



# TOGETHER FOR BETTER MEDIA LAWS

Analysis of media legislation in Bosnia and Herzegovina  
with recommendations for improvement

**BH Journalists Association**

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*Analysis of media legislation in Bosnia and Herzegovina with  
recommendations for improvement*

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## SUMMARY

*Baseline analysis of media legislation in Bosnia and Herzegovina with recommendations for improvement* titled **Together for better media laws** was made to identify problems in the legislation that negatively affect the freedom of the media and the safety of journalists in BiH. In addition to identifying the problems, the aim is to point out constructive initiatives to amend relevant laws and positive practices that seek to improve the legislative framework in the field of media.

The analysis focuses on the laws at the state level, with a sporadic reference to laws at lower levels to explain the significant differences where they exist. The analysis included the Law on RTV Public Broadcasting System of BiH, Criminal Code, Law on Protection of Copyright and Related Rights, Law on Collective Management of Copyright and Related Rights, Election Law of BiH (Chapter 16: Media in an Election Campaign), the Freedom of Access to Information Act and the Law on Protection against Defamation. In the absence of a law regulating the transparency of media ownership at either the state or Entity levels - as one of the most needed laws to regulate the media market - this analysis looked at the Draft Law referred to the relevant Ministry in early 2019.

The analysis showed that the gap between *de jure* and *de facto* in the field of media freedom and safety of journalists has not been shrinking in recent years. The problem is that laws that are aligned with European standards are not applied in accordance with European case law, while laws required to regulate the media market, such as the Law on the transparency of media ownership, have been waiting for adoptions for years.

For the public broadcasting system to become a truly public media service, the powers of the Entity parliaments to appoint management boards and directors of public broadcasters must be narrowed down, and a sustainable model for collecting RTV fees for more stable financing must be adopted.

Worryingly, the *Pre-draft Freedom of Access to Information Act (FOIA)* proposed in 2021 is not a step forward but rather a step backward in relation to the applicable legal provisions. Hence, this Pre-draft needs to be improved. The deadline for obtaining information under FOIA should be shortened, as well as the list of possible exceptions from the right to access information.

A positive example is *Draft Initiative for Amendments to the Election Law* in Chapter 16 relating to the media, which was published at the time of writing this study. The proposed solution introduces “online media”, “social media” and “mobile applications” into the law. It provides a more precise definition of hate speech and expands the provisions specifying the situations in which electronic media may refuse to publish political advertising.

To prevent further abuse of the Law on Protection Against Defamation as an instrument of political pressure on journalists, the application of this Law must be aligned with the caselaw of the European Court of Human Rights.

## INTRODUCTION

The purpose of the study is to facilitate journalists, media workers, civil society activists, state institution officials, and other relevant audiences in reviewing applicable laws and proposed drafts/initiatives related to media freedom and safety of journalists, to point out the identified shortcomings, either in legal provisions or their application, and the possible solutions to problems that threaten media freedoms and the safety of journalists. For more than two decades, a huge gap between de jure and de facto in the field of media law has been evident in BiH. Laws are generally aligned with European standards but are neither interpreted nor applied according to those standards. Some provisions are not at all applied, like the one on the establishment of the Corporation of Public Broadcasters of BiH.

The subject of the analysis is the valid and proposed legal provisions governing the work of the media, journalists, and media workers in Bosnia and Herzegovina. The complex political, legal and administrative organization of BiH is reflected in the legislation in this area, hence in some segments there are different legal solutions at the levels of the state, Entities, and Brčko District of BiH. This study focuses on the laws at the state level, with a sporadic reference to laws at lower levels to explain the significant differences where they exist. Some laws, such as the Law on protection against defamation exist only at the level of Entities and Brčko District of BiH, but not at the state level. However, since there are no essential differences between these three laws, they were jointly analyzed as defamation laws.

Guaranteeing freedom of expression and protection of journalists is one of the 14 priorities of the European Commission, the fulfillment of which is a precondition for BiH's candidate status for membership in the European Union (EU). By signing the Stabilization and Association Agreement with the EU (SAA) in 2015, BiH committed itself to harmonize its legal framework in the field of media with international and European standards and implement it consistently. This obligation has not yet been fulfilled. Year after year, the European Commission in its progress reports for BiH points to the failure of BiH to adopt or implement the relevant media freedom laws. The most recent report for 2020 again reiterates that the Law on Public RTV Broadcasting System needs to be adopted, and the Entity legislation should be aligned with it. By the end of this year, BiH is expected to ensure the protection of journalists and systemic institutional measures to address threats and violence against journalists, financial sustainability and political independence of public broadcasters and harmonize entity regulations with the state Law on public broadcasting, and adopt regulations on media ownership transparency and public advertising criteria.

Institutional protection of journalists' rights and freedoms has not improved, hence they continue to be exposed to threats, intimidation, and attacks. Although the Special Report of the Human Rights Ombudsmen in BiH from 2017<sup>1</sup> warns that without accurate records of the number and type of threats and attacks on journalists it is difficult to create a prevention plan to better protect journalists, public authorities still do not keep such records. The range of threats to which journalists are exposed is wide, from insulting comments through sexual harassment, primarily targeted at women journalists, to death threats and physical attacks. Violence is increasingly moving into *online* space where journalists,

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<sup>1</sup> Institucija ombudsmena za ljudska prava BiH (2017) *Specijalni izvještaju o položaju i slučajevima prijetnji novinarima u Bosni i Hercegovini*, str. 58, [https://www.ombudsmen.gov.ba/documents/ombudsmen\\_doc2017082415202346bos.pdf](https://www.ombudsmen.gov.ba/documents/ombudsmen_doc2017082415202346bos.pdf) (23.05.2021)

especially women journalists, receive threats, including death threats, via Facebook<sup>2</sup>. However, even when such cases reach the prosecutor's office, they are generally rejected, as not being a criminal offense under the law. Even though these cases can be classified as defamation, gender-based violence, or threats under the criminal laws in BiH, it is obvious that this area needs to be better regulated. The attitude of institutions, primarily of the prosecutor's office, towards women journalists who report the threats and attacks is discouraging. This is why a small number of them decide to seek help from judicial institutions to protect their rights. The main reasons for not resorting to BiH judicial system are the lack of trust in the judicial institutions and the lengthy court proceedings.

Public broadcasters at the state (BHRT) and entity levels (RTVFBiH and RTRS) are not provided with a stable and sustainable source of revenue that would allow them editorial independence, quality production, and content in the public interest. Although, under the law, their main source of income is the RTV fee, the level of collection is low, and so far no model is in place to ensure a high rate of its collection. In the FBiH, the tax is collected through Elektroprivreda BiH, and in the RS through Elektroprivreda RS and bill collectors, but their budgets are separate. This is contrary to the Law on PBS RS, which stipulates that revenues from the RTV fee shall be paid into one account, and distributed to three public services in accordance with legal provisions.

The three public broadcasters are exposed to political influence in several ways, especially through management boards and directors, because the Law does not provide adequate protection mechanisms against political control. In the public media at the local level, political clientelism is strongly represented, largely because contracts for the acquisition, development, and (co)production of radio and TV programs are not subject to the Law on Public Procurement. Therefore, the legislation in this segment must be harmonized with the European legislation to oblige the local government to make public calls for the allocation of budget money to the media against clearly defined criteria. Corporation, as a joint governance structure envisaged under the law already in 2005 still does not exist.

The BiH is waiting for the Law on transparency of media ownership for years. The current situation is chaotic, which is most damaging to those media that function professionally and ethically in a poorly regulated market. Ownership structure over *online* media is completely unknown, while in the case of electronic and print media, only nominal, but not beneficial owners are known. European standards require the publication of the names of all those whose ownership share is greater than 5%. It is necessary to establish a detailed register of *online* media, because currently there is no information on the number of such media, their ownership structure, their sources of income, and they often do not even have an Impressum. Transparent and detailed ownership data is a prerequisite for protecting pluralism of opinion, establishing responsibility for publishing illegal and unethical content and protecting copyright and other rights. Without it, it is difficult to prevent ownership concentration, possible conflicts of interest, or understand media editorial policies and the distribution of budget funds from local media funds and provide more stable sources of income for media professionals and safer working conditions for media employees, or prove political clientelism in the media.

The Ministry of Communications and Transport of BiH is expected to finally consider the Draft Law on Transparency of Ownership and Protection of Media Pluralism in BiH, which the Association *BH novinari* submitted to them in early 2019. The draft is the result of two-year project *Media and public reputation* implemented by a Consortium composed of BH novinari, Mediacentar, the Press Council

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<sup>2</sup> Hrnjić Kuduzović, Z., Popov Momčinović, Z. i Delić, A. (2019) *Položaj novinarki u Bosni i Hercegovini*, str. 20, <https://bhnovinari.ba/wp-content/uploads/2019/02/Položaj-novinarki-u-BiH.pdf> (26-May-21)



of BiH, and the NGO JaBiHEU, and funded by the EU Delegation to BiH. As media professionals have been warning us for a long time, this is one of the most necessary laws for the BiH media market.

This analysis includes the following key laws concerning media freedoms and safety of journalists in BiH: Law on Public Broadcasting System, Criminal Code, Law on Protection of Copyright and Related Rights, Law on Collective Management of Copyright and Related Rights, Election Law of BiH (Chapter 16: Media in an Election Campaign), the Freedom of Access to Information Act and the Law on Protection against Defamation. In the absence of a law regulating the transparency of media ownership at either the state or Entity levels - as one of the most needed laws to regulate the media market - this analysis looked at the Draft Law referred to the relevant Ministry in early 2019.

*A baseline study of media legislation in Bosnia and Herzegovina with recommendations for improvement* was created within the project *Improving dialogue between journalists' associations and parliaments in the Western Balkans for a stronger civil sector*, conducted by four media organizations from the Western Balkans region. The project is part of a larger project *Protection of civil space - Regional hub for the development of civil society*, funded by the Swedish International Development Cooperation Agency (SIDA) and implemented by the Balkan Civil Society Development Network (BCSDN). The project aims to enhance dialogue between members of state parliaments and journalists' organizations in the Western Balkans in order to improve the state of freedom of expression as a fundamental human right and strengthen the role of civil society organizations. The same study was conducted by Udruženje novinara Makedonije (ZNM) [the Association of Journalists of Macedonia], Nezavisno udruženje novinara Srbije (NUNS) [the Independent Association of Journalists of Serbia] (NUNS) and Sindikat medija Crne Gore (SMCG) [the Media Union of Montenegro].

The study aims to investigate the existing legal provisions related to media freedoms and safety of journalists in Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia, and identify good and bad practices that improve or harm media freedoms and safety of journalists. The main research question is: What are the legal obstacles and practices that harm the development of media freedoms and the safety of journalists in the country? In addition to this, the researchers looked into the following questions:

- Which legal provisions have proved ineffective or detrimental to the development of media freedoms and the safety of journalists?
- What are the main factors that contribute to the further endangering of media freedoms and the safety of journalists in the country?
- What are the reactions of the media community, civil society, and other relevant actors committed to the development of the media sector?
- Are there any positive practices/ joint initiatives/ actions/ projects of intersectoral cooperation in order to improve media freedoms and the safety of journalists?

