

INDICATORS FOR MEASURING MEDIA FREEDOMS IN THE  
COUNTRIES MEMBERS OF THE COUNCIL OF EUROPE

# **SHADOW REPORT**

## **for Bosnia and Herzegovina**



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## INTRODUCTION

Media freedom is a key prerequisite for development of a democratic society that protects and respects fundamental human rights. The development of a society with high democratic standards is an obligation for ALL the countries members of the Council of Europe (CoE). In order to enable an analysis of these freedoms, the Parliamentary Assembly of the Council of Europe adopted Indicators that facilitates the assessment of the level of media freedoms in the countries members of this European organisation.

Upon the adoption of Indicators for assessing media freedoms, European parliamentarians adopted a special document Recommendation 1848 (2008), referring to Resolution 1636/2008, which makes it mandatory for the governments of member countries to conduct the assessment of media freedoms in their countries following the recommended Indicators. This obligation followed because of the serious problems facing many CoE member countries, and countries in transition in particular, despite their good legislation and their adherence to European freedom of expression principles. These Indicators were adopted in 2008. Since then, the authorities in Bosnia and Herzegovina (from municipal to national level) have failed to show any interest either in these Indicators or in their application in the country, and in the assessment of institutional readiness to protect the freedom of expression and fundamental human rights of journalists and media professionals.

In 2010, the Association of BH Journalists and the Press Council in BiH, with the support of the Civil Rights Defenders (CRD), assumed the responsible task of preparing the first ever Shadow Report, on the basis of an in-depth and expert analysis of the results of application of the proposed CoE Indicators. The main motive behind this undertaking was to enable NGOs, media experts, human rights activists, public figures, representatives of judiciary and journalists themselves to assist the Council of Ministers of BiH, by preparing this Report and offering it to the BiH Parliament for adoption, so that it becomes its ownership and, at the same time, a binding document for legal and institutional protection of the right to freedom of expression and the right to information for all the citizens of Bosnia and Herzegovina.

The proponents of this initiative developed their own methodology of checking the applicability of CoE Indicators, which they also intend to submit to the Council of Ministers of BiH, so that it would be able to prepare such - or similar - reports in the future.

The key question that emerged - as terms of reference - was: can we ensure the applicability of laws protecting the freedom of expression and universal journalistic standards in the media in BiH and in local media environment, and how can we do it? Also, having in mind the fact that, immediately after the war, BiH has developed the media legislation, ethical standards and professional institutions and organisations based on the European model, so that it has become the most advanced country in the region of the Western Balkans, the logical additional question was: how is it possible that, in an almost ideal legal framework for the operation of media and journalists, we still notice a decline in the quality of journalism in BiH and an increase of violations of freedom of expression that assumes different forms?

This Report contains very exhaustive and comprehensive answers to both these questions, alongside precise recommendations on who to change the negative practices.

## 1. MEDIA PICTURE OF BOSNIA AND HERZEGOVINA

BiH is a divided society, which is determined by its constitutional set-up. This fact is of relevance to be able to understand its media system. The media in BiH are divided along entity, ethnic, politico-interest and economic lines.

The media market in BiH is fragmented and over-saturated. With the population below 4 million, BiH has 9 daily newspapers, 4 news magazines (and dozens of various periodicals), 6 news agencies<sup>1</sup>, and 6 associations of professional journalists. When it comes to electronic media, in addition to public broadcasting system that is also very complex (comprising 6 broadcasting services – the Federation TV and Radio, TV and Radio of Republika Srpska, and the state-level services – BHTV1 and BH Radio 1), broadcasting licence was issued to 46 TV stations, and 151 radio stations as well.<sup>2</sup> The media revenues (i.e. from advertising, RTV taxes, donations, public financing) are limited, given the high number of the media, and are estimated to app. 60 million Euros per year. About 60 % of these revenues belong to public broadcasting services.

The Public Broadcasting System of BiH was created under strong pressure of the international community. Its structure is specific and complex since it stems from the territorial and ethnic divisions that prevail in BiH, the principles of equal representation, political correctness and the so-called “ethnic key”. It consists of three public broadcasters: the umbrella broadcaster (BHRT) and two entity broadcasters – Radio and Television of the Federation of BiH and Radio and Television of Republika Srpska. The ratings and influence of the umbrella broadcaster – BHTV - is much lower than that of TV FBiH or commercial TV Pink BH. With numerous financial and human resources-related problems and frequent indirect political pressures on editorial policy, the umbrella BiH TV tries very hard to maintain its primary goal – professional, timely, balanced and politically correct reporting on the issues of interest for all the citizens of Bosnia and Herzegovina.

A recent survey (Mediaplan, 2010) on media reporting of political parties and candidates during the pre-election period indicates that even entity broadcasters are not immune to “political favouritism” and affirmative reporting only on the politically apt parties and candidates.

Conditions for the work of journalists are very difficult and unfavourable – irregularly paid and low salaries as well as undefined status and contracts that do not guarantee secure workplaces. Most of professional journalists, associations and trade unions are rather passive and fail to adequately represent the interest of their members. When it comes to media freedoms, the results of a survey done by the Association of BH Journalists and the Friedrich-Ebert Foundation shows that 35,1 % of respondents throughout BiH (i.e. 33,70% in FBiH, 36,90% in RS) consider that, in 2011, there was no, or else there was very little, media freedom in the Federation of BiH. 53,10% of respondents in BiH (64,50% in FBiH, 38,10% in RS) consider that there was no, or very little, media freedom in Republika Srpska in 2011. Likewise, 6,10% of respondents in BiH (7,90% in FBiH, 3,60% in RS) considers that inadequate legal framework is one of the main obstacles for the free operation of the media. In addition, 28,20% of respondents in BiH (26% in FBiH, 31,90% in RS) considered that the priority task was to ensure better implementation of legislation protecting journalists, in order to improve their work and the quality of their reporting.

## 2. INTRODUCTION INTO THE MEDIA LEGAL FRAMEWORK IN BOSNIA AND HERZEGOVINA

As a member of the Council of Europe, Bosnia and Herzegovina has accepted all the international human rights conventions and formally included them as an integral part of the constitutional order of the country, which means that international conventions on the protection of freedom of expression are an integral part of national legislation. The Constitution of Bosnia and Herzegovina (Annex IV of the Dayton Peace Agreement), as well as the Constitutions of both entities, expressly stipulate that, “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina”, and that „These shall have priority over all other law“ (Constitution of BiH, Article II, Paragraph 2).

The Constitution of BiH, in its Article II – Human rights and fundamental freedoms – guarantees the highest level of human rights and freedoms, the freedom of expression included. Due to the lack of political will of the authorities in both entities to ensure the creation of necessary legal framework that would enable journalists to work professionally and independently in their environment and in order to ensure that this constitutional provision is applied in practice, the High Representative passed, by the end of July 1999, the Decision on freedom of information and abolition of criminal penalties for insult and defamation (Official Gazette of BiH, No. 14/99). Entity Constitutions also contain these guarantees. Thus, the Constitution of the Federation of BiH, in the segment on human rights and freedoms, in Article 1, guarantees fundamental freedoms including “the freedom of speech and press, and the freedom of conscience and belief...”. The Constitution of Republika Srpska, in its Section II (Human rights and freedoms), Article 25, stipulates that the “Freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion shall be guaranteed”.

BiH Law on Free Access to Information (PA BiH, No. 57/00, 23 October 2000) considers information as the public good that belongs to all citizens and not exclusively to authorities, and stipulates that authorities have the duty to provide citizens with access to all

1 Data taken from the web page of the Press Council in BiH, <http://www.vzs.ba>, on 31 January 2012.

2 Data taken from the web page of the Regulatory Communication Agency, on 31 January 2012. <http://www.cra.ba/bih/index.php?uid=1273787399>

information in their possession, without a priori excluding those information that fall under the aegis of national or military security. The exemption from this obligation to provide access to information is possible only if the public interest test is done, i.e. when it is determined whether the publishing of a piece of information would be beneficial or detrimental for public. At the entity level, there is also legislation on the free access to information that is harmonised with the state-level law.

BiH Law on Communications (Official Gazette of BiH, Nos. 31/03 and 75/06), in its Article 4, defines the regulatory principles for broadcasting and telecommunications, where it is stipulated that they include „the protection of freedom of expression and diversity of opinion, while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy and impartiality“. Also, the same provision provides guarantees for „access to public telecommunication services for all users, in a transparent, objective and non-discriminatory basis, which can be provided by a telecommunications operator for a reasonable return“.

In this context, relevant pieces of legislation are also the Law on the Basis of the Public Broadcasting System and the Law on the Public Broadcasting Service of BiH (Official Gazette of BiH, No. 37/03), adopted in May 2005. The former is related to the regulation of relations between three broadcasting services (BHRTV, RTV FBiH, RTV RS) and their joint body – the Corporation of Public Broadcasting Services, while the latter regulates the issuance of licences to three public broadcasting services, giving guidelines for the adjustment of programmes so that they suit the needs of the three constituent peoples and the citizens, being broadcast in three languages and two alphabets (but without guidelines in terms of national minorities and obligations towards them); regulating the status and salaries of employees, and their obligations vis-à-vis strike.

Protection against defamation in Bosnia and Herzegovina is regulated by the Law on Protection against Defamation in the Federation of BiH (Official Gazette of FBiH, No. 59/02), the Law on Protection against Defamation of Republika Srpska (Official Gazette of RS, No. 37/01, and the Law on Protection against Defamation of Brčko District (Official Gazette of DB, No. 0-02-022-213/03). Also, the subsidiary legislation applied in this context is: Law on Obligation Relations (Official Gazette of SFRY, Nos. 29/78, 39/85 and 57/89, Official Gazette of RBiH, Nos. 2/92, 13/93 and 13/94) and the Official Gazette of Republika Srpska, Nos. 17/93 and 3/96); Law on Litigation Procedure in Republika Srpska and in the Federation of BiH; and Law on Executive Procedure that are in force in Republika Srpska and the Federation of BiH.

The media conduct during election period is regulated in Chapter 16 of the Election Law and by the Rulebook on Media Presentation of Political Parties and Candidates in the period from the day of proclamation of election to the day of election, adopted by the Central Election Commission of BiH.

Although there is no special legislation in relation to media ownership, the issue of concentration of media ownership is regulated by the Regulatory Agency's Rule and the BiH Competition Law (Official Gazette of BiH, No. 48/05), given that they are directly or indirectly involved in commercial activities.

Journalists, just like all other employees in BiH, are guaranteed the rights stipulated in the Labour Code (Official Gazette of FBiH, Nos. 43/99, 32/00, and 29/03) that relate to the obligations for employers to conclude contracts with journalists, and to make the payment, in accordance with those contracts, of contributions for health and pension insurance. Based on the provisions of their contracts, they are safeguarded that their working hours shall not exceed those stipulated by law, that they should not be denied vacation; and that they should not be paid a salary that is lower than the contracted one.

### 3. ANALYTICAL FRAMEWORK

The referential framework for this analysis are the Indicators adopted by the Parliamentary Assembly of the Council of Europe (PACE), in the form of Resolution 1636 (2008)<sup>3</sup>, pursuant to Recommendation 1848 (2008). Referring to the media principles, as a prerequisite for the attainment of full democracy in a society, PACE calls for a quality, continuous and systematic analysis of national media environment aimed at facilitating the identification of problematic issues and possible failures. Since the same recommendations were sent to the addresses of government institutions of all the countries members of the CoE, the assumption was that it will enable a unique comparative insight on the media scene of these countries, and represent a good basis for mutual exchange of experiences or for discussion aimed at creating potential activities aimed at overcoming the identified problems.

#### Indicators for media in a democracy

The Council of Europe adopted, at its autumn session held from 29 September to 3 October 2008 the recommendation that „countries shall to measure their level of media freedoms against the Council of Europe ‘indicators‘“.

03/10/2008] „The Council of Europe member states and parliaments should conduct periodic assessments of the state of their own media freedoms, measuring their laws and practice against a range of basic principles drawn up by the Council of Europe, the Assembly said today. The parliamentarians proposed a list of such “indicators” in a resolution based on a report by Wolfgang Wodarg (Germany, SOC).

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<sup>3</sup> The Parliamentary Assembly debate was preceded by a debate in the Committee on Culture, Science and Education, held on 7 July, where its Rapporteur, Mr Wolfgang Wodarg, a representative of the Socialist Group from Germany, presented the draft of this Resolution. For more details, see <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11683.htm>

## **Recommendations 1848 (2008)<sup>1</sup>**

1. The Parliamentary Assembly refers to its resolution 1636 (2008) on indicators for media in a democracy and recommends that the Committee of Ministers:

- 1.1. endorse the list of basic principles contained in the above-mentioned resolution;
- 1.2. take this list into account when assessing the media situation in member states;
- 1.3. establish indicators for a functioning media environment in a democracy, based on this list, and draw up periodical reports with country profiles of all member states concerning their media situations.

In view of the above, the Council of Europe adopted a Resolution with clear instructions and guidelines for its member states to conduct these analyses. These instructions comprise 27 defined indicators:

### **Indicators for media in a democracy in the Council of Europe member countries (Resolution 1636/ 2008)**

1. The Parliamentary Assembly recalls the importance of media freedom. Freedom of expression and information in the media is an essential requirement of democracy. Public participation in the democratic decision-making process requires that the public is well informed and has the possibility of freely discussing different opinions.
2. All Council of Europe member states have committed themselves to respecting democratic standards. Democracy and the rule of law are necessary conditions for membership of the Council of Europe. Therefore, member states themselves must permanently monitor their state of democracy. However, democratic standards are also part of universally recognised human rights in Europe and hence are not merely an internal affair of a state. Council of Europe member states must also analyse the state of democracy in all the member states, in particular at the Assembly level.
3. The Council of Europe has set standards for Europe on media freedom through Article 10 of the European Convention on Human Rights (ETS No. 5) and a number of related recommendations by the Committee of Ministers as well as resolutions and recommendations by the Parliamentary Assembly.
4. The Assembly also monitors media freedom before national elections and produces an analysis on the basis of standards set by the Council for Democratic Elections comprising representatives of the European Commission for Democracy through Law (Venice Commission), the Congress of Local and Regional Authorities of the Council of Europe and the Parliamentary Assembly.
5. The Assembly welcomes the comparative assessments of national media situations prepared, for example, by Reporters Without Borders (Paris), the International Press Institute (Vienna), Article 19 (London), and other organisations. This work provides for important public scrutiny over media freedom, but it does not relieve national parliaments and governments of their political duty to look at their own media situation.
6. The Assembly also welcomes the UNESCO media development indicators drawn up in consultation with experts from Article 19, the West African Newsmedia and Development Centre and others, which shall help determine communication development strategies within the overall context of national development.
7. The Assembly considers it necessary for a number of principles concerning media freedom to be respected in a democratic society. A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems.
8. The Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:
  - 8.1. the right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice;
  - 8.2. state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;
  - 8.3. penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed;
  - 8.4. journalists must not be subjected to undue requirements by the state before they can work;
  - 8.5. political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns;
  - 8.6. foreign journalists should not be refused entry or work visas because of their potentially critical reports;
  - 8.7. media must be free to disseminate their content in the language of their choice;

- 8.8. the confidentiality of journalists' sources of information must be respected;
  - 8.9. exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information;
  - 8.10. privacy and state secrecy laws must not unduly restrict information;
  - 8.11. journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence;
  - 8.12. journalists must not be restricted in creating associations such as trade unions for collective bargaining;
  - 8.13. media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism;
  - 8.14. journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked;
  - 8.15. regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence, which goes beyond a mere business or tax registration;
  - 8.16. media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services);
  - 8.17. the state must not restrict access to foreign print media or electronic media including the Internet;
  - 8.18. media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;
  - 8.19. if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality;
  - 8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations;
  - 8.21. public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;
  - 8.22. "private" media should not be run or held by the state or state-controlled companies;
  - 8.23. members of government should not pursue professional media activities while in office;
  - 8.24. government, parliament and the courts must be open to the media in a fair and equal way;
  - 8.25. there should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts;
  - 8.26. journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism;
  - 8.27. national parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.
9. The Assembly invites the Council of Europe Commissioner for Human Rights to draw up information reports on member states where problems exist in the implementation of the above list of basic principles as regards freedom of expression.
  10. The Assembly also invites media professionals and companies, as well as media associations, to apply and develop further the above list of basic principles applicable to the media. (The End)

## 4. METHODOLOGICAL APPROACH

Based on the 27 indicators developed by the Council of Europe to measure media freedoms (Resolution 1636 /2008), questions that thematically correspond to each of the indicators were formulated, so that they enable a detailed analysis of application/situation vis-à-vis each segment of the law related to media freedoms in the context of Bosnia and Herzegovina.

In the course of the research phase, we applied several methods of research, i.e. survey, expert analysis, focus groups, individual interviews, and desk research.

