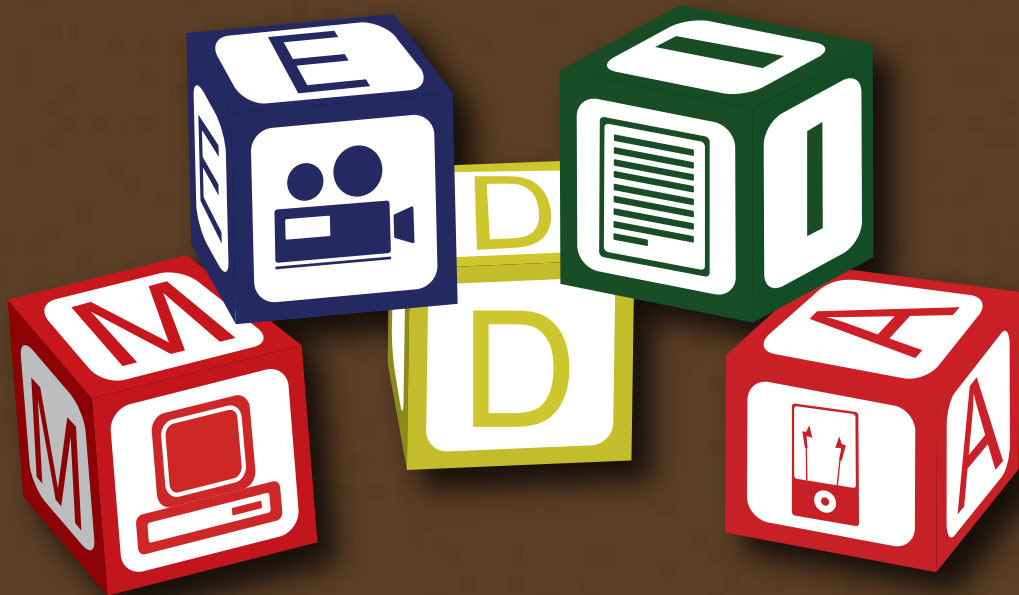


The Media in South-East Europe

A Comparative Media Law and Policy Study

Beate Martin, Alexander Scheuer, Christian Bron (eds.)



The Media in South-East Europe

Comparative Media Law and Policy Study

Based on Country Reports from

Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo,
Macedonia, Moldova, Montenegro, Romania and Serbia

Conducted on behalf of the

Friedrich Ebert Foundation, Berlin – Regional Project Dialogue South-East Europe

By the

Institute of European Media Law e.V. (EMR), Saarbrücken/Brussels,
with the assistance of national experts from the countries concerned.



Foreword

The media are of outstanding importance for our European democracies – and certainly also beyond them. They are considered to be of the highest relevance for the formation of opinion, both individually and collectively, and a basis on which the citizens rely when gathering information and, subsequently, when exercising their role in the democratic process, mainly through voting in elections and referenda.

Because the potential influence of the media hence can hardly be underestimated, it is necessary to continue efforts to bring a considerable level of transparency into the conditions under which the media, foremost the press, broadcasting, online services and film, function – entailing both the media law and policy framework as well as other conditions which have an impact on their actual practice.

Given the fact that current research on the state of the media in South-East Europe has been identified as a well-timed exercise, not only because of the approximation of this region to the European Union, but also due to the eminent relevance of the media for the future development of the “younger democracies” themselves, the Friedrich Ebert Foundation – Regional Project South-East Europe has commissioned the Institute of European Media Law to conduct a study which should not only explore the market and legal conditions of the media sector in the countries concerned, but also identify suitable remedies that could be suggested in order to help improve, and overcome possible shortcomings in, the situation actually encountered.

We firmly believe that the present study can contribute to an enhanced, fruitful and constructive dialogue, which should lead to achieving significant progress in the short to medium term. And this should be in a number of fields that are crucial for a develop-

ment that is both immune to a higher degree against economic vulnerability as well as undue political influence and better suited to the overarching and individual function of the (respective) media.

