

Open Issues in the Legal Protection of Media Freedoms and the Safety of Bosnian-Herzegovinian Journalists

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Abstract: *This paper examines the current state of the legal framework governing media freedom and the safety of journalists in Bosnia and Herzegovina. Particular attention is given to three prominent forms of violations of media freedoms and pressures on journalists' work: threats to journalists' personal security, hate speech, and defamation lawsuits. The paper is structured into several thematic sections. It first outlines the international legal standards related to media freedom and the protection of journalists, and then turns to an analysis of contemporary threats to freedom of expression faced by media professionals in Bosnia and Herzegovina—restrictions that directly affect citizens' right to be informed. A separate section is devoted to the complex and often blurred boundary between lawful journalistic practice and audio/video recording. Media freedom in Bosnia and Herzegovina remains a highly contested issue: while the right to information and freedom of expression are formally guaranteed, media regulation and press laws are frequently used by political elites as instruments for exerting pressure and limiting journalistic freedom.*

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INTRODUCTION

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention, Convention or ECHR) was adopted in Rome on 4 November 1950. It represented a revolutionary achievement in terms of advancing human rights, not only for Europe but for the whole world. The United Nations had adopted the Universal Declaration of Human Rights two years earlier, in December 1948. The Preamble to the European Court of Human Rights states that its purpose is to take "steps for the collective implementation of certain rights set forth in the Universal Declaration".

The European Convention has improved the protection of human rights in two key ways :

1. It was the first legally binding human rights treaty, and the States Parties are formally obliged to comply with its provisions.
2. An important implementation mechanism has been established in the form of the European Court of Human Rights (European Court or ECHR).

The Convention does not prescribe any specific modalities by which this should be done. States are free to protect rights in any way they wish, in accordance with their domestic legal systems, history, political environment, cultural heritage and even economic situation. However, the protection must be effective; the Convention establishes a minimum set of standards concerning human rights that must be ensured to those within the jurisdiction of each Contracting State. The vast majority of Contracting States have incorporated the European Convention directly into their national legal system, so that it is part of their internal legal rules and is thus directly binding. In these States, on the basis of the text of the Convention, or by its incorporation into legislation, its application can be directly invoked in national legal proceedings, including judicial proceedings.

FREEDOM OF OPINION AND EXPRESSION

Freedom of thought

Freedom of thought is considered a traditional human freedom aimed at protecting the spiritual integrity of man. It is a complex freedom and in most constitutions it is associated with freedom of conscience, freedom of determination, freedom of public communication and expression of opinion, freedom of scientific and artistic creativity, etc. Freedom of thought and conscience is a natural human right and cannot be limited by legal norms. It is possible to limit the expression of thoughts and determination, so, for this reason, Constitutions pay special attention to freedom of the press, freedom of speech, public speech and communication and other rights through which, in fact, freedom of thought is realized. This connection is also expressed in international human rights documents, since the statement in Article 11 of the

Declaration of the Rights of Man and of the Citizen from 1789: *"Freedom of communication of thoughts and beliefs is one of the most priority human rights; therefore, every citizen can freely speak, write, and publish, provided that he is responsible for the abuse of this freedom in cases provided for by law"* .

Freedom of expression and freedom of the media

Although some authors state that freedom of speech and media is most often referred to as freedom of expression (Miličević, 2007: 120) , ⁵we believe that it is more precise to state that freedom of expression encompasses almost all ways in which an individual can express themselves, and that it covers all spaces (public and private), purposes (political, artistic and commercial), forms (words, images and sounds) and media (films, cartoons, radio, television and social media). In 1948, freedom of expression and freedom of the media crystallized internationally in the Universal Declaration of Human Rights, whose Article 19 proclaims the right of everyone to freedom of opinion and expression, which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (UN, 1948: Art. 19). This document has the status of customary international law, which means that it is binding on states regardless of whether it has been accepted. The International Covenant on Civil and Political Rights also prohibits interference with freedom of expression, but in a way that it applies to other subjects, not just to “public authorities” (Miličević, 2007: 120). Vesna Alaburić (2003: 12) claims that freedom of expression is a prerequisite for human self-realization, so freedom of expression is considered a natural, inalienable and personal right.

The idea of free speech is universal. No state may deviate from international law. No state is free to deviate from international law through internal law. The Vienna Convention on the Law of Treaties stipulates that a norm of internal law cannot be contrary to an international norm. In addition to universal ones, there are also regional human rights documents that proclaim freedom of expression and freedom of the media. The African Charter on Human and Peoples' Rights, in Article 9, contains a guarantee of freedom of expression for individuals within the African region. The European Convention for the Protection of Human Rights proclaims this freedom in Article 10. The Inter-American Convention on Human Rights, which applies to the Americas, in Article 13, contains the right to freedom of speech.

As in international law, e.g. Article 19, paragraph 3 of the International Covenant on Civil and Political Rights (a court decision and a tripartite test are required to ensure legality), ⁶and in all three regional instruments, freedom of expression is not absolute. Restrictions are strictly defined by parameters. All three parts of the test must be ensured. The restriction must: 1. be

⁵This right is established in Article II. 3. under h) of the Constitution of Bosnia and Herzegovina.

⁶Article 4 of the International Covenant on Civil and Political Rights states: “No one shall be subjected to interference with his opinions. (paragraph 1). Everyone has the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other media of his choice. (paragraph 2). The exercise of the rights set forth in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions which are provided by law and are necessary: (a) For respect for the rights or reputations of others; (b) For the protection of national security or public order, or of public health or morals.”

determined by law, 2. have a legitimate aim (the list in international instruments is exclusive, no other aim is legitimate) and 3. be necessary – it must be justified in a relevant and sufficient manner, and be proportionate to the aim of the restriction. According to Article 20 of the Covenant, propaganda for war, any incitement to national, racial or religious hatred that constitutes incitement to discrimination, hostility and speech that leads to violence are prohibited (ICCPR, 1966: Art. 20). According to the European Convention for the Protection of Human Rights and Fundamental Freedoms, restrictions on freedom of expression must be prescribed by law and may be considered provided that they are necessary in a democratic society:

- for respect for the rights and reputation of others;
- for the protection of national security, territorial integrity and public safety;
- to prevent disorder and crime;
- for the protection of health and morals;
- to prevent the disclosure of information received in confidence or
- in order to preserve the authority and impartiality of the judiciary.⁷

Freedom of the press or freedom of the media is the fundamental principle that communication and expression through various media, including print and electronic media, especially published materials, should be considered a right that is freely exercised. Such freedom implies the absence of excessive interference by the state. Its preservation can be sought through constitutional or other legal protection and security. The United Nations Universal Declaration of Human Rights of 1948 proclaims: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."* (UN, 1948: art. 19). This philosophy is usually accompanied by legislation that ensures varying degrees of freedom of scientific research (known as scientific freedom), publishing and the press. The depth to which these laws are embedded in a country's legal system may go as far as its constitution. The concept of freedom of expression is often covered by the same laws as freedom of the media, thus giving equal treatment to spoken and published expression. Freedom of the press was officially established in the United Kingdom with the repeal of the Licensing Act in 1695. Sweden was the first country in the world to enshrine freedom of the press in its constitution with the Freedom of the Press Act of 1766 (one of four legal acts that together make up the Constitution of Sweden, entitled the "Instruments of Government").

