



MEDIA IN BOSNIA AND HERZEGOVINA: PRESENT CONDITIONS AND THE FUTURE

Every modern democratic society is built on a few fundamental freedoms. Besides freedom of speech, democratic process also guarantees freedom of media. Freedom of media is unimaginable without orderly system of informing, without rules and regulations which define establishing, ownership and acting of media, and responsibility for creating and placing of information. During the pandemics of corona virus, we have been additionally convinced of importance of quality informing and professional journalist ethics. Healthy journalism and healthy media, with healthy cooperation with government representatives, are crucial precondition for maintaining of the public health. This document came into existence as a result of research in the field of media regulation in BiH, present conditions of media and position of journalists, which was conducted by the School of Political Studies of the Council of Europe in BiH. Research is result of the dialogue between media representatives, civic society, institutions and political parties from all over BiH. Contribution towards improvement of legislative framework and media practices in BiH is the purpose of this document.

Legislative framework

Despite huge efforts that have been invested into post war building of media system in BiH, media legislative

framework has yet to be completely established. As a consequence present system of establishment and operating of media is very disorderly, especially its aspect of media responsibility in public discourse. Presently there is no information or media law, nor regulated question of ownership of media which would reduce political and economic pressure on media houses but also on journalists themselves. Law on protection from defamation and the law on freedom of access to information exist at the level of entities and at the level of BiH, and have been established primarily as civic laws, and not with needs of media. Laws on public radio-television system have been imposed by OHR, and they have never reached the shape which is in complete interest of the public even though they have been changed afterwards. Communications Law of BiH concerns solely electronic media, but only through the role of Communications Regulatory Agency of Bosnia and Herzegovina (RAK), as an umbrella regulatory body, which has prescribed reporting code. Council for the press BiH, as a professional association has solely advisory role and acts from a position of civic sector.

Online space has not been regulated by any law, which different interest groups in BiH have used to conduct aggressive campaigns through anonymous portals. In the absence of clear rules regarding taking over of the

writing of anonymous portals from unknown sources, registered portals have also participated in this and often even public media houses take over these contents. Informing remains in the realm of the free individual judgement and ethical standards of journalists and editors. This should not be the case as absence of media legislative framework has serious consequences on everyday life of citizens, election process as well as process of democratization in entirety.

Media and informational literacy

In the 21st century media literacy has been reduced to set of skills and knowledge necessary for successful and good quality life in the knowledge society. Informational literacy is efficient use of information in problem solving.¹

All citizens which in active or passive way participate in creating of public opinion belong to the public realm. Important segment of the public is made up by media, which transfer, filter and interpret information for which they themselves estimate to be in the interest of the public. Based on these information public creates its own collective opinion. If this process is in any way undermined public will not obtain valid information and it will not be able to form an opinion useful to the broader public.

Due to several reasons media are the most sensitive segment of the public in BiH. For a long number of years journalism is in crisis. This is mainly due to pressures from politics to overtake media through system of financing, which has dramatically reduced quality and credibility of media. All of this has influenced the trend of scattering of staff in media houses. Political management of financing of media has led to condition of media being financially deficient, which then leads to low quality and inability to internally develop good quality personnel.

Journalists are in this way being transformed from educated searchers, researchers and interpreters of news into megaphones of political parties or other interest groups. When it comes to interpreting of information, their functions have been taken by bloggers, influencers and commentators, and due to the fact that they are still not at the source of information, their credibility is questionable. As a consequence we observe a general fall in citizen's trust into all forms of information coming from media, which disables the public to develop and usefully process available information.

Information literacy contains certain critical opinion, as it assumes capability of searching for, finding and applying information. Communication and informing have moved to smart phones and user is able to search for desired information at any moment. With this high speed of searching for information it is important to evaluate and choose, and to have an awareness of reliability of information and credibility of its sources, in order for this information to be spread further.

Due to all round presence of media, media literacy is considered one of the key competencies of the present times. Due to broadly accepted definition, it includes capabilities of access, analysis, evaluation and creating of media messages in different forms. According to the European Convention on Media Literacy, media literate persons should be able to use media technologies for access, keeping, obtaining and sharing of content, to understand how and why media content is produced, to understand messages which are shared, to recognize and avoid or to question undesirable, offensive or harmful media content.

Media literacy implies ability to differentiate news and announcements, opinions and information, propaganda, understanding ownership of media and influence of economy on media. Media literacy requires critical thinking skills which enable people to independently choose which media content they will follow and how to interpret information which they receive through channels of mass communication.