We would wish to acknowledge the support that has been offered by national experts drafting the country reports, by stakeholders who were available for discussing preliminary results of those reports as well as by the resident representatives of FES in the South-East European countries which were included in the analysis conducted.

Berlin/Saarbrücken, April 2011

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Preface

A report on Albania, published by the European Commission against Racism and Intolerance, wants to see the media being encouraged to employ more comprehensively the established ethical standards, particularly in the context of racist expression; the media authority in Bosnia-Herzegovina has had to deal with choosing the right approach to react to the highly controversial content of a programme broadcast by the public service media; in Bulgaria, the acquisition of an important commercial broadcasting organisation has been closed; the Croatian Electronic Media Law, as modified, now also deals with the protection of encrypted media services; in Macedonia, the Rulebook on the protection of minors from programmes that might harm their physical, mental or moral development was adopted; on complaint by journalists, the European Court on Human Rights found that for quite some time the independence of the public service broadcaster in Moldova had not been sufficiently guaranteed; in Montenegro, amendments to the Law on Electronic Communications have finally paved the way to an additional distribution of radio frequencies; the contest for film project subsidies has started in Romania; the Serbian Law on Public Information has been amended – these few examples of media law and policy related news, reported on mainly at the beginning of 2010¹ and taken as a starting point for this study, raised the important question of what, beyond the importance of the individual events portrayed, these developments actually mean for the situation of the media in South-East Europe.

It is the primary intention of the present study to undertake a thorough analysis

of the media law and policy situation in the ten countries covered. After the beginning of the democratisation process in the 1990s, these countries had to tackle a number of challenges in order to establish a media order along the lines of democracy, the rule of law and existing European standards, e. g. state broadcasting should be transferred to a public service institution, state-controlled print media should become free and responsible, market revenue-funded and organised in such a way as to ensure that they could live up to their “public watchdog” function, etc. To bring greater transparency to whether and to what extent the necessary progress has been achieved, also through devising the underlying media law and policy concepts and their application in practice, and what the remaining challenges are – this shall be the objective of the present analysis. The study is based on country reports drafted by national experts (“correspondents”) that have been elaborated on the basis of a detailed questionnaire developed by the EMR in order to allow for the greatest possible comparability of the information gathered.² Each report first looks into the political and market situation under which the different media function, i.e. press, broadcasting, Internet and electronic communications, and film, and then goes on to describe the relevant legal framework and the underlying media policy options. With the aim of providing for a certain matrix or “benchmark”, the EMR provided the correspondents with a description of the relevant

² The approach adopted for present purposes can be considered well-established; it has been successfully applied also in view of a number of studies executed by the EMR in past years, see for instance: *EMR et al.*, Public Service Media According to Constitutional Jurisprudence – The Human Rights and Constitutional Law Dimension of the Role, Remit and Independence, 2010; *HBI/EMR*, Study on co-regulation measures in the media sector, 2006; *EMR/ZEI*, Media Market Definitions studies, 2003 and 2005; *EAO* (ed.), IRIS Special “The Public Service Broadcasting Culture”, 2007; *EMR/ZIK* (*Weber/Roßnagel/Osterwalder/Scheuer/Wüst*), Kulturquoten im Rundfunk, 2006; *Roßnagel/Kleist/Scheuer et al.*, Die Reform der Regulierung elektronischer Medien in Europa, 2007.

¹ For more (recent) information see the IRIS Merlin database, available at: <http://merlin.obs.coe.int>.

body of European law instruments, covering both the Council of Europe and the European Union.

In order to inform ourselves of the geographical scope, topics and approaches as well as the results of research that has already been undertaken in relation to the media in the countries at hand, the EMR has investigated former studies – as far as these have been accessible for being held in the English language. This has helped in particular with a view to the design (structure and content) of the developed questionnaire.

