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(In)formal restrictions of freedom of expression in BiH

Freedom of expression is not considered as some sort of absolute right and in developed societies it has become a subject to particular formalities, conditions, limitations or fines defined by the law and required in a democratic society, thus favoring limitations of other people rights or protection of public interest.

In Bosnia and Herzegovina, where laws concerning media field have been reasonably conformed to European standards, there have still been possibilities for particular formal and legal limitations, in regard with the freedom of speech and journalists' general work. These limitations cannot be considered as necessary and required for any democratic society; instead they often display a political instrument used to impose media houses with pressure.

Journalists and media professionals outlined the problem of the implementation of the Defamation Law as one of the most significant obstacle for journalists' work in BiH. Defamation Law is not conformed to European standards, and they also emphasized disobedience of the provisions deriving from the Law on Free Access to Information, including formal and legal decisions passed by the institutions, limiting thus the access to public events or meeting assembly or council sessions at local and municipal levels

Journalists focused on investigative issues and affairs reckon that defamation abused charges and suits, have in fact the limiting role as far as media functional and operational work is concerned. Still, there are certain mechanisms that provide such media houses with legal aid, helping them thus to avoid being charged for defamation, also including particular legal limitations that they may eventually turn to their own benefit through detailed analysis of all facts, as well as through avoiding the diminishing and violation of the reputations and honor of people being subject to writing.

Besides, as far the work of investigative reporters and journalists is concern, there is also a problem with the Law on Free Access to Information where public institutions fail to provide required information to whomever they may concern. Center for Investigative Reporting (CIN) has so far won 9 cases in their favor in regard with claims for failing to obey the provisions of the law on Free Access to Information. Finally, limited access to all public venues in public institutions for particular journalists and media houses displayed a certain pressure against media representatives, including the confining of journalists rights to work.

Everything that has been said may to certain extent violate the rights of others, it may influence the speaker to person being subject to discussion; however, it may also make an impact of wide local community and even society. Therefore, there must a rational explanation why the above mentioned limitations must be clearly defined and marked. Otherwise, if limitations and criteria have not been clearly defined through legal provisions, both citizens and journalists shall be afraid to speak out because they will fear. In digital surrounding, this question and issue shall become significant due to miscellaneous media environment. At the same time, media houses and representatives may avoid charges and claims pressed against them, including, long – term and expensive court proceedings through the porches of obeying ethic codes and professional approach.

How are media houses and journalists in BiH limited in their right to freedom of expression and how are they deprived of their right to professional work? To what extent can media houses and professional handle and manage formal limitations and what are the obstacles that make direct or indirect impact to freedom of speech? What can the local courts do about the issue of freedom of expression in terms of court practice?

55th edition of E-Journalist shall cover these and similar stories through the texts written by **Vera Soldo**, editor-in-chief at Republika.Info, a local web site, **Aladin Abdagić**, editor-in-chief with the Center for Investigative reporting, **Andrijana Pisarevic**, editor-in-chief with Srpskcafe.com, a local web site, **Nikolija Bjelica**, editor with Direktportal.com, a local web site and **Amir Kapetanovic**, judge of the Banjaluka Elemental Court.

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Free expression according to local courts

By: Amir Kapetanović

Freedom and expression both represent fundamental rights of first generation where, for instance, same rights appear in the Constitution of the USA, (namely in Amendment I), issued in 1791. Today, it is impossible to even imagine democracies without guaranteed rights to freedom of expression included in Constitutions of all democracy – based countries where they guarantee these specific and particular human rights. Several international legal acts proclaim the protection of this human right and as for Bosnia and Herzegovina, as member of Council of Europe, the European Convention on Protection of Human rights and Fundamental Freedoms is particularly important and crucial (hereinafter EC), dated in 1950. Namely, Article 10 of the EC guarantees and endorses the rights of freedom of expression. Modern sources of communications, including internet and similar sources, produced new problems in terms of rights to freedom of expression and its limitations, so European Commission, as one the European Union bodies, presented specific Guidelines and Principles for Internet Platform, in order to strengthen the prevention of occurrence of illegal contents on the internet, that would encourage and share the idea of hate speech, violence and terrorism.

In Bosnia and Herzegovina, as we all know, until 1999, defamation and libel issue, as one of the sources limiting the freedom of expression, was identified, recognized and legally treated as criminal deed (felony), which accordingly resulted in imposing of criminal and legal sanctions. After the decision passed by the High Representative for Bosnia and Herzegovina, the de-criminalization of defamation was implemented, and after that, entity level laws were passed regarding the protection from defamation during 2001 and Brcko District Law followed this practice accordingly.

However, no right can remain absolute, including the right to freedom of expression that can be limited in certain cases, including national security, territorial integrity or public safety in order to prevent violence or criminal actions, protection of public health or public moral values, protection of reputation or other rights, prevention of detecting the announcements acquired in confidence or for the purpose of preserving the authority and objective and non-biased work by courts, all together outlined and defined by Article 10 of the EC.

In reality, local courts are often presented with cases where claimants, pursuant to provisions by the Law on Protection from Defamation (Defamation Law), during civil procedure, press charges against authors, editors or publishers, including legal entities which had published or posted the survey (research) results and that were, most of the time, profanely referred to as journalists. On the other hand, we have the appearance of claimants, mostly public figures and politicians, who are convinced that the reputation in their communities had been jeopardized and violated, as a result of certain contested and disputed speech or expression in either electronic or printed media sources. Accordingly, their goal has always been to provide court protection for themselves as this “protection” should additionally limit this kind of freedom of expression, either through court and legal verdicts that would determine that this particular expression was untrue and false and shall be treated as defamation – based expression, and more often, or by claiming material compensation (money claims). The task of courts in such proceedings is to establish and develop the balance, that is, pro-

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Events

8 June 2018
2018 Journalists Academy closes at Boracko Lake

30 May 2018
Journalists in Brcko talk about mechanism required for the protection of labor and professional rights

29 May 2018
Journalists in Banjiluka presented with mechanisms required for the protection of labor and professional rights

Media on media

9 June 2018
DEŽULović CASE: A necrology scholar to certain period of time

8 June 2018
Satire and media: Dežulović Case (media.ba)

8 June 2018
BiH – the only European country with no fourth generation and even its entire territory is not fully covered with 3G network