In time of ever more pronounced influence of digital media, media literacy also implies certain level of information literacy for all those who consume media content through the internet. As with any new channel of mass communication, online media have their own way of shaping messages and information which require development of new knowledge. On the internet, basic requirement in choosing source of informing is making difference between a true media and internet pages which serve different economic, personal and/or political interests. If media does not have posted imprint – published information on ownership of portal and identity of persons, editors and writers, such media can't be trusted.

What are media?

Media is a tool of public informing which conveys shaped edited information, opinions, ideas and other content through words, picture and sound, which are intended for public distribution and undefined number of users.

¹ Zurkowski, 1974.

Under media we include daily and periodical newspapers, radio and television program, services of newspaper agencies and electronic editions of print and RTV media, as well as internet portals.

Professional media can't be anonymous. Hiding of ownership structure of the media or internet pages, as well as identities of persons that edit or manage channels of communication, tells us that media should probably not be trusted. Anonymity is always used in order to avoid responsibility for what is being published. Even though content looks as journalist content, imprint is sign of responsibility and identity of media. By the rule imprint should contain: title of media, name and place of publisher, e-mail address or contact, names of responsible editors and journalists.

Who is a journalist?

Journalist is a person that engages in journalism – collecting information of public interest, on current events, current topics and persons, who shapes them into professional journalist forms and publishes them in print, television, radio or electronic media. They keep public informed about everything that they think is of its interest or that public must know. For performing job of a journalist it is necessary to complete studies of journalism.

Journalist must have a broad general culture and be informed in different areas. He/she must express himself/herself clearly, and be well versed in grammar and mother tongue language. Journalist must be aware of consequences of publishing of certain information and make a judgement on whether their publication will have more use or harm to the public.

Defamation and media

Defamation and protection from defamation is one of the topics which regularly provokes great storm during public dialogue and discussions between media on one side and politicians and other holders of public office on the other side. In the absence of law on media and informing, which would precisely establish the line between public interest for information on behavior of holders of public functions, public has to rely only on civic law for protection from defamation.

Some politicians threaten by law suits, while journalists consider large number of lawsuits for defamation as tool for pressuring the media. Numerous lawsuits have led to self-censure among journalists, due to fears of

retaliation by politicians, especially by media at the local level.

Very high number of lawsuits for defamation illustrates attitude of public persons towards public responsibility but also tendency of some journalists towards media retaliations directed towards those who are of different opinion. Non readiness for public critique on behalf of certain holders of high public offices is resulting in lawsuits and fights with journalists. When names of plaintiffs are analyzed in cases brought against journalists/editors and media founders, it is easy to observe that in largest number they are made by presidents of political parties or holders of highest public offices in government – presidents, prime ministers, ministers, directors and other public figures.

Lawsuits and threats against journalists in smaller local communities have pronounced demotivating effect on journalists. If not all, then part of such actions represent certain pressure on journalists, as journalists are forced to answer lawsuits, to seek and pay lawyers and spend time in court.

There are no reliable data on exact number of filed and withdrawn lawsuits, size of claims for damages, as courts process defamation together with other litigation claims for compensation of damages. Also, very often public figures announce lawsuits in media, even though lawsuits are never brought up. There is no doubt that this is part of messages and threats to media and journalists.

Unique law on protection from defamation does not exist in BiH but there are three different laws (Republic of Srpska, Federation of BiH and District of Brcko laws), adopted over a span of three years (2001-2003). Laws have been adopted at initiative of the Office of High Representative for BiH and based on draft made by group of foreign and local experts. Until 1999 lawsuits related to defamation have been part on criminal laws.

Basic aim of enacting these laws was decriminalization of defamation, which was supposed to contribute to greater freedom of expression and general democratization of society. Decriminalization of defamation meant that criminal lawsuits related to defamation have been completely removed and possibility of court orders for monetary or jail punishment for journalists and editors or owners of media have been removed from criminal legislation.

Based on laws on protection from defamation it is possible to bring only civic lawsuits related to

defamation and obtain monetary compensation. Even though these laws are primarily civic they still encourage media freedoms and establish balance between protection of freedom of expression and protection of privacy and reputation of every person. Their basis represents highest democratic principles contained in European Convention on Human Rights and Basic Freedoms, recommendation/declaration of Council of Europe on protection of media freedoms and standards established through rulings of European Court for Human Rights Protection.

Through these laws government institutions and public institutions are not allowed to undertake lawsuits for damage compensation. This right is reserved only for natural persons and legal entities. Holders of public offices and public servants can file lawsuits only in their own name. Reason for this is the assumption that public institutions and government always have sufficient legitimate sources to publish correct and verified information.

Responsibility for defamation is shared (jointly or separately) in media by author, editor, publisher or anyone else who has control over published content. In case of stating other cited persons (interviews and alike) those persons can also be liable.