A survey of citizens' perception and public opinion on the situation vis-à-vis media freedoms in BiH was taken into account by the Association of BH Journalists and the Friedrich Ebert Foundation, on the occasion of marking the World Freedom of Media Day (3 May). The survey applied the CATI Method of telephone survey done on the sample of 500 randomly selected telephone numbers from all parts of BiH. The purpose of this survey was to get answers and interpretation on the set of questions that correspond to the indicators defined by the CoE (indicators 8.15 to 8.25), while we also collected answers for the topics related to media regulation and self-regulation.

In addition to nine expert analyses, done by experts of different profiles (jurists, media experts, and trade union activists), the method of in-depth interviews included interviews with 27 individuals who belong to the media community of BiH, or have influence on its development. The profiles of interviewed individuals is as follows: ten journalists and editors (on media legislation and regulation), five members of trade unions, two media owners, two representatives of judiciary, two representatives of civil society organisations, and two university professors, as well as one media expert and one economic expert, one representative of political parties, and an officer of BiH Press Council's Complaint Committee. In addition to analysis of the existing legislation and its practical implementation, these interviews provided responses and interpretations of the CoE indicators 8.1 to 8.24.

In the course of our survey, we organised three focus groups - in Banja Luka, Mostar and Sarajevo. The Mostar Focus Group was held on 23 March 2011, with 18 participants; in Banja Luka, the focus group met on 14 and 15 April 2011, with 15 participants of different profiles, while the focus group in Sarajevo was held on 18 October 2011, with the participation of 15 media representatives and politicians. Various issues related to the freedom of expression in BiH, and the most significant problems and challenges facing media and journalists in their daily operation, were discussed with the participants of these focus groups. This method enabled us to obtain responses to the questions relating Indicators 8.15 – 8.25, primarily those of practical implementation of freedom of expression and media freedom, as well as the quality of legal framework in BiH and the process of harmonisation and adjustment to European freedom of expression standards.

The Report below summarises and analyses the responses obtained through interviews and from focus groups, as well as the results of the above-mentioned survey. These responses reflect the knowledge and opinions of all participants based on their experience and expertise, as well as the results of expert analysis and research of the situation relating media freedoms in Bosnia and Herzegovina done on the basis of previously determined indicators.

## 5. ANALYSIS OF INDICATORS

### INDICATOR 8.1: LAWS AND THEIR IMPLEMENTATION

*The right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice.*

#### BiH context

The Constitution of BiH in its Article 2 - Human rights and fundamental freedoms - guarantees the highest degree of human rights and freedoms, including the right to freedom of expression. Entity Constitutions also contain such guarantees. The Constitution of the Federation of BiH, in its Article 1, in the segment related to human rights and freedoms, guarantees fundamental freedoms that include "The freedom of speech and press, and the freedom of conscience and belief...". The Constitution of Republika Srpska, in its Section II (Human rights and freedoms), Article 25, stipulates that the "Freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion shall be guaranteed". Due to the lack of political will of the authorities in both entities to ensure the creation of necessary legal framework that would enable journalists to work professionally and independently in their environment and in order to ensure that this constitutional provision is applied in practice, the High Representative passed, by the end of July 1999, Decision on freedom of information and abolition of criminal penalties for insult and defamation (Official Gazette of BiH, No. 14/99). This Decision required the adoption of new entity laws and the modification of the existing ones, so that defamation cases could be adjudicated in litigation procedures.

Today, in Bosnia and Herzegovina, the protection against defamation is regulated by the Law on Protection against Defamation in the Federation of BiH (Official Gazette of FBiH, No. 59/02), the Law on Protection against Defamation of Republika Srpska (Official Gazette of RS, No. 37/01, and the Law on Protection against Defamation of Brčko District (Official Gazette of DB, No. 0-02-022-213/03). Also, the subsidiary legislation applied in this context are the Law on Obligation Relations (Official Gazette of SFRY, Nos. 29/78, 39/85 and 57/89, Official Gazette of RBiH, Nos. 2/92, 13/93 and 13/94), and the Official Gazette of Republika Srpska, Nos. 17/93 and 3/96), the Law on Litigation Procedure in Republika Srpska and in the Federation of BiH, as well as the Law on Executive Procedure, which are in force in Republika Srpska and the Federation of BiH. The Law on Obligation Relations regulates the compensation of damages; therefore, some of its provisions are of relevance for the application of the Law on Protection against Defamation, since they stipulate the compensation of material and non-material damages.

Since the adoption of entity Laws on Protection against Defamation, the first-instance litigation procedure has become much shorter, while the possibility of delaying the procedure have become limited. In the original text of the FBiH Law it is stipulated that the first instance procedure in the cases of claims for damages for defamation, if defamation is expressed in the media, competent courts are those at cantonal level, while the court of second instance in those cases is the Supreme Court of the Federation of BiH. Thanks to this, there is a certain jurisprudence already built by the Supreme Court. In Republika Srpska, the situation is different, since the first-instance adjudication of these cases is the competence of basic courts. Once the FBiH Law on Protection against Defamation had been amended, the first-instance jurisdiction in these cases in FBiH was referred to municipal courts. One consequence of this change is that very few cases now appear before entity Supreme Courts.

Due to the lack of domestic jurisprudence, in the beginning, the courts applied directly international standards in this domain, particularly those contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in the judgments of the European Court of Human Rights in Strasbourg. In this domain, when the protected element is the one referred to in Article 10, Paragraph 2 of the Convention as the reputation or the right of others, there is no significant jurisprudence of the European Court in Strasbourg, since the practice of this Court is much wider, when other protected elements are subject to disputed expression, such as the interest of national security and the prevention of unrests or crimes. With the passage of time, the jurisprudence has developed to a certain extent, while the particularly significant decisions were those taken by the Constitutional Court of BiH in the context of its appellate jurisdiction. The Constitution of Bosnia and Herzegovina, just like the Constitutions of its two entities, expressly stipulate that, "The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina", and that "These shall have priority over all other law"(The Constitution of BiH, Article II, Paragraph 2). The Constitution stipulates that the application of the European Convention will have priority over all other law and that the international standards accepted in this way must be fully observed in the Federation of BiH, Republika Srpska and Brčko District of BiH. Application of the Convention, therefore, functions on the basis of the system of precedent law so that the judgments passed by the European Human Rights Court represent the binding precedents, while, in terms of legal status, they are the binding legal norms.

In theory, defamation is often defined as untruthful communication that damages the reputation of another person or as the unlawful act of intent or negligence that damages another person by making or disseminating untruthful facts to the third person. Therefore, according to the Law on Protection against Defamation of RS, defamation is actually an act of making or disseminating something that is not true and that can damage the reputation of a person, while the Federation BiH Law defines defamation as an act of causing damage to the reputation of a legal entity or a natural person by making or disseminating untrue facts about that natural person or legal entity to a third person. Main criteria for determining responsibility in such cases are: business capability

(which is not explicitly referred to, but only implied in the FBiH Law), untruthful information, and accessibility of such information to the third persons and the existence of intent or negligence. The subject of making or disseminating may be only the claims related to some event, objective state, action, phenomenon, and the like, the veracity of which can be objectively established, while claims that represent only value judgments cannot be considered defamation. Also, if a statement is made as a joke, it must be of such nature that the jocular tone is evident.

One of the greatest dilemmas in the application of law is whether the person who gives interview or makes a statement to media should be considered as the author of that statement and whether he/she should be held responsible for it, in addition to journalist, responsible editor and other persons who efficiently controlled the content of such statement. The FBiH Law makes a clear distinction between responsible person who makes a statement that is not published in the media and the responsible person who does so, wherefrom it arises that the person who gives an interview to a printed media outlet, or whose interview is recorded by an electronic media outlet, cannot be held responsible for defamation. In the legislations and jurisprudence of other European countries there is mainly no dilemma in such cases; it is considered that primary responsibility is with the person who gives a statement.

The Law stipulates that one cannot be held responsible for expressions presented in the Parliament or during court proceedings, which is in the function of protection of democratic political debate, as well as fairness and efficiency of judicial proceedings. However, there are dilemmas concerning expressions made in the course of administrative procedures and the scope covered by that formulation.

A special issue in relation to the phrase “reasonable making or disseminating expressions” is related to the presumption of innocence. The fact is that it happens very often in the media that some persons are qualified as criminal offenders, although it is a common knowledge that they have not been convicted yet by any of the competent courts. This means that the presumption of innocence, as one of the basic principles of law, is not respected in such cases. The fundamental rule is that, when making an expression, nobody should be accused for a criminal offence; unless he/she has been convicted in a final and binding verdict, such expressions represent defamation and are subject to responsibility. However, there are situations when even such an expression may be reasonable in relation to the provisions of the Law on Protection against Defamation that regulate exemption from responsibility. These are the cases when criminal proceedings are under way against a person who is the subject of such expression, which implies that a certain degree of suspicion has been established that the person in question is really responsible for the criminal offence in question.

When it comes to persons indicted by the International War Crimes Tribunal for the former Yugoslavia, or by a domestic court, as well as by a court in the region, in case someone calls such persons “war criminals”, instead of “war crimes indictees”, that would not be right in view of the theory of law, but could be “reasonable” to use that phrase in case when such persons are the so-called “fugitives from justice”, i.e. when they avoid appearing before the court that could confirm his/her possible innocence or guilt.

In judicial proceedings in cases of expressions that were made and that might be considered defamation or insult, there is the issue of who should bear the burden of proof. According to the provisions of the litigation legislation that is in force in both entities, it is the duty of plaintiff to prove all the facts on which his/her case is based, while the court’s duty is to establish facts, through free evaluation of evidence, and then to decide accordingly. Many people draw from this legal formulation a conclusion that the burden of proof in the whole proceeding is mainly on plaintiff, but it is not so. Both litigants should more equally share the burden of proof in litigation procedures, while clearer rules need to be set relating the proofs that need to be presented by each of them.

When it is up to defendant, usually a media outlet, editor-in-chief, or a journalist, to prove the veracity of his/her expression, the rule that needs to be applied is that journalists should not be obliged to present the same degree of proof as it is the case with judicial proceedings, but, instead, that it is enough to prove that the information that was published had been previously checked as truthful in accordance with the circumstances of the case in question, i.e. in accordance with standard level of journalistic professional care. In practice, it would mean that, in judicial proceedings, sued journalists are not requested to present the proofs of absolute veracity of the fact that were published, but, rather, the aforementioned degree of their possible veracity.

### Respondents’ suggestions

- For respondents’ suggestions relevant for this indicator see discussion on Indicator 8.14 - Institutional protection of journalists.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.1.A.</b>	11	47,83%	5	21,74%	5	21,74%	2	8,70%	<b>23</b>
<b>8.1.B.</b>	17	56,67%	9	30,00%	0	0,00%	4	13,33%	<b>30</b>
<b>8.1.C.</b>	21	84,00%	1	4,00%	1	4,00%	2	8,00%	<b>25</b>

Note: Table includes only those responses that respond directly to the question asked.

## INDICATOR 8.2: RIGHT TO CRITICISM

*State officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment.*

### BiH context

Ordinary citizens enjoy a significantly higher degree of privacy than public officials and public figures. Thus, a public body is not allowed to lodge a claim for compensation of damages for defamation, and if a public official does so, such a claim may be lodged solely in his/her personal capacity. Thus, Article 5. Paragraph 3 of the Law on Protection against Defamation in RS stipulates that „public official may privately and solely in his/her personal capacity lodge a claim for the compensation of damages for defamation“. Private and family life of political figures and public officials needs to be protected, but information about their private life can be presented to public when it has a direct relevance for the manner in which they sued to perform, or perform their function.

Laws have established a hierarchy of values in line with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that relates to guaranteed freedom of expression and information, on the one hand, and the right of individuals that could be violated by a piece of information, on the other.

Declaration on the Freedom of Political Debate in the European Union, in its Article 3 stipulates that persons in public office must be prepared to stand greater criticism due to the very fact that they hold a public position.

Article 8 of the European Convention for the Protection of Human Rights and

Fundamental Freedoms contains a provision relating the right to the protection of private and family life: „1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others“.

### Summary of responses/discussion

In practice, politicians and judges enjoy greater protection than journalists or media - it is a unanimous conclusion of interviewees, respondents in our survey, and focus groups' participants. Differences in opinions occur when it comes to the quality of legislation. Some of them claim that the laws regulating the right of journalists to criticise those in power are good, but that their implementation is problematic, while others claim that the laws cannot be good if they are not implemented. It was mentioned that some legal acts (Criminal Code of BiH) have some shortcomings, while, in the domain of practice, it is important to emphasise the role of courts and judges, since it often happens that in court proceedings there is prejudice vis-à-vis the interpretation of quality of evidence, their relevance and vis-à-vis some laws; some people think that there are too many rights on both sides of the equation, which suits everyone in a divided society such as Bosnia and Herzegovina.

### Respondents' suggestions

- A package of programmes needs to be developed to raise general level of media culture; each of these programmes needs to be focused both on media public and politicians. The associations of journalists and the Faculty of Political Science need to do more in order to educate politicians and journalists as it was done when foreign foundations used to fund such programmes.
- The Criminal Code needs to be improved so that journalists get more effective protection, as well as to punish the perpetrators of attacks on journalists, but also to raise the level of responsibility for the words one expresses in public.
- Laws need to undergo revision and critical analysis so that those things in them that are bad, outdated, or contrary to international norms, are changed.
- We request not only from journalists, but also from politicians and from public and religious figures and dignitaries, to show greater responsibility: We also expect this from journalists, because they are the ones who shape the opinions of ordinary people.

	YES	%	NO	%	No statistics	%	Don't know/Neutra	%	No. of responses
<b>8.2.A.i.</b>	13	39,39%	12	36,36%	1	3,03%	7	21,21%	<b>33</b>
<b>8.2.A.ii.</b>	23	69,70%	2	6,06%	1	3,03%	7	21,21%	<b>33</b>

*Note: Table includes only those responses that respond directly to the question asked.*

## INDICATOR 8.3: HATE SPEECH, POLITICISATION OF LAW AND THE RIGHT TO FREEDOM OF EXPRESSION

*Penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed.*

### BiH context

The freedom of expression may be in collision with other rights protected by the European Convention, such as the right to fair trial, the right to protection of private life, the right to belief and religion, as well as with the provisions of the national legislation against instigation of hatred and against threatening public law and national security. The European Convention regulates the rights covered by this indicator in Article 10, Paragraph 2 (conditions under which the provision of information can be limited), and by Article 8 - Right to respect private and family life.

However „jeopardising national security or territorial integrity and independence“ is defined very generally and it can be interpreted broadly and, consequently, is an easy subject to manipulation.

The issue of hate speech is regulated also by the Criminal Code of FBiH, the Criminal Code of RS and the Criminal Code of Brčko District. According to these laws, it is prohibited „to publish information and opinion that instigates discrimination, hatred or violence against persons or group of persons because of their belonging to a religion, ethnic group, sex or because of their sexual orientation“. However, despite this clear stance vis-à-vis hate speech and the initial success achieved by the Regulatory Communications Agency to introduce some order in electronic media, one must say that it is again present, particularly in pre-election periods. Some of the printed media that often quite openly promote individual political parties and run open campaigns – all in contravention of ethical standards. The pre-election campaign before the 2010 General Elections demonstrated that some electronic media, even some public broadcasting services, took part in the campaign without paying attention to the language they used, which sometimes got close to hate speech.

The Criminal Code of BiH does not regulate explicitly the right to freedom of expression, which needs to be done in order to facilitate judicial proceedings.

The Law on Free Access to Information treats information as a public good that belongs to all citizens and not exclusively to authorities, and it stipulates that the authorities have a duty to provide citizens with access to every information, without excluding a priori even the information in the domain of national or military security. Exemption from this rule is possible only after conducting the public interest test, i.e. after establishing whether the publishing of an information would bring more damage, or more benefit to public in general. A problem with this law is related to the fact that sanctions for denial of information are foreseen only at the state level (amendments), while, at the level of entities and Brčko District, there are no sanctions foreseen. This is why we have to insist on the modification of those laws.

### Summary of responses/discussion

Results of the survey conducted by BH Journalists and FES indicate that 68,30% of respondents in BiH (69,20% in FBiH, 66,70% in RS) think that it was mainly political parties and politicians who violated journalist's rights and media freedoms in BiH in 2011. Also, 63,75% of respondents in BiH (64,22% in FBiH, 63,46% in RS) agree that one of most frequent objections relating the work of journalists that comes from politicians and influential figures is that their reporting is politically motivated.

Some respondents emphasised that, thanks to good legal framework, this indicator is not problematic (33 %), while most of respondents disagreed with this view (56 %). There was not a single case of imprisonment of journalists because of defamation; moreover, some journalists do not get punished even when they should have been; their hate speech and references to religious intolerance is often ignored, while other journalists get sanctioned even when they respect the principles of their profession. Some journalists tend to report professionally and objectively, resisting the trap of becoming the “captives” of nationalistic and political options; however, they are rare, whereas most of the stories published in our newspapers are viewed through the prism of daily politics. Politicians are very sensitive to critique so they tend to exert either direct or indirect pressure on such journalists, e.g. threatening them that they would be sacked, financially sanctioned, subjected to inspections, etc. In addition, some of respondents are of the opinion that some judges are under political influence, while they do not grasp the very essence of the right to freedom of speech. They also think that politicians should show more tolerance to criticism.

