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Legal Framework and Media Regulation

(Bosnia-Herzegovina case)

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Introduction

Following the current situation regarding the BiH Media Legal Framework it could be emphasized as “directly on a track” of the best European experiences. Despite all difficulties, significant progress has been made in media profesionalization, development of the media scene and establishing a complete new legal framework.

But, like in a old folk songs from the region “*there is only one BUT which spoiling the bride`s happiness*” and that BUT means fact in the current BiH media field there is still huge difference between projections in the legal documents and habits into the practice.

Background

The first crucial changes within BiH media happened in the beginning of 1990 when the Law on Social capital was amended so that private individuals could also found media outlets. Before 1990 only organized forces of society, which was euphemism denoting subtle censorship by Communist authorities, had had privilege of owning media hitherto. Once nationalists had come to power and war broke out (1992 – 1995), everyday mushrooming of media was matched only by poor reliability of their reporting.

Dayton Peace Agreement (November 1995) stop the war and established a new Constitution of Bosnia-Herzegovina. This document and constitutions of the two entities (BiH is composed of two entities, Federation and Republika Srpska) guarantee freedom of journalism and media in principle. Annex 4 of the General Framework Agreement on Peace in BiH refers to freedom of expression and guarantees fundamental human rights consistent with existing international standards.

(Rights and freedoms envisioned by the European Convention for the Protection of the Human Rights and Fundamental Freedoms and its Protocols shall be directly applied in Bosnia-Herzegovina. These acts have precedence over all other laws – Constitution of BiH, Article II, 2).

Due to fact that following Dayton Peace Agreement, BiH has really complex political and territorial structure as well as atomization of media legislation on four levels (state, entity, cantonal and international community mandate), within media sphere it just sustains confusion.

Accordingly, the international community headed by OHR (Office of High Representative) and OSCE was forced to undertake significant intervention in media legislation in order to harmonize legislation and bring it closer to modern standards common in developed democracies. The first form of

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international intervention in this field was an *ad hoc* body within the OSCE Mission to BiH: Media Election Commission (MEC – April 1997).

The next moment was when a declaration was adopted by the Peace Implementation Council conference in Sintra (Portugal) on May 30, 1997, which broadened the OHR's powers in relation to media issues in Bosnia-Herzegovina.

- In December of 1997, a Peace Implementation Council conference in Bonn instructed the OHR to establish a body called the Independent Media Commission (IMC), which was to take over the powers of the MEC and receive additional powers.

The IMC was established in mid 1998 and in year 2001 it was transformed into the Communication Regulatory Agency of Bosnia-Herzegovina (CRA).

Meanwhile, the High Representative passed a number of decisions, starting in 1998, all regulating important issues in the field of information and public broadcasting, and imposed several laws that will remain in effect until appropriate laws are passed by local representative bodies. Such a dynamic situation led to overlapping and confrontation in many fields of media legislation between provisions in local laws and provisions drafted by the international factors in Bosnia-Herzegovina. However, the international community cautions that Laws imposed by OHR have precedence over all inconsistent local laws.

- Using his powers, the High Representative to Bosnia-Herzegovina announced the "Decision on Freedom of Information and Decriminalization of Libel and Defamation" on July 30, 1999. The decision required that both entities, under the guidance of the Office of the High Representative, adopt the necessary legislation to create civil remedies for defamation, libel and slander in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms".

Later, both entities adopted Defamation Law (Republika Srpska at June 2001 and Federation at November 2002).

- In the Decision "The Law on Freedom of access to Information" of July 30, 1999, the High Representative stipulated that these Law was to be prepared by the end of the year consistent with laws in democratic countries. This decision was actually initiated by the Peace Implementation Council for Bosnia-Herzegovina, which in its Madrid Declaration of December 16. 1998 underlined the urgency of passing a Law on Freedom of Information in Bosnia-Herzegovina.

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The international community has thus directed its efforts into harmonizing local legislation with international standards and creating a legal framework as a foundation for reinforcing a free and plural media scene in Bosnia-Herzegovina.

Freedom of Information Act was adopted on a state level in November 2000. (Republika Srpska started with implementation of the Law as of November 2001 and Federation as of February 2002).