The laws have established principles when there exists no responsibility for defamation. These are, before everything else, freedom to express opinion (value judgement), then cases when published information is in essence correct, and incorrect in trivial parts, when transfer of information has occurred in the process of acting by executive, judicial or legislative government...There is no responsibility if expression was reasonable. Laws clearly provide seven circumstances which court has to take into account in making these judgements (form and time of publishing or taking over of expression, nature and degree of damage caused, consent of damaged side, and the fact whether publication represents objective and true information, whether it is related to private life or questions of political and public interest...) For media and journalists the most important provision is the one which releases them from responsibility if they have been acting in good faith and in accordance with generally accepted professional standards (Article 7.2 of FBiH law and Article 6 in RS law).

It is of utmost importance that these laws give full guarantees to journalists and other persons in the process of obtaining and publishing of information to

protection of their own reliable sources and all documents obtained from such sources. Such guarantees, however, do not exonerate anyone from responsibility related to publishing of false information which is intentional and contrary to professional standards.

Transparency of media ownership

One of the most important questions related to media integrity is transparency of its ownership. Citizens should have available information on who are journalists, editors and owners of certain media. This would enable easier understanding of true sources of information which are placed by media, and to recognize what are the interests for publishing certain information.

In this moment in BiH there is no legislation on transparency of media ownership. In other words, there is only partial transparency and regulation through the process of registration of economic entities. The obvious deficiency of such principle is the fact that only traditional media (print media, radio and television) are only covered by it, or media which have regulator which lends them permissions/concessions, and which keep registers of such media.

Communications Regulatory Agency of Bosnia and Herzegovina has jurisdiction over electronic (radio diffuse) media, -radio and television, issuing of permits, regulation of work and keeping main register of holders of emitting permits. According to data from the register for 2020, there are 192 electronic media in BiH: 139 for profit radio stations, 4 non-profit (plus three emitters of public RTV system) and 43 stations (plus three emitters of public RTV system).

Registration of print media is under jurisdiction of entity governments, and they are the ones keeping registers of public media. However, these registers are not made public. On the other hand, register of print media is published on the webpage of Council for Print and Online Media, which is a non-governmental organization and does not have a role of a regulator. It is mainly an advisory body which is trying to influence media according to the principle of self-regulation. However, what is important, they keep register of print media in which basic information on publishers of these media are contained. According to this register, there are seven daily newspapers in BiH, and 184 different editions, magazines (weekly, bi-weekly, periodical).

The biggest problem related to the question of transparency of ownership over media is online media-large number of informative web-pages (portals) which are operating on BiH territory. However, it is impossible to establish number of such media, as well as their ownership structure. Very small number of online media on the BH territory have imprint and other available information on ownership structure. These are mainly portals of already known media houses (Nezavisne novine, Avaz, Oslobođenje...) as well as a few well established portals and independent media projects.

The biggest issue related to the quality of reporting represent smaller portals, for which it is impossible to establish ownership structure, ways of financing, which are to the great extent breaching all the professional norms of informing. Furthermore, thanks to modern technology, such portals are to the greatest extent also hiding ownership over their web domain address. These media have become source of misinformation, sensational news, political influence etc. Due to this the number of owners of such media decides to buy international domain, because obtaining of national domain (.ba) requires certain personal documents and data to be submitted.

It is necessary to mention that BiH has subscribed to transparency of ownership over media on its European way and it has to strengthen this segment. One of the questions in European Union Questionnaire in 2016 was dedicated to transparency of ownership over media, to regulatory framework and its actual applications.

In mid-2019 European Commission has made the Opinion regarding BiH's request for EU membership and analytical report which states that BiH has to adopt the law on transparency of media ownership structure, and establish the register of media ownership. In this way, the risk of political influence over media would be reduced, as well as risk of business interests that endanger the editorial politics.

Proactive and reactive transparency of governmental bodies (freedom of access to information)

Concept of good governance implies open government which functions on principles of efficiency, transparency and legality. In this context the requests for transparent management are not directed against the management but towards increased level of awareness and benefit to citizens as well as management.

We should have in mind that laws on freedom of access to information (ZOSPI) are not laws for journalists but for citizens. Institutions and government bodies are very often hiding behind these laws in order to delay providing answers to journalists and gain time, very often being aware that they will never even answer many of those questions. ZOSPI is excellent for media which are solely dealing with research journalism. For all other journalists and media which need information on a daily basis – deadline of 15 days is not in the interest of the public.

Laws on freedom of access to information in BiH and entities have been enacted in 2000 and 2001 with an aim of making information related to public institutions available to all citizens. According to these laws, those information represent significant public good and access to those date encourages transparency and responsibility in workings of institutions, and at least theoretically, it encourages democratic processes.

