

**How much are journalists and their work protected by BiH law:  
Advantages and disadvantages of the existing legislation, the necessary  
changes and the way EU and regional countries have resolved the issue**

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There are many laws that are reflected in how journalists and the media operate. In Bosnia and Herzegovina, only a few of them journalists and lawyers recognize as shaping the image of the media in the country and even their survival on the market. It is the Law on Protection against Defamation, the Law on Freedom of Access to Information, the Labor Law and the legal framework of the issue of transparency of ownership in the media. There are also several parliamentary initiatives currently underway regarding changes to the criminal laws to treat attacks against journalists as attacks on officials, as well as an initiative to incorporate different standards of admissibility, tolerance and evidence into alleged defamation laws regarding public figures and in relation to private persons, in accordance with the practice of the European Court of Human Rights.

Initially, some of the mentioned laws were assessed as a positive milestone that will contribute to better media reporting and development as well as protection of journalists. They fit into the rhetorical puzzle of lawmakers and politicians according to whom Bosnia and Herzegovina has the best written laws in Europe. Time has shown otherwise: their practical application, thanks to a largely fragmentary and cursory interpretation of the law, has put journalists into an increasingly unenviable position since their adoption. The situation is similar in the region where there is also a noticeable increase in the number of lawsuits mainly for defamation, which, according to a lawyer, have become a lucrative business. These laws have become tools for financially and politically pressuring media that have been weakened in status and it is affecting the content they publish. What is symptomatic of the laws which most reflect on the work of the media is the fact that the content of some of them is initially better than after the amendments.

### **LAW OF PRESSURE**

Fifteen years ago, lawyer **Biljana Radulović** first got introduced to the Defamation Act and at that time she had two cases pertaining to defamation lawsuits per year. That has changed in the last three to four years, so now she gets two new defamation cases per month. There are currently eleven active defamation lawsuits in court. Radulović explains that “the

difference in practice from that time is still in the claim for damages; lawsuits used to demand BAM 50,000 each; now five to six thousand marks in damages are generally sought.

Given the specific constitutional order in Bosnia and Herzegovina, there are three defamation laws,<sup>1</sup> two in entities and one in the Brčko District. There are some differences between them and one of them is that, for example, the laws of the Federation of Bosnia and Herzegovina and the Brčko District do not state that they are *lex specialis*<sup>2</sup> (law over laws), therefore, the Law on Defamation in the RS is the one that has the legal definition, which means that it is easier to apply. All three laws are woven inspired by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, with many other conventions and charters, is also woven into Annex IV of the Dayton Peace Agreement, which is also the Constitution of Bosnia and Herzegovina. It is important to emphasize the latter, as this should precisely guarantee the respect and rights of individuals.

In practice, these rights are read differently. According to the BH Journalists Association, in 2017 alone, 173 cases were active in which journalists, editors of the media and their owners were sued for defamation. Prosecutors are mostly politicians and officials at all levels of government, CEOs of public companies and institutions, and other public figures.<sup>3</sup>

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<sup>1</sup> There are three defamation laws in BiH:

The Federal Defamation Law

[https://www.vzs.ba/index.php?option=com\\_content&view=article&id=209:zakon-o-zatiti-od-klevete-fbih&catid=9:novinarski Laws & Itemid = 12](https://www.vzs.ba/index.php?option=com_content&view=article&id=209:zakon-o-zatiti-od-klevete-fbih&catid=9:novinarski-laws&Itemid=12) ,

The RS Defamation Law [https://www.vzs.ba/index.php?option=com\\_content&view=article&id=210:zakon-o-zatiti-od-klevete-rs&Itemid=12](https://www.vzs.ba/index.php?option=com_content&view=article&id=210:zakon-o-zatiti-od-klevete-rs&Itemid=12)

The Defamation Law of the Brčko District

[https://www.vzs.ba/index.php?option=com\\_content&view=article&id=2418:account-of-brko-district-bih&catid=9:novinarski-laws&Itemid = 12](https://www.vzs.ba/index.php?option=com_content&view=article&id=2418:account-of-brko-district-bih&catid=9:novinarski-laws&Itemid=12) (retrieved on December 25, 2019).

<sup>2</sup> Article 13 of the RS Defamation Law directly prescribes the relation of this law with others: “This law is a *lex specialis* with respect to all other laws. Anything not regulated by this Law will be subject to the provisions of the Law on Obligations, the Law on Procedure Enforcement and the Code of Civil Procedure of Republika Srpska.”