The methodological approach of the study included:

- normative analysis, i.e., desk research and analysis of laws that regulate the work of media and journalists in part or as a whole



- analysis of qualitative documents, i.e., research studies and analyzes conducted by other research organizations, academia, NGOs, and individual researchers
- official statistics available on their web portals or other published sources

The study is divided into several parts: analysis of relevant legal solutions and proposals concerning media freedoms and safety of journalists, good practices and positive development, conclusions, and recommendations.

## **1. ANALYSIS OF RELEVANT LAWS CONCERNING MEDIA FREEDOMS AND SAFETY OF JOURNALISTS**

### **1.1. Public services and legal preconditions for work in the public interest**

The legal obligation of the three public broadcasters (BHRT, RTRS, and RTFBiH) to form the Corporation, as a joint governance structure, although prescribed in 2005 by the Law on Public Radio and Television Service of Bosnia and Herzegovina<sup>3</sup> (Articles 6 and 12), has not been fulfilled 16 years later. International organizations, foreign and domestic media experts, and representatives of journalists' associations have been warning for years that breaking the political blockage and fulfilling this legal obligation is a precondition for a functional, depoliticized, and financially stable public service that would fulfill its social function and report in the public interest. Nevertheless, it is uncertain whether this will happen soon. Due to political obstructions by which both the ruling and opposition political parties obstruct the establishment of the Corporation, as a joint governance structure of the three mentioned broadcasters, no progress has been made in implementing the Law. In fact, the system was never put in place nor was it transformed into a BiH public media service. Instead of being a service of citizens, the broadcasters at the state and entity levels remained subject to political influence. At the time of writing this study, the BiH Minister of Communications and Transport, Vojin Mitrović announced that a draft new Law on the Public Broadcasting Service of Bosnia and Herzegovina will be in the parliamentary procedure by the end of this year.<sup>4</sup>

The Ministry states<sup>5</sup> that the draft law will regulate the relations between the three public broadcasters, implement the principles and obligations from the Law on Public Broadcasting System and other applicable laws in the field of public broadcasting, and primarily the competence of the BiH Parliamentary Assembly, BiH Council of Ministers, CRA and the Ministry. "This law defines the competence and work of the System Board, collection and distribution of RTV fees, establishes network operators with the responsibility to manage the digital network, etc." It is not known what specific legal solutions will be offered to regulate the mentioned relations and obligations. The text of the draft law is not yet available to the public because, according to information from the Ministry, it is being in the process of harmonization at the level of the Working Group.<sup>6</sup> Once the harmonized text

<sup>3</sup> Law on public broadcasting system of BiH (Official Gazette of BiH, No. 78/05)

<sup>4</sup> <https://istinomjer.ba/nacrt-novog-zakona-o-javnom-rtv-servisu-bih-do-kraja-godine/> (28.05.2021.)

<sup>5</sup> Email correspondence of the author of the study with the representatives of the Ministry from 11 June 2021.

<sup>6</sup> The working group tasked with drafting the Draft Law on Public Broadcasting System in Bosnia and Herzegovina consists of representatives of: Ministry of Communications and Transport of BiH, CRA, Directorate for European Integration of the Council of Ministers of BiH, Ministry of Transport and

is prepared, it shall be posted, at the end of July or the beginning of August 2021, on the website <https://ekonsultacije.gov.ba/> for public consultation.

A minus of this law is that it does not stipulate the procedures for the appointment or dismissal of members of the Management Board and general directors of public broadcasters. According to the state or Entity laws regulating their work, the state i.e., Entity parliaments play a key role in the process, but the three broadcasters apply uneven procedures. Although candidates for BHRT and RTRS are nominated by the Communications Regulatory Agency of BiH (CRA), the RS National Assembly may refuse to appoint a candidate from that list. The members of the Management Board of RTV FBiH are not nominated by the CRA but by the Commission for Election and Appointment of both Houses of the FBiH Parliament. Thus, adequate mechanisms to protect public broadcasters from the political influences to which they are exposed are not in place. The most recent report of the European Commission on BiH for 2020 also points to the politicization of management boards, which has a negative effect on the editorial policy of public broadcasters and the self-censorship of editors and journalists.<sup>7</sup> Such a working environment makes it much more difficult for journalists to consistently comply with professional and ethical norms, while news programs are occasionally sent politicized and contradictory information to viewers, which is contrary to the mission of public broadcasters (work in the interest of citizens). This undermines trust in public broadcasters in the long run.

The recommendations of professional associations, representatives of international and civil society organizations to incorporate in the laws regulating the work of public broadcasters the provisions that would narrow down the possibilities of political influence on the appointment of executives have not been complied with. These recommendations are primarily about giving greater powers to the CRA, and smaller to the entity legislatures. Of course, the legislatures would not be excluded or marginalized in the process, but powers would be divided between them and the CRA to ensure that crucial criteria for appointment would be professional competencies and professionalism, not ethnicity and political fitness. One of the proposals made by professional associations and CSOs to depoliticize the management and editorial board of public broadcasters was to form an independent commission and involve civil society representatives in the process of selecting candidates for management positions. At the state level, the proposal to form a commission was accepted, but it is not ensured that its work is independent of political influence and guided by public interest. Another proposal to depoliticize public broadcasters was by expanding the Board membership by representatives of various social groups (women, ethnic minorities, vulnerable groups, religious communities, and others). In this way, when appointing management boards, other criteria, needs, and interests of citizens would be taken into account, instead of exclusively ethnic ones.

Not having the Corporation means that there is no public service system driven by the interests of the public, regulated by the highest professional standards that would contribute to the development of civil society, free of politicization and ethnic divisions. The Corporation would have provided for more optimal use of resources for production purposes compared to the current relations between the three broadcasters, which currently more compete than cooperate with one another. (Jusić and Džihana, 2008).<sup>8</sup>

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Communications of Republika Srpska, Ministry of Transport and Communications of the Federation of BiH and three members delegated by the Board of the Public Broadcasting Systems in BiH (BHRT, RTRS and RT FBiH).

<sup>7</sup> European Commission (2020) Report on *Bosnia and Herzegovina for 2020*. [https://europa.ba/wp-content/uploads/2020/10/Izvjestaj\\_z\\_BiH\\_za\\_2020\\_godinu.pdf](https://europa.ba/wp-content/uploads/2020/10/Izvjestaj_z_BiH_za_2020_godinu.pdf) (27.05.2021.)

<sup>8</sup> Jusić, T. and Džihana, A. (2008) Bosna i Hercegovina, p. 82-117, in: Bašić-Hrvatini et al. (ur.) *Razjedinjeni propadaju: Javni radio-televizijski servisi u multietničkim državama*. Sarajevo: Mediacentar.

No progress is made in adopting a functional model of public service financing. Although the payment of the RTV fee is a legal obligation (Article 17), its collection level is low and does not provide a sufficient source of revenue for public broadcasters. A precedent is the behavior of some members of the FBiH Parliament who even openly called on citizens not to pay this fee. Thus, a representative in the legislature that has approved the Law encourages citizens to violate legal provisions! Draft Law on Amendments to the Law on Public Broadcasting Service of BiH from 2016, which provides for the collection of RTV fee through the electricity bill, and the distribution of revenues from fees and advertising in the manner to have BHRT receive 40% of such revenues and RTV FBiH and RTRS 30% each, was not accepted in the House of Representatives of the Parliamentary Assembly of BiH.

Finding mechanisms and money to pull BHRT out of the crises is not impossible, but the root cause of the problem is political. Some of the possible medium-term solutions would be to allocate budget funds to the public service fund by redistribution of VAT or share in excise duties on fuel, alcohol, or tobacco (Kurtić, 2020).<sup>9</sup> For the public broadcasting system to preserve its shaky legitimacy in public, it must offer better quality content both in terms of political independence and in terms of production standards. The way political parties treat the public service shows that they do not see a politically independent, financially stable, and credible service as a social resource, but as a brake preventing the narrowly defined party goals. The long-lasting political obstructions and ignoring the recommendations for improving the position of the public broadcasting system undoubtedly suggest that “the public broadcasting system, especially BHRT, has been intentionally placed into the unbearable economic and social situation it is in now” (Kurtić, 2020). The public system in the bad financial situation it is in now leaves few options to broadcasters - program orientation towards predominant commercialization or politicization. Apart from the citizens of BiH, the employees of this media system also suffer the consequences of the poor condition in which the public broadcasting system has been brought. The economic and labor-legal status of journalists is very unfavorable, which is manifested by low salaries and a significant number of journalists in the status of associates, without official employment.

In considering the implementation of existing and adoption of new legal solutions on public service, the focus should be shifted from politicized to *policy* solutions. These solutions should imply strategic harmonization with the high standards of democratic media services at the service of citizens, and legislature which provides a political and economic environment that facilitates the fulfilling of their social functions (Turčilo, 2017).<sup>10</sup> Instead of founding the Corporation, in public discourse emerged an idea of forming three public broadcasters for three ethnic groups. Such a concept would conflict with the fundamental values and principles of the public service, which is by definition a medium in the service of citizens, regardless of their ethnic, religious, political, and other differences, including minorities on all grounds, and by no means a medium of dominantly one ethnic or any other majority (Turčilo, 2017). The EU, to which BiH aspires, implies the public media services functioning in line with the principles of liberal-pluralist democracy, in the center of which is man as an individual, and not an ethnos.

The Law should be amended, starting with its name. Over the last 15 years, significant technological developments have taken place in the field of media, which require terminological adjustment. Instead of being called the Law on the Public Radio and Television System, a far more appropriate title would be the *Law on Public Media Service of BiH*. In the digital era, media content is adapted, distributed,

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<sup>9</sup> Kurtić, N. (2020): *Na slučaju javnih emitera testira se iskrenost demokratskih opredjeljenja političkih subjekata u Bosni i Hercegovini*. <https://najilkurtic.ba/view-more/javni-emiteri-u-krizi/220> (11.06.2021.)

<sup>10</sup> Turčilo, L. (2017): *Sistem javnog emitiranja u BiH- Ima li rješenja?* <https://safejournalists.net/wp-content/uploads/2017/11/javni-servis-analiza-lejla-turcilo.pdf> (28.05.2021.)

and used in different formats and through different platforms, hence reducing the concept to radio and television is anachronistic. Besides, the new name reflects the mission of this social institution - a medium that acts in the public interest.

The three broadcasters, under the Law, should form the Corporation, and the parliaments should harmonize the Laws on BHRT, FTV, and RTRS with the Law on Public Radio and Television Broadcasting System. Instead of the Parliamentary Commission, the members of the FTV Steering Board should be nominated by the CRA, thus eliminating the possibility for the Entity parliaments to reject shortlisted candidates. Amendments to the Law should require the state and Entity-level parliaments to adopt a sustainable public service financing model. In the medium term, this could be achieved by establishing a public service fund, and in the long run, a more functional model of collecting the RTV fee could be established. To meet the high programming and production standards of the public service, the amount of fee should be adjusted to the costs required for such quality.