Vacancies

Journalists' training session in regard with investigative journalism in public finances. Deadline for application is 15 June 2018

Radio M seeks a radio host – radio editor. Deadline for application is 28 June 2018

Voice of America – editing office in languages of three major ethnic groups in Bosnia seeks multimedia reporter. Deadline for application is 30 June 2018

Voice of America – editing office in languages of three major ethnic groups in Bosnia seeks reporter in the field of science. Deadline for application is 30 June 2018



Free Media Help Line

Actual cases:

Center for Investigative Reporting – CIN journalists were threatened on the official Face Book page of Center for Investigative Reporting (CIN) after they posted the article / text about Fikret Abdic, Velika Kladusa municipal mayor

Dejan Šajinović - General Secretariat of the National Assembly of the Republic of Srpska rejected the enquiry by Nezavisne novine journalists demanding free access to information regarding the assembly transcript. Free Media Help Line provided legal aid to journalists. After the claim filed in by one of the Nezavisne journalists, General Secretariat of the RS National Assembly decided to hand in the subject transcript

Ramo Abidović – After having sent an official notice letter by Free Media Help Line to Kalesija Town police authorities and due to verbal threats directed against Ramo Abadovic, a local journalist, by politicians and public figures, the police authorities replied by stating that there was no elements of criminal deed.

vide the answers to questions regarding the proportionality and relations from one hand, in relation with journalists' rights to freedom of expression as respondent, and on the other hand, claimant's rights to protect her/his reputation; reputation as the public figure.

In order to have local courts reply to whether certain survey and research caused the violation of reputation of claimants, three – part tests must be conducted, that is, certain criteria considered as relevant for the proportionality tests.

These criteria concern disputable and contested reporting and to what extent does this reporting contribute in further discussion (regarded as general public interest); how famous the subject (public figure) is and what is the subject of reporting; behavior of person/figure (being subject to discussion) before the disputable texts, article or post; nature of acquiring relevant information and their accuracy; contents, forms and consequences of publishing or posting and where applicable, the seriousness of imposed sanctions. This actually means that if, for example, journalists make reports about how public budget money is spent, including the work of the police officials, public procurements and similar; it is undoubted that this is about issues that do make significant contribution in public discussions (regarded as general public interests). As far as previous and past behavior of the subject person is concerned, and prior to posting or publishing the article or text, the answer to this question displays the amount of contribution the subject figure had imposed in by posting or publishing the text, by her/his own work or committed deeds. In the line of many brought decisions, politicians were considered as public figures and they were aware of the fact that their work would be monitored and supervised, as far as general public is concerned, and they should accordingly be prepared to public critics exposures, as oppose to ordinary citizens. Of course, public figures are not legally obliged to suffer and accept senseless, untrue and false critics.

In terms of acquiring information and their accuracy, the authors of often disputed and contested expressions, that is, journalists being subject to interrogations process during the civil proceedings before the court official authorities, often claim that the information they attained derived from very confidential source; they had two independent sources and once they are asked to explain and reply whether they contacted the opposite party, that is, the claimant as the public figure before they had decided to publish or post contested article or post, they reply affirmatively, yet outlining that they could not reach claimants. Namely, it is crucial to journalists, as defendants that they, during the civil procedures, prove that their actions were based on good intentions and that contested reporting was not aimed to provide public with senseless critics of public figure with the purpose of harming her/his reputation. "Basically the defendant party, based on genuine intention, represents some kind of alterations for proving the truth. When a journalist has a legitimate aim, when something concerns general public interest and when people contribute with an effort to confirm the facts, media shall not be held responsible even if these information later proved to be false and untrue", which is exactly the quote of the verdict passed by the European Court in the case of Thorgeirson against Iceland. When a journalist, as the accused party, in cases where her/his reporting was identified, recognized and considered as reporting based on good will and intention, that is, if her/his reporting was directed only to provide public with information they consider as generally interested to wide audience and public, outlines and points out that she/he "failed" to contact the opposite party, which means could not reach the politician, as public figure, this fact can prove to be very helpful in terms of proving that her/his intention was genuine and meant no harm to opposite party.

Furthermore, journalists often in courts defend themselves by stating that contested expression represent and display their valued judgment, that is, valued opinion, rather than representing a genuine fact, where local / domestic defamation laws clearly define that as far as the expressed opinion is concerned, they shall not be held responsible for defamation and libel.

The task of courts in such proceedings is to establish and develop the balance, that is, provide the answers to questions regarding the proportionality and relations from one hand, in relation with journalists' rights to freedom of expression as respondent, and on the other hand, claimant's rights to protect her/his reputation; reputation as the public figure.

Namely, it is crucial to journalists, as defendants that they, during the civil procedures, prove that their actions were based on good intentions and that contested reporting was not aimed to provide public with senseless critics of public figure with the purpose of harming her/his reputation. "Basically the defendant party, based on genuine intention, represents some kind of alterations for proving the truth.

In local court decisions, valued judgments is presented as the expression that cannot be proved, while the existence of information, that is, the existence of facts, can be proved. However, even in decisions by local courts, including the Constitutional Court of BiH, and decisions passed by the European Court for Human Rights in Strasbourg (hereinafter European Court) it is indicated that valued judgments with no genuine and reliable facts for support can exaggerate, so in that case the party shall only be held responsible for contested expression, which again means that courts shall have the basis to impose limitations to this particular type of expression.

This practically means that if journalists in contested newspaper article (text), express their opinion that certain public figure or a politician performed his public function duties immorally, performed poor quality work and with no responsibility; and facts of this suspected event being subject to these reports prove completely opposite, than in this case, the contested expression would represent valued judgment which is exaggerated and the judgment with no facts causing thus the misbalance between freedom of expression of any journalists (as the defendant party) and the right for protection of claimant, in this case, as the public figure or politician.

Also, in reality, journalists often express their opinions stating that by transferring and sharing certain expressions (and they may not be genuine authors of such expressions) that is, transfer and share contested articles, texts and posts from other web sites and post them on their own web sites etc, there is no responsibility for this kind of expression. Naturally, it is necessary that media transfer and share information, regarded as vital to general public, and that wide audience is entitled to receive these information; otherwise media would fail to fulfill and meet their fundamental and primary role known as "keepers of public interest".