### Respondents' suggestions

- A revision of the criminal legislation of BiH needs to be done to check whether it is in line with the current standards and decisions of the Council of Europe.
- A journalist is entitled to protect his/her sources and enjoy the freedom of expression- Amendments are necessary in the criminal codes at all levels to enable the criminal proceedings for the violations and denial of the right to freedom of expression. It would be good to have a provision in the criminal laws that protects the freedom of expression.

- Legislation, particularly by-laws, needs to include the possibility for journalists to have the right to adequately report on private matters of public figures, because, very often, their private life is linked to crime and the misuse of official position.
- Laws definitely require amending, particularly when it comes to confidential data, so that journalists, in their effort to inform the public on relevant issues, are not at risk of breaching the law. We need to insist on the modification, i.e. adjustment of entity and Brčko District legislation that regulate free access to information, because only the state-level law envisages sanctions for denial of information. Future debate needs to point at the methodology of modifications, but it is more than clear civil servants when it comes to granting or denying information, which jeopardises the regular operation of the media. How to formulate those provisions is still to be decided.
- It would be much more efficient if the Law on Free Access to Information would incorporate the so-called “double sanction” for those who deny information and thus break the law: a sanction against the responsible official, and a sanction against the officer who actually denies information. This does not require any modification of the Criminal Code, by specific laws, which are much easier to amend (at the level of entities and Brčko District).
- The institution of media ombudsman does not exist now and needs to be introduced as an additional regulation and self-regulation instrument. Then, we would have sanctions, since sanctions are always repressive and it is difficult to built moral responsibility by way of sanctions.
- We need to change legislation in terms of administrative procedure to make decisions enforceable by court.
- There is a problem of accessibility of laws and legal acts since it is unclear which version of the law is in force. In this respect, competent institutions must be obliged to publish those versions of law that are in force and those legal acts that are harmonised so that they are both accessible to public and public and consistently implemented.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.3</b>	6	33,33%	10	55,56%	1	5,56%	1	5,56%	<b>18</b>

*Note: Table includes only those responses that respond directly to the question asked.*

## INDICATOR 8.4: CRITERIA FOR EMPLOYMENT OF JOURNALISTS

*Journalists must not be subjected to undue requirements by the state before they can work.*

### BiH context

In Bosnia and Herzegovina, there are no official requirements for those who want to be journalists, except for those relating adequate degree and type of education and the criteria introduced by the management of public broadcasting services, or some private media outlets (work experience, motivation, reference and recommendations, trial period). This indicator is related to Article 19, Paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### Summary of responses/discussion

Results of the survey conducted by BH Journalists and FES in 2011 indicate that 9,90% of respondents in BiH (10,30% in FBiH, 8,70% in RS) think that insufficient professionalism was one of the main obstacles for the free work of the media. Also, 17,10% of respondents in BiH (18,80% in FBiH, 14,90% in RS) considers that, firstly, the criteria for recruitment into journalistic profession must become stricter in order to improve the quality of reporting, while 32,2% of respondents in BiH (28,70% in FBiH, 37,90% in RS) thinks that, for this to be achieved, the system of education of journalists should be improved first.

Hyper-production of journalists, brain-drain, development of online media, low level of the quality of education, interests of media owners, and inadequately qualified professors who teach at the schools of journalism, are all the factors that jeopardise the profession of journalism in BiH. Respondents generally consider that a kind of licence or professional exam needs to be introduced that would be mandatory for all those employed in the media. Criteria and decisions should be established by professionals (media organisations, journalists' associations), and not by authorities. However, in the present situation, it is very difficult to develop a test that would be credible and to make a commission that would do it in an impartial fashion. Regarding the education of journalists, there are many departments for journalism at the universities in BiH, and the problem lies in the faculty staff as well as in the fact that there is no practical training for students of journalism in the course of their studies. Also, in the process of employment – irrespective of whether it is in private or public media – those who get employed easier are the so-called “politically apt” journalists, rather than those who are professional and good. In the process of life-long learning more courses providing additional training and specialisation in various thematic areas and skills need to be introduced.

### Respondents' suggestions

- Journalists need to respect the standards of their profession; they should be obliged to do so by signing a statement wherein they should commit themselves to respect professional standards prescribed by their Code of Conduct.
- Even before the professional exam, and during journalistic practice, it is necessary to introduce workshops that would help journalists to abide by professional standards, while issuance of certificates after, say, a year of practical work in the media would be a confirmation that would eventually result in the positive selection of journalists.
- There should be an aptitude test for journalists in terms of capacities and skills, as well as the test of ethical characteristics and other characteristics required from journalists, such as rhetorical skills, eloquence, capacity to keep the attention of audience, understanding of text, etc.
- Journalists should not be “general practitioners”, but should specialise in different fields. It is not enough to have a university degree for someone to be a journalist, such a person should undergo additional professional training in a certain area.
- When employing a journalist, it should be done on the basis of market rules, so that those journalists who are knowledgeable in a specific area are employed. Generally, educated journalists should have priority over others.
- Conditions and terms of employment should not be set by government. The journalistic community needs to set more rigorous requirements for journalists working in public broadcasting services.
- Decisions on licensing should also be taken by professionals, rather than by a state body.
- Standardisation and testing, including a psycho-test, need to be introduced. Psycho-tests were part of regular practice in the previous period. This negative situation can be changed by good legislation, e.g., by media laws and laws on public broadcasting services. It should be absolutely clear how systematisation is done.
- Rulebooks on the nomenclature of professions are decided by a couple of people in the ministries. Issues of importance for the journalistic professions are: how to make (or revise the existing) nomenclature? Do we need to work on systematisation during education, or within the media outlet? The value of journalists' performance can be determined on the basis of systematisation, i.e. “wage grades”.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.4.A</b>	0	0,00%	26	100,00%	0	0,00%	0	0,00%	<b>26</b>
<b>8.4.B</b>	18	100,00%	0	0,00%	0	0,00%	0	0,00%	<b>18</b>
<b>8.4.C</b>	26	96,30%	1	3,70%	0	0,00%	0	0,00%	<b>27</b>
<b>8.4.D</b>	14	82,35%	3	17,65%	0	0,00%	0	0,00%	<b>17</b>

*Note: Table includes only those responses that respond directly to the question asked.*

## INDICATOR 8.5: BALANCED REPORTING ON POLITICAL SUBJECTS

*Political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns.*

### BiH context

The media conduct in election periods is regulated by Section 16 of the Election Law and by the Rulebook on Media Presentation of Political Subjects in the period from the announcement of elections to day elections are held. This Rulebook was adopted by the Central Election Commission of BiH. According to the provisions of the Election Law, electronic media must abide by the principles of balance, fairness and impartiality. Thus, no political subject can have a privileged position vis-à-vis other participants in election process, whereby the Central Election Commission sets the rules on timeslots allocated to different political subjects. Cases of violation of election rules are decided by the Regulatory Communication Agency.

Also, the Law on Communications includes rules for political radio and television programmes in the period prior to elections.

### Summary of responses/discussion

In Bosnia and Herzegovina, it is impossible to have equal access to the media for all political subjects during the pre-election period, primarily, because there is a great number of active political parties and candidates. There is also a major problem of political influence on the media and their editorial policy. The media are exclusively ethno-political and most of them give priority to specific political parties and attack or ignore others. The pre-election campaign for the 2010 General Elections demonstrated that not only the private media, but also public broadcasting services, have their political favourites. The exception was BHTV1, which formally provided space to all political candidates and parties, but the problem with this media outlet is its low rating and minimum public influence. The most evident political affiliations were seen in the private media, which, in the context of different political and ownership interests, turn into the „loudspeakers“ or party bulletins of specific political parties. The Press Council does not have any mechanism to sanction biased reporting. On the other hand, some respondents think that the media are entitled to have a political stance, particularly if they are privately owned. Private media have financial and existential interests, therefore, only those private media that are fully independent can be independent from political parties.

### Respondents' suggestions

- There must be a way to prevent the use of private media in election campaigns, both in relation to electronic and to print media. This problem needs to be legally defined. Parties with the backing of popular media outlets show the election results that are proportionate to the popularity and ratings of those media outlets, regardless of what they offer to their electorate.
- It is necessary to prescribe an obligation to cover all political subjects, or else, sanction should be introduced, alongside a provision stipulating that sanctions shall be enforced in a summary procedure.
- The election radio and television programmes need to be shaped so that audience gets informed about essential issues contained in the political platforms of different parties and about the promises they make in the pre-election campaign, with full observance of the principle of fair treatment of all parties involved in elections.
- A law regulating that during the month of pre-election campaign, only issues related to election campaign and the presentation of political parties may be presented in the media, needs to be adopted.
- Laws are very restrictive. They should distinguish general from local elections, which would help the media to provide a better quality of coverage.
- A law should be adopted to regulate that only the issues related to campaign and party presentation should be included in the political programmes in the media during the pre-election and election month.
- The greatest share of responsibility should be born by the Central Election Commission. The efficiency of CEC is problematic when it comes to the protection of media reporting. There must be some sort of regulation to prevent misuse, since CEC is responsible for the whole election process, the integral and unavoidable part of which is the media presentation of political subjects. In doing so, CEC needs to transfer some of its competences on the Press Council.
- The media Codes of Ethics and the CRA rules need to regulate the work of journalists who are affiliated to political subjects (e.g. „freezing“ their functions during the pre-election campaign).

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.5.A</b>	5	15,63%	26	81,25%	0	0,00%	1	3,13%	<b>32</b>

*Note: Table includes only those responses that respond directly to the question asked.*

## INDICATOR 8.6: FREEDOM OF WORK FOR FOREIGN JOURNALISTS

*Foreign journalists should not be refused entry or work visas because of their potentially critical reports.*

### BiH context

This indicator is related to the following provisions of the Law on Movement and Stay of Aliens and Asylum: Article 7, Paragraph 1 (“An alien may enter BiH and stay in its territory with a valid travel document to which a visa or residence permit is affixed, unless otherwise provided under this Law or an international agreement. The entry, stay, movement and exit of aliens may be restricted under the terms provided under this Law or another law.”), and Article 11, Paragraph 1 (“When an alien intends to reside in BiH for the purposes of paid employment, he/she must have a work permit issued by an authority in charge of alien employment affairs in accordance with the provisions of this Law or other laws in BiH regulating the issues of alien work, unless this Law or an international agreement provide that no work permit is required for specific types of work.”).

### Summary of responses/discussion

Respondents were unanimous that journalist should not be denied visa when they want to come to report.

### Respondents' suggestions

- Entry into BiH is too liberal and should be somehow regulated.

	YES	%	NO	%	No statistics	%	Don't know/Neutrač	%	No. of responses
<b>8.6</b>	15	100,00%	0	0,00%	0	0,00%	0	0,00%	<b>15</b>

## INDICATOR 8.7: PROGRAMMES IN THE LANGUAGES OF MINORITIES

*Media must be free to disseminate their content in the language of their choice.*

### BiH context

The freedom of the use of language in the media primarily relates to the public media, which have the obligation to secure an equitable broadcast of the programmes in the languages of three constituent peoples. This is regulated by the Law on the Bases of the Public Broadcasting System and the Law on Public Broadcasting Service of BiH, adopted in May 2005. The former relates to the regulation of relations between three public broadcasting services (RTV BiH, RTV FBiH, and RTV RS) and their joint body – the Corporation of Public Broadcasting Services. The latter regulates, inter alia, the licensing of the three public services, gives guidelines for their programmes so that they serve the needs of the constituent peoples and citizens in three languages and two alphabets. However, these laws do not give guidelines relating the use of languages of national minorities and other obligations towards them. The legislation of BiH and international documents (Framework Convention on the Protection of National Minorities and the European Human Rights Convention) do not define the concept of „the media for national minorities“. This shortcoming makes room for free interpretations, so that those media that are managed and edited by the representatives of minority communities, and those that are broadcast, i.e. printed, in the languages of minorities, as well as those that dedicate a segment of their air-time for contents dedicated to minorities, or provide information in their languages. This is the principle on which the public broadcasting services in BiH are based; they broadcast such programmes once a week.<sup>4</sup> The state and entity Laws on the Protection of the Rights of National Minorities regulate the issue of programmes in the languages of national minorities.

### Summary of responses/discussion

The majority of respondents think that there are limitations in terms of the choice of language in the media. Insistence on the languages of constituent peoples in the programmes of public broadcasting services pushes aside the programmes in the languages of national minorities, which are almost non-existent in the media of BiH. This is proven by the survey, where only the minority of respondents (42 %) think that there are such programmes, yet not the media, broadcast in the languages of national minorities and that, in any case, they are not sufficient.

Regarding the introduction of a broadcasting service in the Croatian language, some respondents think that it should exist, while others consider that it is a purely political issue. Those who support the existence of such a service, they think that it should be introduced as the right of citizens, not as an interest of politicians. Croatian language is already very much present in the programmes of public broadcasting services, such as BHT and FTV, but not RTRS.

### Respondents' suggestions

- News presenters should present news in the three languages of constituent peoples so that one day it is done in Bosnian, the next day in Croatian and then in Serbian, so that all three languages referred to in the Constitution of BiH is represented.
- Public media must have a harmonised and very sensitive language policy so that nobody feels deprived. This policy needs to be respected, because any other option leads to conflicts and politicisation.
- It is an obligation of public broadcasting services to produce programmes in the languages of minorities, irrespective of their size, in their regular programmes and not only on the occasion of their holidays.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.7.A.</b>	12	57,14%	8	38,10%	0	0,00%	1	4,76%	<b>21</b>
<b>8.7.C.</b>	8	42,11%	11	57,89%	0	0,00%	0	0,00%	<b>19</b>
<b>8.7.D.</b>	9	40,91%	12	54,55%	0	0,00%	1	4,55%	<b>22</b>

<sup>4</sup> Although the public services in Bosnia and Herzegovina are legally obliged to broadcast weekly programmes in the languages of national minorities, such an obligation is not fulfilled by any of the three public broadcasting services. Financial problems and the lack of human resources, is an alibi used by the public services for the absence of programme strategy focusing on minorities and for their failure to organise trainings for its collaborators to make them qualified to cover the minority-related topics. See in Udovičić, Z. 2008, „Ideal nije manjinski geto“, Media plan institut, Sarajevo, pp. 97–100.

## INDICATOR 8.8: CONFIDENTIALITY OF SOURCES

*The confidentiality of journalists' sources of information must be respected.*

### BiH context

Relevant legislation stipulates that journalists or other natural persons, who obtain information from confidential sources, are entitled not to disclose their identity, which is a sort of privilege, since it enables them to obtain information that could not be obtained in the regular procedure, because of their potential impact on some individuals holding senior positions. Although the right to protect the anonymity of sources is not explicitly mentioned in Article 10 of the European Convention, it is included in Article 9 of the Law on Protection against Defamation of the FBiH and Article 10 of the same Law in RS, both of which stipulate that journalists and other natural persons, who are regularly or professionally involved in journalistic activity of searching for, receiving or disseminating information to public, and who obtain information from confidential sources, are entitled not to disclose the identity of their sources. This right is further expanded, so that the right not to disclose the source of confidential information relates to every other natural person who participates in the procedure stipulated by these laws, and who, as the result of their professional relation with a journalist, finds out the identity of confidential sources. This right is also ensured by the Code on the Broadcasting of RTV Programme, which explicitly stipulates that journalists do not have to disclose the source of their information, if they do not want to do it.

These laws are defined very precisely and explicitly, and provide for a broad spectrum of protection of the rights to freedom of expression and, therefore, the right not to disclose the source of information is not disputed in practice. A high degree of protection of these rights also provides basis for investigative journalism. One could even conclude that our laws in this respect are ahead of the provision in the European Convention.

### Summary of responses/discussion

Most respondents consider that laws that regulate the confidentiality of sources in journalism are not observed in practice (58 %), and that individual cases need to be analysed to be able to assess the situation in this respect. Problems are, partly, related to the fact that judicial bodies do not respect legal provisions and to the fact that there are numerous other kinds of pressures exerted on journalists to disclose their sources. On the other hand, as respondents notice, journalists also misuse this right to protect themselves, when they publish information of dubious veracity, sometimes even insults or total fabrications. However, the media market „punishes” this practice, since journalist lose credibility if they use too many secret sources of information.

