in Bosnia and Herzegovina. Today, Law on Protection against Defamation (Federation of BiH, Republic of Srpska and Brcko District BiH) appoints journalists' right not to reveal the identity of their information source as this right, under any circumstances must not be limited during the legal court proceedings being under way in respect with the above mentioned Law. Furthermore, a person whose

testimony may eventually disrupt the duty and responsibility of professional and classified secret keeping (and this may involve a journalist) for the purpose of the protection on information sources, cannot be interrogated and treated as reliable witness during criminal proceedings, pursuant to provisions based on four Bosnian laws on criminal proceedings.

However, "Klix" case from December 2014 indicated the collision between normative acts on journalists' rights to protect their information sources and their implementation as this particular case instigated wide public discussion on genuine media freedom and liberties and rights for free expression in BiH. Entity police officials searched business offices and premises of "InterSoft d.o.o" (a local company), including offices of the owner and entrepreneur of the local news internet web site ("Klix"), and the police officials' head office was in the territory of other Entity. The police officials confiscated certain documents and other relevant material. Legal foundation for this action was based on a suspicion of criminal act/deed pursuant to article 174, item 1 f the Criminal Law of the Republic of Srpska in regard with unauthorized eavesdropping and audio/sound recording. In short terms, the purpose of this search was to discover, find and temporarily confiscate the original material (audio and video recordings) of the recorded controversies, that is, a speech delivered by Zeljka Cvijanovic, Republic of Srpska Prime Minister (posted on the local news internet web site "Klix"), that is, journalists' information source. After the appeal had been submitted, Cantonal Court of Sarajevo confirmed that the above mentioned police action had been conducted illegally and unlawfully.

After the "Klix" case, at the beginning of 2015, a completely new legislative was introduced in Republic of Srpska; namely the Law on Protection of Public Law and Order. The Law strictly relates to protection of journalists' sources, but it may have impact on journalists' freedom of expression and their collocutors, that is, journalists' information sources. Unlike the Law on Protection against Defamation, whose provisions are aimed to ensure protection wherever the facts that impeach and disprove insults and offences (that may have insulted and offended the reputation of a certain person) existed. Law on Public Law and Order defines that "the insult" that is "offending", cannot legally be subject to argumentative evidence and proofs. Under this Law, an insult is defined as the feeling of physical threat or disturbance of citizens initiated by rough offending of another person/party based on political, religious or ethnic background or similar inappropriate behavior and conduct. The definition of an "offence" does not predict any exceptions, for instance, as exceptions as in cases within political speeches and discussions or in cases of public interests. Besides, this definition is not thorough and precise and as such, leaves too much blank space for approximate implementation of this particular law provision, including the limitation for freedom of speech.

Now it is necessary to return to the very beginning of this article. Journalists' rights to protect information sources derive from the right for free reporting guaranteed by Article 10 of the European Convention of Human Rights and Fundamental Freedoms (Convention). These rights include freedom of opinion and freedom of receiving and transferring information and ideas without the interference of public authority officials and regardless to any boundaries.

In reality, apart from journalists, these rights are also used by other persons that are professionally in businesses which include collecting and sharing the information, such as analysts and non – government organization activists. However, journalists' rights to protect information sources are not considered as absolute right since they may become subject to limitations, pursuant to item 2, Article 10 f the Convention, that is, limitations or sanctions defined by the law that are necessary in democracy – based society in the national security interests, territorial

integrity or public safety, prevention of riots or crimes, protection of health and moral, reputation or rights of other and impartial judiciary system. This is important for Bosnia and Herzegovina since Article II/2 “International Standards” of the Constitution of BiH specifies that the rights and freedoms/liberties defined in the European Convention of Human Rights and its protocols are directly applicable in Bosnia and Herzegovina and that these acts are the priority over all other law provisions.

For Bosnia and Herzegovina, as Council of Europe member state, other documents provided by the Council of Europe, are also relevant to this issue and considered important, including the court practice by the European Court of Human Rights. The Recommendation provided by the Council of Europe Committee of Ministers officials on journalists’ rights not to reveal their information sources (No. R 2000 7) outlines that local laws and legal practices by the member states, must ensure explicit and clear protection of journalists’ rights, in order not to reveal information that may lead to exposing the identity of information source or sources. Besides, revealing and exposing the information sources in certain member state countries of the Council of Europe, is considered illegal and not permitted even to journalists themselves.

According to this Recommendation, official authorities of member states shall, during the determination and identifying process of legitimate interests of the state, opposite to the interest not to reveal the source of information, pay particular attention to the right of unrevealing, as this right is considered as priority in court practice of the European Court of Human Rights.

Some of the most important cases at the European Court of Human Rights that had established such practice, code of conduct and interpretation of the Convention provisions, related to the protection of journalists’ information sources include the following cases: Goodwin Vs United Kingdom, Ressiot and Others Vs France, Roemen and Schmit Vs Luxembourg etc. In the above mentioned cases and verdicts, the presence of prevailing public interest or prevailing of interest of general public prevailed, since the Court determined that free and undisturbed journalism had been founded on the right of free expression and that it represented a fundamental precondition for public right to be informed on public interest issues. However, the existing legal provisions in Bosnia and Herzegovina define the prevailing public interest during the collection and releasing journalists’ information. It is particularly important in terms of revealing and releasing classified and confidential information because the existing legislative does not defined and recognize any exceptions in these cases whatsoever.