- The Peace Implementation Council in its Madrid Declaration from December 1998 called for the promotion of self-regulation within media scene of Bosnia-Herzegovina. Based on this Declaration, and under the guidance from IMC and OSCE, associations of journalists (in BiH there is 6 journalists associations) started to develop self-regulation framework.

Following that, the six associations of journalists in Bosnia-Herzegovina agreed upon a Press Code and signed it on April 29, 1999.

CRA

Communications Regulatory Agency (CRA) is in charge of broadcasting and telecommunications - means in a field of communications - since March 2, 2001.

The regulatory part of the CRA's mandate in respect to broadcasting includes: licensing all broadcasters, managing the frequency spectrum and creating appropriate codes, rules and guidelines binding to all broadcasters in Bosnia-Herzegovina. CRA is defined and recognized as the only and supreme regulatory body for the terrestrial broadcasting network in Bosnia-Herzegovina.

The very structure of the CRA is fairly simple. It consists of the *CRA Council*, the supreme body in charge of complaints, which is at the same time responsible for creating, determining and implementing the CRA strategy and policy, and the *Enforcement Panel*, authorized to monitor violations of licensing conditions and of the *CRA Broadcast Code of Practice*. Both bodies consist of three international members, all experts on media and regulatory issues, and four local members who represent constituent peoples of Bosnia-Herzegovina and are prominent figures in the country's public, cultural and political life.

The Broadcast Code of Practice calls for fair reporting, without inflammatory language, and programming that does not insult national and religious feeling or the fundamental moral and ethical postulates of society in Bosnia-Herzegovina. Broadcasters are obliged to record all programs transmitted by them and to retain these recordings for 15 days, so that any potential

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plaintiffs have the opportunity to prove their allegations in case of complaints on reporting or any other element of programming.

As far as election rules are concerned, all broadcasters are obliged to give equitable access to all political parties during the election campaign. It is interesting that these rules prohibit paid political advertisements. The reasoning is that funding of certain political parties is hardly transparent while unfair political competition remains a very realistic threat. Broadcasters however maintain that this causes them considerable financial damage.

Although in a new phase of the CRA activities suggesting that this regulatory body is genuinely domestic one (up to know Director was a foreigner replaced in 2003. for the first time by local citizen) and new logo consisting BiH state arm, the main challenge would be - how to retain its independence of the state structures and political parties.

The last information is not so "bright". Namely after years of donors' support to the independent operations of the CRA, this agency is about to face a severe political interference due to new budget set up that make this Agency dependent on decisions of BiH Council of Ministers. Budget set-up of the CRA, as it stands, is open to political interference, which is against the European principles (note the Council of Europe's Recommendation (2000). CRA is currently financed from Technical license fees; hence, does not spent State budget allocations, where its Council adopts the budget for forthcoming year, which then has to be approved by the Council of Ministers. CRA Budget for 2003 was cut by Council of Ministers. There are sufficient funds on the CRA account; however, the CRA is not able to use them, due to CoM reduction of budget. Starting with November 2003, the CRA will not be able to pay salaries to its staff and will, if the budget is not restored, have to close down its operations.

Freedom of Information Act

Under the Act, every member of the public has the right to access information held by government and other public bodies. This act presumes that access to information is the rule and denial of access is the exception and requires the government to provide as much information as possible at the lowest reasonable cost.

The Law also gives individuals the right to correct personal information held by public bodies and give their comments on them.

These draft laws define three categories of information that may be exempted from publication/disclosure.

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The first is related to the functions of public bodies (if publication would cause "substantial harm damage" to the "legitimate aim" of foreign policy, defense and security interests, protection of public safety, monetary policy interests, prevention of crime and preliminary crime investigations, and protection of decision-making process).

The second category of exemptions refers to protection of commercially sensitive information on private enterprises or third parties.

The third category of exemptions stipulates protection of privacy of other persons. Decisions on exemptions must be made one case-by-case basis, after application of a so-called test of "public interest."