### Respondents' suggestions

- Provisions of relevant laws that relate to the confidentiality of sources need to be modified in order to safeguard the right of journalists to protect their sources of information so that the legal responsibility of journalists is excluded when they do so.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.8</b>	7	36,84%	11	57,89%	0	0,00%	1	5,26%	<b>19</b>

## INDICATOR 8.9: RIGHT TO EXCLUSIVE REPORTING

*Exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information.*

### BiH context

A drastic case is that of the Government of RS during Mr Milorad Dodik's tenure as the Prime Minister, because he issued an order to his Cabinet not to give statements to some media outlets (e.g. FTV, ATV).

### Summary of responses/discussion

One respondent said that he had not been faced with attempts to give an exclusive status to some media outlets, while another stated that, if such cases do exist, the information about them is not verified and that they have no impact on public. All other respondents stated that they had experienced this practice, but that there are different reasons for it. Some journalists have advantage because of their professional experience, their responsible attitude towards profession and their seriousness, as well as because of the media outlets they work for. The fact that politicians have their own favoured media outlets where they prefer to place their information is something that is accepted by journalists themselves, so that a form of biased and exclusive reporting reserved for selected media on the events of general public interest has been created. On the other hand, as the respondents claim, there are continuous attacks made by some media outlets on some of the journalists.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.9</b>	23	95,83%	0	0,00%	0	0,00%	1	4,17%	<b>24</b>

## INDICATOR 8.10: ACCESS TO INFORMATION VS. PRIVACY

*Privacy and state secrecy laws must not unduly restrict information.*

### BiH context

The adoption of the Law on Free Access to Information at the level of BiH has brought about a positive change, since this Law (unlike the entity and the Brčko District laws) envisages sanctions, i.e. fines up to 15,000 KM, for officials who deny access to information. The Law sets forth the 15-day deadline for the provision of information when formal request is submitted. Such requests referring to this Law may initiate administrative proceedings, if a piece of information is denied. In practice it happens that, on the pretext of „protection of privacy“, there are attempts to hide the activities of public officials related to their public function, or those linked to criminal groups or criminal offences, on the basis of the protection of privacy and the secrecy of data. On the other hand, the protection of secret data is regulated by the Data Protection Law. This Law is partly in collision with the Law on Free Access to Information, since it allows automatic exceptions from the publishing of information that fall under its scope.

### Summary of responses/discussion

Relating the applicability of this indicator in BiH, respondents' opinions are divided – 45 % of respondents think that it is applicable, and another 45 % consider it inapplicable in practice in BiH, while 9 % did not have an opinion given the lack of adequate statistics. The fact that from 2007 to 2010, there were 150 cases of journalists initiating procedures corroborates the assertion that this indicator is applicable in BiH. Yet, the 15-day deadline influences the topicality of the obtained information, so that, often, the fact that this deadline is not observed serves as an argument for those who think that this indicator is **inapplicable**. On the other hand, as many as 93 % of respondents think that in this respect there are limitations to the access to information. Most frequently, access to information is indirectly denied, by way of avoidance. So far, there were no judicial proceedings relating the violation of this right of journalists. In RS, authorities have prevented full implementation of this Law, when, in 2006, they adopted a decision to deny access to government sessions' stenograms. In an additional analysis, respondents emphasized that a balance should be struck between military, political and business secrets, and the need of public to be informed. Two laws are in collision here - the Data Protection Law and the Law on Free Access to Information – so that politicians often use the Data Protection Law in order to hide the activities related to their function or those linked to corruption and crime. We have a case of the removal of politicians' financial disclosure information from the Central Election Commission's webpage, or the application of a new Rulebook on Access to Information by the Court of BiH, which is restrictive for journalists and limit the freedom of access to information of relevance for the citizens of Bosnia and Herzegovina.

### Respondents' suggestions

- To be able to discuss more competently about the application of laws, including the Law on Free Access to Information, we need to analyse continuously, and inform public about it, i.e. we need to propose measures that would improve access to information and, thus, facilitate the work of journalists and the media.
- For this indicator, the same suggestion is valid as for the previous one: to harmonise entity and Brčko District laws with the state Law so that they all contain provisions on sanctions for the cases of denial of information.
- A great burden lies on the country's courts since they are the ones that decide on a case-by-case principle, so it is impossible to establish a standard set of criteria.
- Based on discussion in the expert group, three conclusions were drawn: cases of denial of information that are in the interest of public do exist; practice needs to be harmonised at different levels of government (state, entities, and Brčko District); a manual needs to be developed for the application of this indicator in practice.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No. of responses
<b>8.10.A</b>	5	45,45%	5	45,45%	1	9,09%	0	0,00%	<b>11</b>
<b>8.10.B</b>	13	92,86%	1	7,14%	0	0,00%	0	0,00%	<b>14</b>

## INDICATOR 8.11: WORKING CONDITIONS FOR JOURNALISTS

*Journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence.*

### BiH context

Results of the survey conducted by BH Journalists and FES indicate that 43,50% of respondents in BiH (44% u FBiH, 43% u RS-u) consider that journalists need to have better material and financial status and that it is the prerequisite for the improvement of journalistic work and the quality of reporting.

Provisions of the Labour Code at the level of entities and Brčko District are of relevance for this indicator, since they guarantee the rights and adequate working conditions for journalists, just like they do so for any other employed person. In accordance with the Constitution of BiH, the area of labour and social rights in the country is the exclusive competence of entities and there is not a single Labour Code at the state level that would regulate the basic principles in the domain of labour relations. In addition to the Labour Code, the relevant acts are also the Collective Agreement, the Law on the Council of Employees, the Law on Strike, the Law on the Employment of Foreigners, the Law on Mediation in the matters Concerning the Employment and Social Security of Unemployed Persons, the Law on Professional Rehabilitation and Employment of Disabled Persons and the Law on Occupational Health and Safety – all adopted at entity level. Divisions within the state have crucial impact on overall legislation. Labour legislation is rather well developed, but in many segments it is not harmonised across BiH and it often happens that it is not applied as envisaged in those very laws.

Journalists, like other employed persons in BiH, have the guaranteed rights contained in the Labour Code that are related to the obligation of employers to conclude contracts with them and to make the payment of health and social insurance done pursuant to those contracts, that their working hours can not exceed those prescribed by the law, and that they are entitled to paid annual vacation and paid leave-of-absence, as well as that they should not receive the salary below the contracted one. Therefore, all rights that are guaranteed to other employed persons are guaranteed to journalists as well. Unfortunately, in BiH, this is not the practice, not only for journalists, but also to those employed in other areas.

Labour legislation in both entities contains a number of provisions that should provide effective protection of human rights and freedoms. However, the problem in practice is with the implementation of those laws, i.e. there are constant breaches of fundamental rights of employees. A significant drawback is the lack of a state-level Labour Code the provisions of which would apply across the country. These provisions would regulate the fundamental postulates in this area, as well as accompanying instruments that would ensure the implementation of this law, both by the administration and by judiciary. Likewise, there is a constant problem of realisation of rights in the Federation of BiH, due to its decentralized structure, and its division to cantons, and due to the lack of harmonisation of laws in this entity itself (between cantons and between cantons and the Federation) as well as with those in RS. The problem occurs due to the division of competences between entity and cantonal inspections, so that trade unions and individual workers often do not know whom to address. Tax inspections control only the payment of contributions and the cases of “moonlighting”, while labour inspections that should protect the rights of employees are mainly non-efficient.

The shortcomings in labour legislation are also related to the enjoyment of the right to paid vacation and leave-of-absence. In this segment, the Labour Code is generally harmonized with the ILO Convention 132 on paid annual vacation. However, the Labour Code does not regulate the amount of compensation for salary during annual vacation, or the right to reimbursement for annual vacation. The provisions of regulations that are in force in the domain of labour vis-à-vis the rights of women employees, during maternity leave, are harmonised with the ILO Convention. However, this issue is not solved in the same manner in the two entities, while, in FBiH there are differences between cantons.

Other forms of protection of the rights arising from labour relations that involves procedures before the third, impartial institutions are also greatly flawed. Judicial protection, due to the way the system of labour relations is structured in BiH, is often the first instance of protection of employees’ rights, but, at the same time, the most complicated, the most expensive and the longest one. Practically, there are no legal sanctions for employers who fail to pay contributions for health and social protection.

Right to salary is one of the basic rights of every employee. The Law stipulates that the termination of work contract must be done in writing with a detailed explanation of reasons for the termination and the mandatory hand-over of such a decision to employees. The Labour Code of FBiH and RS regulate the obligation of employers to pay severance pay to employees with work contracts on an indefinite period of time, who get fired after the minimum two years of uninterrupted employment with the same employer, under the condition that the termination of their contracts is not the consequence of their violation of duties at work.

Amendments to the Labour Code of the FBiH changed the provisions relating the duration of work contracts. According to earlier provisions, work contract could be concluded for an indefinite period, and only in some legally defined circumstances, it could be done for a definite period of time. According to the provision that are now in force, work contract may be concluded both for an indefinite and for a definite period of time; this may be the provision that is most frequently breached by media employers. Both the Labour Code and the Collective Agreements fail to precisely define the concept of “the termination of labour relation due to economic, technical or organisational reasons” and this formulation is misused by employers by private and, sometimes, even by public media, when they decide to terminate work contracts with journalists.

Also, the aforementioned amendments deleted the provisions on mandatory contract done in writing and the obligation to hand over contracts to employees that were included in the previous version of the Law. These amendments envisage that employers, if they fail to hand over to employees their contract in written form, have to hand over a written statement within one month to the employees employed for an indefinite period of time, whereas those employed for a definite period of time should receive this statement on the day they start working. Mandatory written contract still exists when contracts are concluded for temporary or occasional assignments.

Another shortcoming of work contracts is that they do not contain precise obligations for journalists, nor is there a definition of the scope of their work. Such contracts are inadequate and very often they do not abide by the legally defined norms. A particular problem is the trend of employment of the media staff formally on a part-time basis, while they actually work full time. An ever-growing number of employees work on contracts concluded for a definite period of time, i.e. for 2 years only. However, many media employees work with these contracts for 5 or 6 years.

The aforementioned amendments of the Labour Code of FBiH introduced in 2000, deleted the provisions on the right of employees to social insurance, health protection, etc., probably because these elements are regulated by a special regulation. The Labour Codes of RS and Brčko District include an obligation to report employees for the purpose of their health, pension and disability insurance, as well as for their insurance against occupational incidents. All these types of insurance are mandatory. This is where the problems of inability to realise the right to compensation for unemployment and health insurance occur. Furthermore, some employers do not make payments into the social insurance fund, which includes both pension and disability contributions. According to entity Laws on Pension and Disability Insurance, only the work that is covered by these contributions is counted as the years of service by which the size of pension is calculated.

Likewise, the Labour Code of the FBiH does not recognise the concept of mandatory employment and recruitments of employees by way of public vacancy notices, while in the RS Labour Code this is mandatory.

Recently, we hear more and more frequent about mobbing as one of the grave problems facing media employees. In the Law on Prohibition of Discrimination in BiH, this phenomenon is defined as "every form of non-physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee's working conditions or professional status as a consequence". The Labour Code of RS also regulates mobbing, while the Labour Code of the FBiH does not include it, nor does it mention mobbing as a phenomenon. In 2009, with the adoption of the Law on Prohibition of Discrimination in BiH, fight began against this phenomenon that is very difficult to prove, yet one that is getting more and more frequent. A significant provision of this Law is that the burden of proof lies on the defendant, and not on the plaintiff.

### **Summary of responses/discussion**

Two respondents said that there are not enough data to analyse this indicator. Several of them think that the situation in BiH varies, and that some employees have both contracts and good salaries, while others have neither of the two. Most of respondents consider that, just like in other sectors, the situation in BiH is very bad when this issue is concerned. Many journalists have neither work contract, nor any social insurance. In many cases, even those journalists with valid contracts are not protected, either in terms of social protection or against arbitrary sacking; this is registered even at FTV and BHT, although the greatest problem is with small, private media. There are positive examples of the media, e.g. Euro Bloc, where every employee is protected by a work contract, which is regularly checked by inspection, still, many of them have very low salary (200 - 400 KM), irrespective of degree of education. There are different pressures exerted on journalists and it influences the objectivity of reporting, even in the case of good journalists, who given in when they feel that their existence is threatened.

### **Respondents' suggestions**

- Journalists should not have fears, or restrain from their struggle for status, because they have both strength and power to act through the media, be they electronic or printed. If any employee in other branches of industry would have so powerful means in their hands, there won't be thousands of unemployed persons in the country.
- We have to know the structure of capital first; in private media, it is 100% private, while citizens pay tax to public broadcasters. Nevertheless, media owners do whatever they wish, which should be prevented by trade unions, associations, through judiciary, reports, and other different measures. Without those elements, one cannot have the dignity as a human being, a worker, and an employee. As long as this is not done, journalists will not be protected even when laws and ethical codes are violated.
- One could say that entity Labour Codes are mainly based on fundamental principles of the conventions the country has acceded. However, we need to ensure a higher degree of harmonisation of labour regulations with those conventions, and consequently, progress will be made in the realisation of a higher degree of social justice.
- Women's rights at work in relation to maternity leave should be regulated in a harmonised manner across BiH.
- Some legislative acts should be adopted at the state level because they would at least set basic provisions, definitions and obligations in this area. It would be necessary to introduce instruments to control the application of laws. The Committee for Economic and Social Rights has emphasized the necessity to adopt the Law on Economic and Social Council at the state level.
- Given that Bosnia and Herzegovina is a complex state administratively, with divided competences in the area of socio-economic rights, better coordination between different levels of government in the domain of social policy would contribute to the harmonisation of regulations and the elimination of discrimination of beneficiaries of social protection in the country.

- Trade unions need to urgently consolidate their activities to provide adequate protection to workers throughout BiH. Labour legislation needs to be adopted at the level of BiH; the state Economic and Social Council needs to be formed.
- Improvement is certainly needed in terms of extended competences of labour inspections and they need to have instruments for implementation of laws at their disposal.
- Amendments to legislation in this domain needs to secure the possibility of workers who do not have contracts to seek protection from labour inspections, i.e. the labour inspection should be able to establish evidence aimed at the realisation of labour rights, which is now solely in the competence of courts.
- Extended competences of labour inspection so that labour inspectors are authorised to issue decisions to annul work contracts, in cases they establish that they are detrimental for workers.
- It is difficult to harmonise the work of inspections because, in FBiH, they are at the cantonal level and for this reason it is impossible to seek coordination and mutual exchange of information from them. There are cases of persons employed in one canton and reported for benefits in another, which causes a chaotic situation and numerous problems in the implementation or regulations (“inspection acting as mutual enemies”).
- The role of trade unions in the conditions of market economy and labour market should, certainly, be more energetic, since in a great number of cases it has been found that a more active role and assistance from trade unions was missing. In this respect, a reorganisation of trade unions is needed, their clearer positions, alongside the change of direction of their actions that would be aimed at full protection of workers.
- Significant improvement could be achieved in the area of harmonisation of regulations, both those in force and those that are yet to be adopted, irrespective of whether they cover the areas of health, pension, social insurance, occupational protection, or any other. The practice so far in the area of labour has shown the lack of harmonisation of regulations as well as different practices. Continuous cooperation and exchange of information between various ministries and other relevant bodies would contribute to the improvement in his area. Vertical links between institutions and a clearer delineation of competences of different levels of government also needs to be established.
- Legal and material protection of workers would need to be secured in the procedures prior to the judicial ones, e.g. administrative procedures and arbitration. In this respect, it is important to work on the strengthening of the role of inspections and their competences, as well as on the method of solving labour disputes.
- The practice shows that Law on Strike must be amended in both entities. There is a great possibility of improvement of employees’ councils, which, unfortunately, have not been introduced in practice, although, in addition to trade unions, they could be an essential element of protection of workers.
- Legislation in this area needs to be harmonised with mutually assumed obligations, but in the manner that these provisions are clear, easily applicable and harmonised with other regulations in the area of social protection.
- We need to adopt a special piece of legislation that would regulate their work as part of civil society. It is of particular importance to strengthen the role of employers’ associations because good examples of their practice can have major impact on the improvement of the status of media employees and journalists.
- Journalists employed on full-time basis, should have work contracts, which inspections should check and it is not up to employers or journalists to deal with that issue.
- The Association of BH Journalists has a strategy of organising media trade unions. What, perhaps, needs to be emphasised in this context, is the importance of having a quality trade union organisation of journalists.

	YES	%	NO	%	No statistics	%	Don't know/ Neutral	%	No.of responses
<b>8.11.A</b>	4	14,29%	20	71,43%	2	7,14%	2	7,14%	<b>28</b>
<b>8.11.B</b>	0	0,00%	22	95,65%	0	0,00%	1	4,35%	<b>23</b> <sup>a</sup>

8.11.B. Answers „not at all“, „bad“ or „very bad“ were included under „NO“. Under “Don’t know/Neutral”, we have included the answer that “some media have, while others do not have work contracts”

## INDICATOR 8.12: FREEDOM OF ASSOCIATION FOR JOURNALISTS

*Journalists must not be restricted in creating associations such as trade unions for collective bargaining.*

### BiH context

There are no legal limitations in Bosnia and Herzegovina that would prevent journalists from forming their associations. Journalists, just like any other group of citizens in BiH, are entitled to organise in associations, pursuant to the Law on Associations and Foundations of BiH. Thus, in BiH there are six associations of journalists. Some of them are the legacy from the previous period, while some were formed either geographically, or on ethnic principle, which clearly indicates both their goals and their character.