Four criminal existing laws in Bosnia and Herzegovina define collection of classified and confidential information as illegal (including their illegal use), which again represents a criminal act/deed. State law on protection of classified and confidential information regulate the collection of classified and confidential information as illegal and precisely defines who is entitled and allowed to have access to confidential and classified information, while Article 10 defines that all citizens in BiH with access to or citizens that may have access to confidential and classified information in way which is not illegal, share the responsibility and are obliged to keep confidential and classified information from further distribution or eventual releasing.

On the other hand, the Law on the Protection of Persons Who Report Corruption in state institutions of Bosnia and Herzegovina, from 2013, allows any person (so called whistleblower) working officially in BiH institutions, to, for good cause, file and submit evidence on corruption, due to evident suspicion or circumstances that may indicate the presence of corruption in any state institution of Bosnia and Herzegovina. However, this law was passed at state level and refers only to persons working for the state institutions of Bosnia and Herzegovina. All attempts to adjust and pass this law to lower governing levels have so far failed.

Taking into consideration the European Convention for Human Rights and Fundamental Freedoms, verdicts passed by the European Court of Human Rights and court practice in our state, it is inevitable that there is significant available space in Bosnia and Herzegovina for improvement of legal regulations and protection of journalists’ information sources (starting from clear definition of the presence of prevailing public interest, to clear and unambiguous definition of exceptions defined by Article 10, item 2 of the European Convention), including the conforming of the existing and present laws and their passing, such as the Law on Protection of Persons Who Report Corruption at both Entity levels.

Journalists’ rights to protect information sources are not considered as absolute right since they may become subject to limitations, pursuant to item 2, Article 10 of the Convention, that is, limitations or sanctions defined by the law that are necessary in democracy – based society in the national security interests, territorial integrity or public safety, prevention of riots or crimes, protection of health and moral, reputation or rights of other and impartial judiciary system.



Press releases

5 Sep 2016

Condemning inappropriate conduct of minister Predrag Gluhakovic towards ATV female journalist

After being asked to answer the question, raised by the ATV female journalist, minister Gluhakovic grabbed her arm and put the microphone down, because he refused to answer the question he had been asked. Banjaluka Journalists' Club encouraged minister Gluhakovic to organize the press conference, demanding his public apology there, but also allowing journalists to ask justified questions regarding his ministry and its work, since there have been no answers to these questions for some time. Banjaluka Journalists' Club reminded minister Gluhakovic that he rarely organized press conferences during his mandate where journalists would use the opportunity to raise and ask certain questions and consequently get required answers.

[Details](#)

29 Aug 2016

Press release regarding the rape - threats aimed against Lejla Colak, a local journalist

Members of the Association of BiH Journalists' Board of Directors publicly required the Federal Police Authorities and its Anti - Cyber Criminal Unit and Military Forces highest ranked authorities, to launch an immediate and urgent investigation and sanction all threats, rape encouraging and other relevant brutal actions that may put the life of Lejla Colak in great danger. Threats were directed through Face Book (social network) page, after Lejla Colak had made and posted personal remarks and comments regarding the issue of hijab wearing on her Face book profile.

[Details](#)

29 Aug 2016

OSCE condemns assaults on journalists and independent voices in BiH

Organization for Security and Co - Operation in Europe expressed their concerns due to endangering of journalists' safety in BiH, particularly due to unpleasant and deplorable events that had been occurring, including verbal assault against Nenad Velickovic, a writer and journalist, verbal assault against Borka Rudic, General Secretary of the Association of BiH Journalists, verbal assault against Mreza TV program journalists, a Federal Television political magazine, verbal assaults against Dragisa Sikimic, chief-in editor and entrepreneur of MojaHerzegovina.info, a local web site, verbal and physical assaults against TV staff of BN TV, ATV and HIT TV; attack against Nermin Bise, 24sata.info, a local web site, verbal threats against Vuk Bacanovic, a freelance journalist and also, insulting, offensive and discriminatory - based verbal assault against Selma Ucanbarlic, a female journalist engaged with the Center For Investigative Reporting.

[Details](#)

28 Jul 2016

Press release issued regarding the verbal assault against Selma Ucanbarlic, a CIR reporter

Members of the Association of BiH Journalists' Board of Directors and Free Media Help Line strongly condemned insulting, offensive and discriminatory - based statements posted by Dr. Emir Talirevic on his Face book profile and aimed against Selma Ucanbarlic, a female journalist, engaged with the Center for Investigative Reporting (origin. CIN). Statements posted by Dr. Taliervic were aimed to discredit this female journalist, to disadvantage her professional career advancing, including the harm aimed against the entire CIN staff.