## 1.2. Transparency of media ownership and funding

The media market in BiH is crying out for a piece of legislation that would enable more transparent ownership of all types of media, especially *online media*. The legal framework in BiH governing this area completely lags behind European rules and standards in this area, failing to meet even the minimum criteria that would provide transparent ownership data. Although representatives of journalists' associations, academia, and international organizations have been warning, for years, about the need to adopt this law, it is still not on the horizon. Regulating this area is one of the obligations of BiH in the EU accession process. The European Commission expects BiH to adopt a law on the transparency of media ownership and establish a detailed and publicly available register of media ownership. In this context, the finding of the European Commission in the latest report for BiH is rather discouraging. "No progress has been made in adopting legislation on media ownership transparency, including a register of ownership structures, as well as legislation on advertising in the media."<sup>11</sup> The problem of lack of media ownership transparency in the context of media freedoms is also noted in the *State Department* report on the human rights practices in BiH for 2020<sup>12</sup>. More precise, complete, and transparent ownership data are necessary not only for citizens to know whose interests are behind a particular media but also to combat the abuse of media space and manipulation of citizens for personal or oligarchic interests, identify political ties of media owners, end the misuse of budget money for the financing of politically eligible media, and prevent the concentration of ownership.

If we are to rank transparency by type of media, electronic media comes first. Only television and radio stations are obliged to provide basic information on direct owners, although not on indirect owners such as owners of legal entities that apply for or already obtained a license for radio or television broadcasting. Print and *online media* are not required under the law to provide information on the ownership structure to either the Press Council or any other organization or institution. Ownership of *online media* is the least transparent of all media because these media are not required by law to register in any system, and many of them are not even registered as media companies. Hence, the total number of online media in BiH is not known, let alone the ownership structure and financing method of many of them. Media ownership data of those that are registered in municipal or

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<sup>11</sup> [https://europa.ba/wp-content/uploads/2020/10/Izvjestaj\\_za\\_BiH\\_za\\_2020\\_godinu.pdf](https://europa.ba/wp-content/uploads/2020/10/Izvjestaj_za_BiH_za_2020_godinu.pdf) (27.05.2021.)

<sup>12</sup> <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/bosnia-and-herzegovina/> (15.06.2021.)

district court registers are not easily available either. There is no single register consolidating all the data. Instead, the data is maintained in nine municipal courts in the Federation of BiH and five district courts in the RS.

As a result of such non-transparent media ownership data, the public does not know who the beneficial owners of the media are, what is the origin of the capital invested in the media, or with what political, economic, or other interests certain media are connected. Without that, it is difficult to prove why - or against which criteria - the budget money has been allocated to certain media through various grants or advertising campaigns, while others were denied access to it, regardless of how much their content is in the public interest. An additional problem is that the Law on Public Procurement does not apply to contracts for the acquisition, development, and (co)production of programs for radio and TV broadcasting. As result, money from municipal/city budgets is being allocated for these purposes without public calls, thus creating room for political clientelism.

Some portals that cover primarily the territory of BiH and address its citizens are registered in other countries, often with domains and servers located on the remote islands, are hence inaccessible to regulatory authorities. Consequently, their content, which is contrary to professional standards - and often to fundamental ethical norms - cannot be sanctioned because their owners and administrators cannot be reached nor served a warning. The damage they inflict on the BiH media market is manifold. First, with unverified and malicious posts, they harm individuals, groups, and organizations that remain denied the right to use judicial protection mechanisms, and misinform and confuse citizens. Second, by publishing unprofessional and unethical content, that is, by enjoying the freedom of public speech without any repercussions, they harm the credibility of professional journalism. The inability to protect copyright due to unauthorized downloading of media content is an additional problem. Third, they financially endanger the media that operate in accordance with the laws in BiH and pay taxes. The presence of advertisements on portals without an Impressum and a land address suggests the possible presence of unregistered portals operating in the advertising market of BiH, and consequently unfair competition, as well as violations of tax norms.

Measures of the competent institutions in BiH to improve the transparency of media ownership are extremely modest, slow, and insufficient. Even five years after the deadline for the adoption, the Law on Electronic Communications and Electronic Media, which would also regulate ownership transparency, has not been adopted. Under the SAA, BiH was obliged to align this area with the EU regulations by 01 June 2016. The BiH Council of Ministers has repeatedly removed the draft law from the agenda. The RS Government challenges the provisions that imply broader competencies of the CRA<sup>13</sup>. The subsequent deadlines set by the BiH Ministry of Communications and Transport for considering the draft law in the parliamentary procedure, first in 2019, and then in the second half of 2020, were also breached.

When asked by the author of the study at which stage is the draft law and its content, the Ministry of Communications and Transport of BiH replied that it is not yet available to the public because it is still being drafted. "The Parliamentary Assembly of BiH, at the initiative of one of the delegates in the House of Representatives, ordered the Ministry to prepare two separate laws, the Law on Electronic Communications and the Law on Electronic Media. Under way is the nomination of the members to the two working groups tasked with drafting the said laws. The groups will comprise the representatives of the state and Entity ministries, CRA, DEI, and the Government of BD BiH. The

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<sup>13</sup> <https://www.media.ba/bs/magazin-novinarstvo/dugo-cekanje-na-zakon-o-elektronskim-komunikacijama-i-elektronskim-medijima> (12.06.2021.)



Law on Electronic Communications is to be aligned as much as possible with Directive 2018/1972, and the Law on Electronic Media with the Directive on AVM services.<sup>14</sup>”

In 2017, the CRA initiated the establishment of a register of direct and indirect owners of electronic media, but the initiative was prevented by the BiH Agency for Personal Data Protection, explaining that transparency of media ownership is not in the public interest and that publishing such data is not the responsibility of the CRA. It is, however, questionable against which criteria the Agency decided that it is not in the interest of the citizens to know who owns the media that inform them about social events. Sandra Bašić Hrvatin also points out the problematic nature of this decision: „... This is the case of an arbitrary interpretation of the concept of personal data, and perhaps the real reason for such interpretation is to conceal the beneficial owners of the media. This is just another proof that there is no political will to achieve media transparency.<sup>15</sup>”

As a result of a two-year project *Media and public reputation* implemented by a Consortium composed of the Association BH novinari, the Mediacentar Foundation, the Press and Online Media Council in BiH, and the NGO JaBiHEU, and funded by the EU Delegation to BiH, developed was a draft law on ownership transparency and protection of media pluralism in BiH. Despite the fact that *BH novinari* submitted the draft law with accompanying documentation to the line Ministry in early 2019, the Ministry has not yet considered it. When asked when the draft law on ownership transparency and protection of media pluralism in BiH will be considered, the Ministry of Transport and Communications of BiH explained that the law was not planned to be adopted as a separate law but instead, the legal provisions governing these areas will be part of the Law on Electronic Media. However, as explained earlier in the study, the law was due to be adopted five years ago, and the Council of Ministers has repeatedly removed it from the agenda.

Referring to the legal framework of the EU and the positive practices of its members, and taking into account the arguments of experts in the field of media law, in the analysis by Nedim Pobrić<sup>16</sup>, the key determinants that legal solutions should contain are listed:

- the obligation to provide information on direct owners and all shareholders with shares larger than five percent
- the obligation to submit information on indirect owners, i.e., all legal entities that have a share in the ownership
- the obligation to submit information on related ownership, i.e., any other ownership of all owners of shares in the media outlet
- the obligation to provide information on the related interests of the owner
- the obligation to provide information on the interests of related legal and natural persons, such as family members or associates, but with clearly defined types of relationships covered by this legislation
- the obligation to provide information on sources of income through the submission of annual reports
- the obligation to submit data on the company’s management and the editor-in-chief

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<sup>14</sup> Email correspondence of the author of the study with representatives of the Ministry from 11 June 2021.

<sup>15</sup> <https://europa.ba/wp-content/uploads/2017/11/transparentnost-vlasnistva-finansiranja-medija-bhs.pdf> (27.05.2021.)

<sup>16</sup> <https://europa.ba/wp-content/uploads/2017/11/transparentnost-vlasnistva-finansiranja-medija-bhs.pdf> (27.05.2021.)

- any changes in the ownership structure should be reported to the competent state institutions within ten days from the change
- the data in the centralized register should be updated at least once a year
- access to the centralized register should be free of charge.

### **1.3. Criminal protection of journalists in cases of attacks, threats, and other forms of jeopardizing the safety of journalists**

#### **Safety threats**

In the amendments to the criminal codes of BiH, FBiH, RS, and Brčko District, which the Association BH novinari submitted to the relevant governments and MPs, it is proposed that provisions protecting journalists in the way the official persons are protected in the performance of their professional duties be incorporated in the existing law. The proposed amendments aim primarily to address the issue of attacks on journalists.

After the House of Representatives of the FBiH Parliament in 2019 adopted the initiative to amend the FBiH Criminal Code with provisions that would protect journalists while performing professional tasks, the amendments have been pending adoption for already two years. According to the amendments, journalists should be nominally recognized as persons who need special protection while performing professional tasks, hence the attacks on journalists would be treated as attacks on official persons, which implies stricter sanctions. Namely, the current Criminal Code does not recognize journalism as a profession that needs special protection, therefore, it is necessary to introduce criminal protection of journalists. The proposed amendments provide for sentences of three months to five years in prison for attacks on journalists, depending on the gravity of the offense. According to information from the FBiH Ministry of Justice, the Ministry has formed a working group tasked to draft a Pre-Draft Criminal Procedure Code of the Federation of BiH and the Pre-Draft Criminal Code of the FBiH. The Working Group will also consider the proposal developed by the Association *BH novinari*.

As for the amendments to the RS Criminal Code, in June 2020, the National Assembly of RS rejected the initiative to incorporate journalists and other media workers in the criminal offense of Endangering safety or to stipulate a new criminal offense of Preventing journalists from performing their professional duties. Their rationale says that the Criminal Code stipulates criminal offenses of bodily injury, grievous bodily injury, as well as endangering safety, which equally treat and protect all citizens and professions from attacks, such as doctors, professors, teachers, and many others, who in their work might be exposed to attacks. It further adds that the possibility of stipulating the proposed criminal offense will be considered when the preconditions are met to incorporate in the Criminal Code the offenses against honor and reputation.

In this way, journalists in BiH are left at a disadvantage compared to media employees in Serbia and Croatia, whose criminal laws incorporate such provisions. Against this background, BiH lags behind not only the European legal framework but also the ones in the region. Lawyer and director of the Banja Luka Center for Human Rights, Dejan Lučka, believes that politicians are not after protecting journalists and media workers. “Behind this is probably a desire to put defamation within the



framework of the Criminal Code, so as to try to intimidate and silence investigative journalists, i.e., journalists who reveal scandals involving government officials and their families.”<sup>17</sup>.