Freedom of the press is not interpreted as the absence of interference from outside entities, such as government or religious organizations, but as the right of authors to have their works published by others (Powe, 1992: 200). This idea was famously summarized by the 20th-century American journalist AJ Liebling, who wrote: "Freedom of the press is guaranteed only to those who own it". Freedom of the press gives the printer or publisher exclusive control over what the publisher decides to publish, including the right to refuse to print anything for any reason (Powe, 1992: 200). If an author cannot reach a voluntary agreement with a publisher to produce an author's work, then the author must turn to self-publishing.

⁷Article 10, paragraph 2, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Freedom of the media has several aspects. The first is the right of an individual to express their opinions through the media (newspapers, radio, television, print, film, etc.). The second is the right of citizens and their associations to publish and disseminate information through other media (radio, TV, etc.) under conditions determined by law. It represents the negation of the state's monopoly on media ownership. The third aspect is the right of citizens to be informed. It was also present in previous constitutions, the Constitution of the Republic of Bosnia and Herzegovina, the Constitution of the SFRY. Citizens have the right to be informed about events in their environment. Freedom of the media is limited by the availability of information. The media cannot perform their function of informing the public if information is not available to them. For this purpose, there are laws on freedom of access to information, and this legal act applies to everyone, not just journalists. Certain principles have already been crystallized on this occasion. First, facts must be accurately reported. Second, in a commentary, what a journalist interprets some facts himself must not be a call for lynching, rebellion, war, terrorism, or unconstitutionality. Every institution should have a guide/instruction for implementing the law on access to information and a designated contact person for these tasks, i.e. an information officer. Every organization that enjoys public legal status should have an information guide, which regulates what information can be given and to whom. Citizens today also have the right to information, as security services used to create files (ČEKA, EKVO, KGB...).

Certain terms must be explained when it comes to freedom of the media. *Censorship* is the restriction of information that can be made public, inappropriate for a democratic society. Freedom of the media cannot violate the constitutional order. It can be introduced in states of emergency. *Self-censorship* means that journalists limit themselves in what they can and cannot publish. According to laws on freedom of the media (in some countries, such as Brazil, this matter has even been elevated to constitutional status), an individual has the right to demand that a journalist publish *a denial of false allegations in the same place* (the so-called right to correction). *Defamation* and *insult* may not be committed through the media. In our country, they were decriminalized in 2003 (where, immediately after the new legal solutions came into force, high amounts were requested in lawsuits for compensation for non-pecuniary damage), but last year in the Republika Srpska they were again regulated by criminal and misdemeanor normative solutions.

The 1974 Constitution of the SFRY guaranteed freedom of the press. According to paragraph 3 of Article 167 of this constitution, it was the right of citizens, and they, organizations and associations of citizens could, under conditions determined by law, publish the press and disseminate information through other means of information (Constitution of the SFRY, 1974: Art. 167). The framers of the constitution gave the legislator the authority, and the laws only ostensibly granted freedom. According to the Law on the Foundations of the Public Information System, in order to start publishing a newspaper, citizens had to submit a proposal to the Socialist Council of the Working People (it was not a state body), which considered it and gave an opinion on the justification for establishing a public media outlet, which it informed the administrative body specialized in publishing. The SSRN often did not give a positive opinion. Press codes are very important, they contain moral and professional norms.

Freedom of the press is a fundamental right that applies to all member states of the European Union and its citizens, as defined in the EU Charter of Fundamental Rights and the European Convention on Human Rights. In the context of the EU enlargement process, guaranteeing freedom of the press has been called "a key indicator of a country's readiness to become part of the EU". The United Kingdom has a long tradition of "a free, inquisitive press", but "unlike the United States, the United Kingdom does not have a constitutional guarantee of freedom of the press." Freedom of the press was established in the United Kingdom in 1695. By 1694, the United Kingdom had an elaborate licensing system; the most recent was seen in the Press Licensing Act of 1662. One of the first freedom of the press laws in the world was introduced in Sweden in 1766. No publication was permitted without a corresponding licence issued by the government. The Constitution of the Italian Republic of 1948 guarantees freedom of the press, as stated in Article 21, paragraphs 2 and 3: "*The press shall not be subject to any authorization or censorship. Seizure may be authorized only by court order stating the reasons and only for criminal offenses expressly established by the law on the press or in the event of a breach of the obligation to identify the persons responsible for such offenses.*" The Constitution allows the seizure of periodicals without a warrant in cases of absolute urgency, when the judiciary cannot intervene in a timely manner, provided that a judicial certificate must be obtained within 24 hours.

Article 21 also provides for restrictions on those publications considered offensive to public morals, as stated in paragraph 6: "*Publications, performances and other exhibits that offend public morals are prohibited. Preventive and repressive measures against such offenses shall be established by law.*" In 1933, freedom of the press in Nazi Germany was suppressed by President Paul von Hindenburg's Reichstag Fire Decree, just as Adolf Hitler was coming to power. Hitler suppressed freedom of the press through Joseph Goebbels' Ministry of Public Enlightenment and Propaganda. The ministry acted as a central control point for all media outlets, issuing orders on which stories could be published and which would be suppressed. By the late 1980s, communist regimes in the former Central and Eastern Europe were severely restricting freedom of the press and other civil liberties. Radio Free Europe/Radio Liberty, although available to residents of these countries, was mostly illegal and listening to it could result in serious consequences.

Many traditional means of delivering information are being replaced by the increasing pace of modern technological advances. Almost every conventional means of disseminating media and information has a modern counterpart that offers significant potential advantages to journalists who wish to maintain and enhance their freedom of speech. A few simple examples of such developments include: tighter control of satellite television, the Internet and online publishing, VOIP, etc. Governments are responding to the challenges posed by new media technologies by deploying increasingly sophisticated technology of their own (a notable example is China's attempts to impose control through a state-owned Internet service provider that controls access to the Internet). With the advent of these means of communication and information dissemination, freedom of the press is now most often referred to as freedom of the media.