[Details](#)

Protection of confidentiality of journalists' sources in BiH

By: *Borislav Vukojević*

Confidentiality of sources represents very important issue for journalists, as far as the following aspects are concerned: firstly, necessary and required information must be collected (gained) in case of the event being considered as the public interests - based event, while the information source, at the same time, must be protected in terms of retaliation/avenge, loss of job, life endanger etc; secondly, source confidentiality provides guarantees to potential sources the safety so that they can perform their civil duties without any fear of bearing undesired and negative consequences as a result. However, this does seem acceptable and promising on a piece of official document and it most probably makes sense and can be implemented in well - organized and developed countries (although this issue, in legal terms, has not been thoroughly settled and solved in full in these countries either), while in societies with an undeveloped political cultural background, undeveloped and poor institutional framework and uncertain and inadequate legal environment, this issue represents a platform for countless number of journalism misuses.

Therefore, in this text I shall not focus on legal aspects regarding the protection of the confidentiality of sources, because there are many published texts and books treating and analyzing this particular issue. We shall observe this problem from the journalists' ethics and practice point of view, that is, the possibilities of misuse of these mechanisms. First of all, it is necessary to state openly that a journalist cannot and must not vouch any guarantees to anyone regarding the protection of sources (anonymous sources) in every case and without required analysis. Namely, if we accept the fact that public interest is the key guide of journalist' work, the source anonymity can be guaranteed only in the case where journalist checks all other possibilities in order to get the same information. For instance, can we say that it would be fair and can we justify the action of providing guarantees to a person who has been criticizing another political party during the peak period of pre - election campaign? Unfortunately, in media houses throughout Bosnia and Herzegovina, constructions, as parts of articles/texts, reports and statements, such as the following once listed below, can often be found:

- A well - informed source (close to investigation officials) stated that a person committing the crime is surely a member of salafi/wahabi community (the text itself indicates that these are merely insinuations and predictions/assumptions);
- Our source who wished to remain anonymous, provided us with the list of new ministers (after the new government members have been appointed it has been clear that he/she was wrong)
- Political analyst insisting on anonymity stated that the pressure imposed by the international community is under way (why provide guarantees to anyone revealing a common character based statements?)

Source anonymity shall be guaranteed in the following information

- If the journalist exhausts all other relevant sources seeking identical information;
- If a journalist is limited with time and has no time to check the reliability of information in case of great public interests event;
- If a journalist is certain that the source who had been granted anonymity has no hidden motif (politically or economically based motif)

- In situation where the endangering of sources is great, obvious and evident (life endangering and existential safety).

Public interest is the only value taken into consideration by a journalist when he/she has to decide whether one should be provided and granted with anonymity or not. As we have previously mentioned, journalists have no such excuse if they protect the source which had misused this, rather privileged position. For instance, if certain text/article is titled: "Member of Salafi/Wahabi community attempts to kill imam", and the only source verifying/confirming this information is anonymous (while official reports do not reveal his/her identity), it would be unethical, from journalist's point of view, to reveal the identity of this source. The value of this qualification is of great importance for citizens of Bosnia and Herzegovina, which means that anonymity can be guaranteed only in cases where the information source has material evidence and arguments supporting his / her claims. Otherwise, journalists put themselves in an awkward position, because they jeopardize formally assorted articles/texts. On the other hand, media analysts warn about an increasing use of anonymous sources which are often constituent parts of articles/texts, with a purpose of dramatization. Therefore, we could by all means say that if there are such sources present in articles/texts, we should ask ourselves whether this person had even said something like that or whether this person even existed at all.

For instance, sometimes in articles covering local current affairs anonymous sources appear only to add drama to articles/texts, although their credibility is questioned. Person being arrested during the official police action had committed crime (homicide) and even prior to any further investigation; an anonymous source suddenly appears in this article/text claiming that he/she "knows" about the motifs of this murder, describing at the same time, the mindset of this criminal etc. It is typical sample of anonymity misuse and journalists should not grant guarantee protection in this specific case.

When it comes to important decisions, anonymity guarantees cannot be absolute and journalists must be aware of this fact. If this fact is taken into serious consideration, journalists may find themselves in a hypocritical situation; they put themselves in a position of guaranteeing anonymity because of general public interest, but at the same time, they disapprove authorized court officials who claim that revealing the source identify would eventually represent benefit general public interests. This issue must be thus taken into serious consideration, since law provisions cannot and must not regulate journalists' consciousness in this sense.

Namely, if we accept the fact that public interest is the key guide of journalist' work, the source anonymity can be guaranteed only in the case where journalist checks all other possibilities in order to get the same information.

Protection of confident journalists' sources in BiH

By: Nenad Gvozdić

The core of journalism is to release information and ideas that are considered to be important to general public which in simple terms includes the necessity to "widen the truth crucial for all citizens in any country". Harmful truth is sometimes more valuable than a useful lie. This is why journalists promote the truth and this is why their work is often supervised as far as the freedom of expression is concerned. Freedom of expression is framework, but also represents a limitation to journalists' presentation of truth. They must not create public opinion that would serve single social group only, including particular political party or, which often occurs in Bosnia and Herzegovina, serve the interest of certain ethnic group only. Accomplishing their fundamental task mainly depends on the way they gather and receive information and also depends on particular group interests upon which this information has been released. This is why this thin line, which separates them from the need to protect their sources and inevitability to, by exposing their sources, contributes in authenticity of released and announced attitudes and opinions.