Although these laws do not refer exclusively to journalists and the press, but to all citizens and the public in general, they are actually the cornerstones of all civil freedoms, including media freedom. They create a mechanism of constant testing and control of the authorities and at the same time generate trust of citizens and respect for the authorities. Still, it is not expected that these laws will be implemented without resistance, for it is precisely the Government sector that is today characterized by lack of transparency.

This however may not be the only problem regarding the Law on Freedom of Information. As Matevz Krivic one of the most renown law experts from Slovenia points out:

«The Act is excellent, brief and clear – but it is practically inapplicable in the countries which are not yet at some appropriate levels of development of the legal and political structures. (...) And as for Slovenia at least, I feel free to estimate that it will be mature enough to absorb such 'an act above European standards' in some 10 or 20 years only – and even than only to understand it, which does not mean accept it as well.»

Generally, we could point out that in a current moment BiH public as well as the journalists and media are still not very much aware of the Freedom of Information Act and its application in the practise.

Defamation Law

The main change regarding the past is simple. Defamation is decriminalized, i.e. it does not assume criminal but civil procedures for defamation cases. New Law adopts the necessary legislation to create civil remedies for defamation, libel and slander in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedom.

While the Defamation Law may be of great benefits to the journalistic community and support to investigative reporting (in terms of encouraging free press and freedom of expression, even

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the one that may be offensive, shocking or upsetting, as well as in terms of protection of confidential sources of information), many journalist failed to see that the Law also introduces a huge responsibility on them. Also, many politicians and public figures who tried initially to use the Defamation Law in order to pursue journalists, were not able to see to what extend the Defamation Law protects freedom of press.

Generally, if you want to avoid any defamation you need at least two standing points: good intention and to follow professional rules which is not a case in many of BiH print media outlets.

Press Code

The Press Code states that journalists and their publications have an obligation to the public to maintain high ethical standards at all times and under all circumstances. It is the duty of journalists and publishers to respect the needs of citizens for useful, timely and relevant information and to defend the principles of freedom of information and the right to fair comment and critical journalism.

The Press Code prescribes the responsibility of journalists and editors to ensure in all their work a respect for factual truth and the right of the public to know the truth. It establishes the obligation of the media not to incite or inflame hatred, discrimination or intolerance. Among other things, it establishes the fundamental ethical principles of factual and fair reporting, distinguishing clearly between comment, conjecture and fact, protection of children and minors, protection of the accused, and the right of citizens to privacy.

Press Council, a body that represents both the media (the press, journalists and editors) and their readers (the public). Those same organizations that agreed on the establishment of the Press Council reached agreement to form one single Press Council for the whole of Bosnia-Herzegovina in the September 2000.

The Council was constituted on September 22, 2000 and consists of six journalists (press representatives from across Bosnia-Herzegovina), six representatives of the public from across Bosnia-Herzegovina, and an international chairman (the first chairman is a prominent member of the British Press Complaints Commission). The Press Council operates on the basis of the Press Code.

The primary task of the Council is to review citizens' and public complaints against press reports and to resolve disputes in a simple manner, quickly and free of charge. The working paper on the conduct of the Council reads that "the Council shall try to resolve each complaint on the basis of fairness, civility and common sense and shall only use instruments of journalism". These instruments include: publishing full text of the Council's views and decisions at a visible

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place in the paper concerned; publishing findings in a bulletin or regular report, and following the resolution of each case, in the form of a public statement in the media. The Council is not empowered to punish, suspend and imprison journalists or revoke licenses of newspapers and publications. The Council will have a small professional secretariat, headed by director. International organizations will provide financing for its first year of work.

Conclusion

Real challenge is yet to be faced – how to implement such sophisticated Laws as are “Act on Freedom of Access to Information” and “Act on Protection Against Defamation” not to mention “Press Code” which opened a new space regarding responsibility of journalists and editors to ensure in all their work a respect for factual truth and the right of the public to know the truth.

It will certainly take coordinated on all fronts to make these laws effective. Special attention should be devoted to the education of all sectors of society – the public, journalists, state administration, and finally courts if the laws are to become harmonized on all of its levels.

Also, the question without answer is how to make a transition from foreign experts run and pay the institutions toward full local management avoiding political and economic pressure.

Report was based on:

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