Where the state owns and controls the media, it can use the media for propaganda purposes, as John Street argues, further citing examples from Nazi Germany and the Milosevic regime in

Yugoslavia. The job of journalists can be facilitated by the government, as they can provide press releases that are in their own interest and the interest of the state itself. War itself forces the state to use the media for the purpose of disseminating propaganda. An example here is the Falklands War, where the British media spread lies and rumors provided by the Ministry of Defence to confuse British intelligence, even if it meant misleading the British public. So this distribution of information was not done in an *ad hoc* manner, but rather a small segment of a larger system that is intended to maintain control. (Street, 2001). Propaganda has taken hold in the last two armed conflicts, by Russia and Israel.

Threats and crimes against journalists in the world

Journalists play an essential role in ensuring that information is gathered, news is written and that news is presented in an honest and balanced manner. Unfortunately, journalists are often the subjects of harassment and murder. From 2006 to 1 November 2024, 1,718 journalists were killed worldwide (UNESCO, 2024). 2012 was the year when the most journalists were killed (UNESCO, 2023). 55.71% of cases are unresolved/archived in court (UNESCO, 2024). A total of 58 journalists were killed this year (UNESCO, 2024). As of 29 October 2024, preliminary investigations by the Committee to Protect Journalists indicated that at least 134 journalists and media workers were among the more than tens of thousands killed in Gaza, the West Bank, Israel and Lebanon since the start of the 2023 war (CPJ, 2024), making it the deadliest period for journalists since CPJ began collecting data in 1992. Intimidation and crimes against journalists prevent citizens from obtaining and accessing information. What is important is that the perpetrators of these crimes are brought to justice. In 2020, UNESCO developed Guidelines for Prosecutors on Prosecuting These Crimes. According to this international organization, 9 out of 10 murders of journalists remain unsolved (UNESCO, 2020). Freedom of expression is enshrined in most constitutions. Rights are formally guaranteed, but there are problems in implementation. Press freedom and journalism in Europe are under increasing pressure: the recently published Media Pluralism Monitor (MPM), by the Centre for Media Pluralism and Freedom of the Media at the European University Institute, clearly shows evidence of the worsening situation on our continent, without which the state is immune to this trend. Hate speech and online attacks, especially targeting female journalists, are also on the rise, often perpetrated by the very political elites who are supposed to protect journalists and their role as guardians of democracy (EUI, 2024). Murders are often prejudiced (hate murder), where the motive is rarely investigated (prosecutors often do not know how to investigate this motive). Many prosecutors have not encountered crimes against journalists, and training of prosecutors in the field of media freedom and journalist safety is necessary

The prosecutor is independent, free to apply the law freely, without prejudice, in the performance of his duties he must not be subjective, he must not be subject to external pressures. Prosecutors must act in the interests of justice, not in his own interests or the interests of the government. Being independent does not negate a collaborative approach. Effective links with international partners must exist because perpetrators are often in more than one jurisdiction. The speed of cooperation for prosecutors to fight this type of crime is also important. Prosecutors must be transparent in their decision-making and prosecutors must follow their own ethical standards. In 1999, the International Association of Prosecutors

adopted its own “Standards of Professional Responsibility and a Statement of the Basic Duties and Rights of Prosecutors” (IAP, 1999), which recognize the differences in prosecutorial systems and have a crucial role in the administration of prosecutorial justice. The standards contain six articles that regulate issues of professional conduct, independence, impartiality, role in criminal proceedings, cooperation and empowerment.

OPEN ISSUES OF PROTECTION AGAINST HATE SPEECH – IDENTIFICATION, RESPONSE AND REGULATION

Hate is a condition that cannot be regulated by law in the sense that legal rules cannot order anyone to hate or love someone. However, speech that is rooted in hate can be limited. Numerous negative concepts arise from hate, such as: racism, chauvinism, xenophobia, or anti-Semitism. International instruments do not clearly define what constitutes hate speech, i.e. to what extent sensitive and offensive information is considered the right to freedom of expression, and when freedom of expression is abused with the aim of harm and discrimination (2016: 437). (Munivrana Vajda, Šurina Marton, 2016: 437). The working definition of hate speech is that from Recommendation 97(20) of the Committee of Ministers of the Council of Europe (Council of Europe, 1997), according to which hate speech is “all forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed through aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin.”

Alaburić points out that hate messages distributed through the media affect a wide range of people, leaving immediate and harmful consequences (2003b: 8). Carlson and Weibull (2018: 12) point out that many people, including advocates of freedom of expression, advocate for the censorship of views with which they disagree or cause them discomfort, advocating freedom of expression only in cases where certain views do not reflect on them, or do not cause unpleasant consequences. Howard (2018: 14) argues that, if citizens are prevented from expressing their own views, it is impossible to achieve an open and free public debate that forms the basis of a democratic system. When limiting hate speech in the media, it should be borne in mind that, for the general good of the public, the media have the right to critically report on various phenomena of discrimination and incitement to hatred and they should be ensured that they can do so freely and safely, without fear of possible punishment (Alaburić, 2003b: 17)

In the case of hate speech, unlike other forms of abuse of freedom of expression (such as insults, defamation directed at the appearance and abilities of an individual), people are belittled because they are members of a certain group. It is always about all those prohibited grounds of discrimination, which are in the open list in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the BiH Law on the Prohibition of Discrimination, which means that the administrative body, the court can determine some other grounds that are not listed as grounds for discrimination, before the statement "and any other

circumstance". Hate speech produces discrimination, hostility and violent attacks. It can be done through: speech, gesture, behavior, writing, performance, drawing graffiti, visiting certain events, crossing out one of the letters on the bilingual board, etc. It always has two components: a) the expression of hateful messages and b) it must be directed against a specific individual who is a member of a group that shares a common characteristic that is among the grounds that are protected against discrimination.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which concerns the right to freedom of expression, proclaims that everyone has the right to hold opinions, to impart information and ideas, and also includes the right to access information. Paragraph 2 of Article 10 contains the conditions for restricting freedom of expression, when the speech is not of such intensity as to negate the values of the Convention. Thus, the restriction must be prescribed by law, must have a legitimate aim and must be necessary in a democratic society. Article 17 of the ECHR contains a prohibition on the abuse of rights, when it is considered that the disputed statements constitute hate speech and negate the fundamental values of the European Convention. This article excludes the right to use speech to promote ethnic hatred, racial hatred, violence, terrorist activities, denialism, revisionism, religious hatred.

Inadequate case law

The European Court of Human Rights has not defined hate speech in any of its case law, but it has identified factors that should be considered cumulatively through a series of judgments. The human rights NGO Article 19 ⁸has specifically highlighted them, and the Rabat Action Plan suggests them. ⁹They are:

1. context,
2. the speaker's position, political status and position in society, influence on the audience,
3. the speaker's intention to incite hatred,
4. content of speech (only speech in public space is considered hate speech in the sense of being subject to legal norms),
5. reach and
6. the likelihood that adverse consequences will occur.