We are part of Europe both vitally and in terms of constitution and also legally speaking. Because of this, it is clear why the existing legal framework (European Convention of Human Rights and Freedoms directly – and accordingly, conformed local Laws, along with verdicts by the Strasbourg Court) allow what is in all states and countries similar, regardless to democracy level and this is: the interest of press must always be measured in terms of publishing something in regard with the state/public interests in order to prevent the public to acquire certain information.

The focus on the term "similar" is exactly what could eventually cause the problem. In fact it is the problem for anyone detecting the core of this problem while analyzing the issue of "source confidentiality" in BiH media space.

Controversies must arise since any "freedom" has its antipode being forbidden, that is, in our environment it is even in worse and more frequent shape and it has been established in the transitional period which is "the misuse of freedom of expression". I highlight this based on my personal experience. Should controversies be solved in an effective way during court proceedings, we would find much easier to define rather wide term of "confidentiality"

Media on media

6 Sep 2016

European Commission ready to grant finances to public services and media pluralism in West Balkan

Delegation of European Federation of Journalists met yesterday (5 Sep 2016) with Johannes Hahn, Commissioner for European Neighborhood Policy & Enlargement Negotiations.

They discussed about the issue of public services and their importance for regional media scene in the West Balkan countries. They emphasized the need for the strengthening of media pluralism and establishing sustainable models of public service operations, considered as conditions for better positions of journalists and increased quality of information and news.

[Details](#)

2 Sep 2016

Testing broadcasting period of digital signal during mid - September

Testing broadcasting period of digital signal in BiH should be launched sometimes in mid - September in Sarajevo, Mostar and Banjaluka. This was agreed during the meeting between public broadcasting service representatives in BiH, Communication Regulatory Agency BiH officials (origin. RAK) and Ministry of Transport and Communications of BiH officials.

[Details](#)

30 Aug 2016

Unsuccessful decade; BHRT - overstuffed (too many employees) and poor results

875 persons were officially employed in BHRT in 2015 and this Public Service spends over 50% of its budget of their staff salaries. Average net monthly salary in BHRT is around BAM 800.00, which is almost identical to the average net monthly salary in the country. However, taking into account the number of too many unnecessary employees and poor performing equipment and facilities available, it becomes clear where all the money has "vanished" in BHRT house.

[Details](#)

24 Aug 2016

Unsuccessful decade; Public radio and television service debts reaching millions of BAM

During the period of last eight years BHRT debt reached almost BAM 19.0 millions and less than 10% of the budget had been spent on the broadcasting program.

[Details](#)

8 Aug 2016

Countries with powerful public service experience less right - wing extremism

Countries with powerful and stable RTV public service experience larger scope of media freedoms and liberties, whereas in countries with public service having larger share in the market, the response of voters is even greater. Also, there is strong correlation between the public TV service share in the local market and "demand for right - wing extremism", including "corruption control". This was the part of the report issued by the European Radio Diffusion Union officials, based upon the analysis of data collected in 33 European countries.

[Details](#)

However, if any word being publically released waits for its court proceeding as a result of its public release and exposure for five or more than five years since its releasing, it becomes clear that in BiH we could hardly expect a meaningful exposing on the "journalists' sources" subject and issue.

I've been inspired by particular verdict passed by the European Court for Human Rights in Strasbourg ("Sunday Times Vs United Kingdom) that provided answers to the question of the balance of two public interests including freedom of expression and undisturbed court proceeding process

And I shall accordingly allow myself to direct a harsh critic to our judiciary authorities that by their postponed and late decisions disabled us from raising the "source confidentiality" issue place in the first position in list of priorities; instead this issue always appears as secondary problem.

Bow down or step aside - represents the problem of any journalist every day when he/she faces his/her chief-in-editor.

This is why "information confidentiality" has become a screen here, instead of becoming the chain that would create the penetration heading towards the sphere of truthfulness. I shall attempt to revitalize this, rather subjective and personal opinion, wondering how did I come across it at all? Brief answer can be found in diversity of all those "conflict - based" truths that we are surrounded with every single day.

The situation in our society made me emphasize the misuse instead of focusing on tractate regarding the correct use of such mighty democracy source.

It's no surprise that we have almost forgotten that the role of an ordinary person is in fact rather demanding and difficult role. Why dig through the rubbish bin when we actually have the tray from which we can pick tasty products; journalists are human beings as well but they are harnessed into the chariot of politics. I do not oppose their work; on the contrary, their professionalism is often questioned once we discover that their "confidential source" becomes an unreliable source.