The EMR is perfectly aware of the fact that the sample of countries chosen for this study shows a very high degree of diversity – and this is certainly true in many ways, among others: some of the countries have already become Member States of the European Union, while others are more or less advanced in the process of accession; some countries have made considerable progress, after democratisation, in the formation of a stable state, others have only recently undergone segregation or are vested with a relatively complex federal structure, bringing about risks of imbalance; some countries may be considered as having benefited from a comparatively healthy economic situation for a couple of years already, in others, mainly due to difficulties following quite significant political tensions, the market can be regarded as being still in an infant stage. Therefore, it was seen as important to look into each situation in its own right. Nevertheless, from the outset, there is no reason to exclude the fact that experiences gained in one or other country – irrespective of, or even because of, the actually existing, determining political, economic and cultural factors – could prove relevant for other countries, too. Not least, there are a number of (almost) common denominators that, in theory, could lead to the assumption that a best-practice model encountered in one or more countries

also should be made known, and might also be a feasible approach for another one.

It is of utmost importance for every kind of study, particularly in the media field, to strive for the highest possible objectivity when it comes to portraying the factual situation. However, such a goal is not always easy to achieve: while it may be argued that the description of the existing legal framework would *cum grano salis* almost obviously lend itself to a neutral approach, those involved in matters of law and policy, not only in the media sector, will be familiar with a certain bias that cannot always be excluded – because the selection of issues tackled, the manner of presenting them, or the difficulties of interpretation that are sometimes encountered, are still an inherent feature of information processing. These issues are, of course, also an important topic when it comes to media coverage (and the analysis thereof).

The approach adopted by EMR, also for the present study, aims at striking the right balance in this respect, and this has been made operational in several ways: correspondents that were addressed as contributors for the respective country reports are generally experts with whom we have already been collaborating some or even several times before and whose related works have been successfully scrutinised by the interested parties; thereafter, EMR has consulted their own or third party information in order to assess the comprehensiveness and correctness of the reports; national experts have sought reactions from stakeholders, as well as from the representatives of the Friedrich Ebert Foundation (FES) in the respective countries, on their draft reports and the main conclusions contained therein.

But – almost naturally – there remains a certain leeway that should also be given to national experts, in the way that they have assessed the situation at hand, and this im-

plies that some form of value judgements must eventually be made. To give but one example, which refers to recent discussions in several Western European countries on the construction of the financing instruments for public service media: it may be considered preferential for the fulfilment of the public service mission, on the one hand, that recourse to the financing by selling airtime for TV advertising is being limited or completely ruled out but, on the other hand, the subsequent and possibly unavoidable increase in dependency of State (government and/or parliament) decisions on the funding, which may be linked to such regulatory decision, could raise (additional) concerns as regards the independence of organisations from undue State influence. In many cases, appraisal of this or similar developments will be made, against the background of the underlying (implicit) culture of governance existing in a given society (or parts thereof, like media enterprises or the people working in those undertakings).

Therefore, we tend to consider national experts, especially if their conclusions are supported by feedback given to their work from the parties concerned, to be well-placed for such sometimes indispensable evaluations.

In any event, it is quite clear that it will not be the actual wording of a media law, that is decisive alone, but the way that enshrined freedoms are guaranteed and lived, and foreseen responsibility is assumed, which in the end will allow us to draw the whole (big) picture.

Executive Summary

This study on “The Media in South-East Europe” is a project conducted by the Institute of European Media Law (EMR) on behalf of the Friedrich Ebert Foundation (FES) – Regional Project South-East Europe. It aims at bringing greater transparency to the situation of media law and policy of Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Montenegro, Romania and Serbia by describing and analysing the relevant legal and regulatory framework, portraying the actual practice of the media and developing suggestions on how to improve the current conditions.

The study is mainly based on country reports that have been drafted by national experts on the basis of a questionnaire developed by the EMR. Besides the present publication, which contains a review of previously conducted research on the topic as well as an overview of the main findings of the European Union’s reports in the context of enlargement and neighbourhood policies (chapter A – Context and Framework), summaries of the country reports (chapter B), and a comparative analysis (chapter C), the project entails further elements, i.e. a document outlining the European media law and policy standards (“benchmark”) and, finally, the full country reports, these latter parts are made available as online publications exclusively.