However, during the process of transmitting contested expression, media, that is, journalists should transmit such expressions in good intention and for a good cause and with the purpose of providing public with information, rather than imposing unjustified critics. In this specific case, it means that if certain internet web site posted contested expression, related and directed to public figure accusing her/him by her/his own will and without actual and genuine facts provided, that she/he committed crimes (felonies), which by itself represents and to some extent, displays defamation – based expression, other media houses and journalists sharing this specific expression should enable this public figure to express her/his own opinion regarding that particular case and contested expression posted publically on web site, and the goal of this share would be to proceed general and wide public audience about concrete events, opinions or ideas.

Regarding this case, the European Court of Human Rights has, in case of *Jersild Vs Denmark*, opposite to attitudes by local Danish courts that a journalist that during the TV show allowing members of racist organizations to freely express their controversial opinions and attitudes in relation with few insulting and offensive claims in regard with migrants and ethnic groups in Denmark, found that the content of this TV show was aimed to initiate and launch a public discussion and comments by the printed sources, regarding the issue of racism in Denmark and that the TV show itself was not directed and guided in order to propagate racist ideas and attitudes; instead the show warned about immoral occurrences, dangers and illegal actions, promotion of racial hate, including the idea of superiority of particular race.

However, during local court disputes, contested expressions based on defamation and libel contents, are being transferred, transmitted and shared without any activities by the accused media houses, outlining the fact that where a person transmitting or sharing the content is not actually the author of contested expression, so she/he claims the right to share that contents.

This kind of attitude and opinion would be in contrast with the right to free expression and would additionally resulted in its own feign and shame in democratic society. Namely, we could imagine the possibility of significant misuse of freedom of expression when certain and famous online media house, decide to anonymously post



If, for example, journalists make reports about how public budget money is spent, including the work of the police officials, public procurements and similar; it is undoubted that this is about issues that do make significant contribution in public discussions (regarded as general public interests).

defamation based information on certain web site in any way and then this disputed expression is shared to web site address of accused media house that would, in order to defend themselves during court procedure that they are not authors of contested expression and therefore cannot be held responsible. Freedom of expression or as we often refer, journalists' freedom, represents human rights and rights of all citizens, because not only the journalists are entitled to release information that is, to announce facts and express opinions, e.g. valued judgment on one hand, and on the other hand, public is entitled to receive such information.

From claimants point of view, (as public figure), as it has already been outlined through several decisions passed by local courts and also by European Court, it is highlighted that public figures must be able to handle public critics and to demonstrate greater level of tolerance, in terms of contested expressions, as oppose to regular and ordinary citizens. However, in light of the above mentioned criteria, public figures often (in their local political life and through their activities and actions) initiate and encourage journalists' reactions (as public keepers), where such reactions may be exaggerated by the use of inappropriate language, but they should still not be limited pursuant to local court decisions.

Therefore, for instance, in case Bodrozic Vs Serbia proceeded with the European court, the journalist accused the historian (who was representing and calling a public figure an idiot), using another opportunity to express his fascist – based ideas and attitudes. Namely, this historian stated on national TV channel that Baranja Region was under Croatian occupation, how Slovaks and Romanians, and above all, Hungarians in Vojvodina are colonists and that there are no Croats in Vojvodina, and that Hungarians are mostly Slavs. But, the actual facts proved completely opposite, because according to census from 2005, Vojvodina presented a multinational and multiethnic region, with over 35% of its people belongs to non – Serb ethnic groups, and with Hungarians, but also Slovaks and Croats making most of this percentage. The same decision underlined that the fact that the accused was convinced that it was his duty to react to statements made by the claimant, can, to some extent, be understandable and accepted. Although he did use offensive and insulting language, they emerged as a reaction to provocative interview and in terms and context of free discussion regarding the issue considered as common interest for democratic development of this region and surrounding countries. This or similar contested expressions often occur in our country, particularly during the pre-election period, where, as we can see by the practice of European Court, journalists are invited to react publically, and in this case their disputable and contested expression shall not be considered defamation – based nor it should be limited either.

On the other hand, politicians, as public figures, must pay more attention about the content of their speeches and expressions and must be aware that their expression may result and produce negative public reactions, including journalists, so in this case, it would be hopeless to require courts to limit freedom of expression due to violation of reputation.

At the end and in terms of sanctions imposed by local courts in cases where contested expressions is determined and considered as defamation – based and that it should be limited due to violation of claimant's reputation, in local practice certain and significant changes in comparison with the initial period of amendments of the Defamation Law. Namely, the amounts of non – material compensations are subject to verdicts only in cases of smaller and today these amounts range up to BAM 3.000.00, as far as public figures are concerned. These amounts are often smaller than BAM 3.000.00. However in terms of the above mentioned criteria and changes of proportionality tests, and in some decisions passed by the Constitutional Court indicate that the principles of proportionality with limitations to freedom of expression



the problems in practice and reality and in regard with freedom of expression, particularly in these cases where claimant on one hand is a public figure and politician, and the accused party is usually a journalist, and these cases are often very complex and complicated and must be looked through different aspects and point of view, where the advancement is required in terms of education and in sense of European court decisions is possible even with local courts, including media houses and politicians, as public figures, as well.



and compensation for non-material damage, and without clear indicators whether the balance may be established for instance, by public apologies of defendants, by announcing the verdict the same way as defamation expression and similar, and courts should pay more attention to this.

Most perception of local public, particularly journalists, is that the courts mostly protect public figures, particularly protect politicians. However, it is important that journalists, wherever possible, before certain expression apply mentioned criteria, and surely and most importantly is how they conduct and act in good faith and intention, with the purpose of providing public with precise information, instead of untrue and incorrect information, and on the other hand, politicians as public figures, should demonstrate much greater level of tolerance, because it was their choice to choose their political, but also public career, and that it implies that politicians shall always be under public “surveillance”. In cases with popular defamation, pursuant to constitutional structure of Bosnia and Herzegovina, mostly in a signed case, the decision is made by many judges. This practically means that during first instance procedures, at elemental, that is, municipal courts, single judge passes the verdict, upon the appeal with county courts, that is cantonal courts the council consists of three judges, and that such case often becomes the subject and questioning the constitutional decision passed by local courts, before Constitutional Law of BiH, because the Article 2, item 2 of the Constitution defines that priority of European Convention for the Protection of Human Rights in comparison with local laws including the Defamation Law.