Unlike this - when a journalist hits the target ("genuine truth") and this truth is often painful to governing authority officials and when journalists refused to reveal and expose their information source - I simply admire these journalists and their courage. And this does happen in reality, no matter how strange it may sound and seem! Situation like this occurs more often than negative situation does, which I altogether found as "screen" that journalists as vulnerable people have not been immune to.

It is the very same journalists' contribution to common goods! Perhaps it would be better to provide them with greater support in that sense. Journalists need better legal protection from the one they have at present in order to improve and advance such activities. If they are to acquire a better role in a society, judiciary system must be an important segment in this line. However, knowing that judiciary system itself is not functioning properly on one hand, it is, on the other hand, hard to expect from journalists to fulfill their oath and state (in front of the judge): "I shall speak the truth, whole truth and nothing but the truth and shall say everything I know and shall not remain silent or hide anything". If there is something that must not be said in order to protect another man, the source confidentiality is the LAW that we must obey here! The genuine truth shall only then be fulfilled and it shall be worth a lot more than useful and an untold lie, revealed by silence.

I shall recall to United Kingdom and Strasbourg once again:

"It is commonly known that courts cannot function in a vacuum"

Our courts seem to be operating in contaminated areas fulfilled with hate and that is why they find difficult to operate properly. We generally are not the kind of community that is used to debates, common sense discussions and the definition of PUBLIC INTEREST is thus difficult to define. In fact, we don't have public interest commonly and generally accepted at all governing levels and in all parts of our country. It is not bad to refer to something

that we all seem to neglect daily: facts and arguments can be checked and proved/confirmed, while the truth of valuable judgments that we state and release does not necessarily have to be a subject to checking. Should we hide information sources on one hand, we shall, on the other hand, prove the case with facts and arguments and the problem will be solved! For instance, in Soviet Union, where the truth could have only be defined and approved by the state officials, Lev Shestov emerged with a brilliant thought: "A man does not seek the truth the way Schopenhauer would have thought, it is the truth that seeks and haunts the man"!

If journalists are haunted by the truth (which must happen) we do not force them to reveal and expose their information sources unconditionally. But we should not trust them unconditionally by all means either, especially if they had previously failed to make us have any doubts in information they provide us with, since they cannot prove the facts, regardless to their duties of keeping the secret unrevealed professionally.

Our courts seem to be operating in contaminated areas fulfilled with hate and that is why they find difficult to operate properly. We generally are not the kind of community that is used to debates, common sense discussions and the definition of PUBLIC INTEREST is thus difficult to define

Protection of confidential journalistic sources in BiH

By: Harun Išerić

European Law Student Association (abbreviation: ELSA) International, accompanied by the Council of Europe, have been, for the period of last 6 years, organizing law – research/investigation group¹. During the Academic year 2015/2016, the research/investigation topic covered the following issue: Freedom of research/investigation - protection of journalistic sources². Research/investigation concerned the following fields as well: national legislative, in terms of the following: protection of journalists' rights to keep their own sources unrevealed and unexposed, banning and sanctions for journalists should they decide to reveal and expose their information sources; definition of a journalist and the question whether the protection of journalistic sources related to third parties, except for journalists themselves; steps for the protection of journalistic information sources; implementation of principles of the Recommendation No R (2000) 7 of the Committee of Ministers of the Council of Europe; predominance of interests to reveal journalistic sources against unrevealing these sources, implementation of national legislative by national courts in terms of practice conducted by the European Court of Human Rights, in regard with unrevealing the information sources; protection of journalistic sources in context of fight against terrorism and supervision and finally, possibility of protection for whistleblowers that is, corruption denunciators.

It is important to mention that main challenge during the writing of research/investigation was the fact that there was very limited number of academic works covering this specific issue. Namely, only after the illegal raid conducted by the police and law enforcement official authorities and raid of www.klix.ba premises and facilities (local web site) which took place on 29 December 2014, only two publications were published covering this issue in 20th edition of Book for Public Rights (origin. Sveska za javno pravo)³: "Legal protection of journalistic sources" and "Is the raid of premises of editing office against the constitution?"

As far as the case of Klix.ba portal raid is concerned, not even the book "Media rights in Bosnia and Herzegovina"⁴, which represented the first such publication in Bosnia and Herzegovina, published on two and a half pages only, referred on the protection of journalistic sources⁵. Second obvious disadvantage was almost a complete lack of court practice in Bosnia and Herzegovina-

Who can be considered a journalist?

Legislative in Bosnia and Herzegovina does not provide a clear and precise definition of a journalist⁶; instead the

1 So far, the following research/investigation groups have been implemented: ELSA for children: united against sexual exploitation of children (with focus on EU member state; Hate speech online; Social rights and the last one covered the topic the Freedom of Expression, protection of journalistic sources. Reports are available at: <http://legalresearch.elsa.org/archive/>, shared on 1 Sep 2016.