The national experts have sought different forms of feedback, both as regards their initial country reports and the proposals made for remedying possible shortcomings in regulation and practice of the media, including, firstly, through communication with the resident representatives of FES in the countries concerned, and, secondly, in discussing their suggestions with (representatives from) stakeholders of the sectors concerned, i.e. the press, broadcasting, online media and film.

The main findings of the country reports are summarised in the chapter “Comparative Analysis” to which the reader is kindly referred for further and more detailed information. Suffice it here to note that quite obviously the countries into whose media systems research has been conducted vary in numerous ways, not only as regards size, economic strength, importance of ethnic minorities etc., but also when looking into the market situation of and the legal framework for the media. This latter is mainly based on some constitutional law provisions and specific laws covering the four media sectors. In addition, the role of self-regulation, in particular as far as the press and broadcasting are concerned, differs.

It appears rather difficult to identify either specific countries or specific media for which it could be said that the current situation presents itself as at least satisfying. The reasons that could possibly serve as explanations are manifold: in some instances, the relevant sector(s) hardly give the impression of being economically viable to a sufficient degree, in some others and partly in addition to this first aspect, the media seem not to be living up to their role – a perception which *inter alia* may be linked to a lack of independence not only from political, but also from economic forces and an ensuing decrease in relevance attributed to them by the citizens as readers, listeners and viewers.

There remain a certain number of elements where the national legal and regulatory frameworks are not yet fully in line with European standards, thus, additional efforts are needed to improve the legislative framework governing the press, broadcasting, online services and film. Furthermore, even in respect to certain elements of the media legal fundamentals for which the European standards leave room for different solutions to be found at national level, i.e. where these are not formulated in such a manner as to offer

“only one” solution, the margin of appreciation theoretically enjoyed by the legislator or other regulators in the countries concerned is either not used at all or has been effectuated through means which cannot be regarded as sufficiently supportive.

Of course, one should be clear about the fact that it is not the structure and wording of the relevant legislation and regulation *per se* which would suffice to obtain the necessary information for concluding on the situation of the media and its different sectors in a given country or region – but, additionally, specific attention must be paid to the actual implementation in practice. Moreover, the legal and regulatory framework cannot, as such, provide for all important remedies – nevertheless, if the legislation in place does not contribute to a healthy development of the media systems, it will become increasingly difficult to ensure a healthy state of the media.

These findings draw attention to the proposed remedies for overcoming difficulties and deficiencies in the legal framework as well as in media practice – these recommendations are presented in their integral form in the country reports but are also summed up in the Comparative Analysis chapter. Mention should be made that for a couple of issues the regulatory approaches adopted in several countries bear the potential of best practice approaches and therefore could be of high interest for the future development in the neighbouring countries as well.

Adding to the necessary action by the legislators/regulators and apart from efforts that the media need to make themselves, it could be said that there remains a need to foster the media in South-East Europe through increased support for self-regulation – in-house, within a sector, embracing several sectors – and through continuous engagement of initiatives from the relevant societal groups, such as media and political NGOs, consumers and citizenship in general.

It is on the basis of such suggestions that it is envisaged to foster the necessary dialogue among relevant stakeholders at national level and to strengthen the freedom of the media so as to ensure that they can fulfil the remit which is assigned to them under conditions that are favourable for economic stability, diverse and culturally rich contents and a political debate that is objective and fair and thus apt to improve the democratic processes in the states, in the region and *vis-à-vis* and within the European institutions.

A Context and framework

Alexander Scheuer

Christian M. Bron

Shari Kind

The present study aims at analysing different aspects of the situation of the media in ten South-East European countries. It is based on country reports by national experts (correspondents) that have been elaborated on the basis of a questionnaire that was devised by the EMR. The structure of the latter³, on the one hand, has been informed by the design and results of several studies already conducted, (*infra I*) which we examined at the outset of the present exercise and, on the other hand, with a view to the benchmark that exists in the form of European legal and policy instruments. In order to give additional insight into a further perception of the situation of the media in the majority of the countries forming part of this study, the findings of the European Commission, as established in the course of the preparation for accession, are summarily portrayed here as well (*infra II*). This introduction concludes with the outline of the methodological approach that has been adopted both for the establishment of the country reports and for the development of recommendations, which, in their turn aim, at remedying possible shortcomings of the present situation (*infra III*). As has been laid down in the preface, the study – besides offering a comprehensive stock-taking and analysis – purports to identify best practices that may inform the relevant stakeholders in the countries when adapting existing or formulating new media policy approaches.