Despite this, certain sections on all levels of the government still do not apply in practice laws on freedom of access to information so that we paradoxically observe that laws are breached by those who have enacted them. Besides this, there is no clear responsibility for not providing information, even in cases when some of the information seekers have won lawsuits against these public institutions on the basis of these laws.

For almost two decades since the adoption of these laws on freedom of access to information at all levels of government in BiH, some public officers still consider that provisions of this law are nonbinding. In majority of cases fight between journalists and institutions is Sisyphus' work, especially when information sought relates to spending of public funds. Institutions most often avoid providing answers, and fighting for information can last for months. One of the most often cited excuses for not providing information is that collection of data lasts long, and that officers of institutions have more important work.

Very often exceptions relating to free access to information are misused and strenuous efforts by journalists could last for months in order to prove wrong presumptions. Citizens have right to ask and institutions are obliged to provide them access to information which are in their possession, except when these data or information could endanger 'public security or right to protection of personal data and secret commercial data'. In these cases institutions have to conduct so called test

of public interest through which they prove that information is protected. Also, institutions very often provide excuse falling back to Law on Protection of Personal Data, while having an aim of hiding information from the public.

Even though strict laws are enacted, non-government sector but also media, are very often forced to use informal channels and private contacts in order to gain access to information of public interest. Practices differ on different government levels in BiH. Even when certain preconditions have been fulfilled, it is questionable whether request for free access to information will be answered. Information which concern public funds, public procurement, companies with public ownership and public spending are the most hard to obtain. On the other hand, it should also be taken into account that it is not sufficient just to publish such information, but that information should be in open format, easy to understand and easy to use on behalf of the end-users.

Higher level of information awareness and quality of information leads to strengthening of institutions which are proactively publishing information. Depending on the fact which side initiates communication there is *reactive transparency* of administration- which is based on the fact that citizens request information based on ZOSPI and are provided the same at their request, and *proactive responsibility* – where public administration informs certain information at their own initiative, because it wants to inform citizens on its work, their rights and obligations and wants to include them into decision making processes, inform them on laws, policies and alike.

In order to build citizen's trust into public administration, it has to be transparent, its work has to be transparent and understood by citizens, as in this way the possibility for corruption and misuse of office is prevented, while citizens are enabled to actively participate in decision making processes.

Public media in BiH – their role in society and challenges they are facing

Public media have special role in informing the public. Contrary to commercial media which are oriented towards profit-making, the responsibility of public media services are to provide the public with quality media services which include various informative, cultural, educational and entertaining programs. Main role of the public media services are to serve interests of the public, as it is stated that 'they are established by the public,

controlled by public and financed by public'.

According to theoretical principles, task of public media is to inform truthfully and in unbiased manner, to respect basic human rights and freedoms in their programs, pluralism of ideas and opinions and to improve education, culture and media literacy of the citizens. Public media services programs have to be available to all and to tackle all social groups, including those that are disadvantaged. Their role is to educate the public and to entice their participation in public life. Program content of public media has to be independent from state interests as well as from political parties.

There are three providers of public media services in BiH (BHRT, RTRS and RTVFBiH). BHRT has role of state emitter, while other two are entity ones. Working of public media are regulated by four laws: Law On Public Radio-Television System, and Law on BHRT (adopted at the state level), RTRS (adopted in NSRS) and RTV FBiH (adopted in Parliament of FBiH).

Public media services in BIH are faced with many problems in their work which undermine quality of their work. First and foremost, they are faced with constant political pressure. Members of board of governors are chosen in parliaments and their composition is determined by political situation and relationships between political parties in power. Similar situation is found relating to choice of key personnel in RTV media services, and dominant political influence is most visible in their editorial politics.

The above mentioned creates the problem of financing public RTV media services. According to current legislation each household and legal entity which has radio or TV has an obligation of paying monthly tax related to its possession. Administration of collections of payment are under entity emitters, and collection of funds according to Law On Public Radio-Television System in BiH is distributed accordingly (BHRT-50%, RTRS- 25% RTV FBiH- 25%). Even though in the last few years there were few initiatives and suggested models for collection and distribution of the taxes, until today solution that would satisfy all three public media has not been enacted.

Political relationships between and within entities, have led to situation where large number of citizens avoids paying the tax. This has been mainly caused by statements on behalf of numerous politicians, who call for citizens not to pay these RTV taxes. Tax collection is very low even though it is legal obligation, emitters do

not account for and do not distribute collected funds according to current model, which in the end creates large debts which threaten to destabilize all three emitters in the long run. On the other hand, public media have possibility of self-financing through marketing (advertising).

In accordance to obligations undertaken in the process of EU accession BiH has obliged itself to create unique body – Corporation of all public RTV media services, with joint management structure between RTV media services. Even though this has been provided for under the Law on Public RTV System since 2005 due to political obstructions this body has never been formed.