One of the reasons why there are so few verdicts in which the accused is found guilty is precisely because it is clear from the cases so far that neither prosecutors nor courts take these six elements into account in their entirety. This is especially the case with state judicial institutions, and it is best seen that apart from the case in which the accused entered into a plea

⁸ <https://www.article19.org/data/files/medialibrary/3572/12-12-01-PO-incitement-WEB.pdf> (reading 22. 02. 2025.)

⁹ <https://www.ohchr.org/en/freedom-of-expression> (read 02/22/2025).

agreement,¹⁰ there have not been many other cases in which the accused was convicted of the criminal offence of "Inciting national, racial and religious hatred, discord and intolerance" (it is promising that this has changed in the last few years). Only two final verdicts have been issued before the Court of Bosnia and Herzegovina so far after the entire proceedings, both of which found the accused guilty, the first in which members of the Ravna Gora Movement were sentenced to prison¹¹ (the rest were suspended sentences, and in this case only one accused was sent to serve his sentence, the others were allowed to replace their prison sentences with fines), for inciting hatred in the Višegrad area, and the second against SM, whose posts on Facebook insulted children of Croatian ethnicity who were killed in Vitez in 1993.¹²

Another reason for inadequate case law is that in criminal law terms, criminal offenses that fall within the theoretical framework of hate speech are regulated in four criminal codes, i.e. there is divided jurisdiction in this area. These are the criminal offenses: "Inciting national, racial and religious hatred, discord and intolerance" (CC BiH, CC F BiH and CC BD BiH), "Unauthorized possession or endangerment of public order through a radio or television station" (CC F BiH and CC BD BiH), "Public incitement and incitement of violence and hatred" (CC RS) and "Violent behavior at a sports event or public gathering" (CC RS). According to an analysis of case law, all case law from 2004 to April 2019 refers only to the criminal offence of inciting national, racial and religious hatred, discord and intolerance in all criminal codes in Bosnia and Herzegovina (Ferhatović-Trlin, 2019: 144, 145). Only 12 individuals were convicted during that period (Ferhatović-Trlin, 2019: 145).

In fact, many judges and prosecutors have taken the view that hate speech cannot be prosecuted because this crime does not exist in criminal law. In the previous paragraph, we saw that this is not true, because what corresponds to the theoretical construct of hate speech is partially positioned in these hate crimes.¹³ Hate crimes should be distinguished from them, which are related to hate speech in that hate speech most often precedes, accompanies or follows hate crimes. Bosnia and Herzegovina has had cases before the European Court of Human Rights for hate speech (*Smajić v. Bosnia and Herzegovina* , Application No. 48657/16, judgment of 16 January 2018) , but not for hate crimes.

More adequate sanctioning of those accused of the criminal offense of "Inciting national, racial and religious hatred, discord and intolerance" is also made more difficult by the imprecision of legal norms, i.e. what constitutes "hatred", "incitement/incitement", "discord", "intolerance". The degree of "disturbance" of relations between certain segments has not been established in case law. "Publicity" has not been defined either. There is also a conflict of jurisdiction because

¹⁰Case number: S1 2 K 035528 20 K and <https://indeksonline.rs/2020/02/pretio-imamu-klanjem-i-vrsio-nuzdu-ispred-dzamiije-danijel-na-osnovu-sporazuma-dobio-samo-godinu-dana-zatvora/> (reading on February 22, 2025)

¹¹ <https://avaz.ba/vijesti/bih/795129/potvrdena-kazna-od-po-pet-mjeseci-zatvora-pripadnicima-ravnogorskog-pokreta-za-izazivanje-mrznje> (reading on February 22, 2025)

¹²Case number: S1 2 K 047564 24 K

¹³A hate crime can be any crime, provided that it is committed out of hatred as a motive or incentive, and then it is taken into account as an aggravating circumstance when determining the sentence, or hatred as a motive or incentive is prescribed as a qualifying circumstance (for more information on hate crimes and hate crimes inciting in: Filipović 2019). In contrast, hate crimes are crimes in which hatred is one of the alternatively prescribed legal characteristics of the crime.

it happens that several prosecutors' offices are investigating the same criminal offense, but that it is ultimately processed *ad hoc* by the Prosecutor's Office of BiH. Perhaps the best solution would be to prescribe this criminal offense exclusively by one criminal law, namely the state law, with a precise definition of the norm, which would also contain the expanded "Inzko norm" (amendments and supplements to the Criminal Code of BiH on the prohibition of denying genocide and war crimes). This is with the caveat and repetition of the fact that the Prosecutor's Office of BiH has so far managed to conduct only two full (not abbreviated) proceedings for this criminal offense with a verdict in which the accused is declared guilty as the epilogue. A possible reason is that prosecutors handle these cases as a side report, so the conclusion is that perhaps the prosecutors in this prosecutor's office should be specialized in hate speech cases.

Furthermore, hate speech is not only regulated by the norms of criminal law, but also by administrative law (the Court of Bosnia and Herzegovina is competent for the electoral process), and civil law. At seminars of the Center for the Education of Judges and Prosecutors of the Federation of Bosnia and Herzegovina, within the framework of the JUFREX/PRO-FREX project implemented by the Council of Europe, but also in cooperation with the Public Law Center Foundation and the AIRE Center, it was established that civil liability for hate speech can be established by filing a property claim in criminal proceedings, by applying, but also by filing lawsuits for harassment as a form of discrimination under the Law on the Prohibition of Discrimination of BiH (an identical norm exists in the anti-discrimination law of the Republic of Croatia and the highest Croatian courts have already issued final judgments establishing harassment through hate speech). The latter would mean that hate speech can be established in administrative proceedings, and in administrative disputes as its logical consequence, by all competent courts at all levels of government in BiH, since the Law on the Prohibition of Discrimination is also applied in administrative proceedings, in addition to civil litigation. It should be noted that the Center for the Education of Judges and Prosecutors of the FBiH conducted analyses of civil law case law on hate speech and did not find a single verdict.

We believe that there is no obstacle to attempting both criminal and civil proceedings for the same case. A typical case was in Croatia, where ZM was acquitted in a criminal case because the court concluded that he had no intention of inciting violence, but he lost in the civil case because it was found that he had committed harassment/discrimination through hate speech.