Right to organise independent trade unions in Bosnia and Herzegovina is defined and guaranteed by entity laws and constitutions. In Bosnia and Herzegovina, there are separate trade unions at the entity level and in Brčko District. At the level of BiH, there is a Confederation of three trade unions. Branch trade unions of graphic, publishing and media workers are the components of those trade unions.

In line with the Convention 87 on the Freedom of Expression and the Protection of Right of Association, member countries have to observe their obligations contained in this Convention, so that one could say that this is one of the fundamental rights of workers and one of the key missions of ILO. Advantages of organising in trade unions and membership in these organisations are many, and they definitely ensure great influence of employees at their workplaces. Rights of trade unions vis-à-vis executive authorities, the supervisory and managing bodies in companies, employers, employees' council, reconciliation councils, courts adjudicating labour disputes, as well as in the procedure of concluding collective agreements, are especially elaborated and ensured by different protection mechanisms. In BiH, there are five branch trade unions of journalists and media employees. Two of them are in RS, and three in the Federation of BiH (two with the seats in Sarajevo and one in Mostar).

As early as in 1998, there were initiatives to form a Journalists' Trade Union in BiH that would be tasked to ensure the realisation of rights of journalists across BiH. However, this trade union has never become operational. Today, there are more intense activities; thus, the Help Line for Journalists and the Association of BH Journalists are trying to prepare the first draft of collective agreements in the domain of labour relations.

In the Federation of Bosnia and Herzegovina, the Federation of Independent Trade Unions of BiH and the Government of the Federation of BiH have concluded the first General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina, which is applied in all companies with majority state capital. After the adoption of these collective agreements, 22 branch agreements were signed, regulating the rights and obligations of employees and employers in sectors of economy. In 2005, a new General Collective Agreement was signed in the Federation of BiH as the supreme act regulating relations and labour cost between employers, trade unions and government representatives. The General Collective Agreement was concluded in RS as well. General Collective Agreements in RS and FBiH define labour relations, salaries, conditions and terms of trade union organisation, rules on collective bargaining and on the signing of collective agreements, the operation of bodies tasked with peaceful resolution of labour disputes and issues related to strike. In Brčko District, general collective agreement has not been concluded yet.

The legislation in both entities also regulates another form of organisation of workers for the purpose of representing their economic and social rights and interests. These are employees' councils that can be established at the request of minimum 20 % of employees in the Federation of BiH or the minimum of one-third of workers in Republika Srpska. Trade Unions can also initiate the establishment of employees' councils. Employers' obligation is to inform, consult and get preliminary consent from those councils when it comes to the issues of economic and social interests of employees. Namely, employers have to inform employees' councils, at least every six months, on the issues that are relevant for their labour relations. This legal arrangement gives an opportunity to employees to use the members of the councils they have chosen themselves, to decide on the issues of relevance for them, and to actively participate in the adoption of legal acts. Employers do not have the same obligation towards trade unions, since their role is different. Unlike trade unions, which are entitled to organise strikes, employees' councils are not allowed to participate in the preparation and organisation of strikes, nor could they participate in collective labour disputes that could lead to strikes. This is an exclusive competence of trade unions.

### Summary of responses/discussion

There was an almost unanimous opinion that, in BiH, there are no legal limitations for the organisation of associations, and 82 % of respondents confirmed this stance. On the other hand, different sorts of pressures, such as political and socio-economic one (sacking, failure to pay contributions, types of contracts) are the limiting factor and 94 % of respondents mentioned this as a problem. Journalistic associations are not efficient since there are too many, i.e. six associations in BiH, which are not united, but rather act as extended arms of management of some media outlets. This is why some respondents think that their role is not really serious. There are also opinions that this indicator is unnecessary, since, according to legal provisions, three persons can form an association, which deprives associations of any relevance. The roots of divisions are mainly political, ethnic and territorial; most of them are focused on the problems of local character, although the goal for all of them is, at least at a declaratory level, to protect the status of their members. There are disagreements and unnecessary competition between associations.

Generally speaking, trade unions are very inefficient and ineffective (87 % of respondents assessed their work negatively); according

to our respondents, they should play a greater role and take more initiatives for the protection of journalists. There are also cases where they cannot organise themselves into trade unions, if they are in opposition to the ruling political party. Respondents were divided when it comes to the organisation of trade unions or employees' councils in every media outlet – 47 % were for, and 37 against them, while others were neutral.

### Respondents' suggestions

- Journalists should form a single strong association that would be able to protect the interest of all the journalists in BiH.
- Trade unions in media are very useful and legitimate, but they should assume a much greater role, take more initiatives, particularly those aimed at mitigating or suspending the awful dependence of journalists on their media outlets, particularly the private ones.
- It is necessary to work continuously on the improvement of organisation of journalistic trade unions, as well as development of positive attitude and awareness among journalists of the importance of trade unions and their capacity to improve workers' rights. It would be necessary to connect the fragmented organisations of journalist's and media workers and thus empower them in their fight for common goals and interests. Trade unions need to be reorganised; a culture of dialogue needs to be developed; and collective bargaining and representations should be better, both on the part of workers' representatives and on the part of employers and government. Additional education of media employees is needed, as the basis for future actions in this area.
- In the media outlets, trade unions and employees' council need to be set up; their cooperation and agreement is also needed, which is also regulated in the Labour Codes in both entities, as well as in special employees' council legislation.
- Having done this analysis we have realised that there is the lack of concrete indicators on the situation of journalists' labour rights; therefore, our recommendation is to conduct an urgent survey of these issues using a representative sample.
- Journalists need to have strong associations that would deal with professional issues, trade union-related issues; journalists themselves need to publicly expose those media outlets and those media owners who do not allow them to form trade unions.
- We have made and signed an initiative, which will be submitted to the Federation of Independent Trade Unions, to enable the formation of the branch trade union of public electronic media and multimedia workers.

	YES	%	No	%	No statistics	%	Don't know/Neutral	%	No.of responses
<b>8.12.A</b>	23	82,14%	3	10,71%	0	0,00%	2	7,14%	<b>28</b>
<b>8.12.B</b>	31	93,94%	2	6,06%	0	0,00%	0	0,00%	<b>33</b>
<b>8.12.D</b>	1	3,23%	27	87,10%	0	0,00%	3	9,68%	<b>31</b>
<b>8.12.F</b>	7	36,84%	9	47,37%	0	0,00%	3	15,79%	<b>19</b>

8.12.D – 'NO' – bad, 'YES' – good, 'Neutral' – in some respect good, but could be better.

## INDICATOR 8.13: INDEPENDENCE OF EDITORIAL POLICY

*Media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism.*

### BiH context

Results of the survey conducted by BH Journalists and FES indicate that 6,60% of respondents in BiH (6,80% in FBiH, 6,70% in RS) think that the media owners and editors had the greatest influence on the work of the media in BiH in 2011. Also, 13,90% of respondents in BiH (14,40% in FBiH, 13,80% in RS) thin that media owners and editors were those who mostly violated the rights of journalists and media freedoms in BiH in 2011..

In BiH, ownership over the media and their function are treated as one and the same thing. The media in BiH, particularly the private ones, are „slaves” of the interests of their owners, and their editorial policies reflect the preferred political option advocated by those media. In BiH, there are no laws regulating the transparency of media ownership and protecting journalistic profession from their influence. There is a Press Code that imposes an obligation on printed media to report professionally, but this is not a binding act.

### Summary of responses/discussion

Journalism is a profession that strongly needs professional and financial independence. Unfortunately, none of these elements is secured in BiH today. Not only that the legal system in BiH is not yet ready to provide it with adequate protection and to guarantee political independence and freedom, but it is not capable, at times, to guarantee physical safety of journalists who dare to confront the ruling structures or the powerful lobbies linked to them. Journalists are often exposed to different sorts of pressures, while their unenviable financial situation and dependence make them totally subordinated, forced to serve political and other centres of power, most often to the detriment of professionalism and impartiality.

All respondents agree that, in BiH, media owners not only interfere with editorial policy, but also run it. If we know who the owner of a media outlet is, we would a priori know how that media outlet would report on a specific topic. Owners of some media outlets are politicians themselves, and that is why public interest is subordinated to their particular political interests. This is the cause of many problems, such as biased reporting and self-censorship.

Some respondents consider that a distinction needs to be made between private and public media, and that owners of the private media have a legitimate right to support one political option or the other, but that they should not impose it to the media outlet’s editorial policy so that it derogates journalistic profession. Generally, there is a view that those who have control, either financial or political, automatically interfere with the editorial policy in the public media. There are opinions that private media should be entitled to perform a public function and to provide programmes that would be of general public interest; for that purpose, they should be eligible to receive public, i.e. budgetary, funding.

Most of respondents consider that there are no internal rules that would prevent the interference of media owners and that, in case such rules do exist, they are not effective. The only situation when journalists are independent from owners of the media outlets they work for is when journalists are held accountable for damages they cause. The only example of independent editorial policy is given by one of respondents, who worked for a foreign media organisation.

### Respondents’ suggestions

- There should be legal limitation on the interference of owners into editorial policy of the media.
- There should be normative acts in the media outlets, including the provision that the independence of journalists in terms of editorial policy should be of utmost importance.
- Although in BiH it seems unimaginable now, there should be a possibility for the private media to perform a public function, so that all media outlets are given the possibility to apply, if they want to produce programmes of general public interest, for funding. They should be able to win a competition and produce such programmes. Therefore, a media outlet does not have to be state-owned to be considered a public media.
- In the Federation of BiH, there is an obligation for printed media to register in court registers, while in RS the registration is done with the Ministry of Culture.
- Web portals need to have an impressum published, so that their owners, directors and editors-in-chief are publicly known.

	YES	%	NO	%	No statistics	%	Don't know know/Neutral	%	No. of responses
<b>8.13.C</b>	3	20,00%	10	66,67%	0	0,00%	2	13,33%	<b>15</b>

*Respondents who answered with “YES” or “Do not know” think that, although there are rules protecting them from interferences in editorial policy, they are not efficient and there the number of media outlets that have those rules is insignificant.*

## INDICATOR 8.14: INSTITUTIONAL PROTECTION OF JOURNALISTS

*Journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked.*

### BiH context

Results of the survey done by the Association of BH Journalists and FES in 2011 indicate that 89,50% of respondents in BiH (90,80% in FBiH, 87,5 in RS) think that every kind of attacks on journalists is absolutely unacceptable.

According to Article 10 of the European Convention, states have an obligation to guarantee the freedom of expression, thus creating safe environment for the realisation of journalists' rights, and in cases when journalists and distributors are injured, tortured or, even, murdered, the member states have to conduct an investigation and to protect journalists from eventual future commission of such acts, as it is set as a principle by the Strasbourg Court. These obligations of CoE member states are also included in the Guidelines set by the COE's Committee for the Protection of Freedom of Expression and Information in the situation of crisis.

The provisions of the Criminal Procedure Code of FBiH show that journalists have the possibility, like other citizens, to get efficient protection of their personal integrity. The report made to the competent prosecutorial body of any sort of attacks should prompt the prosecutorial body to press criminal charges, if there is a grounded suspicion that the reported individual has committed a criminal offence, which should be followed by a court proceeding. The most frequent criminal offences against journalists, which result in criminal charges, are: light bodily injury, serious bodily injury, acts that threatens public law and order, and violent behaviour.

### Summary of responses/discussion

Most of respondents (74 %) think that journalists are not adequately protected from verbal or physical attacks, as well as those attacks that threaten their socio-economic position. Some respondents even think that they are less protected than any other profession in the public sphere. On the other hand, some think that there are journalists who pretend to be victims in order to gain popularity. Judicial protection is not efficient because the court proceedings are too slow, while most of the journalists refuse police protection because it hinders their efficient work, although there are journalists who are under police protection. Some respondents consider that the best protection of journalists is their professionalism, since there will be fewer threats as long as they do their job professionally and do not show fear.

### Respondents' suggestions

- There is a need for court experts and qualified individuals to act as "amicus curiae" so that they could facilitate the adjudication in the cases based on the Defamation Law; there is a need to find a possibility to educate court experts specialised in media-related matters.
- There should be education on both sides; on the one side, we need to educate journalists to do their job properly, while, on the other, we need to educate judges so that they understand the importance of the role played by journalists and media reporting in a society, since both professions, although through different methods, work in the interest of public and, therefore, their mutual understanding and cooperation are necessary.
- It would be useful to translate all the media-related cases adjudicated by the Strasbourg Court related to the application of Article 10 of the European Convention for Human Rights so that differences in national judicial practice could be eliminated. Based on this, the European standards for judicial protection of the freedom of expressions could help judges in BiH in their adjudication of cases.
- An upgrade of electronic database of court cases related to defamation and labour disputes needs to be done. Software, i.e. the CMS system for entering data from courts on cases, processes and judgements already exists. The existing software needs to be improved so that it enables a thematic recording of cases related to media and journalists (defamation, labour disputes, mobbing, discrimination, etc.). This new method of entering data on cases related to media and journalists would enable establishment of precise dates when charges are pressed, when a case was processed, when a decision was taken relating defamation or any other offenses, and the amount of fine adjudicated. Also, court clerks in charge of statistics need to undergo trainings, or at least get clear instructions on the method of keeping statistics useful for the media community in BiH.
- The request for the change of CMS needs to be presented to the High Judicial and Prosecutorial Council.
- Media must be protected by law, but also sanctioned when there is a reason for it.
- Media need to use legal aid before publishing their stories, and when they report from the courts.
- There is a need to establish funds, with managers or management boards that would make assessments whether a media outlet needs to be financially assisted. This should be done only when legal remedies have been exhausted, i.e. when the pronouncement of verdict in the case of defamation has produced adequate results. The obligation to publish denial on the same page where original article was published may be much more effective than constant financial sanctioning of media.
- Law must include a provision stipulating that decisions taken by the Press Council must be published in the media to which those decisions are related.

- We need to strengthen the mechanisms of application of law by adopting necessary by-laws.
- We need to adopt some new laws, such as the Law on Advertisement.
- We need to introduce mandatory enforcement of judicial decisions to prevent obstruction of justice as it happened in the case of a FTV journalist, Duška Jurišić, where there was a court decision and a decision on the execution of that decision, yet the amendment to the Statute of this Public Broadcasting Service has prevented the enforcement.
- Institutions that have been formed to affirm and protect human rights (Ombudsmen, Helsinki Committee) should be obliged to monitor court cases where there is a violation of the rights of journalists.
- Journalists who were victims of physical attacks have a problem of providing evidence (e.g. the Police of Herzegovina-Neretva Canton refused to check a masked person who attacked journalists in Stolac, or the cases from Bihać or Kalesija where the judges decided that attacks on journalists were the cases of fights in which journalists were involved and sanctioned the perpetrators with the 500 KM fines).
- A proposal to the Parliament: the Criminal Code needs to be amended so that it ensures the protection of journalists from physical attacks, when they perform their professional duty. Also, the Code requires a precise formulation of sanction in cases of attacks on journalists and a clear distinction between attack on journalist and attack on politicians.
- Courts and judges should be obliged to abide by the high degree of professionalism, due diligence and efficiency, particularly in cases of defamation and labour disputes.

	YES	%	NO	%	No stastics	%	Don't know/Neutral	%	No.of responses
<b>8.14</b>	2	10,53%	14	73,68%	2	10,53%	1	5,26%	<b>19</b>

## INDICATOR 8.15: MEDIA LICENSING AND PERMITS TO OPERATE

*Regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence, which goes beyond a mere business or tax registration.*

### BiH context

Online media in BiH do not require licence for operation and broadcasting of content and, currently, the Press Council in Bosnia and Herzegovina has committed itself to draft a regulation in this area that would be based on the principle of self-regulation. Also, there are no general limitations for the registration and the start of operation of the media, except for radio and television stations that are obliged to have a licence issued by the Regulatory Communication Agency of BiH (CRA). As of 2000, the then Independent Media Commission was competent for the issuance of long-term licenses for broadcasting, based on clearly set criteria and the quality of programme. High Representative's Decision of 2 March 2001 combined the competences of the Independent Media Commission with those of CRA. This marked the establishment of one of the first convergent regulators in Europe.

On 21 October 2002, High Representative passed an interim decision to regulate some issues arising from the aforementioned High Representative's decision; at the same time this meant the enactment of the Law on the Communications of Bosnia and Herzegovina (Official Gazette of BiH, No. 21/02). This Law, in its integral and unchanged text, was later passed by the Parliament of BiH (Official Gazette of BiH, No. 31/03). Since then, this Law has undergone some minor amendments (Official Gazette of BiH, Nos. 75/06 and 32/10).