We should also note that BiH is the only country in Europe which has not implemented digitalization. Public RTV media services as carriers of permits to emitting in multiplexes A and B, have never agreed on the way to start this process. Therefore, it is evident that complex political situation in BiH has captured complete public emitting system. In current conditions their development is impossible and their survival is very uncertain.

On the other hand, during floods in 2014 reporting all over the country has been very demanding as well as in 2020 during the pandemics of corona virus, when public media services have taken leading role in education process, These have demonstrated that public media services are ready for challenges but that they need to be freed from political pressures.

Online media

Special place in informing of citizens is taken by online media. In the last few years we observe large expansion of online media in BiH. What characterizes these media is large speed of publishing information, technological capacity of developing multimedia content which offers the public complete insight into certain topics, as well as a low costs of maintaining such media. Through phenomena of media convergence, internet media have completely 'killed' traditional boundaries between media. Digitalization of content has incited complete separation of content away from classical forms of distribution.

Combination of picture, text, video and audio content which internet enables has brought production of new forms of media content. Through an appearance of broad range internet and its access to majority of population, online media have become very popular, especially with younger audiences, which are dominantly informed in

this manner. According to the latest reports on media freedoms in BiH, for 35% of population internet represents first choice in process of informing and is on second place immediately behind TV. According to the same research 38% of citizens considers internet as quality source of informing, while more than 70% of citizens have opinion that this platform has important influence for public and citizens.

Development of social media and creating of free platforms have transformed media industry and traditional media have lost monopoly they had in publishing information. According to the report on freedom of media, more than 70% of BH citizens consider that internet has democratized communication and enabled pluralism of opinion. Internet media are established on global basis, mainly use international domains, and due to this in general have low degree of regulation. Despite increased number of internet portals and publicly available media content, almost 50% of BH citizens do not feel that the quality of informing has been improved in this manner.

The biggest reason for the above lies in the fact that internet is to the largest extent associated with the fake news phenomena. Therefore, the absence of clear legal rules which regulate this field, and due to regulators which have created this grey zone the questions of professional standards and respect for ethical principles in the process of informing has been made into pressing issue.

Misuse of online media

Online media have become the most potent weapon in political communication. It is most often evident through publishing of wrong information. More than 60% of wrong or misleading content which is found in online media relates to political topics. According to some research two phenomena in online space have been observed:

- 1)'opportunistic misinforming', which is using anonymous portals and social networks, most often with an aim of financial profiteering;
- 2) Political and state players, which use public as well as commercial media for spreading of misinformation tailored to suit their political agendas.

Misinforming campaigns in the public are not incidental but are planned activities, which have for an aim to discredit their political opponents, as well as to serve certain financial and other interests. Appearance of large number of anonymous portals (online media for which

ownership structure is unknown, non-existence of imprint) is further confusing the public. On the other side, hate speech is forever becoming more present in online media and threatens to further destabilize society.

Appearance of such media in election years shows that this is very well prepared action coming from certain political addresses. Financing of such media is mainly done in cash so that financiers remain hidden, as well as those that manage these processes. It is very concerning that certain renowned media are very often found to use information that were produced by so called anonymous web portals, and hence can be considered in certain correlation to these phenomena.

Fake news

Placing of fake news is not new phenomena but the term *fake news* has gained in importance due to its intensity which we observe due to development of internet, web portals and social networks. Through flourishing of digital technologies fake news and misinformation have taken altogether a new shape, which academic community, state actors and media professionals have started to recognize as complex system of hybrid threats.

Intentional spread of fake news, and as a consequence hate speech have become global issue which requires technological and legal solutions. European Union has in December 2018 adopted Action plan against misinformation, considering them as serious threat to democratic processes. Countries of Western Balkan region has been left out from this plan.

Individuals and whole groups are exposed to organized campaigns of fake information. Individuals that are for some reason at a certain moment unsuitable to certain group are very often victims of so called photo montage which is shown as true photographs. This is often followed by threats which altogether can lead to serious endangering of individual and collective security.

Publication of fake research which have an impact on certain phenomena and uncritical spreading of it is also observed. It helps creation of conspiracy theories even though facts speak against them. Besides political propaganda which have financial influence, very often they relate to organized fake medicine and healing campaigns which endanger care and health of citizens, which have been best exhibiting themselves during

pandemics of corona virus.

Functioning of the system of misinforming

Main sources of miss-informing and deceiving content are anonymous web portals. Anonymous web portals create fake news, which are then transferred by private commercial media, social networks and recently also by public media and national news agencies. Anonymous web portals do not have imprint, nor any data on registration. Due to this they do not oblige to any rules, nor do they publish any denials. Their most common way of acting is connecting to a few tenths of Facebook pages which transfer the content of such portals. This model of operation is known as 'portal pharming'. Network of web-pages and Facebook groups which is being created by the same person, remains completely anonymous, does not have editors or journalists, and its users (consumers) are absorbing fake information not knowing this background.