Unlike neighboring countries with similar legal heritage, Bosnia and Herzegovina (in relation with verdicts passed by the European courts in these cases regarding the freedom of expression) has no decisions brought so far; the decisions that would enable us to determine that local court decisions in fact do limit freedom of expression, which is in contrast with European convention. As we can see, the problems in practice and reality and in regard with freedom of expression, particularly in these cases where claimant on one hand is a public figure and politician, and the accused party is usually a journalist, and these cases are often very complex and complicated and must be looked through different aspects and point of view, where the advancement is required in terms of education and in sense of European court decisions is possible even with local courts, including media houses and politicians, as public figures, as well.

How to avoid defamation charges in reality

By: Aladin Abdagić

Media must respect first and genuine professional rule and accordingly release, post or publish correct, true and confirmed information. Consequently, they have to do everything they can in order to get the feedback from so called “the other side” so they could, in objective and most appropriate and fair way, present all parties involved in their stories. Although, it seems that these professional norms are easy to accomplish, in reality, it is not quite simple. Due to pressure journalists have been imposed with by their editors and deadlines, they often neglect the rules or simply have not enough time to obey these rules and fulfill their tasks in time. This is exactly why they release inaccurate, unchecked and unconfirmed information and their stories often lack constitutional elements, such as “the other side”.

What is the solution to this problem? It is simple – do yourself a favor and do not release, post or publish a story until you take everything it takes to confirm your thesis. This can be done by checking the accuracy of all sources included and all documents and statements you could possibly acquire. During this process, emotions must be put aside, including personal preferences and journalist’s ego, because the story posted upon these basics and fundamentals usually has no sustainable arguments, and this almost always means that the subject story concludes as incorrect and wrong. A journalist and media house that publish such story may accordingly expect defamation charges from the other side as a result and the defamation legal process exhausts financially; it takes precious time for work away and if the charges are well founded (in legal terms), the process may also take the credibility away.

Besides, the announcement of such incorrect news damages the people and institutions that are subject to this news and the audience is thus provided with wrong information – which is not the goal of benevolent and beneficiary professional journalism. Center of Investigative Reporting (CIN) has so far announced and released over 500

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investigative stories, tens of video stories and 14 information bases.

All information must be checked several times before it is released, based on relevant documents and witnessing of involved parties that would prove allegations indicated in articles, posts or texts. Shortly – nothing should be “taken for granted”; nothing should be presumed and everything should be checked carefully several times.

Due to this kind of working and operating, the CIN and their journalists have never been accused nor convicted for defamation. However, we should take into consideration yet another type of effects that create this kind of working and these effects include public reputation and trust amongst the readers. Based on CIN stories, many investigations by judiciary and police institutions have been launched, certain legal law amendments were implemented, some politicians and highly ranked officials were also dismissed and sacked and some of them were even convicted for actions they had conducted.

Journalists bear great responsibility for their work. Providing public with information regarding important and controversial information, news and affairs is not an easy task to accomplish, taking into consideration that this kind of information must be correct and unambiguous, as this is the only right and appropriate way, because journalists, with every post they release, influence the public opinion regardless to how impossible this may appear. This kind of influence may result in social reactions and consequences may (as a result) be tragic.

Denials following this will not help because (apart from the fact that journalist would be held legally responsible for defamation in front of judiciary institutions), there is even greater burden; the consciousness that their actions could produce negative impact on public lives, including wrong opinion and attitude they may have about someone or something as a result.

I have been writing this text and editing it for two days and during this time, I have also written two denials and directed them to web sites that had posted incorrect and wrong news about the cooperation between the CIN and certain local institutions.

Prior to this, no one has even contacted me to check whether my post was correct and what exactly was the subject of the alleged cooperation between another party and myself.

Finally, this information was removed from this web site after two denials and the time I had to spend writing these denials.

I later discovered that this news was forwarded to these web sites by the representative of the institution and this very representative had been appointed to this position through political connections. He masterfully represented the CIN meeting (during the public event) as the meeting between the two institutions for eventual planning future cooperation.

Furthermore, colleagues have posted this announcement and released it without prior investigation and analysis, despite the fact that they were not the authors of this announcement. This was completely unacceptable and represented vast violation of basic professional rules, and this is why journalism in BiH (in general terms and because of similar conduct by journalists), is drowning into the abyss.

In CIN we like to say that we “talk” with the documents at our possession and particularly if these documents could prove and confirm corruption or criminal deeds conducted.

Journalists get different information from various sources but cannot confirm whether they are accurate or true, that is, whether the document itself has been forged in the first place.

We always have to check its authenticity from various sources and after that we decide to use it for our work as opposite and unprofessional actions and operations actually display a dam to semi – truth, false, wrong and incorrect news, including the atmosphere created by bad people, so they can easier attain and acquire their personal interests.

Editor of famous German newspaper told me once that his journalists got the document from certain but, on the other hand unreliable sources in relation with the issue of arms smuggling and with members of their government being involved in this affair. Information was considered exclusive and they were eager to release it before anything else. However, it turned out that the document had been forged and the editing office was closed down for one month because the police authorities had to launch the investigation regarding this particular case.



During the process of investigation and writing, the author also disposes of great amount of information so she/he often takes available information “for granted” without prior explanations for their interconnections or the meaning in certain contexts. This often makes a key and crucial difference, as far as information content that we release in public is concerned. It also may be considered as the reason why texts and articles may be wrongfully interpreted in public.

Therefore, exclusivity cannot be priority in relation with professional journalism principles because professional journalism does exist for a good reason.

Since the establishing in 2004, the CIN has been implementing the system of information verification as filter that does not allow incorrect and wrong information to be posted, published, released or announced. During the process of information checking, journalists are required to support every single allegation with solid, firm and verified documents (arguments), including the appropriate collocutors in regard with the subject issue.