According to the Media Freedom Index for 2021, BiH is in 58th place, the same as the year before. *Reporters Without Borders* warned that during the Covid-19 pandemic, some institutions at various levels of government directly disrupted the work of journalists, making it difficult for them to access information and interlocutors, holding press conferences without journalists, avoiding to reply to critical questions about crisis management, and threatening with defamation lawsuits. According to statistics of the Association *BH novinari*, the pressures on journalists and the number of violations of their rights have increased by 23% in 2020 relative to 2019. In the same year, the number of requests made by journalists to *Free Media Helpline*, as well as the number of requests for legal assistance in pre-investigation and investigative actions related to online violence and threats also increased.

In the first half of 2021, the Free Media Help Line of the Association *BH novinari* received 30 reports on attacks and threats against journalists in BiH. Of these, there were four death threats, seven brutal political pressures, and threats, ten attacks on journalists with elements of gender-based violence, three new defamation lawsuits against media owners, editors, and journalists, six cases of mobbing, violations of labor rights, and access to information. In 2020, there were 69 such cases, and in the last three years, the Free Media Help Line recorded 143 reports of criminal offenses.

In the context of media freedoms, cases of pressure on journalists exerted by representatives of institutions that should have protected them are particularly discouraging. In the last two years (2019-2021) *BH novinari* recorded one incident related to the possible abuse of power of the BiH Intelligence and Security Agency and interference in the work of journalists, as well as six cases involving police officers and border police officers in the field. Also, there were at least four incidents in which prosecutors unlawfully summoned journalists for informational interviews, forcing them to disclose their sources of information, or otherwise exerted institutional and political pressure on media workers, especially investigative journalists.

According to call records from 2002, when the Helpline opened, about 70% of reported attacks on journalists remain unpunished. “The share of 30% of cases decided in favor of journalists is unacceptably low. It points to a misunderstanding of freedom of expression. It is necessary to depoliticize judicial decision-making in cases of attacks on journalists”, said the Secretary-General of *BH novinari*, Borka Rudić.

Experiences of journalists and analyzes of professional associations show that the prosecutors are the weakest link in determining the responsibility and sanctioning of such cases. “Death threats are not “an expression of a view”, warns Rudić. There have also been cases in which representatives of the BiH Prosecutor’s Office tried to force investigative journalists who exposed corruption scandals to reveal their sources. When it comes to women journalists<sup>18</sup>, very few of those who have experienced some form of violation of their rights seek help from judicial institutions. The reason for this is that prosecuting threats and attacks can take years, Also, judges lack an understanding of the nature of journalistic work, and the outcomes of the process are often disappointing for journalists.

“I have a feeling that the judiciary treats journalists as enemies of this country and someone who needs to be interrogated, and not as partners striving towards the common goal of building a better society

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<sup>17</sup> <https://ba.voanews.com/a/politicki-funkcioneri-napadi-novinari-bih/5913839.html> (05.06.2021.)

<sup>18</sup> Hrnjić Kuduzović, Z., Popov Momčinović, Z. i Deliće, A. (2019) *Položaj novinarki u Bosni i Hercegovini* <https://bhnovinari.ba/wp-content/uploads/2019/02/Položaj-novinarki-u-BiH.pdf> (26.05.2021.)

and changing things for the better”, claims Siniša Vukelić, the president of the Banja Luka Journalists’ Club.<sup>19</sup>

Guaranteeing freedom of expression and protection of journalists is one of the 14 priorities of the European Commission, the fulfillment of which is a precondition for BiH’s candidate status for membership in the EU. This protection implies adequate prosecution of threats and attacks on journalists.

Legislatures at various levels in BiH still do not recognize journalism as a profession of public importance, nor do they see the need for criminal protection of journalists. Initiatives of the professional associations, as well as recommendations of international organizations for more adequate prosecution of those responsible for threats and attacks on journalists, were not upheld. A more systematic recording and monitoring of these cases could also contribute to a better understanding of the scale and severity of the violence faced by journalists. So far, the only institution that keeps its record of attacks on journalists is the Republika Srpska Ministry of the Interior. Since the criminal codes in BiH do not recognize the attack on journalists as a separate criminal offense, judicial institutions do not have such statistics available. Against this background, the HR Ombudsmen in BiH recommend to the Entity governments and the Government of the Brčko District, i.e., their respective Ministries of the Interior, to systematically collect data on threats and attacks on journalists.

In order to map and monitor data on victims, witnesses, and proceedings involving media professionals, *BH novinari* and other media organizations have engaged in several discussions with representatives of judicial institutions, the BiH Ministry of Justice, and the BiH Ministry of Human Rights and Refugees. Judicial institutions have not yet implemented the decision of the HJPC on the introduction of electronic case records and a publicly available database on cases related to media freedoms and the safety of journalists.

The 2020 Analytical Report of the European Commission on the Progress of BiH towards EU membership also underlines that BiH made no progress in providing guarantees to freedom of expression and the media, and judicial protection of journalists. As explained in the report, “the authorities continue to downplay the intimidation of journalists and their reaction remains weak.”<sup>20</sup> It further states that more effective police investigations and judicial prosecutions are expected to lead to final convictions of the perpetrators. Therefore, it is reiterated that in 2021, BiH should ensure the protection of journalists and systematic institutional measures to address threats and violence against journalists.

#### **1. 4. Protection of copyright and related rights of journalists and media**

The Law on Copyright and Related Rights, as well as the Law on Collective Management of Copyright and Related Rights, have not been amended or modified since their adoption in 2010. Although legal provisions need to be adapted to the digital era, until that happens, the existing legal solutions leave enough room to protect these rights. Both laws are largely in line with European standards in this area, offering an adequate framework for fulfilling the obligations in this area that BiH undertook by signing the SAA in 2015. Despite this, copyright and related rights are very poorly

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<sup>19</sup> <https://detektor.ba/2020/10/12/istrazna-komisija-zbog-stanja-u-pravosudju-novinari-se-osjecaju-nesigurno-i-nezasticeno/> (13.06.2021.)

<sup>20</sup> [https://europa.ba/wp-content/uploads/2020/10/Izvjestaj\\_za\\_BiH\\_za\\_2020\\_godinu.pdf](https://europa.ba/wp-content/uploads/2020/10/Izvjestaj_za_BiH_za_2020_godinu.pdf) (27.05.2021.)

respected due to the poor application of the legal provisions. The protection of these rights is neither timely nor effective.

Legal expert Haris Hasić explains that the competent authorities are neither ready nor competent to implement legal regulations. “Those dealing with copyright and related rights, tell stories of inspectors who do not have the basic knowledge of regulations or technical acumen to tackle modern mechanisms of copyright and related rights infringements, let alone organized crime that infringes a copyright and related rights as their primary activity - piracy. Courts are overwhelmed by cases of another kind, and even when they processing a rare copyright and related rights dispute, they demonstrate worrying incompetence to provide timely and consistent legal protection. By the time a verdict is passed, in most cases, the enforcement is either impossible or meaningless. There is a consensus among businessmen that courts are impotent to protect in the event of copyright and related rights infringements, and a large number of them have stopped turning to the court for help.”<sup>21</sup>. Although the laws have been in place for 11 years, there has been no progress in developing institutional capacity and implementing mechanisms to better protect these rights.

The main shortcoming of Copyright and Related Rights Law and the Law on the collective management of copyright and related rights is the lack of specific provisions that would apply to *online* media and platforms. In other words, the laws do not take into account the profound changes caused by the Internet in publishing different types of content. The consideration of future amendments to these laws should certainly take into account *EU Directive 2019/790 on copyright and related rights in the digital single market* adopted in 2019, which is extremely important for the survival of quality journalism and news media because it recognizes copyrights to news publishers.

Under Article 15 *Protection of press publications concerning online uses*<sup>22</sup> the authors are granted some new protections issuing from the use of their publications by information society service providers. The protection granted under this Article shall not apply to acts of hyperlinking. The Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers. Article 16 *Claims to fair compensation* or the so-called “link tax” is also relevant for the media and journalists. This is primarily reflected in news content aggregators such as Google News and others who have so far used journalistic news products and other media content for free, thus generating millions in revenue from journalistic products, and paying no fees to publishers or authors. With the introduction of this fee to information society service providers (ISPs), the contribution of publishers i.e., media, and indirectly of the author (journalist) to the production of *online* news has been recognized. If ISPs would allocate a certain portion of their profits as compensation to publishers whose media products they use, it would help the publishers return at least part of the money invested. More stable sources of income for publishers of informative publications are necessary to preserve the quality of journalism and ensure a better working and economic status of journalists. Therefore, it is in the interest of journalists and information media in BiH to have the relevant provisions of the Directive incorporated in the Law on Copyright and Related Rights.

In BiH, downloading and publishing journalistic texts in whole or in parts without the permission of the author or citing sources is a very common practice, primarily on web portals, but also on other *online* platforms. Unauthorized downloading of journalistic texts, copying, and plagiarism devalues the work of journalists and endangers their source of income. This form of copyright infringement is

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<sup>21</sup> [http://bhnovinari.ba/wp-content/uploads/2012/06/bhn\\_e-novinar-juni2016.pdf](http://bhnovinari.ba/wp-content/uploads/2012/06/bhn_e-novinar-juni2016.pdf) (02.06.2021.)

<sup>22</sup> <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32019L0790&from=PT> (01.06.2021.)

not taken seriously enough in the public or the case law, hence very few journalists decided to seek legal protection of their rights. Although the Law (Article 113) stipulates that an intentional or negligent infringement of copyright may be sanctioned by a fine of up to 200% of the price of the regular fee payable for this type of use, this option is rarely used. As the previous analysis showed<sup>23</sup>, poor protection of copyright and related rights is partly because in the Federation of BiH the protection is not entrusted to courts specialized in business law cases, unlike in the RS, as well as in Serbia and Croatia. Courts are extremely slow in processing cases in this area, the judgments are not supported by substantive legal norms, nor are these rights given the deserved importance. BiH is a glaring example of a state in which *copyright* is converted to a *right to copy*. All this has a discouraging effect on authors and publishers.

On the other hand, since some media outlets, due to insufficient knowledge of legal provisions or the need to as quickly as possible publish information, violate Law on Copyright and Related Rights it is important to recall the obligation to seek permission from copyright holders, regardless of whether they are transmitting a part or all of the content. It is in the long-term interest of professional journalism that journalists who infringe copyright be sanctioned and their editorial offices issue a public apology. Also, the media should pay attention to the label on the conditions of transferring content from a particular source. It is sometimes difficult for journalists to determine who is the copyright holder of a particular text, photo, or video. Since the Law on Copyright and Related Rights (LCRR) does not specify the procedure in such situations, the amendments should aim to align the LCRR with EU Directive 2012/28/EU on certain permitted uses of orphan works i.e., the work whose author(s) cannot be identified, despite a diligent search for the rightsholders having been carried.