Flourishing of digital technologies has completely changed media market, and in order to survive many media are forced to reduce their capacities (copy-paste journalism, with decreased pay of professional journalists) and to resort to tactics of sensationalism in attracting the public, and lowering standards of journalist profession. This is the reason why traditional media have become fertile field for spreading misinformation, which further contributes to erosion of public discourse, quality of political and other debates, which in the end leads to reduced overall level of trust in society. There is need for further employment of professional journalists, which would only be involved in checking suspicious information. We also observe appearance of so called fast-checkers web pages, but in BiH there are only few of them.

Even though there is general consensus in academic community that problem of misinforming has to be approached only as a part of more complex hybrid system of threats, especially in online space, this problem has not been recognized on behalf of state actors and media professionals. Misinformation has not been recognized as a hybrid threat, and public debate with respect to this topic is almost non-existent. New media, such as anonymous web portal pages contribute to the preserving of such state through the spread of fake news through social networks and social media, so it is obvious that seriousness of this issue is not recognized neither by media nor state decision makers.

Due to the fact that media form strong networks and have very well-tuned system of publishing misinformation it is necessary to develop awareness and educate citizens/consumers of media to recognize fake news. Education of users/consumers of media content would be first and foremost step in solving the problem of spreading of fake news as well as hate speech as its consequence. Current system of regulation is only partially protecting public from false information but not from targeted fake news. Law on informing does not exist, while protection from defamation is the only rule in current legislation on which damaged side can rely, but only in case that traditional media have made an offense but not in case when anonymous platform made an offence as no action can be taken in that case. Also, given the fact that transparency of ownership in media has not been regulated through legislation it is impossible to obtain information on true ownership of certain media, so that public could make easier judgement regarding credibility of media content.

In such circumstances there is no obstacles for existence of anonymous platforms which use misinformation towards aims of certain political parties or other centers of power. Platforms over which no oversight has been exercised include social media and blogger's pages, which have a pronounced influence on perception, choices and engagement of citizens. It is of utmost important that media professionals undertake a key role in fight against fake news, so that freedom of expression would not come under threat.

Freedom of speech and hate speech

Freedom of thought and expression is basic human right protected under 19th Universal Declaration on Human Rights which is also recognized through all key international and regional documents for protection of human rights.

Freedom of speech relates to right of individual to express his/her opinion without fear of retaliation or punishment. Freedom of speech ensures free exchange of ideas and opinions in society. This exchange leads to changes in society which ensure its continuous advancement. Today we often speak about the importance of freedom of speech as a tool with which we can control workings of state. In this respect, freedom of speech exists so that citizens can freely express their dissatisfaction with certain actions of the state and suggest changes which they would like to see in society.

Special protection of freedom of speech is intended for journalists and media. Media are termed as fourth pillar of government or control over government due to their oversight over activities, procedures and processes relating to actual holders of public functions but also over all other aspects of workings of government. Besides their influence on state institutions, their role as educators, and good quality informing of citizens is very important.

For 'Reporters without Boundaries' freedom of expression and informing is the first and most important of all freedoms. Without freedom of expression and free media there are no free individuals, no free society, and there is no democracy. Freedom of expression is a holy right in all democratic societies.

Besides the guarantee to free expression being given to each individual, it is important to know that there are situations where this right can be limited. In this context it is not an absolute human right from which there is no retreat such as right to be free from torture or slavery or unlawful punishment. Freedom of expression can be limited and its' misuse is punishable in accordance to the law and in 'interest of national security, territorial integrity or public security, prevention of chaos and criminality, protection of health or moral, protection of dignity or rights of others, prevention of uncovering of secret information or for maintaining of authority and impartiality of courts', as stated in Article 10 (2) of European Convention on Human Rights.

Even though freedom of expression is one of the fundamental democratic rights it is not an absolute right. Freedom of expression can't be unlimited or unconditional but each limitation of freedom of expression has to have clearly state reasons and limits. Prevention of hate speech and stigmatization of certain social groups is one of the rare justified reasons for limiting freedom of expression.

In recommendations by Council of Europe it is stated that 'hate speech implies all forms of expression which spread, incite or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed in the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities and people of immigrant origins'.

Improvement of technology is rapidly redefining public space, channels of communication and ways of informing. Internet as space which enables individual to

express his/her opinion, has unlimited resources and boundaries, contrary to print and electronic media. Therefore, one of the main challenges in protecting freedom of expression is limiting of freedom of expression and punishing hate speech in digital surrounding. Hate speech is appearing on the internet in growing intensity and it is spread further due to development of social networks, due to their nature, mass use, reach and quantity of content which is created in a very short time and is therefore difficult to regulate.