The concept of hate speech differs around the world. In the United States, all speech is free until there is a threat of physical violence. In that country, anti-Semitic demonstrations in Jewish neighborhoods are therefore possible, after the so-called "clear and present danger" test has been carried out. In Europe, the approach is different. In Sweden and Denmark, for example, there is an objective approach, where the actual content of the message is looked at, i.e. whether the speech is: conducive to violence, harassing people and whether it spreads intolerance towards others. In our country, a subjective concept is accepted, where the intention, the intention to incite violence (there must also be a consequence) must be proven.

Internet as a public space

In theory, it is controversial to define the public space itself, although it was easier before the advent of the Internet (Turčilo, Išerić: 27). Dewey (1927: 67) also defined the public sphere as “the permanent, extensive, and serious consequences that result from the combined activities of individuals, and which are, in themselves, without organization or form”. The content of the Internet coincides with this definition of the public sphere. Also, according to Habermas, the public sphere is an intermediary between the private sphere and the sphere of public authority, through which public opinion is formed, which first related to the immediate needs of individuals in society (to the exchange of goods and social work), and then to participation in political life (Habermas, 1969). The Internet has long been identified as an information agora (Branscomb, 1994). The role of the Internet as a public space for every citizen (as opposed to purely professionals, for example) is shaped by two seemingly contradictory characteristics: the Internet is both ubiquitous and personal. Cyberspace, unlike traditional types of media (broadcasting, common carrier, publishing, distribution) and traditional public spaces in the physical world (Grbavica stadium, airport, city library, train station, etc.), allows citizens to find new ways to communicate economically, politically, and socially. This universal connectivity of the Internet is its potential for everyone and everywhere. However, the very nature of its ubiquity can also affect a range of individual or organizational rights, thus hindering its overall utility. Surfing the Internet as a public domain is a relatively new phenomenon, but it also clearly requires a similar set of civic rules, intuitive or formal, that regulate its broad information-based activities (Camp, Chien, 2000).

One of the most current topics when it comes to hate speech in BiH, in the legislative context, is the regulation of the Internet as a public space. The ECtHR has already determined the Internet as a public space, and this can be read from the Court's judgments in the cases of *Delfi v. Estonia* (*Delfi v. Estonia*, Application No. 64569/09, judgment of 16. 06. 2015) and *Times Newspapers v. the United Kingdom* (Applications 3002/03 and 23676/03 of 10. 03. 2009), which emphasize the capacity and ability of the Internet to carry out communication, and the possibility of exchanging large amounts of information. Thus, it points to "an important role in increasing public access to news and facilitating the dissemination of information in general".

In theoretical terms, there are discussions about whether the Internet is actually a public space, since hate speech most often takes place on social networks, which are actually privately owned. They are subject to intellectual property rights, which fall under private law. The fact that the Internet is a public space supports the idea that the state decides whether the population will have access to it, or to its individual parts, or whether it will be limited/prohibited. It is evident that in our country every natural and legal person has access to the Internet, and this also supports the thesis that in Bosnia and Herzegovina the Internet is already a public space, without any special regulation in the laws.

However, as we have already mentioned, many Bosnian and Herzegovinian lawyers, including judges and prosecutors, view regulations strictly formally (they apply the regulation and not the law that regulates the matter that the regulation only elaborates, they apply the law, ignoring the European Convention for the Protection of Human Rights and Freedoms, which they are

obliged to apply), so there is a possibility that in the Law on Misdemeanors, if they do not see that the Internet is a public space, they would not treat it as such. I would like to point out that according to several provisions of Article II. of the Constitution of BiH, a Bosnian and Herzegovinian judge has the right to apply the European Convention for the Protection of Human Rights and Fundamental Freedoms directly, even if something is not regulated, or if it is regulated contrary to the Convention and the “Strasbourg” jurisdiction. The same problem exists with the “public interest” in the case of unauthorized audio and video recording (it is specified only in the Criminal Code of Croatia, out of all the countries in the region).

I am not sure whether defining the Internet as a public space in the Law on Misdemeanors would improve anything, it is possible that it would actually lead to censorship. I would like to point out that in Croatia, the event has been treated several times as a disturbance of public order and peace, and not as public incitement to violence and hatred under Article 325 of the Croatian Criminal Code. The best solution, in my opinion, would be to enact the Law on Electronic Media of Bosnia and Herzegovina, which would resolve this issue. I believe that the German law NetzDG on hate speech on the Internet is not a solution, especially since it had a limited effect and failed to suppress hate speech online.

CRIMINAL LAW PROTECTION OF THE MEDIA

According to data from 2022, the most common criminal offense in attacks on the safety of journalists is: Endangering safety (Išerić, 2022: 303). After this, the journalist appears as an injured party in the criminal offenses of Violent behavior and Damage and seizure of another's property (Išerić, 2022: 303). Criminal legislation in BiH does not recognize an attack on a journalist as a separate criminal offense (Radević, 2021: 10). The dilemma with this criminal offense is what constitutes a threat. Prosecutors' offices interpret it narrowly, so a threat represents something that is serious and realistically achievable. Prosecutors' offices have already created additional parameters for why something does not constitute a serious threat. An indictment is filed only if the threat is serious and if there is an indication that the person making the threat will carry it out (comes to the journalist's office, "hangs" around the porch of the building where he lives, etc.). This behavior prevents all threats contained in the conditional from being processed (e.g., person XY writes "your text is good, I read it" and puts a smiley face in Facebook messenger).

As a combination of attacks on the safety of journalists and on the basis of gender often occurs, it should be noted here that Republika Srpska currently has a better legal framework. The Federation of Bosnia and Herzegovina has not yet harmonized its Criminal Code with the requirements of the Istanbul and Lanzarote Conventions. In the Criminal Code of the Federation of Bosnia and Herzegovina, the criminal offense closest to stalking is precisely Endangering Security. It is prescribed in paragraph 3 of Article 183, which reads: “Whoever, by sneaking, frequent following or harassing in any other way, endangers the safety of a spouse, a person with whom he or she lives in an extramarital relationship, the parent of his or her child or another person with whom he or she maintains or has maintained a close relationship, shall be punished by a fine or imprisonment for up to one year”. The process of harmonizing the Criminal Code with the Istanbul and Lanzarote Conventions in the Federation of Bosnia and

Herzegovina is currently underway, and it is expected that the criminal offense of stalking will be explicitly prescribed. The draft law has been adopted in one of the houses of the Parliament of the Federation of Bosnia and Herzegovina, but has not yet been promulgated. What the draft provision does not contain, compared to the solutions from Serbia, Croatia and Montenegro, is primarily the circle of persons who may be harmed (especially since the victim must be a person with whom the potential perpetrator maintained a close relationship), and the prescribed punishment (a prison sentence can be replaced by a fine). This is enough to conclude that of all criminal legislations, victims of persecution have the weakest protection in the Criminal Code of the Federation of Bosnia and Herzegovina.