Copyright and related rights are also covered by the Criminal Codes at the state, Entity, and Brčko District levels. It is important to mention the initiative to amend the 2019 RS Criminal Code. The initiative was aimed at harmonizing the Codes with the Convention on Cybercrime by adding new Articles on copyright infringement and unauthorized use of copyright. In June 2020, the NARS adopted extensive amendments to the Entity Criminal Code but rejected this initiative.

## 1. 5. Media in the election campaign

Legal regulations on the conduct of the media during the election process are contained in Chapter 16 of the BiH Election Law, entitled *Media in the election campaign*. Due to the lack and imprecise provisions governing the obligations of the media and journalists in reporting on political entities in the mentioned period, these provisions need to be amended. First of all, adequate mechanisms for its implementation in an *online* environment are not in place, although over the past 15 years *online* media and platforms have become a significant source of information for citizens, as well as a frequently used channel of election campaigning.

Despite the fact that the law imposes the obligation of balanced, fair, and impartial reporting, relevant analyzes of media coverage in the election campaign point to a violation of these provisions, especially in *online* media<sup>24</sup>. This obligation applies to all media, but the emphasis is on electronic media, and sanctions can be imposed only on them, while *online* media, under the current law, are not explicitly mentioned. This shortcoming has been corrected in *the draft Initiative for Amendments to*

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<sup>23</sup> <https://bhnovinari.ba/bs/2019/12/26/analiza-zakonskog-okvira-za-zastitu-autorskih-i-srodnih-prava-novinara-u-bih/> (03.06.2021.)

<sup>24</sup> Monitoring media coverage in the 2018 general election campaign: Final report <https://bhnovinari.ba/wp-content/uploads/2019/10/Finalni-izvje%C5%A1taj-monitoringa-medija-2018.pdf> (09-Jun-21)

*the BiH Election Law*<sup>25</sup> published by the BiH Central Election Commission (CEC) in June 2021. In Article 16.17, which refers to the complaints regarding the work of the print media, *online* media have been added, as well as with the Press Council. Of course, *online* media are not subject to strict regulations such as the one applicable to electronic media, but even if it were, there is nobody that could implement appropriate measures in cases of violation of legal and ethical norms. Introducing *online*, as well as social media in the Law and specifying explicitly the body responsible for regulating their work in the election campaign would contribute to more consistent implementation of legal provisions.

The current Law does not mention social media and networks, which have become a significant channel of communication for political entities. The Covid-19 pandemic only intensified their use for election campaigning. The election campaign using these means of communication begins long before its official start<sup>26</sup>. These means of communication are often used to publish inflammatory content and hate speech contrary to the legal provisions on the prohibition of discrimination and hate speech. Undoubtedly, in this context, the legal regulations are significantly behind the digital reality, hence it is necessary to more precisely include these means of political communication in the text of the Law.

In the segment of media, the proposed amendments to the CEC's draft start from the very title of Chapter 16 and terminology. According to the proposed amendments, the title "Media in the election campaign" should be replaced by the new title "Media", and the notion of "radio and television program" should be replaced by the term "Audiovisual media and radio media services". Also, the amendments propose introducing the terms "social network" and "mobile applications". The new terminology is much more appropriate to the digital age and more in line with CRA rules.

Hate speech means "every form of public provoking or incitement to hatred, discrimination or violence against any person or group of persons, based on race, color, nationality, gender or religion, ethnic origin or any other personal characteristic or orientation. "It is prohibited to use "hate speech, and/or publish or use images, symbols, audio and video recordings, SMS messages, Internet communications, social networks, and mobile applications."<sup>27</sup> Violation of electoral silence is an additional problem in online media and social networks, challenging the merits of the concept in electronic and print media.

Although the Law stipulates that the election campaign begins one month before the elections, political entities in practice start campaigning much earlier, especially in *online* media and on social networks. However, the Law does anticipate such a situation nor does it envisage any mechanism for sanctioning political entities that violate the said provision. The draft corrects this shortcoming by adding Article 7.1. prohibiting early election campaigning in Chapter 7 *Rules of conduct in the election period*. Still, this Article explicitly mentions electronic and print media, but not *online* media.

An important novelty is in the new paragraph 16.2, which requires the media to publish and provide transparent information on media ownership. The proposed amendments also stipulate in more detail the circumstances in which electronic media may refuse to publish paid political advertising. Article 16.3 is significantly expanded to include provisions relating to advertisements that humiliate,

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<sup>25</sup> Draft Initiative for Adoption of the Law on Amendments to the Election Law of Bosnia and Herzegovina [https://www.izbori.ba/Documents/2021/06/Inicijativa\\_Zakon\\_o\\_izmjenama\\_i\\_dopunama\\_Izbornog\\_zakona\\_BiH.pdf](https://www.izbori.ba/Documents/2021/06/Inicijativa_Zakon_o_izmjenama_i_dopunama_Izbornog_zakona_BiH.pdf) (09.06.2021.)

<sup>26</sup> <https://raskrinkavanje.ba/analiza/stranke-i-kandidati-na-facebooku-ko-je-poceo-kampanju-prije-njenog-zvanicnog-pocetka> (28.05.2021.)

<sup>27</sup> Article 7.3. Initiative on the Law on Amendments to the Election Law of BiH



intimidate or incite hatred, violence, or discrimination on various grounds, the abuse of children for political purposes, as well as those that are contrary to CRA regulations. Proposed amendments offer the media a strong legal foothold for the protection from their instrumentalization to incite and spread hate speech.

The draft also proposes a new Article 16.17.a, which authorizes the CEC to conduct a procedure of establishing the liability of political entities for presenting false information through electronic media and the Internet. Under this Article, the accountability lies primarily on the political entities as users of media space, not on journalists or the media as intermediaries in conveying the message. This Article can contribute to greater accountability of political candidates for public speech, without compromising media freedoms.

The draft also imposes an additional obligation on public radio and television broadcasters to allow female candidates in the election at all levels of government free 30-minute airtime to present their political program during the election campaign (Article 16.17b). The proponents intend to facilitate women's political advancement through greater media coverage, as well as to contribute to the inclusion of gender issues in the programs of political entities. When it comes to considering the approach of providing free airtime for the direct address of political entities, one should bear in mind an extremely large number of political entities in BiH. If public broadcasters are made to provide free media space to all political entities on equal footing, as explained by a communicologist Amer Džihan, that could further weaken their position on the market. Therefore, before deciding on the manner of distribution of these airtime slots, representatives of public radio and TV stations, political entities, and experts must be consulted, taking into account the viewership of such programs: *"...if no one cares about these programs or if they contribute to voting apathy, then we must ask ourselves whether we need them at all, i.e., whether they are counterproductive."*<sup>28</sup>

Another shortfall of the Law is that the deadlines for addressing the complaints about violations of legal provisions related to the work of the media in the election process are not specified. These deadlines should be shortened in accordance with Recommendation no. R (99) 15 of the Committee of Ministers of the Council of Europe to member states on Measures concerning media coverage of election campaigns, and The Code of Good Practice of the Venice Commission in Electoral Matters. Due to the short duration of the media campaign, the CRA should resolve complaints, especially in cases that may cause damage or lead to undesirable consequences, under an abbreviated procedure, within 72 hours of receiving the complaint. This deadline includes 24 hours to file a complaint with the CRA, 24 hours to verify the facts and seek answers from the media complained about by the political entity, and 24 hours for the CRA Council to render a decision.

At the time of writing this study, an invitation has been extended to BiH election authorities, academia, electoral law experts, and representatives of NGOs and other organizations to submit comments and proposals to the CEC on the draft Initiative.

Based on the analysis of media reporting in the election process, the Association of BH novinari and the Boram Agency proposed, as part of the activities they conduct with the Coalition *Pod lupom*,<sup>29</sup> the

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<sup>28</sup> Džihana, A. (2017) *Pravila za djelovanje medija u izbornoj kampanji: Analiza Izbornog zakona BiH i Radnih materijala Centralne izborne komisije BiH za izmjene i dopune Izbornog zakona BiH*. Sarajevo: BH novinari.

<sup>29</sup> The proposal is the result of activities carried out in the EU-funded project *Building accountability and systems in the election*. <https://euresurs.ba/projekat/izgradnja-odgovornosti-i-sistema-u-izborima/11> (21/06/2021)

improvement of the Election Law in the segment of media obligations in the election process<sup>30</sup>. Based on research pointing to the bias of certain media that violate the legal provisions on fair and balanced reporting, they advocate the strengthening of the principle of equity in the free of charge representation of political entities. Political parties and candidates already in power are significantly more represented in the media, and elected officials dominate media content. The law should be amended to ban tendentious reporting and highlight the editorial independence of the media. It was also recommended to introduce provisions that would specify the right to reply in all media, especially in print and *online* media. The Election Law only stipulates that complaints regarding the contents in the press are to be sent to the Press Council, but does not explicitly oblige the publisher to publish a reply, apology, or correction, nor does it provide mechanisms for exercising the right to reply in print or *online* media, which are not even mentioned in the Law.

## 1.6. Freedom of Access to Information Act

Although the Freedom of Access to Information Act (FOIA) of BiH, which was adopted in 2000<sup>31</sup> meets the highest European standards, it yielded no expected results. The problem is that no adequate mechanisms are in place to sanction the officials in the institutions who do not comply with it nor do such mechanisms exist in the other subsequently adopted laws at the state and Entity levels that have significantly restricted the right to free access to information.<sup>32</sup> It is similar to the amendments to the FOIA from 2006, 2009, 2011, and 2013, which not only failed to improve but rather degraded its implementation. A preliminary draft of the new FOIA<sup>33</sup> prepared by the BiH Ministry of Justice envisages further restrictions of this right, which would make the work of investigative journalists and civil society activists a lot more complicated.

The Ministry of Justice states that, in accordance with BiH's obligations under the SAA between the EU and BiH, the Preliminary Draft of the new law is aligning the regulation with international and European standards, specifically with the provisions of Directive (EU) 2019/1024 of the European Parliament and the Council on open data and the re-use of public sector information<sup>34</sup>.

BiH has committed to the transparent work of public institutions much earlier, through other documents. Accordingly, one of the measures of the *2018-2022 PAR Strategic Framework* aims to increase the accessibility of public administration information. The measure envisages that the right of access to public information will be improved in legislation by applying proactive transparency standards. Also, in 2012, BiH ratified the *Council of Europe Convention on Access to Official Documents* under which all States Parties undertake to guarantee everyone, without discrimination on any ground, the right of access to official documents held by public authorities. It is envisaged that in case of denied access to official documents, the applicant will have access to a review procedure before the court or the right to appeal before another independent and impartial institution.

Proactive disclosure of information manifested in continuous disclosure of information on the websites of the institutions of BiH is a step towards a more transparent work of institutions. The information

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<sup>30</sup> <https://bhnovinari.ba/bs/2017/10/31/predstavljeni-prijedlozi-za-unapredjenje-izbornog-zakona-i-obaveza-medija-i-novinaru-u-izbornom-procesu/> (03.06.2021.)