<sup>3</sup> Maja Radević, “Media and Defamation Laws: What is the Cost of Mental Pain?”, <https://bhnovinari.ba/wp-content/uploads/2019/07/65-PUBLISHING-E-NOVINAR-FINAL-FINALA-1.pdf> (retrieved on December 25, 2019)

**Avdo Avdić**, one of the most frequently reported journalists in the past few years, has been brought to the attention of the public because of articles about corruption; he is a journalist at Žurnal.info and there are currently fifteen defamation lawsuits pending against him. He does not consider lawsuits a problem but a democratic right for every individual -- because everyone has the right to sue. He believes that laws here are more favorable to journalists and that they have greater and better rights than their counterparts in developed or wealthier countries in Europe or America, where journalists have been detained because they protected their sources. In particular, he mentioned a journalist of *The New Yorker* who was detained because she did not want to reveal her source; in Bosnia and Herzegovina, on the other hand, journalists have the right not to be summoned as witnesses in this context. He disputes the practical implementation of local laws, which ultimately has fatal consequences for working conditions of BiH journalists.

"The problem are not lawsuits but corrupt judges; one should bear in mind the fact that once you lose a lawsuit, it does not necessarily mean you were wrong," said Avdo Avdić.

Federal television journalist **Arijana Saračević-Helać** has had a similar experience: fifteen criminal charges were filed between 2001 and 2010 against her while she was doing investigative stories for the political magazine *60 Minutes*. The longest trial against her lasted for six years, and the lawsuit was filed because, in a ten-minute television broadcast, she mentioned in one sentence a person and the well-known rumors about that person. Arijana Saračević-Helać explained her situation in the text "Blue envelopes called libel",<sup>4</sup> published on the BH Journalists' page:

*"Additionally, it is not easy, regardless of statistics, to come to court. People recognize us, ask us questions and label us a certain way. By the time you leave the hearing, everyone knows everything. As much as you want to spare your family, they found out what happened to me and at one point, they are scared of the mailman. Lawsuits and threats against journalists in our society have a discouraging effect on journalist."*

Similar lawsuits have swept BiH and regional courts, and some disputes have lasted for eleven years, although attorney Radulović said the trial should be expected to last for two

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<sup>4</sup> Arijana Saračević-Helać, "Blue envelopes called slander", <https://bhnovinari.ba/en/2019/08/29/plave-koverte-zvane-kleveta/> (retrieved on December 27, 2019)

years. The reason for that must be sought in the so-called “captured state syndrome”,<sup>5</sup> which is actually a direct consequence of corruption in the executive branch and the courts. It is often pointed out that courts are corrupt and that financial sanctions imposed on the media are aimed at impoverishing journalists. The above-stated claim can be substantiated by facts: the management of the weekly *Slobodna Bosna* paid a fine of BAM 10,000 a decade ago for writing about political racketeering of businessmen. The verdict was arbitrated by a judge who fled the country eight years later under suspicion of incurring a multi-million damage to the state.<sup>6</sup>

## LEGISLATIVE TROJAN HORSE

The situation in legislation or more precisely the interpretation of legal legislation is similar in the countries of the region. For example, since 2014, a set of media laws has been in force in Serbia, which has ratified all major international acts in this field. Similar to Bosnia and Herzegovina, our eastern neighbours have introduced into their constitution the basic standards laid down in Article 10 of the European Convention on Human Rights, which guarantees freedom of expression and freedom of the media, and they have provided judicial protection against any restriction of these freedoms.<sup>7</sup> However, enforcing these laws in Serbia is now problematic.<sup>8</sup> Croatia, as a member of the European Union, is itself bound by the

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<sup>5</sup> According to the World Governance Indicators rankings, BiH has a negative trend since 2006 to date in the area of corruption control, i.e. an increase in the level of perceived corruption, <https://www.dw.com/en/in-bih-se-zvi% C5% BE% C4% 8Di-Doubt% C4% 8De-For-Corruption / a-51221765> (retrieved on December 20, 2019)

<sup>6</sup> Senad Avdić, “We must organize ourselves”, <https://www.vzs.ba/index.php/profession-novinar-novinarika-1/3001-senad-avdic-ne-prestoje-nam-nista-drugo-nego-da-se-organize>

<sup>7</sup> Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

1. Everyone has the right to freedom of expression. This right includes freedom of thought and freedom to receive and impart information and ideas without interfering with public authority and regardless of frontiers. This Article does not prevent States from requiring licenses to operate from radio, television and film companies.