³ For the sake of transparency, the approach aimed at with the questionnaire preparing for the country reports shall be presented here as well (see Annex).

I Studies already executed

The EMR has analysed several recent media (law) studies, either covering more specific topics or dealing with more general regulatory approaches. Within this framework of relevant research on the media in South-East Europe, which was accessible to us because the studies are being held in the English language, nine studies are assessed in greater detail. These studies have been chosen as they give a vivid impression of the different existing approaches when it comes to analysing the media (law) landscape. Mainly, they have been of interest for us because these informed the approaches taken in the present study.⁴

1 Content, main results and approaches adopted for studies already undertaken

1.1 "Media Sustainability Index 2010"

The "Media Sustainability Index 2010 (MSI)"⁵, first to mention, has recently been published by the International Research & Exchanges Board (IREX). IREX, in co-operation with the United States Agency for International Development (USAID) and various media experts in different countries, presents an analysis of the media environment in 21 countries of Europe and Eurasia during 2009 and shows trends in the media sector since 2001.⁶ The MSI is the

⁴ Currently, there are two – not yet finalised – studies also to be mentioned: "INDIREG – Indicators for independence and efficient functioning of audiovisual media services regulatory bodies for the purpose of enforcing the rules in the AVMS Directive" (<http://www.indireg.eu/>) by the Hans Bredow Institute for Media Research at the University of Hamburg et al., which deals with the issue of the independence of regulatory authorities and focuses on 43 countries including, except for Moldova, all those here examined; and "mediadem" (<http://www.mediadem.eliamep.gr/>) which tries to identify policy tools and instruments that can support the development of free and independent media and focuses, *inter alia*, on the countries examined here: Bulgaria, Croatia and Romania. As an ongoing project, also the work of the European Journalism Centre titled "Media landscapes" (http://www.ejc.net/about/press_releases/media_landscapes_series_relaunches) should be pointed out.

⁵ The MSI of 2010, including the different country studies, is available at: http://www.irex.org/programs/MSI_EUR/

⁶ Annual scores of the MSI for 2001 through 2009 are available at: http://www.irex.org/programs/MSI_EUR/archive.asp

only report that covers all the countries also examined within the present EMR study.

The results of the MSI are based on a scoring system⁷: IREX allocates five objectives that – in view of IREX – shape a successful media system. The objectives are: “Freedom of speech”, “Professional journalism”, “Plurality of news”, “Business management” and “Supporting institutions”. Each objective consists of from seven to nine indicators. For example, a “freedom of speech” indicator in the sense of the first objective is “the existence and enforcement of legal and social protections of free speech”. Each indicator is scored from 0 (= country does not meet the indicator; government or social forces may actively oppose its implementation) to 4 (= country meets the aspects of the indicator; implementation has remained intact over multiple changes in government, economic fluctuations, changes in public opinion, and/or changing social conventions). The points for all individual indicators are averaged to obtain a single, overall score for each objective. These scores are then averaged to provide an overall score for the country. The overall scores range from 0-1 (unsustainable, Anti-Free Press) to 3-4 (sustainable). As an example: The overall score for Albania is 2.11, consisting of the “freedom of speech” score: 2.16, the “professional journalism” score: 2.18, the “plurality of news” score: 2.19, the “business management” score: 1.73 and the “supporting institutions” score: 2.29. This means, in the wording of IREX, an “unsustainable mixed System”, which is a country that minimally meets objectives, with segments of the legal system and government opposed to a free media system.