2 28 member states took part altogether in this project. National coordinator for Bosnia and Herzegovina was Nasir Muftić. Academic coordinator was Tahir Herenda. Academic supervisor was Kristina Cendić and the researchers/investigators were Harun Išerić, Tahir Herenda and Nihad Odobašić. Report was available at: http://files.elsa.org/AA/LRG_FoE_Final_Report.pdf, shared on 1 Sep 2016

3 Available at: http://www.fcjp.ba/templates/ja_avian_ii_d/images/green/Sveske_za_javno_pravo_broj_20.pdf, shared on 1 Sep 2016

4 Halilović, M. / Džihana, A., Media rights in Bosnia and Herzegovina (origin. Medijsko pravo u Bosni i Hercegovini), Internews, Sarajevo, 2012.

5 Text mostly related to verdict passed by the European Court of Human Right in leading case regarding the protection of journalistic sources, that was Goodwin Vs United Kingdom (No. 28957/95, 11 July 2002).

6 Law on Media of Sarajevo Canton („Official Gazette of Sarajevo Canton“; No. 13/98) Article 38
"Journalist is a professional who collects and analyses information and prepares information for media. Journalist is a professional who works for publishing house or a professional who lives from journalism that is, a person who works in news / information department of state or public

definition can be withdrawn from the Law on Protection against Defamation⁷. Provisions of the Law on Protection against the Defamation can provide protection of confidential sources to the following persons:

a) journalists; b) any other physical entity (persons) involved in investigative/research journalism on regular or part – time basis, including receiving, collecting, releasing or broadcasting news/information to general public; c) other physical entity taking part in compensation, pursuant to Law on Protection against Defamation provisions and which, as a result of its professional conduct with journalists or any other person described in item b), discovers the identity of confidential information source⁸.

Therefore, by applying the method argumentum a contrario, a journalist can be anyone being engaged with journalism on regular or part – time basis. First element in this chain includes: regular or part – time journalism. Second element includes the following: In order to consider someone a journalist, he/she must be dealing with journalism as occupation. Journalism includes the following activities: research, investigation, receiving information or providing general public with information⁹. These activities can include any mass communications, including the internet.

Who is entitled to protection?

Rights to protection of journalistic sources¹⁰, apply to and (pursuant to law provisions of the Law on Protection against Defamation), apart from journalists (whose protection is guaranteed pursuant to Laws on Criminal Procedures) (origin. ZKP)¹¹, other persons that are involved in journalism business on regular or part – time basis, also including persons taking part in procedures pursuant to the Law on Protection against Defamation. Therefore, the protection applies to vast number of people and: “advances to provisions of the Convention (European Convention for Protection of Human Rights and Fundamental Freedoms), including even court practices applied by the European Court ...¹². Recommendation No R (2000) 7 on journalists’ rights to keep their information sources unrevealed and unexposed by the Committee of Ministers of the Council of Europe [Recommendations no R (2000) 7] indicates that the protection should include legal entities as well, including publishing companies/houses and journalistic agencies. Council of Europe also outlined that the protection should not exclude freelance journalists, persons being engaged in journalism business on honorary basis or those beginning with their careers, that is, those not being professionally engaged in journalism¹³. Protection should include information, that is, any information that may lead to source identification. Apart from this, this should apply to the following; source name and its personal data (information), circumstances under which the information was received (for instance, place and time of meeting with the source etc.), unrevealed information content given to the journalist by the source (audio recording or photos that may lead to the source) and personal data (information) related to professional work of journalists and employer .

What can serve as protection tool?

Most important protection is provided through the Constitution of BiH, Article II, item 2, direct and indirect implementation of European Convention for the Protection of Human rights and Fundamental Freedoms, including Article 10 – freedom of expression and practice conducted by the European Court of Human Rights . Apart from the above mentioned laws on protection against defamation, laws on criminal proceedings¹⁴, it is defined that journalists, in terms of witnesses, cannot be interrogated / questioned, in order to protect information source if this could dis-

institution or other legal entity”. The Law was put out of force/order in 2009.

7 Law on Protection against Defamation of Brcko District („Official Gazette BD BiH“; No. 14/03); Law on Protection against Defamation of the FBiH (“Official Gazette of FBiH “; No. 19/03, 73/05) and Law on Protection against Defamation of the Republic of Srpska (“Official Gazette of RS; No. 37/01)

8 Law on Protection against Defamation of Brcko District, Article 9; Law on Protection against Defamation of the FBiH, Article 9; Law on Protection against Defamation of the Republic of Srpska, Article 10

9 Identical to journalists’ definition, deriving from the Recommendation No R (2000) 7, of the Committee of Ministers of the Council of Europe pursuant to journalists’ rights of unrevealing and not-exposing their information sources available at http://ravnopravnost.gov.rs/wp-content/download/se_preporuka_r_2000_7.pdf, shared on 1 Sep 2016

10 Pursuant to Recommendation No R (2000) 7 the source may be any person who provides journalist with information. “Journalists can receive information from all kinds of sources. Therefore it is necessary that this particular term has wide interpretation”

11 All four laws of the Law on Criminal Procedures (ZKP) define that journalists, in terms of witnesses, cannot be interrogated and questioned, in order to protect information source if this could disrupt professional secret.