The safety of journalists has also been attacked by civil servants, and disciplinary proceedings have been initiated against them. Disciplinary proceedings can also be combined with criminal proceedings, where a civil servant may even be suspended, depending on the normative solutions of the political-territorial unit for which he works. In previous years, civil servants in the Federation of Bosnia and Herzegovina used to simply go on sick leave and thus avoid disciplinary proceedings, and possible determination of responsibility and sanctions.¹⁴ It should also be noted that the problem is the provision of Article 100 of the Labor Law of the Federation of Bosnia and Herzegovina, which prescribes an absolute statute of limitations for dismissing a civil servant, but also last year's amendments to the Regulation according to which disciplinary proceedings are conducted (in addition to the provisions of the Administrative Procedure Act).¹⁵

CRIMINALIZATION OF LIBEL IN THE REPUBLIC OF SRPSKA¹⁶

Theoretical assumptions

The European Court of Human Rights has adopted a legal approach that requires that any restriction on freedom of expression and, in this regard, on all other freedoms guaranteed by the ECHR be determined to be “reasonable”, the first step being to determine whether there is a “reasonable need” for a restriction in a “democratic society”. In order to do this, it must be determined whether there is a “need in the public interest” to introduce such a restriction. For the restriction of freedom of expression and the freedom of the press and media derived from it and the justification of such a restriction in a democratic society, the question of the type and amount of the penalty prescribed in the event of an act contrary to the law is important. The ECtHR concluded that the severity and type of penalty are key factors in determining the extent of the interference with the right and the proportionality of the restriction and the aim sought to be achieved by it. The European Court has already found that a sentence of 5 days in prison

¹⁴ <https://www.oslobodjenje.ba/dosjei teme/drzavni-sluzbenici-su-sticena-vrsta-354855> (reading on February 22, 2025)

¹⁵ Regulation on the rules of disciplinary procedure for disciplinary liability of civil servants in civil service bodies in the Federation of Bosnia and Herzegovina ("Official Gazette of the Federation of Bosnia and Herzegovina", No.: 72/04, 75/09, 17/21, 55/21 and 15/23)

¹⁶ The criminalization of defamation in the Republic of Srpska was carried out by the adoption of the Law on Amendments to the Criminal Code of the RS in July 2023. It contains articles that prescribe criminal offenses against honor and reputation: defamation, disclosure of personal and family circumstances, and public exposure to ridicule due to belonging to a certain race, religion, or nationality. These amendments entered into force a little over a month later.

imposed on a lawyer for “contempt of court” is severe and disproportionate to a legitimate aim (*Kyprinaou v. Cyprus* , Application No. 73797/01, judgment of 15 December 2005, paragraphs 178-180). From this position, but also from other case law of the European Court of Human Rights, we can clearly and unequivocally conclude that this court does not support criminal prosecution, and moreover, it has taken the view that administrative and civil measures are acceptable while considering criminal sanctions disproportionately severe in the context of restrictions on freedom of expression. However, when it comes to freedom of the press and media, the ECtHR has taken the legal view that a criminal sanction depriving professional media of the right to perform their professional duties is disproportionately severe because it causes a "chilling effect" on public debate (*Kaperzynski v. Poland* , Application No. 43206/07, judgment of 3 July 2012 , paragraph 74).

According to the case law of the European Court of Human Rights, individual human rights are intertwined with collective rights and are interdependent with them. No individual may exercise rights to the detriment of the rights of the collective and vice versa. The European Court of Human Rights has determined that journalists must act in good faith (*bona fides*) and must apply “due diligence” or the care of a good professional when publishing content. A journalist is obliged to verify the veracity of the content in good faith. If a journalist is not convinced that the content is not untrue, he must not publish it. In particular, he must not publish content that is manifestly untrue. According to the case law of the European Court of Human Rights, a journalist may also publish sensational content, disturbing content or content that is contrary to public opinion, after assessing whether the publication of such content is in the public interest (case *Pedersen and Baadsgaard v. Denmark* , Application No. 49017/99, judgment of 19 June 2003) and whether the public would be interested in such content. This right of journalists is limited when it comes to natural persons who are not participants in public and political life. Those who are, are obliged to tolerate a greater degree of media interest in their private and family life. However, the continuous publication of malicious content relating to someone's private and family life, regardless of the social position of that person, is considered by the European Court of Human Rights to be a form of abuse. Politicians have the right to protection of reputation and honour, even within the exercise of their public office, and not only within private and family life, but the European Court of Human Rights has established "...but the requirements for such protection cannot be against the interest in open discussion of political issues, since restrictions on freedom of expression must be interpreted narrowly..." The ECtHR has also established that politicians must have "tough skin", especially if the way others treat them is reciprocated from how they treat others.¹⁷ When it comes to the

¹⁷ This is particularly true in the case of so-called political satire. Political satire in the media is an important and effective instrument for discussing politics, criticizing hierarchies and developing more aware and critical citizens. Political satire provides a distinctive perspective on political topics, personalities and social problems using humor, wit and irony, questioning established narratives and inspiring viewers to challenge the status quo. The weaknesses, hypocrisy and inconsistencies of political institutions are depicted through satire. Satirists highlight the contradictions between political language and the work using devices such as exaggeration, parody, and caricature, which encourage a more critical evaluation of political people and programs. Satire is a type of social criticism that addresses larger social issues, including injustice, corruption, and the erosion of fundamental freedoms. In the current media environment, satirical events and programs, including late-night talk shows, satirical news programs, and sketch comedy, have become important venues for political satire. These programs combine entertainment and political commentary, entertaining viewers

justification of restrictions on freedom of expression in a democratic society, in order to prevent or suppress hate speech, in addition to the practice of the ECHR and the provisions of the ECHR, other sources of international law also participate. By establishing standards of “journalistic ethics”, “quality of journalism”, “intimacy of the home” and “continuous publication of malicious content”, the European Court of Human Rights has clearly established that limits exist and that no right, including freedom of the media, is unlimited.

When assessing whether a particular provision prescribing a restriction of convention rights is in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights, the starting point should be the tripartite test carried out by the European Court of Human Rights under Article 10 paragraph (2) of the European Convention. In the case of the criminal offence of "Disclosure of personal and family circumstances" under Article 208b of the Criminal Code of the Republika Srpska,¹⁸ it can be concluded that the restriction is prescribed by law in a clear, precise and foreseeable manner. Everyone can read these provisions, be aware of the consequences and adjust their behaviour accordingly. The restriction aims to achieve a legitimate aim - to protect the reputation and honour of an individual. In the question of whether the restriction under Article 208b is necessary in a democratic society, it must be examined whether there is a public need for this type of restriction. A reasonable basis, which must be supported by evidence that the media and individuals are not acting in accordance with the standards of "journalistic ethics" and "quality journalism", and that the media and individuals appearing in the media do not understand the effect of "home intimacy" and that "continuous malicious publication", often of inappropriate content relating to the private and family life and the reputation and honor of public office holders outside the scope of their function and which the public has essentially no interest in knowing about.