2. The exercise of these freedoms, since they involve obligations and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as may be required by a democratic society in the interests of national security, territorial integrity or public security, the prevention of disorder or crime, protection of health and morals, reputation or rights of others, prevention of dissemination of confidential information or in the interests of maintaining the authority and impartiality of the court. [https://www.echr.coe.int/Documents/Convention\\_BOS.pdf](https://www.echr.coe.int/Documents/Convention_BOS.pdf) (retrieved on December 28, 2019)

<sup>8</sup> JOURNALISTS AND MEDIA AT COURT 2015-2017 - analysis of proceedings against journalists and the media and a practical policy proposal, <http://www.yucom.org.rs/wp-content/uploads/2018/01/jOURNALISTS-I->

European Convention for the Protection of Human Rights and the practice of the European Court of Human Rights. Nevertheless, last year was marked by over a thousand lawsuits for defamation of journalists, of which the most drastic are 33 in which the Croatian Radio and Television (HRT) sues its own journalists for defamation.<sup>9</sup>

The Director of the Judicial Training Center **Arben Murtezić** recalls that Bosnia and Herzegovina was the first country in Europe to decriminalize libel -- that is, where defamation ceased to be a criminal offense. He also states that, with much controversy, the Republic of Serbia deleted the libel crime from the Criminal Code only in 2012, while in the Republic of Croatia decriminalization never happened, and in 2015 a new criminal offense was introduced: “grave shaming”.<sup>10</sup>

In an interview for *E-journalist* bulletin, **Vesna Alaburić**, who is an expert on media law in Croatia, said: "If journalists and editors in fear of penalties and damages do not publish information that the public has a right to, there will be 'freezing effects' of court proceedings for media freedom. And this is already a warning sign that something needs to urgently change either in legislation or in jurisprudence."<sup>11</sup>

How have the current laws in Bosnia and Herzegovina been enacted? A few years after peace was established in the country, towards the end of the last century, international representatives began to initiate changes to previous laws, including the media. In this context, the main focus was on the Law on Defamation, which had been promoted by the High Representative **Wolfgang Petrisch** and OSCE Head of Mission to BiH **Robert Barry**, along with many other governmental and non-governmental domestic and foreign experts. The AIM Sarajevo text entitled "Draft Law on Defamation" states that "the group was formed after the High Representative issued a recommendation in July 1999 to draft a civil law on

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[mEDIA-ON-cOURT-2015-2017-fin.pdf?fbclid=IwAR38RSIZBCDtZKUnQjggn0MOFsjK5HtZlgbfnkv1C7rbwB1OgEfG5NAwc8](#)

<sup>9</sup> “Croatia: Over 1,000 court cases against journalists and the media”, <http://balkans.aljazeera.net/vijesti/hrvatska-protiv-novinara-i-medija-vise-od-1000-sudskih-prometa> (retrieved on December 29, 2019)

<sup>10</sup> Arben Murtezić, “Law on Defamation: From revolution to reaction?” <https://bhnovinari.ba/wp-content/uploads/2019/07/65-IZDANJE-E-NOVINAR-FINAL-FINALA-1.pdf>

<sup>11</sup> Vesnom Alaburić, <http://bhnovinari.ba/wp-content/uploads/2018/04/51enovinar.pdf>

defamation, that is, to finally remove libel from the criminal legislation. The recommendation was made after two prominent Sarajevo journalists were sentenced to probation at a time when a few more libel cases were awaiting them in courts."<sup>12</sup> **Rubina Čengić**, a journalist, asked two unnamed colleagues in *Oslobođenje* to comment on the draft law: one admitted that the content of the text was unknown to her and another expressed concern that journalists could often be found in court as defendants. Two decades later, it is clear that the fear of that unnamed journalist was justified, since many libel lawsuits were filed against journalists. The exact number is not known.

One example of what the lawsuits are often about is the example of Avdo Avdić, who was sued by three of the **Mehić** brothers, all three of whom have been convicted of criminal offenses. And that is precisely the reason for the dispute: he stated the facts mentioned in the text and now they are suing him for defamation over that fact.

"Now I have to prove in court that they were all punished, but they do not have to prove that what I wrote was not true," said Avdo Avdić.