12 Halilović, M. / Džihana, A., Media Rights u Bosnia and Herzegovina, Internews, Sarajevo, 2012. pg. 59.

13 Recommendation No R (2000) 7

14 ZKP BiH Article 82 item.1 t.c; ZKP FBiH Article. 96 item 1.t.c ; ZKP RS Article 147 item.1 t. v and ZKP BD BiH Article 82 item 1t.c.

Rights to protection of journalistic sources , apply to and (pursuant to law provisions of the Law on Protection against Defamation), apart from journalists (whose protection is guaranteed pursuant to Laws on Criminal Procedures) (origin. ZKP) , other persons that are involved in journalism business on regular or part – time basis, also including persons taking part in procedures pursuant to the Law on Protection against Defamation.

Vacancies

Educational program “Free Voices: promotion of freedom of expression and media liberties in BiH”

Sarajevo Media Center encourages all senior / graduate students of journalism and communication studies from BiH to apply for Educational program titled: “Free Voices: promotion of freedom of expression and media liberties in BiH”.

Deadline for this program applying is **25 Sep 2016**.

[Details](#)

ECPMF’s Journalists-in-Residence programme for threatened media workers calls for applications

In many European countries, journalists are persecuted, targeted with death threats or imprisoned. #ECPMF takes direct action and helps endangered media workers to take a time-out. For up to 12 months, participants can live in a safe house in Leipzig, Germany, work and publish at the ECPMF and receive a monthly allowance of 1.000 euros. Apply until 8 November 2016

[Details](#)

Incoming events

- **Media monitoring of pre-election campaign** for Local Elections in 2016 (September and October)

- **Workshops on media reporting during the pre-election period** in Srebrenica, Capljina, Tuzla and Banjaluka in cooperation with Coalition for Free and Fair Elections (origin. Pod lupom).

rupt professional secrets . OSCE Mission to BiH, in its guidelines to the police official authorities and law enforcement officials in their conduct with media representatives¹⁵, outlined that the police officers and law enforcement officials cannot force a journalist to reveal and expose a confidential source of his/her information

Are journalists allowed to reveal and expose confidential sources?

Generally, the answer is no. The documents issued by the Press Council and Association of BiH Journalists disapprove, disallow and ban this. Thus, Press Code and online media strictly defined journalists’ duties, in terms of protecting the identity of those who provide confidential information, regardless whether these persons required the information or not. Still, the Code of Honor outlined that journalists would not have to reveal and expose information.

In Bosnia and Herzegovina, revealing professional and confidential secrets is legally considered a crime, which may include confidential information sources as well. Criminal deed or felony is precisely defined as “unauthorized revealing and exposing of professional secrets”¹⁶. Defined criminal sanctions for the above mentioned crime include prison sentence from 30 days up to one year. However, criminal laws (KZ), at the same time, define that revealing and exposing secrets for the purpose of public interests or interests by any other person over-poising from keeping the secret, shall not be considered a crime.

Apart from criminal laws, labor laws [abbreviation ZoR] also ban exposure and releasing confidential information sources. Labor Law of BiH Institutions also strictly defines the revealing of official secrets and also treats this as severe violation of official civil service¹⁷. Disciplinary sanctions for revealing official secrets include the following: a) warning in written; b) written admonition; c) work suspension, including salary / wages for the period of two days up to thirty days; d) degradation to lower level job position and e) sacking (loss of job). Labor Laws of FBiH and BD enable employers to fire / sack employees without the respect to sacking / fire period in case of severe violations of work duties / obligations. Laws do not provide precise definition of “severe violations of work duties”, but, taking into consideration the state law provisions, we may conclude that revealing and exposing a confidential professional secret can be considered as the above mentioned clause and can thus be

considered and treated as such. Law on Labor of RS defines the following: Any behavior and conduct demonstrated by employees resulting in damage caused to the employer and their interests shall be considered and treated as severe violation of work duties. Penalties for the violation of work duties include the following; warning in written, fines (salary reducing) and finally sacking (dismissal).

In what cases can confidential information source be revealed and exposed?

ing to European Convention on Protection of Human Rights and Fundamental Freedoms, revealing and exposing of confidential information sources is possible in cases of cumulative fulfillment of the following conditions:

1. with cases and procedures when the confidential information source can be revealed and exposed which is defined by the law¹⁸;
2. if confidential information source revealing and exposing has a legitimate goal; that is, if its purpose is aimed towards one of the following legitimate aims: state security, territorial integrity, public law and order, prevention of riots, violence and crimes, protection of public health or moral, protection of reputation or rights of other persons, prevention of releasing of confidential information or preserving the authority and non-biased court authority officials and

15 OSCE Mission to BiH, Guidelines for the Police Officials in their conduct with media representatives available at: <http://www.bhnovinari.ba/images/stories/pdf/zakoni/osceuputezapolicijuuophodenjusmedijima.pdf>, shared: 1 Sep .2016

16 KZ FBiH („Official Gazette of FBiH“; No 36/03, 37/03, 21/04, 69/04, 18/05) Article. 187; KZ RS („Official Gazette of RS“, No. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13) Article 173 and KZ BD („Official Gazette of BD BiH“, No. 10/03, 45/04, 06/05, 21/10, 52/11) Article 184