The MSI can be qualified as an overlapping study that deals with different aspects of the media landscape. However, the objectives

of IREX show a special focus on the production of and access to news and information within traditional media as well as new media (especially in the fields of journalism and/or distribution). The MSI provides important information for the media (themselves), the “players” in the media policy sector (policy-makers, advocates, implementers) and the citizens by showing the strengths and weaknesses of the media landscape in the countries observed.

1.2 “Kosovo and the Media”

“Kosovo and the media”⁸, published by the Macedonian Institute for Media and carried out by the South-East European Network for Professionalisation of Media (SEENPM) in 2008, is a study that nearly covers all countries (also) examined by EMR, except for Kosovo, but follows a different, more specific approach.

The project has mainly focused on press analyses in the south-eastern European countries underlining the main characteristics of the media coverage regarding the Kosovo situation. Each report firstly presents both the political events and stances of the political parties in the single countries regarding the Kosovo as well as “basic facts” of the media infrastructure (e.g. the media ownership structure, potential political influences and human resources capacity), in order to describe the background against which the portrayal of developments in Kosovo has been taking place. The basic methodology was then a quantitative content analysis of the newspaper *Art.s* written in the period around the declaration of Kosovo independence by observing mainly formal attributes of the *Art.s* (e.g. location of

⁷ The methodology of the MSI 2010 in detail is available at: http://www.irex.org/programs/MSI_EUR/2010/EE_MSI_2010_Intro_ES_Methodology.pdf

⁸ The English online version of the book “Kosovo and the Media”, released on 15. November 2008, is available at: http://www.mim.org.mk/attachments/095_media-coverage-kosovo-ang.pdf

the text, text genre and author, source type, content, occasion for the text), in order to provide grounds for identification and evaluation of standards for journalistic production. The findings were enriched with additional methods encompassing different aspects of media coverage and complementing the qualitative dimension of the research. The different newspapers themselves have been selected, based on different aspects such as political or ethnic affiliation of the newspaper, the editorial policy, daily circulation and influence on readership. In Montenegro, for example, high media interest was present only in the pro-Serbian daily named "Dan", while the other newspaper observed, "Vijesti", displayed a balanced approach. The report concludes that "the fact that Kosovo Arts occupy pages reserved for world news in 'Vijesti', while in 'Dan' they are placed together with domestic politics creates the image of two realities in Montenegro. However, as the analyses showed, repeatedly represented stances of local parties on Kosovo were often only a topic in the 'daily war' for gaining political points

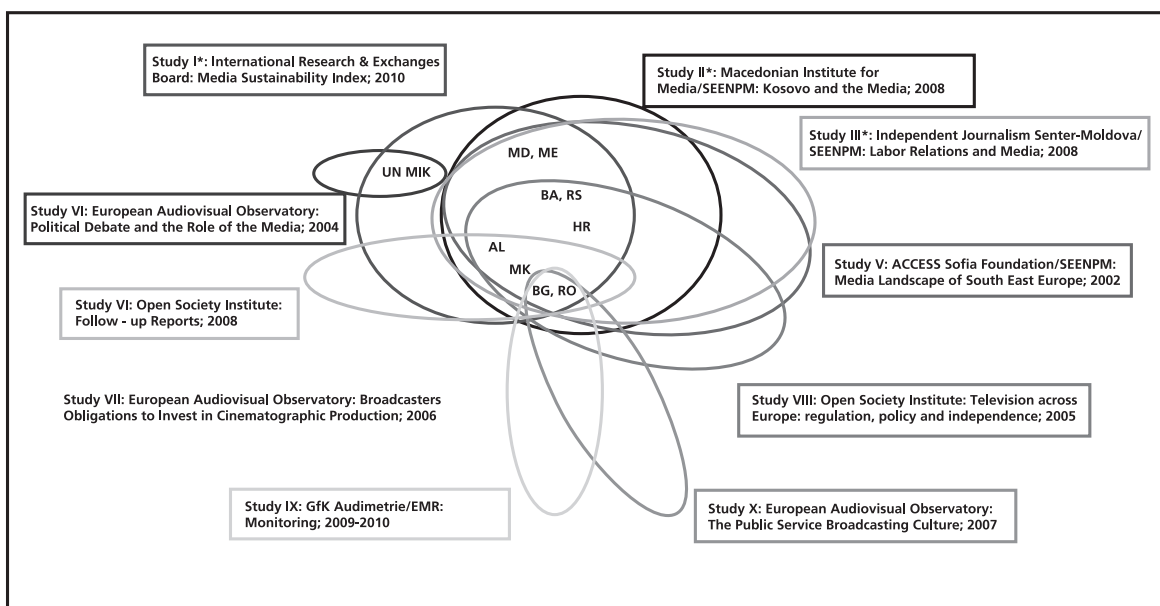
directed at the goal and could easily exchange their roles."