<sup>31</sup> Laws at the level of the BiH Entities, Republika Srpska and the Federation of BiH, were adopted in 2001 and do not differ substantially from those at the state level.

<sup>32</sup> Halilović, M. and Džihana, A. (2012): *Medijsko pravo u Bosni i Hercegovini*. Sarajevo: Internews.

<sup>33</sup> <https://ekonsultacije.gov.ba/legislativeactivities/details/110763-> (14.06.2021.)

<sup>34</sup> <https://ekonsultacije.gov.ba/legislativeactivities/details/110763-> (14.06.2021.)



whose publication is obligatory is listed in Article 13.2. The establishment of a central portal of public institutions for permanent access to documents (Article 14.1) should facilitate the citizens in finding and accessing information. This could also speed up the work of journalists or encourage them to do data-based research stories.

However, civil society organizations warn that proactive transparency proposed by the new law should in no way become an obstacle to exercising the right to access information on demand.<sup>35</sup> Furthermore, the legal actions taken due to denied access to information shall be addressed in an urgent procedure and the Court must render a decision within 90 days (Article 21.1). This should prevent future delays of court proceedings on this ground, which can last for years and be very exhausting for journalists.

However, the Preliminary Draft contains many controversial provisions that leave room for officials to abuse the restriction of the right to access information. Civil society organizations<sup>36</sup> made remarks and submitted proposals to the Ministry requesting that the Preliminary Draft be amended accordingly. The possibility of further extension of the deadline for reply to a request for information from the current 15 to an additional 15 days is especially problematic for journalists (Article 25), which means that journalists could end up waiting up to 30 days. The current deadline should be significantly shortened, not extended. Neither the current Law nor the Preliminary Draft recognizes the specific needs of journalists to whom information obtained after 15 or 30 days may as well be worthless. The Preliminary Draft should be amended with a provision stipulating that information requested by journalists should be provided immediately, and no later than three days.

An important shortcoming of the Preliminary Draft of FOIA is a very wide list of exceptions to access to information (Article 26). Exceptions must be precisely standardized and reduced to the protection of a narrow circle of legitimate interests (national security, protection of privacy, crime prevention, etc.) Also, it is envisaged that the institution processing the request will conduct a test of proportionality and public interest (Article 20), but no procedure for such tests was specified. Instead of replying generally that the requested information amounts to personal data or that it is not in the public interest to share it, the institutions denying the access should be required to explain which specific information amounts to personal data, i.e., how did they conduct the proportionality and public interest test. Therefore, this test should be elaborated and specified in more detail in the legal provisions, to be able to establish whether the applied exception is justified.

Although the Preliminary Draft of the new FOIA envisages fines for violation of BAM 500 to 15,000, the problem is that, as before, that these fines are paid from the budget, and not from the income of the offender. Despite the fact that 12 lawsuits for non-compliance with the FOIA have been ruled in favor of the Centar za istraživačko novinarstvo BiH, the current sanctioning system has not made the journalist work easier nor did it improve the transparency of institutions. Not even a final verdict is the guarantee that the journalist will receive the requested information. Most often, they need to make a new request and again wait for a reply, and sometimes go to court again.<sup>37</sup>

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<sup>35</sup><https://ti-bih.org/organizacije-civilnog-drustva-ministarstvu-pravde-bih-povuci-prednacrt-zakona-o-slobodi-pristupa-informacijama-na-doradu/> (23.05.2021.)

<sup>36</sup> Centar za istraživačko novinarstvo, *Transparency International* in BiH, the Balkan Research Network in BiH, Association BH novinari, Open Society Fund of BiH, Centar za zastupanje građanskih interesa, Sarajevo Open Center, Association of Citizens “Zašto ne”, Foreign Policy Initiative of BiH, Center for Promotion of Civil Society, *Civil Rights Defenders*.

<sup>37</sup><https://www.media.ba/bs/magazin-novinarstvo/novi-zospi-bi-mogao-dodatno-ograniciti-slobodan-pristup-informacijama-u-bih> (12.06.2021.)

Even 20 years after the adoption of FOIA, journalists face the problem of institutions denying access to information. The researches<sup>38</sup> show that judicial institutions are the most closed of all institutions, and journalists have a difficult time obtaining information from them. Although in 2014, the High Judicial and Prosecutorial Council of BiH (HJPC) published *Framework guidelines for publishing court and prosecutorial decisions*, this document is applied very differently. Some courts do not even have the name of the information officer on their websites. Different institutions process FOIA requests differently, and the same goes for publishing judgments. Symptomatically, all interviewed journalists and editors have a very negative view of the level of openness of judicial institutions. The results of the most recent research have shown that no significant progress was made in this regard<sup>39</sup>. Journalists are dissatisfied with the communication with judicial institutions and the replies to their requests under FOIA. Apart from being very closed and inapproachable, information officers in some institutions also demonstrate poor knowledge of FOIA. For this reason, CSOs demand that information officers as well as institutions involved in exercising the right to access to information be educated. These persons should be well acquainted with the Law, and have adequate knowledge and skills in the field of public relations, especially proactive information and crisis communication.

Journalists do not find the health institutions and Covid-19 emergency headquarters transparent either. A survey conducted with journalists<sup>40</sup> showed that more than 83 percent of journalists believe that the emergency headquarters did not provide objective and comprehensive information to citizens about the coronavirus. Also, the management of clinical centers in Sarajevo and Banja Luka denied journalists access to public information.<sup>41</sup>

A solution proposed by the Pre-Draft, which is worse than in the current Law, is that the role of the appellate body in the procedures of exercising the right on free access to information is assigned to the Appeals Council within the Council of Ministers, not the Office of the Ombudsman, as defined by the current Law. Institutions ensuring the application of the Law must be independent and specialized in the field of access to information. The Appeals Council cannot be independent, because it is appointed by the executive power.

## 1.7 Defamation laws as a means of political pressure

With the adoption of the Law on Protection against Defamation at the level of the Republika Srpska in 2001, i.e., the Federation in 2002 and the Brčko District of BiH in 2003, BiH was the first country in the Western Balkans to decriminalize defamation. Moreover, BiH has been at the forefront of these laws compared to many European countries with a longer democratic tradition and better regulation.

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<sup>38</sup> <https://www.analitika.ba/sites/default/files/publikacije/Transparentnost%20pravosudnih%20institucija%20-%20osvrt.pdf> (29.05.2021.)

<sup>39</sup> Sokol, A. (2021) *Transparentnost rada pravosudnih institucija tokom pandemije: Javna komunikacija i odnosi s medijima*. Sarajevo: Mediacentar. <https://media.ba/sites/default/files/transparency-report-vol-01-bcms.pdf> (30.05.2021.)

<sup>40</sup> The survey was conducted by BH novinari in June 2020 on a sample of 102 journalists in BiH. [https://bhnovinari.ba/wp-content/uploads/2020/06/Anketa-BH-novinara-Pristup-javnim-informacijama-u-vezi-sa-COVID-19-BHS\\_compressed.pdf](https://bhnovinari.ba/wp-content/uploads/2020/06/Anketa-BH-novinara-Pristup-javnim-informacijama-u-vezi-sa-COVID-19-BHS_compressed.pdf) (21.06.2021.)

<sup>41</sup> <https://bhnovinari.ba/bs/2020/05/06/bh-novinari-javni-protest-direktoru-ukc-rs-vladi-djajicu-i-njegovom-zamjeniku-nenadu-stevandicu/> (21.06.2021.)  
<https://bhnovinari.ba/bs/2020/04/03/bh-novinari-javni-protest-direktorici-kcus-a-dr-sebiji-izetbegovic/> (21.06.2021.)

“... these defamation laws were in their own way 'revolutionary' as the first national laws in Europe to completely decriminalize defamation and insult in both normative and political terms.”<sup>42</sup>

However, contrary to expectations, the number of lawsuits against journalists and the media did not drop down even in the first years after the adoption of the law<sup>43</sup> nor is it decreasing about 20 years later. Judicial institutions do not classify statistics on cases related to lawsuits against the media and journalists separately. The data held by *BH novinari* indicate an increase in the number of defamation lawsuits. In September 2020, there were 289 active defamation trials against the media and journalists, and by the end of last year, 21 new lawsuits had been filed. *Special report on the position and cases of threats to journalists in BiH* published by the BiH Ombudsman Institution states that “politicians very often resort to the Law to discourage journalists from publishing articles whose content they disapprove ... and litigation, initiated by politicians against the media are handled much faster than average ...”( 2017: 44).

Also, the European Commission Progress Report on BiH for 2020 identified defamation lawsuits as a means of political pressure and financial depletion of the media and journalists. The courts are urged to “ensure an expedient processing of defamation cases and consistency of case law on damage awards, to prevent any chilling effect that would force journalists into self-censorship.”<sup>44</sup> Lawsuits against journalists are most often filed by high-ranking political and public officials such as political party presidents, prime ministers, ministers, and directors, and their compensation claims are the highest - between five and ten thousand BAM or more. Some political officials have filed multiple lawsuits, up to several dozen<sup>45</sup>. The threat of lawsuits through the media, which remain only a threat, is also used as a means of intimidation. This tactic, in addition to being a threat by court actions and financial damage, is also a threat to the professional credibility of journalists.

Although the law stipulates that in deciding on compensation, due regard shall be paid to whether the damages awarded would likely result in severe financial distress or bankruptcy for the person who allegedly caused the harm, the average amount of the defamation fine is three thousand BAM, which is still very high relative to journalists' income. Also, this may be particularly harmful to the financial stability of media outlets involved in multiple defamation lawsuits. Politicians who file defamation lawsuits or threat to file such lawsuits are aware of this, which is why they use it as a means of intimidation.

Lawyer Senad Pećanin warns of the financial consequences of exhausting and lengthy trials: “Courts are often completely insensitive to the tragically poor economic and social position of journalists and the media; to the fact that court proceedings last for years, not by mistake of journalists; to the fact that often even minimal fines, after calculating default interest from the day of filing lawsuits, turn into many times higher amounts, which is a real nightmare and threat to the very livelihood of journalists and media.”<sup>46</sup>

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<sup>42</sup> Halilović, M. and Srdić, M. (2012): Defamation Laws, p. 123 u Halilović, M. i Džihana, A. (ur.): *Medijsko pravo u Bosni i Hercegovini*. Sarajevo: Internews.

<sup>43</sup> Ibid, 127

<sup>44</sup> [https://europa.ba/wp-content/uploads/2020/10/Izvjestaj\\_za\\_BiH\\_za\\_2020\\_godinu.pdf](https://europa.ba/wp-content/uploads/2020/10/Izvjestaj_za_BiH_za_2020_godinu.pdf) (27.05.2021.)

<sup>45</sup> <https://bhnovinari.ba/wp-content/uploads/2018/01/Kleveta-BiH.pdf>, 2018.

<sup>46</sup> <https://www.media.ba/bs/magazin-novinarstvo/podnose-tuzbe-pa-ih-povlace-kako-mocnici-pritiscu-novinare-koristeci-zakon-o> (23.05.2021.)