It is necessary to make a difference between hate speech and calls to violence. Calls to violence, especially collective ones, are forbidden in majority of countries and are severely punishable. International Agreement on Civic and Political Rights, in its Article 20, legally forbids propagation of war but also advocating of national, racial or religious hatred which represents incitement towards discrimination, hatred or violence. This is not the same as hate speech, as hate speech would in its broadest definition mean expression of any negative opinions towards somebody or some group.

On a global level discussion on hate speech is still undergoing. That is why European Commission against racism and intolerance has in its general policy number 15 defined in more details hate speech as 'implying use of one or more special forms of expression- advocacy, promotion or inciting towards belittling, hate or condemnation of certain individual or group of individuals, such as disturbing, negative stereotypes, stigmatization, or threats to certain individual or individuals and any justifying of all forms of expressions- which are based on illustrated list of individual features or status which includes 'race', color, language, religion, or convictions, nationality or national, ethnic or other origins, age, invalidity, gender, gender identity and sexual orientation.'

Hate speech as such is forbidden under the Law on Prohibition of Discrimination, Law on Gender Equality in BiH, Law on Freedom of Religion and Legal Position of Churches and Religious Communities in BiH, as well as Election Law of Bosnia and Herzegovina. From 2019 it is possible to report hate speech to Ombudsman for human rights in BiH.

Media have always been assigned the function of preserving democracy. They should be more proactive in this role when it comes to hate speech as it represents negating of basic democratic values. Media should be controller of content in order to minimize or completely forbid all forms of expression which incite hatred

irrespective to whether it relates to race, gender, sexual orientation or any other peculiarity.

Having into account all of the above, it is clear that question of freedom of expression and preventing of hate speech is complex issue, and that it can't be reduced to simple removing of all content in public, whether hate speech is found on internet or any other public space. Hate speech can't be solved partially or only on social networks, but rather there is need for holistic and complementary solutions which include civic education and upbringing, media literacy, and efficient and fast punishment of heaviest forms of hate speech.

Political influence on media

One of the biggest problems and obstacles for free functioning of media in BiH is strong influence of politics on their acting. Media are most important factor of political communication and there is mutually interdependent relationship with politics, therefore political subjects have a strong interest to control media.

Media and politics are mutually dependent; however media usually have upper hand as politics would hardly survive without media, while media without politics would be affected but would not totally disappear. Media represent intermediary between politics and the public, which is now so easily accessed. Journalism in BiH has been developing under strong influence of politics. Due to this, independent editorial politics in media have never completely developed. Instead of having situation where public controls politics through the media, we have reversed situation where we observe censure and control of information which cause many other negative consequences. System of state control, such as observed in SFRJ, has been replaced by system of control by political parties and elites, as well as business community, which also in the end is strongly interconnected to political relationships.

Media have completely become political instrument, which is also noted in reports by Freedom House. As this organization states, freedom of expression in BiH is guaranteed by laws but limited in practice. Journalists are facing political pressure in their work, through disturbance, threats and retaliations against them. There is large private media sector, including places connected with local political parties.

Especially pronounced is political influence which political subjects have on public emitters in BiH.

Strong influence of politics has led to few other negative phenomena, such as political clientelism, which is very pronounced in BiH. Media workers/owners have become strong advocates of certain political interests in exchange for different forms of political and economic support. This has led to phenomena of advocacy/cheerleading journalism. Contents are tendentiously placed, strong support to certain political circles is present, and negative reporting about political opponents is pronounced.

Political elites have strongest influence on working of media through financing. Given the presence of a large number of media houses which can't be financed through the current size of advertising market, many media are financed by entity/cantonal or local governments. This is executed in three ways: public institutions or government engage services of media houses for 'the purpose of media promotion', giving of grants to media houses and through direct advertising.

Similarly, political circles also participate in ownership structure of media, in direct and indirect ways, through intermediaries. It has been observed that owners of certain media are also founders of political parties, while more often owners of media are members or highly ranked functionaries of certain parties, or there is family relationship between politicians and journalists/editors.

Journalists, media and ethics

In contemporary pluralist societies media freedom implies moral responsibility on behalf of all media workers – from journalists to publishers. Basic function of media is quality informing, education and instructing of citizens, and encouragement of public discourse. In order to perform its function in the best quality manner, media would have to act within the boundaries of professional ethics in journalism. The basic criteria of this moral acting is respect for human dignity.