"Kosovo and the media" (like MSI) is broad in the sense that lots of countries have been investigated but, more narrowly, as a specific topic, namely media coverage has been chosen for examination. The study showed that the "issue" of Kosovo did receive the appropriate attention according to its political significance in the media coverage, but it is linked to, and therefore its coverage varies according to, the ethnic background of the readership and political climate (stances of the state authorities).

1.3 "Labor Relations and Media"

The Independent Journalism Centre-Moldova evaluated within SEENPM the observance of labour laws in the media sector to identify problems in the way such norms were applied to so-called "typical" and "atypical" employees, to propose solutions for the problems identified and to share best practices throughout the region. The results are presented in

Graph 1: Identified Studies and Their Respective Geographical Scope



* Study covering all EMR observed countries

the 2008 publication “Labor Relations and Media: Analysing patterns of labor relations in the media of SEENPM member countries”.⁹

The country reports focused on the legislation regulating labour relations in the media, the implementation of the legislation in practice (including the current status of typical and atypical media workers), censorship and self-censorship as an effect of labour relations as well as the existence and effectiveness of journalists’ trade unions. A reference point was the “typical” or “atypical” employee. Employees in this regard were fully-employed staff of TV and radio stations, newspapers, news agencies and online publications, freelancers working for various media organisations, managers of news outlets, trade union representatives, staff of non-government organisations and media regulators.

“Labor relations and media” followed, like the above-cited study “Kosovo and the media”, an empirical approach, but was based on issues of law, with regard to a specific topic. Within this topic, several aspects beginning from the existing labour regulation up to its application have been observed. The observations of the country researchers showed, in general, that respect for journalists’ labour rights seems to be better in public media outlets than in private ones, that the most common violations of labour rights occur in relation to the duration of working hours/rest time, but also the inadequate protection of journalists from dismissal and the problem of imprecise labour contracts, especially with regard to job descriptions.

1.4 “Television across Europe”

The EU Monitoring and Advocacy Program of the Open Society Institute (OSI), in co-operation with OSI’s Network Media Program, has

⁹ “Labor Relations and Media: Analysing patterns of labor relations in the media of SEENPM member countries” of 15 February 2008 is available at: http://ijc.md/Publicatii/resurse/Labor_Relations_and_Media.pdf

presented two reports: “Television across Europe: regulation, policy and independence” of 2005¹⁰ and the 2008 follow-up report: “Television across Europe: more channels, less independence”.¹¹

The 2005 report includes a regional overview and 20 individual reports focusing on the state of both public service and commercial broadcasting television, the 2008 report mapped the main changes in broadcasting legislation, policy and markets over the (then) past three years (after the publication of the initial reports in 2005) of nine of the 20 countries previously analysed, and assessed the progress (or lack of it) that these countries had made in improving the independence and pluralism of their broadcasting systems. The countries observed in 2005 include nearly all countries monitored also here, except for Kosovo, while those observed in 2008 include only four of them, namely Albania, Bulgaria, Macedonia and Romania. In the single country reports of 2005 the following topics have been tackled: “the general broadcasting regulation and structure” (e.g. regulatory authorities for the television sector, licensing and broadcasting independence), “regulation and management of public service broadcasting” (e.g. the public broadcasting system, services and funding), “regulation and management of commercial broadcasting” (the commercial broadcasting system, commercial television ownership and cross-owner-