The provisions of the Law are written so as not to stifle freedom of expression, but to increase accountability for public speech. In that sense, these laws cannot be said to be bad. Just as with other laws governing media in BiH, the problems are in the case law, i.e., the interpretation and application of what has been stipulated. BiH judiciary needs to align the application of defamation laws with the case-law of the European Court of Human Rights (ECtHR). This court interprets freedom of expression very broadly, implying that it includes information that offends, shocks, and disturbs. This is especially true for political speech, where the least restrictions on freedom of expression are applied, leaving the media a lot of room for negative writing about politicians. Simply put, the European Court of Human Rights in defamation cases does not apply the same criteria as in the cases of protection of the reputation of politicians and citizens who are not public officials.

Following the case-law of the ECtHR, in 2019, a delegate in the House of Representatives of the Parliamentary Assembly of BiH, Mr. Damir Arnaut, asked the competent bodies of the Entities and the Brčko District of BiH to incorporate higher standards of acceptability, tolerance, and proof in cases of alleged defamation against public figures than against private ones. In 2020, the House of Representatives of the BiH Parliamentary Assembly rejected this initiative.

Poor implementation of the law is also manifested in the fact that in BiH the burden of proving defamation in court is shifted from the plaintiff to the journalist. Lawyers working with civil society activists<sup>47</sup> agree that judges in BiH need to be educated on how to apply ECtHR standards and interpret defamation laws. The problem is that the standards are interpreted here much more rigidly and more strictly for journalists than in Western European countries characterized by a broader understanding of journalistic freedoms and better differentiation of insult, value judgment, and slander.

In addition to judges, journalists too need training to better understand these terms, anticipate the possible legal interpretations that may be different from journalistic ones, and use protective mechanisms. At the same time, education should encourage the media to fact-check information and adhere to professional standards.

To systematically monitor cases against journalists and the media, the HJPC should record such cases separately. Classification criteria may be the cases under Article 10 of the European Convention on Human Rights.

A significant terminological error should be corrected when the next amendments to the Law on Protection against Defamation of the Federation of BiH are proposed. A contradictory term *false facts* should be replaced by syntagm *false information*. A fact, by definition, corresponds to reality, something that really exists or has existed, hence falsity and fact are mutually exclusive concepts.

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<sup>47</sup>[https://detektor.ba/2019/06/20/tuzbe-za-klevetu-postaju-sredstvo-za-cenzuru-medija/\(06.06.2021.\)](https://detektor.ba/2019/06/20/tuzbe-za-klevetu-postaju-sredstvo-za-cenzuru-medija/(06.06.2021.))

## 2. GOOD PRACTICES AND POSITIVE EXAMPLES REGARDING MEDIA FREEDOMS AND SAFETY OF JOURNALISTS

A positive development compared to the current law is Chapter 16 of the *Draft Initiative for Amendments to the Election Law*, which is about media. This chapter corrects many shortcomings that have been highlighted in the media coverage of the elections so far at various levels. The proposed changes, in addition to electronic and print media, explicitly mention *online* media, which are not included under the applicable Law. Thus, the obligations of this type of media in the election process are articulated more precisely, which is especially important due to the prohibitions of certain behaviors that apply to all types of media. Also, the Draft introduced the terms “social network” and “mobile applications” into the election legislation. These changes are significant because they are aligning the terminology with the rules and codes of the CRA and provide a more uniform interpretation of legal provisions.

Furthermore, the Draft specifies the circumstances in which the electronic media may refuse to publish political advertisements. In Article 16.3, four new points have been added relating to the right to refuse to publish advertising involving any discrimination or prejudice based on sex, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin, as well as and any other content that aims at or results in preventing or endangering recognition, enjoyment or exercise, on an equal basis, of the rights and freedoms of any person, of humiliating, intimidating or inciting hatred, violence or discrimination against a person or group based on sex, race, ethnicity, nationality, religion or belief, disability, special needs, age, sexual orientation, social origin or any other circumstance that aims at or results in preventing or endangering the recognition, enjoyment or exercising, on an equal basis, of the rights and freedoms of any person, and advertising involving misuse of children for political purposes, as defined under international standards, and if advertising is in conflict with other regulations of the Communications Regulatory Agency of BiH. The positive thing is that this gives the electronic media a stronger legal stronghold to reject political advertisements that are contrary to professional and ethical standards.

Although the Pre-Draft of the new FOIA has many shortcomings that roll back what has been achieved in regulating the right of access to information so far, a positive novelty is the introduction of proactive disclosure of information prescribed by Article 13. It is defined as a continuous self-initiated publication of certain types of information on the websites of BiH institutions in open form, which implies a file format that is independent of the platform used and without restrictions on re-use. It is the result of the obligation to align the Law with the provision of Directive (EU) 2019/1024 of the European Parliament and the Council from 2019 on open data and the use of public sector documents. In paragraph 13.2, provided is an exhaustive list of the types of information that institutions are obliged to publish. To this end, the establishment of a Central portal of public institutions, which the institutions are required to feed in with the information provided in Article 13.2, is another positive development that will make the information available to Internet users. Another advantage is the planned shortening of decision-making in cases of lawsuits for denying freedom of access to information. The proceedings would be considered urgent and the Court would have to rule within 90 days.

It is important to point out that in addition to these few positive innovations, the Preliminary Draft contains many shortcomings, which is why it needs to be revised so as not to make the work of journalists and civil society activists even more difficult. To this end, CSOs sent an Initiative proposing the following:

- define broadly the concept of public information
- give the right of access to information to all persons, including natural and legal persons, as well as other forms of organization that may arise in the process of exercising the right to access information
- stipulate that the information sought should be provided in the form required by the person requesting the information
- not require from the person requesting the information to state the reasons for which the information is requested
- enable the right to appeal to an independent institution, in case the access to the requested information has not been granted, as well as the court review
- provide for a narrow range of exceptions to access to information, with an obligation to conduct a mandatory public interest test
- stipulate, as a statutory obligation, proactive publishing of certain categories of information such as operational information, information on organizational structure, budgetary and other information on the work of public authorities
- provide for oversight inspections and sanctions in case of non-compliance with legal provisions<sup>48</sup>.

In light of the fact that the legislation in BiH only partially and insufficiently regulates the media ownership in BiH, the Consortium composed of BH novinari, Mediacentar, the Press Council, and the NGO JaBiHEU submitted a draft law on transparency of media ownership to the BiH Ministry of Communications and Transport, as well as to other institutions responsible for regulating the work of media. This piece of legislation is one of the most necessary laws in the field of media in BiH that would provide citizens with insight into the interests involved in the editorial policy of the media. The draft law also proposed the formation of a detailed register of media with data on direct and indirect owners. It would also provide information on indirect owners, such as owners of legal entities that applied for or already have obtained a radio or television broadcasting license. The draft law is aligned with the European standards and requires that information on all ownership shares higher than five percent be reported.

Adoption of the proposed draft law would have better regulated *online* media, many of which are now nowhere registered as media, nor are data available on their ownership, nor the editorial board. Such portals are the main generators of unverified, sensationalist, often false information, i.e., the content below all professional standards, which causes immeasurable reputation and financial damage to professional media. Anonymous portals often abuse freedom of expression, neglecting the liability for the words spoken out. The draft provides for the obligation to register *online* media and provide information on company management, as well as on the editorial board. To ensure transparency of media financing, the proposed draft law imposes the obligation on the media to submit information on sources of income by submitting annual reports.

Although the mentioned Consortium drafted a legal solution, which was submitted to the competent institutions in the form of a draft in early 2019, it has not yet been considered. Such a delay in considering the prepared legal solution points to political obstructions, calls into question the readiness of institutions at the state and Entity levels to provide an adequate legal framework for combating political clientelism in the media, as well as fulfilling SAA obligations. The same Consortium also submitted a draft law on advertising to the Ministry, which has not been considered either.

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<sup>48</sup> [https://ti-bih.org/wp-content/uploads/2021/02/Inicijativa-za-izmjenu-ZOSPI\\_Ministarstvo-pravde-BiH.pdf](https://ti-bih.org/wp-content/uploads/2021/02/Inicijativa-za-izmjenu-ZOSPI_Ministarstvo-pravde-BiH.pdf) (09.06.2021.)



In the past two years, there have been several initiatives to amend the criminal codes and provide for an adequate prosecution of threats and violence against journalists and media workers, and to ensure that such attacks against journalists are treated as if they were committed against official persons. Association *BH novinari* submitted this initiative in 2019 to all governments at all levels of government, to all parliaments, clubs of representatives in the state and Entity parliaments, and the Brčko District. In 2019, members of the FBiH Parliament adopted the Initiative to amend the FBiH Criminal Code with provisions that would protect journalists on the job. The initiative proposed punishing the attack on journalists with a prison sentence of three months to three years. However, this remained declarative support, and this change has not yet been incorporated into the FBiH Criminal Code. In the other Entity parliament, the NARS, the initiative was rejected in 2020.

In 2019 another important provision was initiated regarding the amendments to the legislation concerning the sanctioning of threats and attacks on journalists and media workers. A delegate in the House of Representatives of the Parliamentary Assembly of BiH, Mr. Damir Arnaut, asked the competent bodies of the Entities and the Brčko District of BiH to incorporate different standards of acceptability, tolerance, and proof in cases of alleged defamation against public figures relative to private ones, as does by the European Court of Human Rights. Despite the worrying number and seriousness of the attacks on journalists, the House of Representatives of the BiH Parliamentary Assembly rejected this initiative as well.

Among the few encouraging reactions of institutions regarding the freedoms and safety of journalists is the final judgment of the Municipal Court in Ljubuški in 2021 against Jurica Pavlović. In 2019, Pavlović sent a series of threatening messages via Facebook, which abound in hate speech targeting Martina Mlinarević. On the account of “inciting ethnic, racial and religious hatred, discord or intolerance”, Pavlović was sentenced to three months in prison, wholly suspended for one year.

“The suspended sentence in the Pavlović case is not sufficient satisfaction for this type of crime, but it is certainly an encouraging step forward in the processing of hate speech in *online* space, especially on social networks” - said Vildana Džekman, a lawyer of the Free Media Help Line of the Association *BH novinari*.<sup>49</sup>

Another case that could be a sign of minor progress towards a more serious understanding of threats to journalists is the verdict of the Basic Court in Banja Luka, which sentenced a man, M.P., to a fine of BAM 700 (358 EUR) for threatening journalist Milkica Milojević.

A third somewhat encouraging example is the disciplinary sanctioning of civil servant Adnan Čakalović for insulting and threatening journalist Zinaida Đelilović. In April 2021, the Free Media Help Line of Association *BH Novinari* sent a letter to the Ministry of Human Rights of BiH requesting disciplinary sanctioning of Čakalović for discrimination, gender-based or sexual-orientation based violence, and gender-based harassment or sexual harassment.