Until the checking procedure is completed, journalists and editors must reply to questions on fair basis, regarding the subject of investigation and in accordance with professional standards.

As far as I am aware, other editing offices in Bosnia and Herzegovina do not undergo the procedure of detailed information checking.

Those in charge with investigative journalism must do this while editing office (the office in charge with posting, publishing and releasing daily news) may find similar mechanisms that might be considered functional but also faster. Perhaps, consulting with colleagues in regard with the posted subject could be considered appropriate, especially consulting and advising with people considered as fair journalists and journalists with vast experience.

Finally, regardless to how certain we are about what we have written; information must be checked several times. In this way the danger of defamation charges and eventual accusations (or even indictments) shall be minimized.

During the process of investigation and writing, the author also disposes of great amount of information so she/he often takes available information “for granted” without prior explanations for their interconnections or the meaning in certain contexts. This often makes a key and crucial difference, as far as information content that we release in public is concerned. It also may be considered as the reason why texts and articles may be wrongfully interpreted in public. In order to avoid such misinterpretations, we in CIN have so called, “round table” discussion. This is the process where journalists (our colleagues) read the text loudly and make comments regarding the parts they find unclear. During this process, texts often alter and change and if the text is additionally considered unclear to colleagues, the end reader cannot find it clear either.

In order to protect from defamation, it is unnecessary to “spice” your text with additional phrases such as “criminal/s”, “forger/s”, “thief”, “criminal octopus” or using word games that may discredit and endanger reputation and dignity of the person your write about especially if you cannot prove and confirm your thesis. Finally, why would you do this if you are not sure what is actually the genuine truth? Journalist disposing of arguments and evidence has no need to transform her/his text into a political or marketing pamphlet. It would represent an undoubted sign that the text provides no answers whatsoever; instead, it raises questions and issues and this cannot be considered as professional journalism, can it?

Instead of bombastic labels and tags, identifying and naming the person would be enough, including the explanation what has been done by whom, because this is, after all, our job. Everything else should be left to readers to make judgments as they will base and have view of the story provided by you and thus consequently make conclusion about this particular person. Critical public opinion is made in accordance with this principle and public opinion, again based on journalism quality provided by your editing office and special kind of working procedures, shall at least require the same process from others.

Same applies for photo posting. Humiliating photos of naked persons (as part of your stories) with fingers in their mouths or noses shall not improve the quality of your texts. It would be interesting for a day or two, but it shall not launch legal investigative stories against this particular person. Additionally, it may serve as the legal fundament to prosecution against the authors of such photos.

Texts and articles without epithets, mustering, and specific qualifications and metaphors may seem boring, although boring does not mean anything bad in general. Boring is usually great if correct, true and confirmed information are transferred and shared, particularly if they can result in the court trials of those held legally responsible.

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Shut up and abide: Bandage on the mouth for those with different opinion

By: Andrijana Pisarević

Freedom of speech and its limitations in BiH are impossible to observe other than from outside the prism of journalists' economical and existential living conditions; including journalists' chronic lack of knowledge and information regarding their own rights, and even rights that concern free access to information, but also impossible to observe without having considered the "slavery" that their media houses guide and entail towards the ruling and governing structures and powerful centers.

As a result of the above listed factors, journalists have been facing and encountering various obstacles (on a daily basis), that produce direct or indirect impact on the freedom of expression, starting with depriving of statements and announcements and banning of particular issues and topics through direct threats, until getting sacked and losing a job due to disobedience.

After being asked to outline the greatest limitations that journalists face at present and which is more frequent: censorship or auto censorship; journalists, professors and analysts listed many different factors, but they all agreed that most jeopardizing limitations were those we set up to ourselves in relation with bans imposed by media houses. They all agree that limitations of freedom of speech have become so deep, that journalists deliberately decided to avoid certain and (to some extent) even less important topics or issues that are criticizing and resenting, or even taking a risk with their employer who may decide to reject their story and fine them due to their displayed level of enthusiasm. On the other hand, sometimes according to dictates imposed by higher powers, entire reality is ignored with the purpose of displaying banality and to be taken away from headlines. This is exactly what has been happening in case of mysterious death of David Dragicevic, where RTRS has openly been reporting and mainly biased towards the defense of the Ministry of Internal Affairs (the Police), thus ignoring the protests and rallies held at Krajina Square in Banja Luka, including SRNA news agency whose headline was: "Dragicevic had a fight, robbed the house and dived into the river".

Tanja Topic, a political analyst, claims that freedom of speech is (in our cases) limited in terms of disallowing and disabling certain media house representatives to have free access to particular public institutions venue or event, including the limitations in creating and making reports from these facilities, as far as certain case is concerned. Another type of limitations is the lack of law implementation in regard with free access to information, and depriving certain media houses with announcements or statements.

- The problem is best demonstrated through the division between "ours and theirs" (including their media houses), that is, "suitable" or "non – suitable". Suitable are privileged and unsuitable are those that direct critics towards holders of certain politics and governing or public function holders. I shall illustrate this through the simple case of World Press Freedom Day reception at the facilities of Mrs. Zeljka Cvijanovic (prime minister of the Republic of Srpska). Not all media houses and their representatives were invited there on this special day. At certain point of time, certain warning letters circulated throughout the RS public institutions, with clear orders given to governing officials, regarding whether they can speak with particular media representatives and with whom they would not be allowed to speak at all, or give any statements or announcements. This kind of limitations in media freedoms and disabling certain journalists to perform their work duties and complete their tasks is very close to typical discrimination - says Mrs. Topic.

She said that it would be difficult to balance which is more present, censorship or auto censorship and whether we are more keen to react on the latter (auto censorship). The problem is that all of this has become normal and commonly accepted. Censorship has become more visible in public space. Certain centers and cabinets have been turned into editing offices and dictate and determine editing policies of particular media houses and this is not a secret either. We have had black, that is, the list of banned guests and collocutors on public broadcaster and this was openly admitted by Rajko Radovanovic, the RTRS General Manager.

- This is modern way of patching the bandages on the mouth of individuals

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with different opinion. We have seen some sort of rebellion in public, due to this. Worst of all is the fact that we have begun to treat this as regular and normal occurrences and accordingly accepted it – said Mrs. Topic.