The extent to which the Defamation Law has affected the media scene in Bosnia and Herzegovina is best illustrated by the examples of the fate of several media outlets, which have had a significant impact on the BiH public as well as regional perceptions of the local media. When those laws came to life in Bosnia and Herzegovina, there were two political weeklys, *BH Dani* and *Slobodna Bosna*, and 60 Minutes a TV show on FTV, which exposed the affairs but also significantly influenced public opinion. Exposed to constant financial pressures (an ever-smaller piece of the marketing "cake" and frequent lawsuits and defamation judgments) *Slobodna Bosna* ceased to be issued in print, *BH Dani* changed, and 60 Minutes magazine ceased to be aired.

When *Slobodna Bosna* was forced to cease its print edition in 2016, the portal lupiga.com published a text under the title "We cannot talk about *Slobodna Bosna* without recalling that healthy rivalry with *BH Dani*. Journalists fought for readers with quality, which was lost after the privatization of *BH Dani*. That healthy rivalry has been lost, and some will say quality as well. *Slobodna Bosna* tried to continue along the beaten track by providing quality research papers and authorial texts. However, today it might be concluded that this

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<sup>12</sup> Defamation Draft Law, <http://www.aimpress.ch/dyn/pubs/archive/data/200102/10223-003-pubs-sar.htm>

was also a clear sign in which direction *Slobodna Bosna* was going. Either to become privatized or to shut down.”<sup>13</sup>

Five years earlier, **Bakir Hadžimerović**, the editor of the television magazine 60 Minutes, shut the show down in 2011; the show had dealt with topics similar to those of the two print media. The end of the show did not go unnoticed in neighboring countries where the media was wondering if the editor had stopped broadcasting the show because there were elites on the political scene at the time to whom he was inclined<sup>14</sup> or maybe it was because of perennial pressures (defamation lawsuits) that were coming to the newsroom on an almost daily basis? Today, investigative journalism in Bosnia and Herzegovina only exists in media funded by grants from international organizations such as the portal *Žurnal* and the Center for Investigative Reporting (CIN).

**Senad Avdić**, the owner of the magazine *Slobodna Bosna* and one of the pioneers of domestic journalism, is also a prime example of a Defamation Law victim. In an interview published on the website of the Press Council of BiH, he commented on the Defamation Law and its consequences: “It is one in a series of laws imposed on us by foreigners believing that they are creating an ideal society. However, even those foreigners did not have pure intentions in all this, nor did they sufficiently specify it. For decades, slander was a criminal offense and you could be imprisoned if you slandered someone; however, later on, it was considered that by decriminalizing slander and making it a civil offense, journalists would be protected. Of course, it was an underestimation of our overlords’ willingness to make the most of their trouble. Then that hysteria with lawsuits started. We had neither a professional nor a morally capacious judiciary, which was independent and depoliticized, but they were virtually at service to the ruling elites.”<sup>15</sup>

## (UN)REASONABLE EXPECTATIONS

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<sup>13</sup> <https://lupiga.com/vijesti/nakon-1-000-brojeva-i-20-godina-slobodne-bosne-kraj-ili-pravi-pocetak> (retrieved on December 28, 2019)

<sup>14</sup> Why did Bakir Hadžimerović cancel 60 Minutes? <https://www.tportal.hr/vijesti/clanak/zasto-je-bakir-hadziomerovic-ugasio-60-minuta-20111003> (retrieved on December 28, 2019)

<sup>15</sup> Senad Avdić, “We must organize ourselves”, <https://www.vzs.ba/index.php/profesija-novinar-novinarika-1/3001-senad-avdic-ne-preostaje-nam-nista-drugo-nego-da-se-samoorganizujemo> (retrieved on December 28, 2019)

At the same time the Defamation Laws was introduced, the Freedom of Access to Information Act was met with hope and approval. The public's focus was on the former. The Law on Freedom of Access to Information of BiH (ZoSPI) was adopted in November in 2000. Two years later, entity laws of similar content were adopted, followed by the Brčko District. On the one hand, the ZoSPI received high praise because it legally regulated greater transparency of the work of state institutions and access of journalists to information. The law stated that institutions are in principle obliged to provide information to journalists within fifteen days. In the regional context, among journalists in the Balkans, that fact was read as an opportunity for journalists to do their jobs better and faster. Although ZoSPI has not been written for journalists only, according to the Ombudsman for Media,<sup>16</sup> they are the ones who use it the most, while the practice in the United States (USA), for example, is different. According to the same source, FOIA was introduced for the first time in 1967, and journalists -- as those who are seeking information -- are tenth on the list.