“In a way, we are satisfied that the civil servant in question was sanctioned, as this can serve as a warning to others, but we are sad and disappointed that in this case the lowest possible sanction has been imposed - 15% pay cut for three months”<sup>50</sup> - Džekman explained.

These and several other court cases resolved in 2021 in favor of journalists and media workers who have been the target of hate speech, insults and threats inspire hope that judicial institutions in BiH

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<sup>49</sup> <https://bhnovinari.ba/bs/2021/06/11/pripadnik-os-bih-osudjen-na-tri-mjeseca-uvjetno-zbog-govora-mrznje-prema-martini-mlinarevic/> (11.06.2021.)

<sup>50</sup> <https://zurnal.info/novost/24052/zbog-otvorenih-prijetnji-novinarki-zurnala-cakalovic-kaznjen-minimalnim-smanjenjem-plate-> (06.06.2021.)



will begin to use mechanisms available to protect media freedoms and the safety of journalists. More precisely, during this year, the following cases were resolved in favor of journalists: five criminal offenses of threatening and endangering safety, two cases of defamation, one illegal appointment to an editorial position, and four complaints about denied access to public events and information. Reactions by judicial institutions to threats and attacks on journalists remain slow and mild, but these verdicts should encourage all journalists who suffer humiliation and intimidation to report them. To measure the efficiency of judicial institutions in the protection of media professionals, *BH novinari* and the Free Media Help Line have established regular monitoring of cases with the judiciary, police, and other institutions responsible for protecting media freedom and the safety of journalists.

### 3. CONCLUSION

Legislation concerning journalistic freedoms and the work of the media in BiH has not improved in the past three years. Despite the commitments assumed under the Stabilization and Association Agreement between BiH and the EU, no progress has been made in bringing BiH media law closer to international and European standards. Although the initiatives to amend relevant laws that affect the work of journalists, media workers and the media are not lacking, the authorities at various levels have not shown a willingness to seriously consider and adopt them. Also, draft laws aimed at regulating the situation on the media market have been waiting for years to be tabled on the agenda of the BiH Parliamentary Assembly. A glaring example is the Law on Electronic Communications and Electronic Media, which should have been adopted five years ago, but has not been adopted to present. This piece of legislation also regulates the transparency of media ownership. In the absence of this law, the ownership structure and sources of funding for the media, primarily *online* remain unknown. Other consequences are unfair competition, a link between political and economic interests, which is difficult to prove without ownership information, and political clientelism in the media. A particular problem is the non-transparent financing of public media at the local level due to the lack of clear criteria for subsidizing media production.

By proposing the draft law on transparency of media ownership, the media community tried to make up for what the government authorities failed to do. As a result of a two-year project *Media and public reputation* implemented by a Consortium composed of the Association *BH novinari*, the Mediacentar Foundation, the Press and Online Media Council in BiH, and the NGO JaBiHEU, and funded by the EU Delegation to BiH, developed was a draft law on ownership transparency and protection of media pluralism in BiH. In early 2019, the draft law with accompanying documentation was submitted to the Ministry of Communications and Transport of BiH. Even though the European Commission's Report on BiH for 2020 emphasized the necessity of adopting this law and repeated the recommendations from the previous report, the Ministry has not yet considered it.

The Law on Protection against Defamation is not in line with the case-law of the European Court of Human Rights. The case law of the ECtHR implies higher standards of acceptability, tolerance, and proof in cases of alleged defamation against public figures relative to private ones. According to analyzes of professional associations, international institutions, and civil society organizations, defamation lawsuits and threats by lawsuits are often being used by high-ranking politicians and public officials as a means of intimidating and sanctioning journalists. The data held by *BH novinari* indicate an increase in the number of defamation lawsuits. This law is interpreted and applied in BiH much more strictly and unfavorably for journalists than in Western European countries.

Apart from not making progress in approximating the existing laws to European standards, BiH has not implemented the long-adopted legal provisions either. This primarily refers to the obligation to establish a Corporation as a joint management structure of three public broadcasters in BiH, which is stipulated by the 2005 Law. Due to political obstructions, the public broadcasting system has never been transformed into a BiH public service broadcaster. Establishing a Corporation would have provided more optimal use of the resources of the three broadcasters, a more coherent and independent editorial policy, a better program in the public interest, and free from politicization and ethnic conflict, all of which would contribute to the development of civil society. A sustainable model of financing the

public system has not yet been provided, even though it is a precondition for achieving the mentioned goals immanent to public media services.

It is worrying that some of the proposed legal solutions are worse for journalistic freedoms than the existing ones. Pre-Draft FOIA proposed by the Ministry of Justice of BiH is an example of such a legal solution. In addition to introducing proactive disclosure of information and shortening the deadline for making a court decision in cases of lawsuits for denying access to information - which is a shift compared to existing provisions, the Pre-Draft proposed several unfavorable provisions that make it more difficult to access documents of public institutions. Particularly problematic is the possibility of extending the deadline for submitting the reply to an information request from 15 to 30 days, as a result of which many journalistic stories may lose their value. Furthermore, the list of exceptions to accessing information is too extensive. The effectiveness of the penalties for violators of the law is also very questionable, as long as the penalties are paid from the budget, and not from the personal income of the official who unlawfully denied someone access to information. Due to these and many other objections, representatives of civil society and the media submitted their comments on the Preliminary Draft with proposals for its improvement.

The long-term delay in harmonizing media law with European standards, as well as the rejection of initiatives to amend the law that would create a more favorable environment for journalists and media workers, regardless of the arguments of the proponents, points to the lack of interest of institutions in achieving this goal. The long wait for the application of some laws or adoption of other laws calls into question the declarative commitment of state and Entity officials to European values and the fulfillment of SAA obligations. In such a political environment, it is difficult to be optimistic and expect that the institutions will ultimately honor their commitments. Unfortunately, the achievement of these goals seems to be highly unlikely without pressure from the international community.

One of the few draft laws that have taken into account many proposals of relevant actors, including representatives of the professional and academic community, as well as the civil sector is the *Draft Initiative on Amendments to the Election Law* proposed by the CEC, in Chapter 16, which deals with the media. The draft for the first time introduces the terms “online media”, “social networks”, “mobile applications” into the Law, thus making the legal provisions more harmonized with the rules and codes of the CRA. More precise terminology adapted to the digital age will also facilitate the application of legal provisions. The Draft also defines more precisely hate speech in the media. For the first time, the phenomenon of a premature election campaign was legally recognized. This phenomenon is banned by the proposed changes, while the current law completely overlooks it.

Legislatures at various levels in BiH still do not recognize journalism as a profession of public importance, nor do they see the need for criminal protection of journalists. Initiatives of the professional associations, as well as recommendations of international organizations for more adequate prosecution of those responsible for threats and attacks on journalists, were not upheld. Journalists who publish stories about social deviations are exposed to insults, threats, verbal and physical attacks. Those who report the violence are often discouraged by the lack of understanding, primarily of judicial institutions, towards journalistic work. Some journalists are exhausted by lengthy proceedings related to the threats and attacks, and many are disappointed with the outcome of court investigations and proceedings.

Although BiH has a solid legal framework for the functioning of the media, and some legal solutions that are ahead of other countries in the Western Balkans, due to the way these solutions are interpreted and implemented, it has lagged in recent years. The gap between what the law says and what is seen in

practice is deepening. The current environment is not conducive to the development of journalism, especially analytical or investigative journalism, but to the spread of self-censorship.

## 4. RECOMMENDATIONS

1. Parliaments at the state or Entity levels need it **to harmonize the Laws on BHRT, FTV, and RTRS with the Law on Public Radio and Television Broadcasting System**. This implies and more precise regulation of the relations between the three broadcasters in order to finally fulfill the legal obligation from 2005 - **form a Corporation as a joint management structure**. This would enable a more rational use of human and technical resources of the three broadcasters, and a better, more independent, and financially stable media service in the service of citizens. By implementing existing and adopting new legal solutions, a favorable political and economic environment should be created to enable the public service to fulfill its social functions. In particular, legal amendments should be made to **correct the procedure for appointing management boards** to reduce political influence on public broadcasters. This means that instead of having the Parliamentary Commission nominate the Board of the FTV, the Board should be nominated by CRA: Also, the Entity parliaments should be deprived of the possibility to reject the shortlisted candidates. Amendments to the Law should ensure that the state and Entity-level parliaments are required to adopt **a sustainable public service financing model**. This means that the RTV fee should be adjusted to the costs of production of high-quality media content and a model that will enable a high level of its collection should be adopted.

2. It is necessary to finally **adopt the long-awaited a Law on transparency of media ownership and protection of media pluralism**. Establishing a detailed register of ownership would make it easier to determine the liability of *online* media for publishing illegal and unethical content, and a possible conflict of interest in all types of media, but also to ensure fair competition and more stable sources of income for media that operate professionally and in accordance with the law. This is also a prerequisite for the protection of copyright and related rights.

3. Protection of journalists requires adequate prosecution of threats and attacks on journalists. Amendments to the criminal codes of BiH, FBiH, RS, and Brčko District of BiH should **introduce a new criminal offense - obstructing journalists from performing their professional tasks**. It could prevent belittling, threats, and attacks on journalists and create a safer environment for their work. To this end, journalists should be nominally recognized as persons who need special protection while performing their professional tasks, hence the attacks on journalists should **be treated as attacks on official persons**, which implies stricter sanctions.

4. The Law on Copyright and Related Rights and the Law on Collective Management of Copyright and Related Rights should be reinforced **through specific provisions that apply to *online* media and platforms**. The provisions of EU Directive 2019/790 on copyright and related rights in the digital single market adopted in 2019, and primarily one that recognizes copyright to news publishers, should also be incorporated in the laws. It is also important to speed up the processing of cases in this area, and give them the importance they deserve, while using legal mechanisms to protect rights in this area, including **sanctioning the downloading of copyrighted texts without permission**.

5. It is necessary to **adopt several amendments to Chapter 16 of the BiH Election Law**- to introduce the concepts of *online* media, social networks, mobile applications, and premature election campaigns in the Law, as well as a ban on tendentious reporting and emphasize the editorial independence of the media. Also, it is important to **shorten the deadlines for resolving complaints about media content** which the CRA should address within 72 hours of admission. In addition, in

cases of complaints concerning media content, all the media, in particular print and *online* media, should **specify the right of reply**.

7. Freedom of access to information Act should be amended to impose an obligation on the institutions to reply to journalists' information requests immediately, and no later than within three days. **Exceptions** to access to information must be **precisely stipulated** and reduced to the protection of a narrow circle of legitimate values. Legal provisions should **specify the procedure for conducting the proportionality and public interest test** to determine whether the application of the exception is justified. Institutions ensuring the application of the Law must be independent and specialized in the field of access to information.

8. Application of the Law on Protection against Defamation should be aligned with the case law of the European Court of Human Rights. The Laws on Protection against Defamation (BIH; FBiH, RS, BD) should provide higher standards of acceptability, tolerance, and proof in cases of alleged defamation against public figures relative to private ones. To systematically monitor cases against journalists and the media, the HJPC should record such cases separately.

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