As far as certain media houses and their silence is concerned, in regard with Dragojevic case, she claimed that eliding represents a great omission and failure, including public deceiving.

- Silence is sometimes more louder and stentorian than great noise and sometimes it outlines and highlights important processes and venues. It would be wrong to believe that, if you remain silent and ignore something, to convince yourself as if that had never happened. Journalists sometimes appear as split- up personalities in this sense, placed between the hammer and the anvil. On one hand they are imposed with pressures by editing policies, that is, pressured by the entrepreneurs (owners) with certain powerful centers backing them up and, on the other hand, pressured by their own, personal, individual and professional integrity. Everyone is entitled to have a choice, but the question is what each and every one of us decides to choose; comfort, safe and stable existence, and silence, that is, a choice of remaining solid and to live stable life with clear professional dignity with head up, which is asset that money cannot buy. Social media provide you with this kind of freedom; if you have no choice or, if you cannot work for other media houses, although this has certain limits as well. Limits can last until the moment, where it begins to disturb and bothers media houses, editors and entrepreneurs that journalists work for, and then this space shall be taken away from them for sure – she said.

Sinisa Vukelic, president of Banjaluka Journalists' Club says that freedom of speech in this particular region suffers from identical diseases, including messy state administration and non – functional democracy.

- First of all, historically – colonized – dictatorship and criminal based power left consequences as far as public consciousness is concerned. Secondly, limiting the freedom of expression is directly related to economic decline of both, readers and viewers on one hand, and decline of editing office on the other hand. When combined altogether, they compose a conglomerate of what we have today in media market. Pressures, realistic and imaginary fear produced a censorship and strengthen auto censorship even further. The boundary between censorship and auto censorship is almost invisible; therefore it is very difficult to tell the difference between the two of them. Auto censorships operates in order to eliminate the censorship, so colleagues (workmates) believe that by this they might keep their dignity intact because no other party would erase and delete their work, shorten or shut off their TV programs, reports, articles or texts. Of course, they are mistaken and lose the respect amongst professional journalists and these things are not easy to forget. Auto censorship, in the other hand is more dangerous. Open censorship evokes a resistance, produce creativity that helps journalists in discovering the way that would help the general public in receiving news regarding current affairs in their communities or their society. Auto censorship is different in this sense, because rules of professional conduct are obeyed and this creates the emerging of slight censorship as a result, censoring thus themselves – Vukelic claimed.

Borislav Vukojevic from the Faculty of Political Sciences in Banjaluka reckons that freedom of speech with us is mostly limited by narrowing the public space for different opinions.

- “For instance, what media houses fail to follow, it seems as it had never happened. Also, there are open and latent threats directed to journalists and citizens as well. Auto censorship is increasing, although it is the product of “censorship organizational culture” in most media houses. Therefore auto censorship would have never come to existence if it were not for censorship that had served as the “teacher” to auto censorship and additionally transmitted and transferred to employees. This is best illustrated through the “Dragicevic case” that has best displayed a true and genuine picture of media houses and this should be stated and released openly. RTRS, as public broadcaster, began to cover this case while making reports as part of “political biasing” on the Krajina square, desperately trying to put all rallies, gatherings and public protests in the context of “destabilizing and ravaging. I found that there was plenty hypocrisy in this case, because they should not have defended themselves by stating that Police Ministry cannot be blamed because

there were no evidence against them, while, at the same time, they provide no arguments and evidence either for attacks on RS. Still, on the other hand, I do not support bloggers releasing and posting unchecked and untrue information, because this may revitalize the truth as well - claimed Vukojevic.

Sinisa Vukelic claims that everyone is entitled to personal opinion and attitude, but certain media are silent and remain passive as far as this big social tragedy and public interest is concerned, including the case of David Dragicevic death, actually displays the clients that news and TV shows are broadcasted for.

- Ignoring is even more effective than biased reporting that many are tempting to lately, in order to justify their previous actions. This is how they openly support certain political party despite the fact that the minority of their subscribers actually supports this party. The fact that particular journalists of the above mentioned media houses express their opinion openly and when they are in contrast in conflict with editing policy, is definitely something that should encourage us all – says Vukelic.



What happened to freedom?

By: Nikolija Bjelica

If freedom of expression should represent the fundamentals principles of democracy for its development, it seems that the same fundamentals principles in Bosnia and Herzegovina obviously malfunction. Basic right to freedom of expression should be guaranteed to every single individual, but it appears that this right is hardest and most difficult to be applied, implemented and practiced with journalists, because they have constantly been deprived of this right in many different ways at many different levels. Depriving journalist of their fundamental rights is perhaps best demonstrated by certain individuals, institutions or particular interest – based groups and lobbies, that cannot accept direct critics addressed and directed against them, so therefore they do not hesitate to apply pre-checked methods in order to reply and respond to these critics; they consequently put pressure on journalists, threaten journalists, blackmail them, press charges against journalists, ignore their enquires, emails etc.

Freedom of expression, at least as far as media scene in East Herzegovina is concerned, almost does not exist in reality and practice. Many fail the test concerning the right to freedom of expression, regarding the rights of East Herzegovina journalists and their investigative and survey stories that concern the general public. Those journalists that “dare” to do that (investigative and survey journalism), encounter obstacles almost everywhere and are deprived of their fundamental rights to free expression. Although limited in numbers, there are few media houses in this particular region that manage to work under such hard and obstructive conditions. They some-

During the mission of limiting the freedom of expression, the easiest way would be ignoring the Law on Free Access to Information and its provisions, and state and public institutions have indeed mastered this practice. The manager of one of many public companies in Trebinje, had perhaps best illustrated the relationship between institutions and powerful figures, towards the Law on Free Access to Information; namely, once we asked him to explain why he had refused or rejected to provide us with particular information in accordance with the law, his response and reply really spoke for itself: “The law exists so we could eventually disobey it and break it”, he responded!