ZoSPI has been amended several times in 2006, 2009, 2011 and 2013.<sup>17</sup> Over time, what it allowed from the beginning was greatly reduced. In his analysis of the last change made to the Draft of the Freedom of Access to Information of BiH in 2013, **Mehmed Halilović**, lawyer and media expert, concluded that "the proposed amendments to the ZoSPI in the Draft Law published by the BiH Ministry of Justice can jeopardize basic democratic principles of an open government, prevent the fight against corruption and make things very difficult for investigative journalists. Accepting amendments to the ZoSPI as proposed would

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<sup>16</sup> "Double standards: Non-transparent media advocate for transparency of government", <https://www.media.ba/bs/mediametar/dvostruki-arsini-netransparentni-mediji-zagovaraju-transparentnost-vlasti>

<sup>17</sup> It should be borne in mind that apart from state law, there are two entity laws: the Law on Freedom of Access to Information in Bosnia and Herzegovina [http://www.szdp.gov.ba/data/dokumenti/pdf/Zakon-o-slobodi-pristupa-informacijama-u-Bosni-i-Hercegovini\\_precisceni-tekst.pdf](http://www.szdp.gov.ba/data/dokumenti/pdf/Zakon-o-slobodi-pristupa-informacijama-u-Bosni-i-Hercegovini_precisceni-tekst.pdf), Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina <https://novosarajevo.ba/zakon-o-slobodi-pristupa-informacijama/> and the RS Law on Freedom of Access to Information <http://www.djeca.rs.ba/uploaded/ZOSPI-RS.pdf> (retrieved on December 25, 2019)



be a significant step backwards and would allow greater abuse in limiting the public's right to free access to information."<sup>18</sup>

At the end of 2019, we witnessed that what Halilović pointed out in his analysis was exactly what happened. Confirmation of this are, among other things, ten lawsuits by the Center for Investigative Reporting (CIN) against different levels of government because journalists have been denied information despite the fact that the ZoSPI allows them the access. The tenth verdict was issued in early December 2019, referring to a lawsuit based on the fact that in September 2017 CIN reporters were denied information on the individual salaries of all members of the Presidency since 2014 (the secretariat of that institution refused to give that information because "it would harm the persons in question"). CIN reporters in a press release after the ruling stressed that "protection of personal data, as part of the right to privacy, however, is not a right over rights; on the contrary, it is a set of rights that has the same importance and status as other rights and may be restricted by the same right of others."<sup>19</sup>

Avdo Avdić, a journalist on the portal zurnal.info, believes that ZoSPI does not end up hurting journalists a lot, and the best quality information is almost always reached informally. Avdić explained that "if an 'institution' proclaims some information as protected, it must be brought to court in order to release it."

However, it is important to emphasize that, at the time, ZoSPI was one of the most modern and democratic laws of its kind in the region and seemed to announce a time when public institutions would work much more transparently. As with the Defamation Law, it looks better in print than in practice.

## **PUBLICLY (IN)VISIBLE**

In the context of understanding the position of engaged employees within media outlets, it is important to keep in mind that there are many ways in which they are exposed to pressure. One of them is financial, which refers not only to the media outlet but also to their journalists, which is again (un)regulated by law. It is evident that the number of media in BiH

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<sup>18</sup> Analysis of the Draft Law on Freedom of Access to Information in BiH [https://bhnovinari.ba/wp-content/uploads/2013/05/analiza\\_nacrta\\_zakona\\_o\\_slobodi\\_pristupa\\_informacijama\\_bih.pdf](https://bhnovinari.ba/wp-content/uploads/2013/05/analiza_nacrta_zakona_o_slobodi_pristupa_informacijama_bih.pdf) (retrieved on December 25, 2019)

<sup>19</sup> CIN won tenth lawsuit against institutions, <https://media.ba/bs/vijesti-i-dogadaji-vijesti/cin-dobio-desetu-presudu-protiv-institucija> (retrieved on December 25, 2019)

is increasing and that media workers are increasingly in a difficult position due to a volatile market, according to the concluding deliberations of the Special Report on the Position of Journalists and Reported Threats to Journalists in Bosnia and Herzegovina published in 2017 by the Ombudsman Institution in Bosnia and Herzegovina.<sup>20</sup> It states, among other things, that the media market is fragmented and oversaturated. The authors recall the recommendations they made in a similar report in 2012 and expressed concern "over the Press Council's assessment that the working conditions of journalists are very difficult and unfavorable, that the salaries of journalists are irregular and low, and that journalists often have an undefined working status." It is precisely these allegations that need to be taken into account in order to better understand the position of media employees who, in addition to the problems of supplying basic livelihoods, are also burdened with defamation penalties, which are usually around BAM 3,000.