17 Law on Civil Service in the Institutions of BiH Article 60 item 3 t. d.

18 According to practice of European Court of Human Rights, the law must be available to: general public that is, it must be published and then adequately precise; it must, with appropriate and convenient advice/council – predict consequences that the action taken may produce during the process and it must be appropriately available that is, any citizen must be presented with an opportunity to receive an indication that appropriate legislative, under given circumstances, is indeed applicable and can be implemented during the ongoing cases

Free Media Help Line

Actual cases:

1. BN Television staff – during the recording of eviction from the apartment in Bijeljina, court police officer physically attacked Srdjan Veljo, BN TV cameraman. Free Media Help Line sent an official note letter to official police authorities in Bijeljina to launch an investigation and work on this case;

2. Nermin Bise - Nermin Bise, our colleague and journalist, while standing in front of the coffee bar restaurant facilities accompanied by his friends and an underage son, was assaulted by the owner and entrepreneur of this coffee club restaurant. The investigation by the Police officials in Capljina outlined that there was no criminal responsibility detected by the above mentioned restaurant owner in this particular case and that Nermin Bise also decided not to press charges against the owner;

3. Vuk Bačanović - Vuk Bacanovic was making comments on his own face book profile, regarding the installation of the Republic of Srpska in Sarajevo, which resulted in battue and death threats aimed against him. Association of BiH Journalists issued a press release demanding the protection for Vuk Bacanovic;

4. Lejla Zvizdić - Lejla Zvizdic received a threatening phone call, also followed by the threatening text messages sent by an unknown (but assumed to be a close friend of Alen Albinovic) person threatening her, because she had previously initiated the dismissal of Alen Albinovic from all party duties within the SBB political party due to certain reasons. The police authorities in Sarajevo Canton informed us that the case has already been submitted to Cantonal Prosecutor's Office for further processing.

3. In cases where revealing and exposing confidential information source is considered necessary/required in democratic society. It is required to determine, in rather convincing way, that there is overbalance and predominance of public interest in relation with the unexposed. Official governing authorities must outline and highlight the arguments and evidence according to which public interests must prevail in relation with the opposite.

As it has already been indicated, the legislative in BiH is quite acceptable in terms of quality; however its implementation has already declined in its initial testing stage: the case of the police raid of Klix.ba premises and facilities on 29 Dec 2014. Despite the decision passed by the Municipal Court of Sarajevo from 5 Jan 2015, ordering that confiscated items must be returned to their original owners, the raid itself created notable public reaction, because, according to Dunja Mijatovic, an OSCE representative for media freedoms and liberties, this raid represented the “trend of media freedom violations”¹⁹. Municipal court claimed, in its decision, that “the judge who was in charge with the previous case and proceedings, had failed to examine the required and requested conditions that were considered necessary in order to encroach private rights guaranteed and pursuant to Article 8 and 10 by the European Convention for Protection of Human Rights and Fundamental Freedoms (based on law, legitimate goals, essentiality and proportionality towards aimed goals/purposes)...”²⁰ The Court concluded that ordering the raid operation was “against and opposite to Articles 8 and 10 of the European Convention for Protection of Human Rights and Fundamental Freedoms.”

Conclusion

Without adequate protection of journalistic sources, there can be no media freedom and liberties in journalism. Should media representatives, on the other hand, be disable to demonstrate freedom of speech; they cannot perform the function of “guardian dogs” of democracy and thus cannot make contribution in development and advancement of democracy. Although, BiH legislative provides legal protection to journalistic sources, the implementation of law represents the key question here. As noticed in the case of the police raid of Klix.ba premises and facilities, perhaps the crucial disadvantage in this case can be seen through inadequate educational level of judges and prosecutors being involved in this case, and this is the field where centers of education for judges and prosecutors in both Bosnia and Herzegovina Entities, should take place and serve accordingly. Also, it is necessary to launch full implementation of the Recommendation of the Committee of Ministers of the Council of Europe No R (2000) 7 into the legislation and judiciary practice in BiH.

¹⁹ OSCE: The raid of Klix.ba premises and facilities represented a clear assault against the journalists' rights to protection of information sources available at: <http://www.klix.ba/vijesti/bih/osce-pretres-klix-ba-predstavlja-jasan-napad-na-prava-novinara-na-zastitu-izvora/141229106>, shared 1 Sep 2016

²⁰ Decision by the Sarajevo Municipal Court, No. 65 0 K 477433 15 Kv, from 5 Jan 2015.

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Bulletin Board of Editors

Faruk Kajtaz

Siniša Vukelić

Borislav Vukojević

Bedrana Kaletović

Amer Tikveša

Editor

Adis Šušnjar

Art Editor

Arman Fazlić

BH Journalists Association

Kralja Tvrtka 5/5, Sarajevo, Bosnia and Herzegovina

Tel/Fax +387 33 223 818; + 387 33 443 072

e-mail: bhnovinari@bhnovinari.ba;

web: www.bhnovinari.ba