The Law on Communications defines the establishment of the Communications Agency as a functionally independent and non-profit organisation tasked with the regulation of the communications sector in the country. The Law set forth that, inter alia, the Agency has the competence over the planning, managing, and allocating frequency spectrum, issuing of licenses and monitoring of the observance of rules and regulations in the area of broadcasting, as well as other rules and regulations set by the Agency. The process of licensing is fully non-discriminatory and transparent; it is carried out following the "beauty contest" principle based on clearly defined criteria and the best results achieved in technical, programme and financial terms. Every electronic media outlet and every provider of media services must have the licence issued by the Agency in the area of broadcasting and every case of broadcasting a programme without a licence is considered illegal and, therefore, forbidden. Having a broadcasting license implies an obligation to abide by the rules and regulations set by the Agency, which, in any case, protects the independence and freedom of expression; at the same time, it sets some standards that must be observed by media. In this respect, it is of particular importance to secure the regulator's independence, which has been jeopardised in the last three years, among other things, because of the failure of the Council of Ministers to appoint the Agency's director-general and to confirm the election of its Council, which has affected the operation and the functioning of the Agency greatly.

The Law on Communications envisages the mechanisms of protection of the Agency's independence, both through explicit provisions that stipulate that officials at any level of government are not allowed to interfere with the Agency's decision-making processes (Article 36 (3) of the Law: „Neither the Council of Minister, nor individual Ministers or any other person shall in any way interfere in the decision-making of the Agency in individual cases.”), as well as in the provisions that regulate the process of election of director-general and the Council of the Agency.

In terms of operational practice, the Agency adopted the Code on Audio-visual and Radio Media Services, which could be considered as one of the first major achievements and an instrument to measure to what extent the terms set in the licences are observed. In addition to this Code, there is the Advertising and Sponsorship Code that will be revised in the course of this year, and thus made stronger in terms of provisions that regulate the protection of children and minors in the context of advertising and sponsorship. In addition to these codes, a set of guidelines was adopted for the purpose of providing assistance to the media to apply in the best possible way the binding rules and regulations set by the Agency. The Law on Communications of BiH (in its Article 46) envisages sanctions, i.e. executive measures that are proportionate to the breach of relevant rules and regulations.

It needs to be pointed out here that the Agency currently works on the harmonisation of its rules and regulations in the area of broadcasting with the EU Directive on Audio-visual Media Services, which will enable further development of the audio-visual sector in BiH.

Finally, in 2010, the Agency adopted the Decision on the Use of Multiplex A (MUX A) for the purposes of terrestrial digital and TV broadcasting in Bosnia and Herzegovina in the transitional period; this decision defines the terms and conditions for the use of MUX-A A for terrestrial digital broadcasting of the programmes of the public broadcasting services in BiH. Also, the Agency has continued developing the criteria for entry of the existing broadcasting companies into commercial MUXs, as well as for the development of necessary documentation for tendering procedure for the issuance of licenses for MUX operators.

### Summary of responses/discussion

There are different views on the effectiveness of the Regulatory Communications Agency. Some respondents consider that CRA is effective and that it has a full mandate, as well as enough instruments to carry out its duties, and to react to everything that requires reaction, while others think that CRA does not do its job at all, although it has a strong infrastructure, that it is not socially effective and that it does not apply the same rules for all the media.

Dominant opinion among respondents was that there are limitations (such as permits and licenses) for the work of online media and the work of printed media on the Internet. Some of respondents emphasise that some kind of order needs to be introduced in the world of online media because the situation with Internet portals is chaotic, particularly when it comes to visitors' comments that are full of hate. There are views that there are too many printed media in BiH given the size of population and its purchasing power. The major problem is related to the relevance of data relating the circulation figures of those media, given the high return of unsold copies, which is an indicator that there is no real need for so many printed media. Some printed media outlets that also have Internet editions do not abide by the same principles when they report traditionally and when they do their online editions. There is a view that BiH is not prepared for Internet journalises and that there is not enough knowledge in this domain in BiH. BiH is not the only country faced with the problem of comments posted on Internet portals and the freedom of expressions on Internet fora and web portals; well-organised and regulated countries such as the USA are also facing this problem, where these media are used to discriminate some groups of people, or some races. Regulation of the Internet is a complex and unique problem, since regulation implies control, while Internet should not be controlled the way it is done in China and in the Arab world. There needs to be a document, such as the Press Code in BiH (or a global convention that regulates online journalism) that would be morally and professionally binding for online portals and journalists working for them. It is the opinion of respondents that the Press Council in BiH is on the right track when it comes to the development of such a document. Only one respondent thinks that this is not necessary and that the Press Council should be immediately abolished. As for licences and work permits, according to this respondent, they are necessary only for broadcasters.

### **Respondents' suggestions**

- Additional criteria should be introduced in electronic media given that their influence on public opinion is much greater than that of printed media.
- Some sort of media inspection is needed, while the Agency's work should be restricted.
- CRA should become the "ownership" of the whole society of BiH, because it is only then that it will have a legitimate mandate and would treat equally all the media.

## INDICATOR 8.16: EQUAL ACCESS TO DISTRIBUTION CHANNELS

*Media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services).*

### BiH context

Results of the survey conducted by the Association of BH Journalists and FES indicate that 29,20% of respondents in BiH (30,60% in FBiH, 26,40% in RS) think that technical conditions for the work of journalists need to be improved first in order to improve the quality of their reporting.

The area of distribution of press is regulated by local legislation on public information, i.e. by the media laws (in RS, it is at the entity level, in the Federation of BiH, it is at cantonal level). In the Law on Media of the Canton of Sarajevo (other laws are similar) it is stipulated that “distribution of press is free” (Article 49). The distribution of press may be limited. Thus, the Canton of Sarajevo Law stipulates that “the distribution of press with pornographic content is done in accordance with the special act adopted by the competent Minister” (Article 54), while “it is prohibited to distribute the press that threatens the security of the state and the territorial integrity of the country, instigates racial, ethnic or religious hatred or intolerance, instigates the commission of criminal acts and propagates or support the commission of acts against humanity” (Article 55). There is no special regulation that prohibits “the distribution of press with pornographic content”.

Permission for the distribution of Radio and TV programmes is issued on a non-exclusive basis to legal entities that are registered, in accordance with the law, to perform telecommunication activities. Another applicable act is the Rule 36/2008 on Allocation and Terms of Issuance of Permits for the Distribution of RTV Programmes. This Rule defines general principles for the issuance of permits and the fees paid by permit holders. For the purpose of protecting the viewers, the Rule also prescribes the conditions that must be observed by permit holders. All distributors are obliged to include in their distribution on a free-of-charge basis the programmes broadcasted by the Public Broadcasting System, i.e. by BHTV1, FTV and RTRS, as well as by the broadcasters for terrestrial broadcasting in their technical zone of coverage, free of charge.

There is a trend on the market of providers of RTV programme distribution service providers that operators with significant market power take over smaller cable network operators, so that they have started to expand their operation across BiH, while in the previous years cable operators operated more or less in one or two neighbouring municipalities. In addition to this, the appearance of service providers of IPTV and DTH distribution has led to a more competitive market, and consequently to greater offer in terms of the number and diversity of TV channels offered in the cable systems, as well as improved quality of their service: This has opened up the possibility for users of these services to make their own choice of operator.

### Summary of responses/discussion

The opinions relating equal access to frequencies are divided. As many as 55 % of respondents consider that the existing CRA rules (e.g. Rule 36/2008), and the Law on Communications ensure equal access to frequencies and to their technical infrastructure, while 36 % of respondents disagree with this view. Some respondents think that frequencies were allocated in accordance to political aptitude, because members of CRA are mainly selected on the basis of their political aptitude (several respondents expressed this view during discussion), which makes the CRA biased. Although there are competitions published, some media get frequencies without a public competition and, therefore, the activities of CRA are not transparent. One respondent makes a distinction between frequencies and technical infrastructure, and claims that the system of allocation of frequencies is fair, while in the allocation of technical infrastructure there are manipulations. Most of respondents (67 %) consider that, in this respect, printed media are more protected so that they can freely distribute even the pornographic material.

### Respondents' suggestions

- There were no concrete suggestions for this indicator.

	YES	%	NO	%	No statistics	%	Don't know/Neutral	%	No.of responses
<b>8.16.A</b>	12	54,55%	8	36,36%	0	0,00%	2	9,09%	<b>22</b>
<b>8.16.B</b>	4	66,67%	2	33,33%	0	0,00%	0	0,00%	<b>6</b>

*8.16.A. Neutral – Technical infrastructure and frequencies are different things, and they are allocated in different procedures.*

## INDICATOR 8.17: PREVENTION OF MEDIA CENSORSHIP

*The state must not restrict access to foreign print media or electronic media including the Internet.*

### **Bh. konekst**

Distribution of press is regulated by local public information laws, i.e. the media laws, which stipulate that “distribution of press is free”. There is no limitation and we have access to all the Internet content that is available in the free world.

The only limitation in this respect is in the Law on Foreign Direct Investment Policy in Bosnia and Herzegovina; Article 3 of this Law stipulates that the share of foreign capital in a company dealing with public information shall not exceed 49% of total capital. In case of investments in the sectors that are not subject to restriction, foreign investors must get preliminary approval from the competent entity body. Application for approval must be solved within 30 days, otherwise, it will be considered approved, except when the competent body informs the applicant in writing that decision was postponed beyond the 30-day deadline. In any case, final decision, accompanied by an explanation, must be submitted to applicant within 90 days from the day of receipt of application. If decision is not taken within this time frame, it shall be considered that the foreign direct investment in question has been approved. Once granted, the approval for foreign direct investment is permanent.

### **Summary of responses/discussion**

All respondents, except one who stated that he did not have all the necessary information, agreed that there are no imitations to the access to foreign media on the BiH market. Several respondents consider that the purchasing power of BiH citizens is so low that they cannot afford to buy newspapers every day and that this is the only way their access to foreign media is limited. There is one limitations related to this indicator, however, i.e. the Law on the Policy of Foreign Investment, which stipulates that the foreign share in the capital of a company dealing with public information shall not exceed 49% of the company's total capital. Three respondents mentioned the examples of neighbouring countries, where there are limitations and the printed media from BiH cannot be bought there. Nevertheless, these respondents do not support the introduction of the same practice in BiH. Most respondents think that the market can never be too free and that everyone should have equal access to market, where quality of products should be relevant, rather than their political aptitude. Several respondents claim that the BiH market is too free and that it undermines the competitiveness of the BiH media. One respondent mentioned that there were examples of misuse, with foreign companies that influence the rates of advertisement by charging their broadcasts only in the countries of their seat, while they broadcast them for free in BiH.

### **Respondents' suggestions**

- The CRA rule on the prohibition of concentration of ownership needs to be renewed.
- The problem of printed media and of their circulation is reflected in the fact that there is no agency for circulation in BiH.
- We need to re-examine the credibility of ratings done by some agencies (there is an investigation carried out by the State Investigation and Protection Agency (SIPA) of some marketing agencies and the ratings broadcasting companies that published as the result of their polls.

## INDICATOR 8.18: TRANSPARENCY OF OWNERSHIP AND BUSINESS OPERATIONS

*Media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism.*

### BiH context

Although, at present, there is no special legislation relating media ownership, i.e. the potential limitations vis-à-vis media concentration, the issue of concentration is regulated by the Rule adopted by the Regulatory Agency, and by the Law on Competition in BiH, given that they are directly or indirectly related to commercial activities. The Law envisages the possibility to prohibit some concentrations of corporations or individuals if they could significantly undermine market competition either in BiH, or in its major part, and particularly if such a concentration creates a new or strengthens the existing ruling position of a company or an individual. Although this Law does not stipulate that this prohibition is related to the media, European Parliament passed in 1999 the Resolution on Media Takeovers and Mergers, where it emphasises that media pluralism is of essential importance and that limitation of ownership is necessary not only for economic reasons, but as “the means to guarantee the diversity of information and the freedom of press”.

As for the measures for the promotion of media pluralism, they are partly incorporated in the Law on Communications, through the competences of the Agency and the Council of Ministers, which provide that the Council of Ministers and the Agency, in accordance with their competences defined in this Law, shall undertake all reasonable measures to: promote fair competitions and to prevent the acts that undermine or limit the competition in the communications sector. Generally speaking, there is a high degree of media pluralism in Bosnia and Herzegovina.

There is also the Law on Party Financing that does not permit political subjects to own electronic media.

The problem lies in the fact that, in BiH, there is neither a central register of printed media, nor a central register of commercial companies, while all the existing archives are mainly in printed, rather than electronic format and not easily accessible.

When it comes to electronic media, there is no doubt that there is a conflict of interest given that there are links between an agency that conducts the polls measuring TV ratings with some marketing agencies and individuals employed in some media companies. CRA has started establishing a system of regulation of the work of electronic media based on the principles set by the Independent Media Commission. These criteria need to strengthen the responsibility of media, develop competitiveness in relation to allocation of frequencies, which would be the driving force for the professional advancement, technical improvement, as well as for financial sustainability and transparency of the work of every broadcasting company. These standards are incorporated in the Broadcasting Code of Practice (adopted in August 1998, and amended several times later), and harmonised with the right to freedom of expression and the Constitution of BiH.

### Summary of responses/discussion

During the qualitative interpretation of this Indicator, a minority of respondents (29 %) considered that media ownership in BiH is transparent, despite various interferences and pressures, and one can get access to court registers and check how and under whose name a media outlet is registered. However, majority of respondents (71 %) think that one cannot speak about transparent media ownership, while some of them even claim that there are cases of different kinds of influence that we witness on a daily basis. The registered owner is not always the real owner, because ownership can be transferred from one person to another, while the original owner can still continue to run the whole operation. Likewise, the media can be controlled by those who finance them and that is why there are no free media and nobody is fully independent; the situation is rather that everybody is under the control of those who have the money to pay. Therefore, we can speak only about professional and unprofessional media. Non-existence of a central media register and the fact that the existent ones are only in printed format, represents a problem because one cannot establish with absolute certainty whether there is a concentration of ownership or not.

Almost all respondents (86 %) agreed that there are monopolistic tendencies in the media, although everything seems to be formally and legally regulated. Some think that there is a high degree of media pluralism (primarily due to the great number of media outlets, whose profile and editorial policies are diverse). And, while, on the one hand, the monopoly of one media outlet limits pluralism and creates one-minded media scene; on the other hand, pluralism we find in BiH creates partial truths, since different media outlets offer different versions of events. These versions most often have political connotations. Respondents consider that it would be good if there we had a media outlet that would rise above daily politics and divisions and events.

As many as 67 % of respondents claim that there is a monopolistic tendency of big companies and advertisers, while others (33 %) claim that this is not the case. Among those who claim that there are no monopolies, one respondent claims that, in BiH, there are no big companies since big companies have by-passed the country, while another considers that there is a very low interest of companies to buy the media in BiH because its market can be covered by TV channels from Croatia and Serbia. Another respondent thinks that big companies and advertising agencies cannot get access to the BiH market because the BiH politicians pose an obstacle.

Most of respondents (80 %) who answered the question related to the activities of CRA in this area think that this agency should initiate the adoption of the law prohibiting the concentration of ownership, since such trends exist, with strong political influence and control. Some think that powerful individuals – business magnates and politicians – use the passivity of CRA. Media ownership

concentration and monopolies are dangerous, particularly because of the influence of the media in rural areas, where the majority of population accepts the media reporting as verified facts and as the truth that does not need to be verified. The role of the media is not only to inform, but to educate as well, and that is why public broadcasters should not support any political party. The respondents think that public broadcasters will find it much more difficult to free themselves from political pressure, while private broadcasters will easily get rid of the limiting political pressures. One respondent thinks that this law is not necessary, since quality of programme is much more influential than the concentration of ownership.

### Respondents' suggestions

- The structure of media ownership needs to be more transparent.
- We need to establish a media company in BiH that would rise above daily politics and would present a more objective picture, since everything becomes doubtful if there are too many perspectives of an event.
- The CRA Rule on the prohibition of concentration of media ownership needs to be revived. It is very important to prevent the concentration of ownership and to secure transparent ownership. It is the only way to fight against the influence of lobbies in the media. This way, we could also influence unfair competition and the dumping of prices on the media market.
- A debate needs to be organised among lawyers and media experts on the issue of prohibition of concentration of ownership; something definitely needs to be changed in this respect.
- The adoption of the law prohibiting the concentration in the media would bring safeguards against the big media corporations that tend to select the information they publish and that publish them from one centre, just because they have both the printed and the electronic media in their ownership. If that would be the case, then all information would be identical, irrespective of whether one reads newspapers, watches TV, or listens to the radio.
- The solution in this respect would be to strictly impose strict limits on public broadcasters, by some legal schemes, regarding the amount of funds they can collect by selling their airtime for advertisements.
- Some regulations need to be introduced to define, in a much clearer fashion, the methods of assessing ratings; in this respect the standards applied in the world need to be studied and applied in BiH.