The second question within the standard of “is it necessary in a democratic society” is whether the sanction is proportionate to the aim sought to be achieved? Given that a fine is prescribed, and not a prison sentence, the fear of¹⁹ the “chilling effect” or “intimidation effect” that results when a prison sentence is prescribed as a punishment for acts against reputation and honor is reduced. Article 208a of the Criminal Code (“Defamation”) contains a high amount of fine but also fulfills one of the functions of criminal law legislation – preventive, i.e. to deter future perpetrators of criminal acts from deciding to commit a criminal act.

Decision of the Constitutional Court of BiH No. U-21/23

At its session on January 18, 2024, the Constitutional Court of BiH determined that the criminalization of defamation in the RS is in accordance with the Constitution of BiH.

with humor and satire, and informing them about current political events and pressing issues. They attract a diverse audience, especially the young and politically active, and they also promote critical thinking and active engagement in political discourse.

¹⁸Article 28b of the Criminal Code of the Republika Srpska ("Official Gazette of the RS", No. 64/2017, 104/2018 - decision of the Constitutional Court, 15/2021, 89/2021 and 73/2023).

¹⁹The Venice Commission stated in its 2013 Opinion on the legislation relating to protection against defamation of the Republic of Azerbaijan that “The imposition of excessive punitive measures should be avoided, and the imposition of prison sentences should be limited only to cases where exceptional circumstances exist”.

However, the Constitutional Court of BiH also pointed out that the competent authorities in the RS should proceed with particular care in the event of criminal prosecution under the contested articles of the Criminal Code, and in doing so, they should take particular care to apply the contested provisions in accordance with the standards of the European Court of Human Rights and the Constitutional Court of BiH that have long been established (the so-called "beaten path"). The Constitutional Court also pointed out that it is necessary to take into account that excessively high penalties may discourage freedom of expression.

Also, the National Assembly of Republika Srpska adopted [the Law on Non-Application of Decisions of the Constitutional Court of BiH in the middle of last year](#), according to which decisions of the Constitutional Court of BiH, adopted after amendments to the Rules of the Constitutional Court of BiH, will not be applied and executed in the territory of RS, until the Parliamentary Assembly of BiH adopts the Law on the Constitutional Court of BiH. In this regard, the OHR adopted The decision preventing the entry into force of this regulation. However, the political elites from the Republika Srpska are acting as if the decisions of the Constitutional Court are not being applied, and the National Assembly of the RS has not even submitted answers to the Constitutional Court of BiH regarding the criminalization of defamation. It can therefore be reasonably argued that it is questionable whether the decision of the Constitutional Court of BiH would have been applied if it had been different. Here, it is worth pointing out Article III/3.b) of the Constitution of BiH: *"The Entities and all their administrative units shall fully comply with this Constitution, which shall supersede the legal provisions of Bosnia and Herzegovina and the constitutional and legal provisions of the Entities that are inconsistent with it, as well as the decisions of the institutions of Bosnia and Herzegovina. The general principles of international law are an integral part of the legal order of Bosnia and Herzegovina and the Entities."* The decision of the Constitutional Court of the RS was also awaited regarding the constitutionality of prescribing defamation as a criminal offense (initiative sent in September 2023). In May last year, the Constitutional Court of the Republika Srpska rejected the initiative to assess the constitutionality of Articles 208a. and 208b. The Criminal Code of the Republic of Serbia, which defines defamation and disclosure of personal and family circumstances as criminal offenses.

UNAUTHORIZED AUDIO/VIDEO RECORDING

In Bosnia and Herzegovina, prosecutors often launch investigations against persons who publish recordings of illegal activities (most often journalists, but also ordinary citizens). By acting in a manner that has occurred in some prosecutors' offices, which, when analyzing and deciding whether to issue an order for an investigation, does not take into account the public interest, the location where the recording was made, and the practice of the ECHR (*Haldimann and Others v. Switzerland* (Application No. 21830/09, judgment of 24 February 2015), *Radio Twist v. Slovakia*, Application No. 62202/00, judgment of 19 December 2006), it makes it impossible to combat serious crimes, but also promotes self-censorship of the media and citizens. There is a large number of such proceedings by Bosnian and Herzegovina prosecutors, and we believe that it is necessary, through amendments to the existing criminal codes, to prevent them from prosecuting such persons. This could be achieved by one of the following ways: a) by amending the existing provisions - by clearly stipulating that recording other

persons in the public interest or in a public place, or the publication of such recordings by other persons, does not lead to criminal prosecution and b) by deleting the relevant legal provisions. We believe that it is sufficient to focus on the criminal laws of the entities (with the proviso that the RS Criminal Code is more rigid because it also prohibits a participant in a conversation from recording his or her conversations with other persons "with the intention" of "misusing" the recording or sharing it with a third party), because the provisions of the FBiH Criminal Code and the BD Criminal Code for these acts are identical, and the BiH Criminal Code regulates exclusively unauthorized wiretapping and recording by official and responsible persons in the Institutions of BiH (it does not prescribe any recording by other persons as a criminal offense).

The approach of prosecuting persons for illegal recordings, which were obviously made in the public interest, in a public place, for the purpose of documenting a criminal offense, is precisely the argument that the legal framework for unauthorized audio and video recording in Bosnia and Herzegovina should be harmonized with European standards. If the Bosnian and Herzegovina legal framework were harmonized as much as possible with the "Strasbourg" jurisdiction (an example of such harmonization is the Criminal Code of the Republic of Croatia), then the possible defense of insufficient knowledge of the case law of the ECHR would be avoided and more complete criminal law protection would be provided.

The fact is that every person gives up some of their privacy by going out into a public place, i.e. it is reasonable to assume and expect that they will be seen by others, but it is not reasonable to expect that they will be recorded. In most countries in the region, secret audio or secret video recording is a criminal offense, but only the Criminal Code of the Republic of Croatia provides an exception when it comes to the criminal offense of Unauthorized Sound Recording and Wiretapping in the event of exclusion of illegality. Therefore, the solution in Article 143, paragraph 4 of the Criminal Code of the Republic of Croatia seems the most acceptable. It stipulates that there is no criminal offense if the act of recording or wiretapping is done to protect the public interest or another interest that outweighs the protection of the privacy of the person being recorded,²⁰ and this should also be introduced for the criminal offense of Unauthorized Photography/Optical Recording. This formulation of the provision would eliminate doubts in interpretation and set adequate limits for the criminal law response, because if the legislator is not sure what he meant by a certain norm, those who apply that law cannot know it either.