Often, politicians, being subject to our posts or stories, openly outline and emphasize that they know members of our families, relatives etc, and imposing thus subtle way of pressure against us. It is necessary to improve the work conducted by judiciary institutions at all levels, so all individuals that we ask to provide us with specific information, could have in mind or take into serious consideration, that they might be financially fined and punished, should they fail in allowing us to have free access to information.

how manage to prevail with their work and sustain in media field, only because of the work conducted by few responsible individuals who still believe and are convinced that their occupation is an honest job and trade and they should accordingly act in that direction. In Trebinje alone, there are around 20 media and self – proclaimed media houses. Legal disorder, as far as online media sphere is concerned, enables almost everyone to set up their own private media online house and publish or post information based on their own will and desire, so one could, observing this particular market as a neutral person standing aside, conclude that freedom of expression, at least to some extent, does exist in reality. However, according to information posted on the internet, the information posted by various local web sites are almost identical, so once again, one could conclude that media pluralism does not necessarily mean pluralism of different ideas, attitudes, opinions and views, at least as far as certain public events, venues or affairs are concerned. Unified providing of information has come as a result and consequence of the emerging of limited journalism freedoms, where auto censorship and self censorship also emerged as inevitable occurrence.

If a journalist does not bound to auto censorship, powerful centers (that do not agree with certain and specific media contents and programs), usually ignore these media houses along with their representatives, they impose them with pressure, or direct open threats against them and eventually, they press charges against such media houses and their representatives.

Media houses consequently find very hard to support court proceedings in terms of finances, because most of these media houses have already been financially exhausted.

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Breaking the law is something that happens often and something that Mrs. Jelena Denda Borjan, a female journalist working for the "Direkt" (local web site) is very familiar with.

For the period of last two months, enquires regarding free access to information, sent or e-mailed by "Direkt" journalists, were completely and easily ignored by public institution officials.

Although the law enables and allows any citizen to require and demand information being under the control official authorities, Trebinje City Council officials, also, after being enquired by "Direkt" web site journalists, responded by demand-



ing the “Direkt” officials that, in order to reply to their questions and enquires, they (“Direkt” web site people), must submit an official registration form for this media house and only after they have received it, they “may consider responding and replying to “Direkt” enquires, but only upon request”.

“We did send our enquires typed on our official memo letter and we also send a company registration number under which the “Direkt” web site works and operates, but even after this, and even after the explanation that the law enabled and allowed every citizen to have access to information, there were no positive results. Recently, even the director of local radio station refused to provide us with certain information although he has been employing journalists himself. Getting information, apart from this law, is almost impossible, because when you press charges against for failing to provide you with information, the path to justice is very long, due to lazy work by judiciary institutions, so very few people actually decide to press charges in order to receive required and necessary information”, claims Mrs. Denda – Borjan, emphasizing that journalists working in smaller

communities are particularly working under exceptional pressure.

Although we act professionally, we display and highlight the facts in adequate, honest, appropriate and transparent way and we do invite our collocutors; still, we get many verbal threats and court charges etc. Often, politicians, being subject to our posts or stories, openly outline and emphasize that they know members of our families, relatives etc, and imposing thus subtle way of pressure against us. It is necessary to improve the work conducted by judiciary institutions at all levels, so all individuals that we ask to provide us with specific information, could have in mind or take into serious consideration, that they might be financially fined and punished, should they fail in allowing us to have free access to information. Also, it would be additionally encouraging to impose money fines directly against an individual, that is, a person who would fail to provide information and ignore the provisions of the law on Free Access to Information, because it would again force these persons to become more conscious as far as information providing is concerned, claimed Mrs. Denda – Borjan.

Marija Manojlovic, a female journalist from Trebinje, also outlined that the trend of limitations and reducing of journalists freedoms is undergoing, as far as local media houses are concerned.

“Journalists right to freedom of expression, but also a fair and responsible relationship towards journalism, as professional occupation, has been questioned and has become a subject to dilemma and disputes. Politicians allow themselves to prepare and edit news programs, including commercial advertisers and other interest – based groups, and unfortunately, they are often completely allowed to do this. Journalists, in their fight for their own existence often forget or ignore fundamental principles upon which journalism, as professional occupation, is based. Those that dare to refuse censorship or even reject auto – censorship, take a great risk, and are often being put under lot of pressure; they also often get direct threats, they are often assaulted and consequently put their jobs at stake”, Mrs. Manojlovic said.

She emphasized that the biggest problem for journalists is if the other side decide to ignore the request for having free access to information.

“Public institutions and authorities shall not express their concerns and shall not worry, once they receive unusual and embarrassing questions to their address; they will simply ignore the provisions of the law on Free Access to Information. This is very simple”, she concluded.

An illustrative example of the fight against the limitations of freedom of expression in media scene in BiH was presented by the Center for Investigative Reporting (CIN), because they won nine court cases against the institutions whose officials failed to provide required information.

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Individuals and governing authorities referring to themselves as to democratic, and those that imposed these non – liberties, could be instead referred to as pure idiots. Just as Gerhard Oberschilich, an Austrian journalist referred to Haider, Austrian Liberal Party leader after his Nazi – based breakdown, European Court of Human Rights set this journalist free, concluding that journalists' critics directed to a public figure. Those, more liberate media house, could conclude that European Court agreed that Heider was an idiot.

FREEDOM: If we want freedom of expression – we must also allow others to express different opinions and views

By: Vera Soldo

When we want to focus on certain issue or topic, some thesis or discussion, we often quote great philosophers, writers or intellectual historical figures. Although, I rarely do this, maybe this time I shall make an exception and shortly shape myself as one the above mentioned “quoters” for the beginning.

Ludwig von Mises in his “Almighty State” in 1944 said: “It is vain to fight totalitarianism by adopting totalitarian methods. Freedom can only be won by men unconditionally committed to the principles of freedom. The first requisite for a better social order is the return to unrestricted freedom of thought and speech.”

Or

François-Marie Arouet Voltaire: “I disapprove of what you say, but I will defend to the death your right to say it.”

BiH is indeed a divided society where everyone has his/her own truth about the past, her/his own understanding of present time and future visions. Right to freedom of expression is no exception to this, despite the fact that freedom of expression is guaranteed by Article 10 of the European Convention of Human Rights. Despite Voltaire's opinion and statement, we unfortunately often limit each other's right to freedom of expression.