	YES	%	NO	%	No statistics	%	Don't know/Neutral		No.of responses
<b>8.18.A</b>	7	29,17%	17	70,83%	0	0,00%	0	0,00%	<b>24</b>
<b>8.18.B</b>	18	85,71%	3	14,29%	0	0,00%	0	0,00%	<b>21</b>
<b>8.18.C</b>	8	66,67%	4	33,33%	0	0,00%	0	0,00%	<b>12</b>
<b>8.18.E</b>	16	80,00%	3	15,00%	0	0,00%	1	5,00%	<b>20</b>

## INDICATOR 8.19: FINANCING OF THE MEDIA BY THE STATE

*If media receive direct or indirect subsidies, states must treat those media fairly and with neutrality.*

### BiH context

Survey conducted by the Association of BH Journalists and the FES suggests that 36.10% of the respondents in BiH (32.40% in FBiH, 40.30% in RS-u) believe that the main obstacle to the media freedom is their financial dependence.

The Law on Public Broadcasters provides for the right to financial assistance from the state and entity bodies. Besides the public services, there is a whole range of public RTV stations in Bosnia and Herzegovina that were established and in a good part also financed by the local authorities, such as cantons and municipalities. One third of TV stations and almost a half of radio stations depend on financing by local and regional level authorities. This fact makes them vulnerable to pressures to a great extent. Although the money the various authorities use to finance different media is public, the authorities behave as though it were their private money and put the media in situation of direct dependence thus affecting their bias in reporting. The already mentioned Law on Financing of Political Entities also applies to this indicator.

### Summary of responses/discussion

Most of the respondents believe that allocation of funds from public budgets to the media is not transparent at all (75%), one respondent claims that this is the case in all sectors, not only with media, while some consider that the situation varies from one canton to another. A number of respondents claim that the whole process is transparent, but is carried out improperly in the absence of relevant and acceptable criteria for fund allocation to the media, resulting with only the media that are “suitable” receiving financial support.

The respondents are also divided on the issue as to whether the media should use public funds. A smaller part (22%) believe that this is not in line with their role and threatens the media impartiality, objectivity and professionalism, the majority of respondents (74%) believes that the media should be financed by public funds. The reasons they have cited in this context were that journalists are underpaid, and therefore exposed and prone to pressures and blackmails, and that the media can prevent political and other sorts of pressures only if they have financial funds secured. One respondent believes that a clear distinction should be made between private and public media and only the public media should receive the funds, while others believe that the funds should be awarded for specific projects, regardless of whether such projects are to be carried out by public or private media. Allocation of funds should be transparent, orderly and designed in a way that would not affect media impartiality.

### Respondents’ suggestions

- Allocation of funds must be transparent and orderly, should be subject to public competition to which different media would apply.
- The fund allocation should be organized in a way that would make sure that no media have their money guaranteed. A tender should be issued where the best bidder with the best references should get the money.
- A public call for project proposals should be organized, which proposals would be selected by a commission of non-partisan peoples. Topics may be pre-determined, to reflect public interest, while the media should apply with proposals to research stories.
- Approval of appointment of directors of public media should never be sought for in politics, and their board members should not be appointed from the ranks of political parties. This is the practice in Slovenia.
- In addition, on the basis of the Slovenian experience, a proposal was made to expand the governing structures (managing board first of all) to include more members to include not only politically suitable representatives, but also representatives of the civil sector.
- In BiH, we need to apply the Scandinavian model of media funding. The money is given to public broadcasting services, but, at the same time, there are opposition public services established that receive the same amount of money so that both sides could be heard. To increase the level of professionalism, independent sources of funding the media that will not be able to influence their editorial policy, must be secured.
- Media might receive support when employing new people, journalists with no experience, for student’s practical work or exiting to international markets, but this would have to be clearly defined in order to avoid any misuse.
- In order to raise the level of professionalism you must provide some independent sources of financing for which you will not seek ways to obtain and what you are going to spend them on. However, you will not condition this by editorial policy.

	YES	%	NO	%	No statistics	%	Don’t know/ Neutral	%	No. of responses
8.19.A.	0	0.0%	15	75.00%	0	0.00%	5	25.00%	20
8.19.B.	17	73.91%	5	21.74%	0	0.00%	1	4.35%	23

*8.19.A. Response ‘NO’ means that the fund allocation is not transparent at all, the response “do not know/neutral” means that the funds allocation is formally transparent but unlawful and manipulated.*

## INDICATOR 8.20: DEPOLITICISATION OF PUBLIC MEDIA

*Public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations.*

### BiH context

Results of the survey conducted by the Association of BH Journalists and the FES show that 52.20% of the respondents in BiH (51.20% in FBiH, 53.50% in RS) are of the opinion that political dependence is the main obstacle to free work of the media in BiH. Also, 39.90% of respondents in BiH (42.70 in FBiH, 36.50 in RS) believe that the general political climate in the country is a fundamental obstacle to media freedom in BiH. In addition, results of the Association of BH Journalists and FES survey suggest that 69.90% of respondents in BiH (69.80% in FBiH, 69.20% in RS) think that political parties and politicians in general have the strongest influence on the work of the media in BiH.

International community has invested significant funds in order to make possible the development of professional media, free of influences by governments and political structures. Independence of public RTV broadcasters is guaranteed under Article 4 of the Law on Public RTV system in BiH that clearly provides that public RTV services have editorial independence and institutional autonomy, as well as by the CRA Rulebook 41/2009 that formally prevents direct influence of politics on the media work. Also important is the Law on Financing Political Parties in BiH that prohibits the political parties to own media.

However, what remains unclear is the status of those print media whose owners have subsequently established political party, which had participated in elections and whose editorial policy is in fact implementation of the political platform of that party. The law does not foresee such a possibility, and the response of the Central Election Commission is not to be expected. Also, public broadcasting services are under strong influences and pressures, often through election of politically suitable people to important managerial structures. This is not in line with provisions of the law because it provides for clear and transparent procedure of electing boards of directors of public RTV services, and laws on public RTV services foresee that a person who occupies executive, legislative or judicial office at any level in BiH, or who is the owner or co-owner of a company carrying out activity of radio or television broadcasting, or when the person's function is contrary to the Law on Conflict of Interest, should not be appointed General Director.

The sales tax on goods and services and even-rate value added tax applicable to the whole territory of BiH has been introduced and entered force in early 2006. This measure has strongly affected all printed media and printing companies, particularly small publishers and distributors, leading them to resort to a number of restrictive measures, such as laying off employees, reducing number of pages in the newspapers, reducing the number of copies, paying salaries irregularly, not paying social contributions, and some even closing down. Moreover, additional sources of financing are welcome; besides, due to the already mentioned fact that the authorities treat the public funds as their own the media impartiality is often undermined.

The independence of the CRA would to a large extent secure the independence of electronic media. Mechanisms that guarantee CRA independence are contained in the Law on Communications and the Law on Financing Institutions of BiH. However, a question mark has been put on the independence of the CRA in the past three or four years because of the Council of Ministers of BiH and Parliament of BiH. The Council of Ministers has been refusing for the past three and half years to confirm the General Director of the CRA, the new members of the CRA council, and has been trying to restrict financial independence of the Agency, and also to reduce the independent regulator to the level of executive power. Such actions are the most serious attempts to undermine independency of the Agency and restrict media freedom and they are still present.

Besides the public RTV services, there are also other public RTV stations working at local levels (cantonal or municipal). Their specificities are regulated by the Rule 41/2009 on public RTV stations that defines the public RTV stations.

### Summary of responses/discussion

Almost all respondents (95%) agree that media in BiH are not politically independent. For that reason, following the logic of political option they are affiliated with, they spread intolerance and propaganda thus undermining principles of professionalism and objectivity. When asked to give reasons for this, respondents mentioned different things – starting from education that is provided to journalists at the faculty of political sciences to the fact that people are by nature the political beings having their own opinions. Among more specific reasons the respondents stated that financial independence does not exist, that the problem of public broadcasters is in low collection rate of the RTV fee, that the method of election of board members and other governing bodies is such that they are ultimately politically appointed.

On the other hand, some respondents said that there were some journalists in BiH who were trying to provide objective and professional reporting, however, predominantly polarized context makes such journalists “incidental” occurrence, not a rule. So it happens that when individuals do publish something professionally and objectively that is not in the interest of relevant political option they get sanctioned. A number of respondents shared the opinion, in optimistic tone, that this trend is changing because we are witnessing generation change. However, in order to completely overturn the situation one has to conduct a thorough analysis, change laws, management and management election models, while the regulatory bodies should punish any public broadcasters aligning with party ranks.

**Respondents' suggestions**

- A fundamental change in the whole management, as well as of the Law on Public Broadcasting System. Management and editors must not have partisan affiliation. Public broadcasters should have program councils where more than half of representatives should not be coming from the Parliament, and the rest should come from other segments of society, such as culture, sports, etc. Those councils should play a key role in making sure that the media perform their public function.
- Every attempt should be made to strive to find a new way for selecting members of managing boards that would prevent politicians to control them (this has already been discussed under previous indicator).
- Regulatory bodies should punish every joining in partisan ranks when it comes to public broadcasters.
- By fulfilling the original mission of public media and by professionalizing those media one may revive their fundamental function according to law – informing and educating the general public.
- Independence may be achieved only through a system of financing that does not open the door to political interference.
- In order to have and to apply those parameters of freedom, media must move away from politics and politicians. It means that managers, supervisory boards and programme councils should be selected or appointed only on the basis of professionalism

	<b>YES</b>	<b>%</b>	<b>NO</b>	<b>%</b>	<b>No statistics</b>	<b>%</b>	<b>Don't know/ Neutral</b>	<b>%</b>	<b>No. of responses</b>
8.20.A.	1	2.63%	36	94.74%	0	0.00%	1	2.63%	<b>38</b>

*Response is "NO" if there are political interferences that prevent media independence*

## INDICATOR 8.21: PROTECTION OF PROFESSIONALISM IN PUBLIC BROADCASTING SERVICES

*Public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides.*

### BiH context

Independence of the public RTV broadcasters as parts of the Public RTV system of BiH is guaranteed under Article 4 of the Law on Public Radio Television System of Bosnia and Herzegovina.

Besides already stated facts of politicized management and financial dependence, the biggest problem in operation of the public service is their fragmentation and lack of progress with started reforms. Due to the lack of developments within the public broadcasters, their fourth member – the System Corporation – has not been established yet to unify and improve efficacy in use of all their potentials; this was also helped by delays in system digitalization. Still, ethical norms contained in the Code for editing television and radio programs are strictly adhered to in most of the cases, because the implementation of the Code is monitored and when necessary imposed by the Communications Regulatory Agency.

### Summary of responses/discussion

Public electronic media should establish Codes of Conduct within their own houses to apply to their own journalists, which would guarantee their independence from political influences – this is what some respondents think. The others believe that there is a problem with implementation, that the Code of Conduct should be one and the same for all media instead of being media-specific, and that the public broadcasters, instead of the Code, should comply with the existing CRA rules.

Differences in opinion emerged with regards to the contents and very character of such a code of conduct for public broadcasters. A code like that should be focused at a higher level of transparency of operations and decision-making and the competences of persons who decide on it, which is currently subordinated to political aptitude, rather than professionalism. Such a code must be clear and enforceable; it should apply to all electronic media, not only public broadcasters.

Opinions as to what such a Code should look like vary:

- In addition to the principles set as a deal and as desirable situation, the Code should provide for a higher level of transparency of operations and decision making, while a special attention should be paid to competency that is currently inferior to political suitability.
- Besides the ideals and desirable situations, the Code should also provide for sanctions, it must be clear and enforceable.
- Key provision of the Code should be independence of the operation of media from political influences.
- Information, not propaganda, should be a motto of the Code.
- The Code should be applicable to all, but particularly to the editors of news programs.
- It should cover everything from what is the responsibility of journalists in public service for public information to how should they behave at work and after work.
- The Code should apply to all and be universal, and the CRA should monitor, check and sanction any violation of its provisions.
- One should look at how these things are dealt with in other developed democratic societies where public broadcasters are not under so strict control of political actors as in Bosnia and Herzegovina.

### Respondents' suggestions

- By checking implementation of the Law on Public Procurement, tenders and other one may prevent pressure and influence on media performed by political options that have power to decide on financing.
- All depends on political will that can be changed only by educating and creating a clear citizens awareness of the importance of independent media for development of democracy. The role of public broadcasting services deserves to be particularly emphasized here as they should be leading this process, ultimately and unconditionally becoming aware that they are here to serve the public, not politics or to be used in inter-partisan confrontation. By changing this political will, we could achieve to preserve the media independence by implementing legislative framework, maintaining continuity and independence of regulatory or self-regulatory bodies, strengthening media associations and solidarity among journalists, particularly in transition societies such as the one in Bosnia and Herzegovina.
- A universal professional code should be supported, but at the same time sanctions need to be introduced. The media and media communication should be rid of all the things that have destructive effect on individual and general public opinion in BiH because additional efforts to stabilize political conditions are required here. Nobody will invest capital, nor come to work here unless political conditions in BiH are stable, while the media have a fundamental role in that process.
- Independence could be achieved by using clear criteria for election of members of management and supervisory boards and program councils, and by choosing respected public workers and independent experts to fill those positions.

## **INDICATOR 8.22: RELATIONSHIP BETWEEN THE GOVERNMENT AND PRIVATE MEDIA**

*“Private” media should not be run or held by the state or state-controlled companies.*

### **BiH context**

The existence of the Law on Financing of Political Entities that prohibits to political subjects to own electronic media has already been mentioned. In addition to that, regulatory principles in the area of broadcasting that are provided under the Law on Communications foresee, among other things, separation and protection of RTV stations from political control and manipulation.

### **Summary of responses/discussion**

Majority of respondents (89%) agree that private media should not be run by state-owned companies or state-controlled companies because this would suppress professionalism and media freedom, but most say that this is not the case in BiH. One respondent thinks that, formally, it seems that it does not happen, but that there were many informal ways of achieving the same goal. One example of this is the control of media through advertising money. One other opinion is that due to problems with transparency, one may not see clearly which company is private and which is state-owned, and besides, private interests are often portrayed as public.

### **Respondents' suggestions**

- A serious analysis should be done in order to obtain a precise picture of the situation with regards to this issue.
- By controlling implementation of the Law on Public Procurement, Tenders and other one may prevent pressures and influence on the media by political options that have power to decide on financing

## INDICATOR 8.23: INCOMPATIBILITY OF POLITICAL AND MEDIA FUNCTIONS

*Members of government should not pursue professional media activities while in office.*

### BiH context

Independence of public RTV broadcasters in BiH is guaranteed under Article 4 of the Public Radio-Television System of Bosnia and Herzegovina that clearly provides that public RTV services should enjoy editorial independence and institutional autonomy, meaning that politicians may not become members of managing boards. This is also regulated by the Rule 41/2009 on Public RTV Stations of the CRA, which also formally prevents direct influence of politics on media operations. The Law on Financing Political Parties of BiH that prevents political parties from owning media has already been mentioned (according to the Law, such persons may use their own revenues to finance only companies that operate in the fields related to culture or publishing).

### Summary of responses/discussion

Respondents' opinions on the issue of influence of politicians on media are divided. One part of the respondents (43%) believe that it is not right that public officials write columns in media, while the rest believe this is fine, provided the author is a professor or expert who writes on their profession (57%). When asked to explain their position, some of the respondents felt that the politicians were under obligation to inform the public, but they should do so in press conferences and other very clear forms of communication with public. Others thought that politicians had the right to use media, but that they should do so under clearly defined conditions and that clear distinction should be made between media reporting and what politicians write themselves, so that readers would not be confused and in order for them to be able to assess whether it is in public interest or mere political propaganda.

Almost unanimously (95%) the respondents confirmed that in BiH we could talk about misuse of media for the purposes of promoting interests of specific politicians. As threats to journalists' professions the respondents identified cases where the journalists are presented as independent, while in fact they are working for the interests of a political option, which is, some believe, quite frequently the case in BiH (not only in BiH – this is something that exists in developed democratic societies too). Part of the responses suggest that politicians and representatives of the government should use their own funds and resources to promote their political views and positions, such as web-pages, blogs, portals, party newsletters, press conferences.

### Respondents' suggestions

- Politicians should inform the public, that is their task, and how should they do this but by using media, issuing press releases, having press conferences etc. If politicians are writing in the media, they must state clearly that what they are writing is their writing, not writing of independent professional journalists. It would be more honest that they make their own blog and communicate with the voters at their own expense.
- The authorities have to realize that media are not their private property and that the journalists have the right to write about people who are elected to offices, who voluntarily agreed to represent citizens and therefore to be placed under the magnifying glass of the public.