This is a complex task that is before the courts in each individual case. In any case, a court decision that is clearly and well-reasoned will certainly have a preventive effect on the content and strength of potential criticism through the media and/or the public. These normative solutions and the role of the courts in determining the public interest are particularly important for the so-called investigative journalism. The ECtHR decides differently from case to case, and it all comes down to whether Articles 10 and 8 of the Convention have been violated. Here, the ECtHR assesses whether the topic is important for the protection of public health and

²⁰Article 143, paragraph 4 of the Criminal Code of the Republic of Croatia (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23 and 36/24).

morals; the reputation and rights of others; national security, and the preservation of territorial integrity or public safety. Different criteria apply to a public figure than when it comes to a private person. The key word when talking about the public interest is money, or budget (e.g. if a journalist filmed a politician with his mistress on a summer vacation, which was paid for from public funds, then it is in the public interest).

At the beginning of January of this year, amendments were proposed to the CC of FBiH, which should have introduced a new article 193a and the new criminal "Unauthorized publication and display of documents, portraits and recordings", which met with great criticism,²¹ especially from the media community (in the end, the Proposal of the Law on Amendments to the CC of FBH was abandoned, with the explanation that it was actually intended to propose the criminalization of revenge pornography). In public, the proposed new article 193a. it was comparatively treated with the same type of crime described in Article 156a of the Criminal Code of the Republic of Srpska in such a way that it was presented as a legal transplant from the RS that undermines the rule of law and legal security, restricts the freedom of the media and journalists. It is true that Article 156a of the RS CC prescribes the same criminal offense. However, there is a difference in that it is a consequential criminal offense in which the occurrence of a harmful consequence or the possibility of the occurrence of a harmful consequence is an essential characteristic of the offense and a condition for its fulfillment (there is an objective condition for punishment that is not covered by intent), while this was not the case with the proposed amendments to the Criminal Code of the Federation of BiH. In the Federation, it was a formal criminal offence whose essence was fulfilled at the time of publication or display, provided that they were carried out without valid consent. The European Court of Human Rights has established in its case law the standard applicable to restrictions on rights guaranteed by the ECHR: 1.) The restriction must be prescribed by law in a clear, precise and foreseeable manner and be publicly available; 2.) The restriction must pursue a legitimate aim and the measure must be proportionate to the aim sought to be achieved ; and 3.) Is the restriction necessary in a democratic society? Both criminal offences are prescribed by law in a clear, precise and foreseeable manner and both are necessary in a democratic society, given that the protected object is private life, family life and the right to correspondence, as well as personal integrity. However, in terms of the legitimate aim and proportionality of the measure, Article 156a is in accordance with the Constitution of Bosnia and Herzegovina because its legitimate aim is protection from harmful consequences, while in the proposed Article 193a the zone of incrimination was set too broadly and it did not strive to achieve the legitimate aim - protection from harmful consequences, but rather, through a general provision, incriminated every publication and presented it as a social danger. From this we can summarize that Article 193a was not in accordance with the Constitution of Bosnia and Herzegovina.

²¹ <https://ti-bih.org/ti-bih-uvodjenje-cenzure-na-mala-vrata-kroz-izmjene-krivcnog-zakona-fbih/> (reading on February 22, 2025)

CONCLUSION

The safety of journalists and media freedom are two sides of the complex relationship between freedom of expression and control of information. Media freedom is a human right in a modern democratic society and enables the exchange of information, ideas, opinions, positions, arguments, questions and answers. It enables citizens to have access to information, which is important for decision-making and transparency of government bodies. Media freedom allows journalists to investigate corrupt actions of politicians. In this light, they appear as a kind of supervisory body over political elites. In most countries, censorship is prohibited by legal acts (in some even constitutions).

John Stuart Mill stresses that freedom of expression, including the possibility of contestation and criticism, is essential for the intellectual and moral development of society. The only way to advance human understanding is through debate and the exchange of ideas. Opinions must be free to be expressed and criticized. Freedom of expression is the foundation of any democratic society. The right to freedom of expression and information through the media is guaranteed by international and domestic legal instruments, but the guarantees contained in the laws are not consistently implemented. According to the assessment of the organization Freedom House, Bosnia and Herzegovina is a “partly free” country, and according to Reporters Without Borders, it ranks 81st out of 180 countries.

Although the legal framework for the media in Bosnia and Herzegovina is largely in line with international standards, the policy-making process has stagnated in recent years. Worse, the Republika Srpska has criminalized defamation, which could encourage more self-censorship. On the positive side, access to information is in principle open to all journalists, without discrimination, and legal provisions on the protection of sources and a code of ethics are in place. Journalists are often the target of verbal threats and attacks, and sometimes physical attacks. Most journalists do not feel sufficiently protected while doing their work and do not trust the police or the judicial system. Various initiatives have been taken to improve the safety of journalists, including laws and investigations by the prosecutor's office. One of the steps (eight) that the EU expects from Bosnia and Herzegovina is to "Guarantee freedom of expression and the media and the protection of journalists, in particular by ensuring an appropriate judicial response to cases of threats and violence against journalists and media workers". All prosecutors' offices and law enforcement agencies have appointed contact points for journalists, their details are published on the safejournalists.net platform. The first EU-funded training for contact points was held at the end of February this year.

The paper highlights the key findings of the conducted analysis of the state of legal aspects of media freedom in Bosnia and Herzegovina, while the analysis in this conclusion is expanded with thoughts on normative solutions that can improve the protection of journalists and the improvement of their freedoms. First of all, it should be introduced that a journalist should be designated as an official in the criminal codes. The criminal offense of "Persecution" should be introduced within the Criminal Code of the Federation of Bosnia and Herzegovina, which could serve instead of or in parallel with the criminal offense of "Endangering Security" to protect the safety of journalists. In the context of the criminalization of defamation, we point

out that the global trend is the decriminalization of defamation. In addition to the reports and positions of relevant international organizations, I point to the practice of the European Court of Human Rights, according to which, among the various interferences with freedom of expression after something has been said, the most dangerous for freedom of expression itself is a criminal conviction and punishment. The criminalization of defamation in the RS provides for a high fine, which, if not paid in full, can be converted into a prison sentence of up to two years. We would also suggest that in future legislative amendments, following the model of the aforementioned provision of the Croatian Criminal Code, an exclusion of illegality for secret audio/video recording should be introduced if it is carried out for the purposes of public interest or an interest that outweighs the protection of the privacy of the person being recorded.

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