In the article "Journalists' Labor Rights",<sup>21</sup> **Kristina Gadže** points out that various European studies have touted the decline of journalism as a profession and that this is the case due to the emergence of new working relationships: irregular, unpredictable and short-term business engagements such as *outsourcing* (use of outside firms and individuals to do some work), short-term contracts, etc. Despite the fact that there are a number of laws and regulations, ordinances and statutes that regulate this area, the most important of which is the Labor Law, these are regularly violated when it comes to journalists. Although they do public work, journalists often do not have a contract, as Gadže writes, job descriptions are unclear, but the situation is not bad just in Bosnia and Herzegovina, as evidenced by the fact that in 2019 the European Federation of Journalists has issued recommendations for MEPs to help them promote media freedoms, media plurality and quality journalism in all EU member states, candidate countries and those hoping to join the EU.<sup>22</sup> The manifesto warns that "financial stability of independent media is at risk and that media concentration is increasing, and the growing power of the Internet platform, which is characterized by a lack of

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<sup>20</sup> Special report on the position of journalists and cases of threats against journalists in Bosnia and Herzegovina, [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017082415202346bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017082415202346bos.pdf) (retrieved on December 29, 2019)

<sup>21</sup> Kristina Gadže, "Journalists' labor rights", <https://bhnovinari.ba/bs/2019/04/23/radna-prava-novinarar-u-bih/> (retrieved on December 30, 2019)

<sup>22</sup> European Federation of Journalists: Journalism Manifesto 2019: Europe Needs Journalism, <https://www.hnd.hr/novinarski-manifest-2019-europa-treba-novinarstvo> (retrieved on December 29, 2019)

accountability, transparency and regulation, which is a threat to news and information ecosystem."

In this context, it is important that comprehensive laws on advertising and transparency of media ownership are enacted in Bosnia and Herzegovina, which has been resolved in EU countries. The existing laws and regulations are not harmonized throughout the country and are often contradictory and essentially regulate other areas, and only partially relate to the field of media advertising and financing of the media by public money.

In the article on "Transparency of media ownership in Bosnia and Herzegovina", **Nedim Pobrić**<sup>23</sup> states: "The lack of a law regulating transparency of media ownership in BiH has opened a space for media with unknown ownership structure, which prevents citizens from adequately understanding the content of the information posted and it prevents them from assessing it critically. It is further stated that, before becoming a member of the EU in 2011, Croatia adopted laws regulating this area, while legal frameworks exist in Serbia, but according to Pobrić, sufficient quality solutions were not adopted. "The BiH Ministry of Communications and Transport has formed a Working Group in charge of drafting laws on electronic communications and electronic media. The draft law, according to the Ministry, will regulate the area of media ownership transparency and restrict the concentration of media ownership, but it will not cover print media."<sup>24</sup> The realistic deadline for the draft law is for the end of 2020. According to the same author, the law on transparency of media ownership should cover all media sectors, from radio and TV broadcasters, through print media and agencies to online portals, as well as media related sectors, such as agencies that measure viewership or listening and readability.

## **PARLIAMENTARY INITIATIVES**

Two important parliamentary initiatives have been launched in 2019 which, if adopted, should at least contribute a little to the protection of journalists: the first initiative is to amend criminal laws and treat attacks on journalists as attacks on officials, and an initiative to incorporate different standards of admissibility, tolerance and proof when it comes to defamation against public figures in relation to private individuals in accordance with the law of the European Court of Human Rights.

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<sup>23</sup> Nedim Pobrić, "Transparency of media ownership in Bosnia and Herzegovina", <https://bhnovinari.ba/wp-content/uploads/2019/09/Transparentnost-medijskog-vlasnistva-BOS..pdf> (retrieved on December 29, 2019)

<sup>24</sup> Ibid.