	YES	%	NO	%	No statistics	%	Don't know/ Neutral	%	No. of responses
8.23..A.	17	56.67%	13	43.33%	0	0.00%	0	0.00%	<b>30</b>
8.23.B.	18	94.74%	1	5.26%	0	0.00%	0	0.00%	<b>19</b>

## INDICATOR 8.24: OPENNESS OF THE AUTHORITIES TOWARDS THE MEDIA

*Government, parliament and the courts must be open to the media in a fair and equal way.*

### BiH context

Article 10 of the European Convention foresees the possibility of restricting freedom of speech in order to protect authority and impartiality of judiciary in national practice. Media often follow court proceedings, and the ways they do so give rise to many different opinions. Often media feature very inappropriate opinions on the work of judiciary while on the other hand, courts and prosecution offices are not sufficiently transparent in their work and sometimes are openly hostile towards the media. Media have the right and obligation to follow court proceedings and general situation in judiciary and to inform public thereon; however, the question is how to do so in a way that would be professional and responsible and will not jeopardize integrity of the judicial system.

In trials, main hearings are public. Since the opening of the session to the end of the main trial, the judge or the respective judicial panel may at any time, *ex officio* or at proposal of parties or defence counsels (but always after hearing them) exclude the public for the whole main hearing or a part thereof if so required by the interests of the national security or for the purpose of keeping state, military, official or important business secret, protection of public order, protection of morality in democratic society, personal or intimate life of the accused or damaged party or protection of interests of minors or witnesses. Decision to exclude public is made by a judge or judicial panel by a decision that must be explained and made public.

Considering that the Criminal Procedure Code of BiH provides for publicity of processes being a rule, while the exemption of public is an exception that may be granted based on a specific list of reasons, the Press Council in BiH issued Recommendations for media reporting in court cases according to which general public has the right to receive timely and professional information on the operation of judicial bodies. Courts are the ones who should strike a balance between reputation and honour of an official in judiciary and freedom of press to report on issues of public interest and they must decide which of the two should take priority in a democratic society. Certainly, this applies to the cases where free expression truly strives to contribute to public debate on judiciary and weaknesses of judicial system, and not when the judges and prosecutors are victims of severe attacks because their decisions were not to somebody's liking, or because of the desire to affect the court proceedings what is, sadly, quite often the case in BiH.

In addition, journalists often complain that they are being imposed a double ban on commenting ongoing processes as well as first instance rulings because "they might influence courts"; and when a final and binding decision is finally made in a proceedings, then they are told they are not allowed to comment final and binding court decisions. In connection with this, the European Court from Strasbourg has reiterated in several of their decisions that the courts are not operating in vacuum and that public discussion on court decisions, as well as the criticism of the outcomes of court proceedings, must not be prohibited

### Summary of responses/discussion

Most of the respondents (88 %) share the opinion that the Government, Parliament and the courts are not equally open to the media. Most of the journalists' objections were addressed to the Parliament, which is open to the media, what is more the politicians are racing each other to be quoted in the media, but they are very selective when it comes to their media choice; they are absolutely open for some, for others they say what they must, while some media are on their "black list" and some politicians refuse to give statement to them. On the basis of reciprocity, specific politicians use specific journalists or media to send out their messages to the public while, on the other hand, the same media get used to take statements from the same politicians again and again, and as a result, their reports remain limited and one-sided. Also, most of the respondents (89%) say that there are many examples of different approach to the media by the judicial institutions, while only one respondent states that this is not the case. One respondent believes that a thorough analysis of the situation is required because the available statistics is insufficient to serve as a basis for any evaluation.

### Respondents' suggestions

- A key thing for a country and media is the how open are the institutions are towards the public, including media, because the media are the means of communication and connecting those public institutions with citizens. Public institutions must be equally open to all media regardless of the type of ownership or what part of BiH a specific media that requires information is coming from. All media should be treated equally.
- Authorities need to realize that the media are not their private property and that the journalists have the right to write about those individuals who are elected to offices, who have voluntarily accepted to represent the citizens and as a result to be subjected to public scrutiny.
- Current political and economic scene in BiH is divided in almost all segments, and this is reality of our lives. Still, journalists should identify at least the minimum of their common interests and demand their protection from all stakeholders in the field of media.
- The problem is also the closeness of the governments, particularly in smaller communities: they are only issuing press releases, there are no press conferences, nor direct confrontation with journalists.
- Whoever wants to be in judiciary must not belong to any political option.
- In order to get a more realistic picture of developments in judiciary, the media approach should be better informed and cooler, not sensationalistic as it is now. Access should be granted to all, naturally, with restrictions regarding insults and provocations.

Questions asked should be fair, and in that respect the journalists' freedom cannot be unlimited, given that protection of judicial proceedings that are under way must be ensured.

- There is a problem of communication of judges. The Press Council in BiH has been working for several years now, providing training of judges and journalists and some minor progress has been achieved already. However, we need to find permanent sources of funding for joint education of journalists and judges on the principles of the work of both media and courts, with practical courses for judges on how to best communicate with journalists and public, while, for journalists, the course should focus on how to follow and report from courts in the interest of public.

	<b>YES</b>	<b>%</b>	<b>NO</b>	<b>%</b>	<b>No statistics</b>	<b>%</b>	<b>Don't know/ Neutral</b>	<b>%</b>	<b>No. of responses</b>
8.24.A.	1	4.0%	22	88.00%	1	4.00%	1	4.00%	<b>25</b>
8.24.B	16	88.89%	1	5.6%	1	5.56%	0	0.00%	<b>18</b>
8.24.C.	6	40.00%	9	60.00%	0	0.00%	0	0.00%	<b>15</b>

## INDICATOR 8.25: MEDIA SELF-REGULATION

*There should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be legally recognized by courts.*

### BiH context

Media self-regulation is successfully implemented in BiH. The trend is that in the weekly newspapers the editors set some pages for reactions and refutes of the readers, while daily newspapers, with exception of two dailies, *Oslobođenje* and *Večernji list*, do not provide such pages, but refutations are mostly published in the same sections where the refuted texts were published. As of two years ago, self-regulation is applied by the online media in BiH as well. Most of them now publish reactions and refutations made by their visitors, and in several cases there were apologies made to the individuals on whom inaccurate information had been published.

This is an area of competence for the Press Council in BiH, as a self-regulation body for printed and online media that has existed since 2001 and that, in its work, tries to increase the level of professional reporting and to enable readers of printed and online media to protect their right to truth, by way of submitting complaints in the cases of inaccurate reporting.

The Press Council in Bosnia and Herzegovina has been established as an expression of will of journalists and the representatives of printed media to regulate their field and principles of their own profession and their own work. The establishment of the Press Council of BiH provided a single, independent body citizens can turn to whenever they observe non-professional reports in printed or online media, or when they are themselves an object of untrue or misleading reporting, in order to have them send corrections of wrongly presented facts or filing a complaint to which the free and quick solutions are provided. The right to refutation is one of the basic rights the Press Council in BiH has been trying to secure by their efforts. By mediation, or intervening with the editorial board that had published the disputed article, the Council insists to have the voice of the “other party” heard also. In addition, when making decisions on possible violations of the Press Code of BiH, the Council may point at certain irregularities in reporting and provide recommendations as how to repair or minimize the damage.

A significant progress has been observed in terms of the number of citizens’ complaints suggesting that the citizens’ awareness of their right to response has improved and that existence of this media self-regulating body is well justified. By publishing reactions or refutations in the specific media significantly reduces the number of court cases against media.

As an important prerequisite for establishment of a self-regulating body, the journalists’ associations from BiH adopted a single Press Code of BiH in 1999, which was revised and amended several times. The Code is based on the European practice and it contains parts of the most important ethical provisions, recommendations and resolutions of the EU. By signing the Press Code, editors of printed media accepted a set of ethical rules and regulations that the journalists should adhere to and apply in their daily work. If a reader of a specific media believes that the Code had been violated, they may decide to act in accordance with complaint procedure of the Press Council in BiH: to write a letter of refute to the editor of the media outlet that had published the article and to the Secretariat of the Council. It is important that the refutation is precise and related to specific statements in the original article that is being refuted. If the editor fails to publish the refutation, the Complaints Commission of the Press Council shall consider the complaint and decide on its validity. The Commission shall publish their decision on the web page of the Press Council in BiH [www.vzs.ba](http://www.vzs.ba) with recommendation to the respective media to publish that decision. Numerous are the opinions that mere publication of the decision and issuance of recommendations is not sufficiently effective and that the Press Council in BiH should have power to pronounce sanctions to the media who violates the Code. On the other hand, pronouncement of sanctions would go against the principle of self-regulation.

In the legislative framework, Article 8 of the Law on Protection against Defamation of FBiH and of the RS Law titled “Obligation to mitigate damage” is relevant to the field of self-regulation of media. Article 8 of the FBiH Law stipulates that the “injured party has to take all necessary measures to mitigate the damage caused by statement of false fact, and particularly to submit to the injuring party the request to rectify that statement”. Article 8 of the Law on Protection against Defamation of RS says: “The plaintiff within the meaning of this Law shall take all necessary measures to mitigate any damage caused by alleged defamation, and particularly the request for rectification that has to be submitted to the defendant.”

### Summary of responses/discussion

Ninety-one percent (91%) of respondents are familiar with the system of self-regulation, i.e. the work of the Press Council in BiH, but only 33% have had insight into how the Complaints Commission of the Press Council in BiH works in practice. Very few respondents had negative opinions on the work of the Council, while the rest supported the work of this organization, but still had divided opinions on its effectiveness and implementation of self-regulation in BiH, because the self-regulation is an excellent system of implementing main rules of conduct and respect of ethical principles and professional standards, and that BiH is among few countries in the world that has good basis for self-regulation. Factors restricting self-regulation stated include the difficulties of proving that violations of applicable rules and laws were actually made caused by their lack of precision and by lack of minimal economic stability due to which the editors and journalists cannot fight for their rights for fear of jeopardizing themselves. In addition, a number of respondents said that the public is not sufficiently informed on the work of the Council. Some say that the Press Council has no authority to pronounce sanctions, while mere making and publishing of decisions on violation of professional standards is not enough to cause any change

for better in the media. Some respondents are of the opinion that the self-regulating work of the Press Council and principles they stand for are designed for a well organized democratic society, while Bosnia and Herzegovina is still very far from becoming one.

Some positive examples of effectiveness of self-regulation in BiH include: an increase in number of citizens' complaints, quality of the complaints that quote the violated articles of the Press Code of BiH, an increased number of published refutations and reactions compared to the initial years of the operation of the self-regulating body in BiH, existence of special sections or pages for complaints and reactions in some weekly and daily printed media, expansion of self-regulation to include online media too. Also a very positive indicator lies in the fact that the judges, in the processes on defamation, more and more often check the plaintiffs whether they had complied with the Article 8 of the Law on Protection Against Defamation and demanded correction of wrong statements before they filed complaints to the court.

### Respondents' suggestions

- Citizens of BiH need to be educated on existence of the Complaints Commission of the Press Council in BiH, taught to use its capacities, how to file a complaint, how to react to articles in print or online media. One proposal is to "involve religious communities, because religious communities may talk to members of their congregations".
- One respondent believes that, if all media accepted and supported the Press Council, the self-regulation would become more effective.
- The institution of Ombudsperson for Press should be re-established.
- The idea that media should establish their own in-house ombudsperson is not bad; however, in the conditions of Bosnia and Herzegovina, media are neither economically nor in terms of their professional maturity ready to do so.

	<b>YES</b>	<b>%</b>	<b>NO</b>	<b>%</b>	<b>No statistics</b>	<b>%</b>	<b>Don't know/ Neutral</b>	<b>%</b>	<b>No. of responses</b>
8.25.B.	20	90.91%	2	9.09%	0	0.00%	0	0.00%	<b>22</b>
8.25.C.	5	33.33%	10	66.67%	0	0:00%	0	0.00%	<b>15</b>

8.25.B. The answer is "YES" if the respondent had any knowledge of the system of self-regulation.

## INDICATOR 8.26: PROTECTION OF JOURNALISTS FROM CORRUPTION

*Journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism.*

### Summary of responses/discussion

Very few were the respondents who could give an example of journalists making their financial interests public, and this was mostly in relation with reporting on financial gains and disclosing the sources of such gains.

Less than half of the respondents (43%) believe it is absolutely not right that the journalists or media owners attend paid events sponsored by companies, institutions or tourism agencies and then publish news articles on such events. However, this happens quite often, and not only in media, but in many other fields too (for example, in medical profession). Rest of the respondents (57%) think that such travels are justified provided that the journalists retain their objectivity and professionalism, never lose critical attitude towards the organizers and clearly state that the reporting is of marketing character whenever that is the case. Media coverage of national sports team and have pharmaceutical company, for which it is a positive media promotion, should not be treated the same.

Most of the respondents (76%) agree it is not right for journalists to accept gifts from public companies, public officials or politicians – something that often happens in BiH, and that this is a form of corruption and should be prohibited by rules. A lot smaller part of respondents (24%) finds it is acceptable for journalists to accept presents, but under direct condition that they have the high level of self-control so that the presents would not affect their objectivity and that the maximum value of the present the journalists are allowed to accept is clearly set in advance.

	YES	%	NO	%	No statistics	%	Don't know/ Neutral	%	No. of responses
8.26.B.	12	57.14%	9	42.86%	0	0.00%	0	0.00%	21
8.26.C	4	23.53%	13	76.47%	0	0.00%	0	0.00%	17

*8.26.B. Every YES response includes the condition that the journalist must at any time retain their impartiality and professionalism. 8.26.C. YES, but the present must not make them less objective.*

## INDICATOR 8.27: PERIODICAL REPORTING ON MEDIA FREEDOMS BY THE AUTHORITIES

*National parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level,*

### BiH context

In Bosnia and Herzegovina there are assessments of media freedoms done by Transparency International and other non-governmental organizations, however, neither the Parliament of BiH, nor the Government of BiH have done such evaluations so far.

### Summary of responses/discussion

Majority of respondents or more precisely, 80% responded with “NO”, while 20% said “I do not know”). None of them knew of any Parliament at any level of government assessing the media freedoms and rights of journalists, or were they aware of any national report on such issues. They believe that authorities have no interest in this because they are more interested in editorial policies of the media, what is contrary to the law, and financial reporting, as well as in their own representation in the media.

Some respondents (57%) said that the Parliament should take position on indicators included and analysed in this document with the aim of adopting not only declarative but an obliging document that would be applied in practice and regularly updated. One respondent went as far as to say that the Parliament should have regular sessions to discuss this topic and that a written trail should be left after every such session in form of a document, resolution or decision. Other respondents (43%) thought it would not be democratic that the Parliament issues official position on this issue, or to adopt anything; instead, they should pay regular attention to this issue in a less formal way, such as through discussions with journalists and editors where they would be engaged in communication which would lead to improvement of media freedoms.

### Respondents’ suggestions

- One should organize a “Media Day” in the Parliament so that the members of the parliaments should meet with media editors and exchange opinions for the purpose of improving their communication.
- Analysis of the implementation of the Council of Europe’s indicators need to be done by media experts and their report should be submitted to parliamentary procedure, since this way they would get a sort of public verification.
- It would be very important for the society as a whole if the Parliament of BiH, as the highest legislative body in the state, would take position on one of the key issues in the society: how the media and journalism operate in the public space of BiH as democratic developments in any country would be unimaginable without them. Constant attention needs to be paid to this topic in order to identify deficits when it comes to media freedoms, if they exists, as well as to determine whether something needs to be corrected in the process of work; there needs to be a document about it in the form of resolution, decision and the like.
- Experts should make analysis and produce reports, and Parliament should provide mechanisms to implement the recommendations.

	YES	%	NO	%	No statistics	%	Don’t know/ Neutral	%	No. of responses
8.27.A.	0	0.00%	12	80.00%	0	0.00%	3	20.00%	15
8.27.B.	0	0.00%	11	100.00%	0	0.00%	0	0.00%	11
8.27.C.	12	57.14%	9	42.86%	0	0.00%	0	0.00%	21

# LIST OF PARTICIPANTS OF THE FIRST SHADOW REPORT

Analysis of media freedoms in Bosnia and Herzegovina  
According to the indicators set by the Council of Europe

In the course of 2011, the Press Council in Bosnia and Herzegovina and the Association of BH Journalists conducted, with the support of the Civil Rights Defenders, CRD, a survey and made an analysis of media freedoms in BiH, based on Indicators for measuring media freedoms set by the Council of Europe for its member states. In this process, focus groups, expert analyses and numerous interviews, as well as desk research and surveys, were organised and then followed by the final meeting and by the final analysis done by a group of experts. The whole material was divided into transcripts that were systematically analysed as part of the assessment of media freedoms in Bosnia and Herzegovina. The list of individuals who took part in the development of this first Shadow Report is given below.

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- Ivanka Džajić, Director and Editor-in-Chief of Radio Čapljina
- Ivica Šimunović, former Editor of Radio of Herceg-Bosna
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## Shadow Report for Bosnia and Herzegovina

This Report is made according to the Indicators for measuring media freedoms in the countries members of the Council of Europe

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