'Three fundamental questions regarding journalist ethics are truth, independence and understanding of consequences of journalist and media actions. Truth, which should always be reconsidered, is the most important part of journalist ethics. Independence from external political and social forces, as well as from

internal editorial or ownership pressures is second important value. Finally, understanding and consideration for consequences from journalist actions should be considered as third most important concept around which all discussion on journalist ethics has to be centered. Editorial strategy in media has to take care about needs for dialogue, agreement and negotiation inside its profession, in order not to lose from sight the fact that media do not primarily serve the profit making goal but much higher goals.'²

Majority of laws and codes for media provides that it is important that media convey true and important information to its public. Journalist is obliged to follow ethical principles of truthfulness, objectivity, freedom and responsibility in his/her reporting towards the public, towards their sources of information as well as responsibility towards themselves.

Journalist profession includes rights and responsibilities, freedoms and responsibilities. Basic principles of ethical thinking in journalism stresses that clear distinction has to be established between news and opinions. News is information related to facts and data, while opinions convey thinking, ideas, convictions and value judgements. Emitted news should be based on truth, following certain methods of proving and impartiality in presentation, description and narrative.

In journalism, information and opinions have to be harmonized with presumption of innocence, especially in cases which are still being considered. In this case, journalism should refrain from judgements. It has to respect the individual's right to privacy. Public persons have right to protection of their privacy, except in cases where their personal life can influence their public life. The fact that some person is having a public function does not mean that this person loses his/her right to privacy.

In journalist profession final outcome does not justify the means, so that information has to be obtained in legal and ethical manner. In case of untrue or incorrect news, at the request of relevant persons, the news has to be corrected through media and process should include all wrong news. With an aim of providing high quality work and independence of journalists, they have to be provided decent pay and appropriate working conditions and job benefits.

² Aidan White; Secretary General, International Federation of Journalists

In order to ensure oversight over execution of ethical principles, self-regulatory bodies or mechanisms have to be established and they should include publishers, journalists, and associations of media users. Council for Print and Online Media exists in BiH, which is self-regulating body for print and online media, which as such does not have mechanisms for punishment, but solely the role of intermediary between the readers and print and online media through the appeal mechanism. System of self-regulation of media in BiH is not very efficient. Communications Regulatory Agency for Bosnia and Herzegovina, according to the Law on Communications in BiH, has assumption of executive action and sanctions in case of observed breach of provisions of code of conduct.

Journalists often find themselves in situations where they have to think about the right way of presenting certain information, and ways on how to stay objective and tell the story which will incite and activate the public. Journalists in BiH have Code of Conduct for Print Media in BiH, and Code of Honor, which encompasses certain basic ethical principles of profession and acting. There is no single excuse that every journalist in BiH should not know ethical code in its entirety.

Conclusions and recommendation

This analysis has shown current conditions in the field of media in BiH. Even though in certain areas, such as decriminalization of defamation, BiH is first country in Europe which has enacted such laws on protection from defamation, situation in media is not satisfactory at all. Unfinished legislative framework on all levels leaves the space to politics and financial powers to directly influence creating of public opinion in this grey zone and without fear of consequences.

On the other hand, Law on Freedom of Access to Information in BiH has obliged public administration to communicate with the public, but it should be kept in mind that these are civic laws and not intended for journalists. Public administration has been given space to hide information which are of public interest through delays and falling back to long deadlines. In accordance to defined problems it is necessary to:

- Initiate broader public discussion on all levels within BiH on need for enacting laws on media (or law on informing); this law would among else precisely define what is media, which is public informing, deadlines within which public administration has to answer to journalists; to oblige publishers to regularly report to the public on its ownership structure, business results, average circulation, media reach; it would define rights and responsibilities of journalists, main editors and media for public word; it would define rights and obligations of public administration and in the end it would put an order into media space and in this manner enable higher degree of freedom of media in BiH;
- Initiate broad discussion on need for enacting law on transparency of media ownership;
- Initiate broad discussion on true role of three public emitters, and need for enacting new laws which would prevent direct influence of politics into working, appointment of board of governors and program councils in creating program content;
- Promote need for media and information literacy efforts in BiH directed at the public, public administration and complete education system;
- Establish quality dialogue between media and politics, related to decriminalization of defamation;
- Encourage reporting of hate speech through public advocacy; think about eventual prohibition of comments in online-media, and possibility of reducing hate speech in all social networks, with an aim of preventing enticing towards all sorts of intolerance;
- Initiate broad dialogue, to include media, public administration and academic community, on needs and ways of fighting fake news;
- Establish quality dialogue between media representative and politics (public administration and other holders of public functions on all levels of government).

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This document is result of an effort by alumnus of School for Political Studies of the Council of Europe in Bosnia and Herzegovina. Opinions expressed in this paper do not necessarily reflect opinions of the Council of Europe and the Embassy of Norway in Bosnia and Herzegovina.