One of the recommendations of the Special Report on the Position of Journalists and Cases of Threats to Journalists in Bosnia and Herzegovina in 2017 was to define assault on journalists in criminal law as a separate offense or as a serious offense of assaulting an official in the exercise of official duty, and to consider that assaulting journalists is defined in Law on Public Order and Peace as a particular violation of law and order.<sup>25</sup> It is a fact that in the criminal laws of BiH (entity, state and the Brčko District) a media worker is not recognized at all as a profession of importance and a profession that needs special protection. Due to this fact, journalists are often targeted, and attackers are not adequately sanctioned and often do not suffer any punitive measures at all.

In 2019, there was a lot of advocacy in the public to address this in a way that a media worker would gain official status. As a reminder, the status of an official would make the attacks on media workers more severely sanctioned. In neighboring countries, this issue was legally resolved as follows: relying on comparative law, the Republic of Serbia adopted amendments to the Criminal Code of the Republic of Serbia in 2009, thus enlisting media professionals as members of professions with the status of public importance, i.e. they have been granted official status, and it has been prescribed as a criminal offense to endanger the safety of a media worker. In its Criminal Code, Croatia has the prescribed criminal offense of violations of freedom of thought and expression of thought, and in particular treats the threat addressed to a journalist, which is punished by imprisonment between six months and five years.<sup>26</sup>

In April last year, members of the Parliament of the Federation of BiH adopted an initiative to amend the Federal Criminal Code with provisions that would protect journalists at work. **Senaid Begić**, who proposed the initiative, told that he would treat attacks on journalists as an attack on health workers (that is, it would enter the same segment of the Criminal Code) and he proposed that the imprisonment be between three months to five years, depending on the gravity of the crime. It is similar in Republika Srpska, where a draft law with amendments to the Criminal Code was referred to the parliamentary procedure.

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<sup>25</sup> Nives Jukić, "BiH: Improve the existing legal framework, but also define the scope of work of journalists", <https://bhnovinari.ba/wp-content/uploads/2019/09/66-IZDANJE-E-NOVINAR-BHS.pdf>

<sup>26</sup> Senad Pizović, "Protection of media workers in criminal laws is of public interest", <https://bhnovinari.ba/wp-content/uploads/2019/09/66-IZDANJE-E-NOVINAR-BHS.pdf> (retrieved on December 29, 2019)

Another important initiative was launched in 2019: MP in the House of Representatives of the BiH Parliamentary Assembly, **Damir Arnaut**, sent an initiative to ask entity and Brčko District BiH authorities to incorporate different standards of acceptability, tolerance and evidence in defamation laws against public figures in relation to private persons, in accordance with the law of the European Court of Human Rights. Arnaut explained that it is a common practice in democratic countries that public figures, and politicians and public officials in particular, are subject to a higher standard of defamation lawsuits than private individuals, which has been the practice of the European Court of Human Rights since 1986. He recalled that in 1964, the *New York Times v. Sullivan* case established the precedent that when persons in public office are sued for defamation, they should prove not only that the information published is untrue and harmful, but also that the journalist acted with "intended malice", that is, they knew the information was false or reckless but ignored the truth.

Commenting on the Law on Defamation, **Lejla Turčilo**, Professor at the Faculty of Political Science in Sarajevo, said: "Holders of public office and public figures believe that the Defamation Law was created for the purpose of protecting them from the critical court of the media and journalists and from questioning their work in a transparent and public manner. They forget that their public position obliges them to extend the tolerance on criticism and public expression of opinions. In other words, they forget that by accepting the role of public figures, with all the privileges that they bring, they accept to be scrutinized more than other people whose jobs are less public."<sup>27</sup>

## **INTERPRETING THE RIGHT**

It is a fact that the position of journalists in the last two decades has changed and that all the laws have changed as well, although, according to experts, they are well-written. The fact is that the situation in the media must adapt, but also that new and old laws must be amended and rewritten.

Journalists here do not file appeals to domestic courts and the Strasbourg Court, as the costs of filing a suit are usually several times higher than their monthly income. One can hope that future amendments and those already in place will be better interpreted and enforced.

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<sup>27</sup> Lejla Turčilo, PhD, "Defamation as an ethical and not (just) legal measure", <https://bhnovinari.ba/wp-content/uploads/2019/07/65-IZDANJE-E-NOVINAR-FINAL-FINALA-1.pdf> (retrieved on December 29, 2019)

Current domestic legal practice in the context of the media has shown that even the most perfect laws can be interpreted contrary to their original purpose and intent.