Our development is mutating – we need more time

Today, we aspire developed democracies and we freely, without boundaries, express ourselves, as this process is not easy to accomplish all the time, because we sometimes get lost on the way and our development process is mutating, making us thus look like confused adolescents, or rather teenagers, as we could no longer consider ourselves as little and young, being far away from big ones. Still, current approach is completely different comparing to what it was in the period from 194 to 1945, but also different from the period between 1945 till the 90's. Back then; this issue was truly considered a taboo, regardless to how some people look at this. We may consider ourselves privileged to some extent, since we openly talk about this subject.

What does actually freedom of expression mean and can it be limited? Are we allowed and entitled to impose self – censorship or demand punishing or fining those that also use freedom of expression? Can we ask for bans or request prohibition of mutual, rough, sharp, joint argument-based, often straight and insulting, but also public discussions launched by journalists and authors with different opinions and views?

Do we, in this liberty of ours, require ban or prevention of pluralism as specific idea market; can we demand interdict of freedom of public opinion expression amongst those with different views? Shall we, in our desire and eagerness for democracy and our selfish exclusivity of rights to our own opinion only, eventually become an anti – pod of our own and personal ideas?

Shall we evoke new terror upon others?

Are we going to forget that conflicts between political and literary sides entered our history, with Antun Gustav Matoš on one hand, and Gjalski, Marjanović, Hranilović, Begović, Ujević and Kovačić on the other hand. Can you imagine that great Tin Ujević, in his “Death of Julius Caesar”, refers to Matos as to “long – time and eternal odious”, “original monkey”, “unique crow”, “plagiarist of Barrès and Baudelaire”? Matos on the other hand returned by calling this Vrgorac bohemian poet with “crystal cube of brightness”, similar names, comparing him with “the dog sitting along the road and barking at every single person passing that way”.

Krleža also criticized poetry by Aleksa Santić, even by writing in necrologies form, and he was also mocking other poets, including Ducic and many others. Matvejevic unscrupulously mocked Aralica, Stankovic and even Pesorda, who decided to press charges against Matvejevic for defamation and he won. Dilemma is present even today and these controversies and polemic sometimes appeared rough, exceeding all standards of polemic discourse and sometimes they seemed slightly easier. All in all, polemic remained an ongoing process even if its content offended or insulted others.

But really, we should realize that this is how things appear today, because we still have – freedom of expression at our disposal.

Limiting freedom of expression, but also limiting the right to professional work

“Vucko”, a 1984 Sarajevo Winter Olympic Games mascot, proved disastrous for Elma Kazagic, editor and host of “Mreža”, an FTV political magazine. For those willing to know and find out about the background of this case and without wider explana-



tions, they should watch “Mreza” magazine TV political magazine, broadcasted on 13 February 2018 and everything should eventually become clear to them. After this particular date, nothing was the same for Elma anymore. Only two years before this date, Elma was awarded with “Journalist of the Year” award, due to editing, hosting and reports from “Mreza”.

What can we say about the fact that Center for Investigative reporting (original CIN) had been waiting for months for the information that should have been provided by public institutions? However, this was not some kind of a joke – accusations followed one another, pursuant to the Law on Free Access to Information, so the official authorities, from the same public institutions, “blow hot and cold” and accordingly began to provide information literally on the same day upon request.

What would you say about the thesis that this topic, regarding the issue of the process of renaming certain street names in Mostar, primarily renaming the present street names with the names of very suspicious historical figures from infamous, Ustasha WWII period, represented nothing but the political will by the leading political parties in Mostar, as this specific and sensitive topic cannot even be a subject to professional writing; instead of accepting facts rather than accepting “the only politically biased” solution?

What would you say about the fact that female journalist was banned from entering the RS Assembly facilities? During the press conference, the questions she had asked were not answered; instead she “dared” to ask and question about such issues!

Individuals and governing authorities referring to themselves as to democratic, and those that imposed these non – liberties, could be instead referred to as pure idiots. Just as Gerhard Oberschilich, an Austrian journalist referred to Haider, Austrian Liberal Party leader after his Nazi – based breakdown, European Court of Human Rights set this journalist free, concluding that journalist can express journalists’ critics directed to a public figure. Those, more liberate media house, could conclude that European Court agreed that Heider was an idiot.

Unfortunately, journalists are capable of misusing freedom of expression

Do you remember “freedom of expression by tripping over” by Petra Laszlo, a female Hungarian reporter? During the report making about the stampede of misfortunate and poor refugees, she coldly tripped over a man who was holding a child in his arms at the time.

She also kicked a young Syrian girl. Petra defended herself in court by stating that she had to “defend herself”, but still, she was finally found guilty and was sentenced for three year probation period.

Monisha Rajesh,”The Guardian” female journalists expressed her own opinion and views (along with many others) regarding the victory of Donald Trump and these views, posted on her Twitter profile, seemed very radical. She wrote that “it was time to assassin Trump”. She was accordingly fired, and her profiles on Twitter and Face book were de-activated, although she was not sent to court for open invitation for murder.

Hague Tribunal verdict to six Croatian political and military leaders showed and confirmed how keen we were, as far as the use of hate speech was concerned, and the fact that many journalists were neither immune to hate speech use nor could have been considered as exception to this, rather wide occurrence of sudden hate speech appearance. The left wingers criticized “Ustasha” biased followers celebrating that “he died miserably form the drinking flask liquid”, while right wingers replied and responded by insulting “dirty Muslims, so called Bosnian Mujahedeen followers etc”. They both called each other fascists and perhaps this was the closest to the truth.

Instead of Conclusion

Is freedom of expression in BiH, the way BiH is shaped now, limited? The answer is yes.

Can we express ourselves freely; determine our expression without fear and work in order to minimize these limitations and boundaries? Yes we can.

Can this, to some extent, display a sign of democracy; a democracy that we failed to see, prior to independent, modern, sovereign and free state of BiH? Yes it can.

Should we persist and insist on continuous development of ourselves in the first place, and then followed by the society which we live in? Always.

Just like Ivo Andric once said:”All Drina Rivers in the world are curved. We shall not have time to align them and make them flow right. We shall never stop aligning them”.

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