¹⁰ The summary of the report “Television across Europe: regulation, policy and independence” of 11 October 2005 is available at: http://www.soros.org/initiatives/media/Art.s_publications/publications/eurotv_20051011/summary_20051011.pdf. The single country reports are available on the OSI Website at: http://www.soros.org/initiatives/media/Art.s_publications/publications/eurotv_20051011

¹¹ The full publication of the report “Television across Europe: more channels, less independence” of February 2009 is available at: http://www.soros.org/initiatives/media/Art.s_publications/publications/television_20090313/1/fullpublication_20080429.pdf

ship), “the European regulation” and “the impact of new technologies and services” (new media, market conditions and digital television). The country reports of 2008 include the topics “general broadcasting environment” (key developments in legislation and policy, EU legal provisions and broadcasting market), “regulation and licensing of the television sector” (regulatory authorities and framework and the licensing system), “regulation and management of PSB” (legislation and policy, governance structure, funding and editorial standards), “commercial broadcasting” (regulation and management, ownership and cross-ownership, the advertising market, editorial standards and independence, as well as regional and local broadcasting) and “programming” (general provisions on news, general programme production guidelines, quotas, etc.).

The two “Television across Europe” reports are characterised by a general regulato-

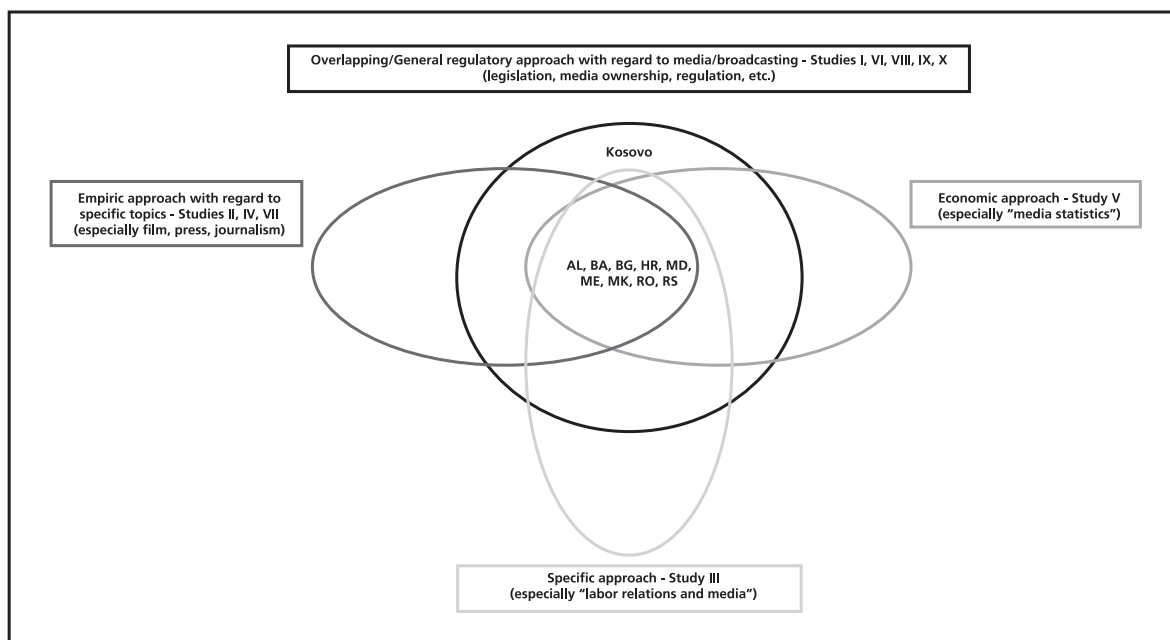
ry approach. General legal topics, such as the relevant legislation, ownership or regulation were mapped. The approach – though limited to television broadcasting – is similar to that adopted for this EMR study, which (also) presents an overarching and general regulatory approach with regard to the media situation in countries of South-Eastern Europe.

1.5 “Media Landscape of South East Europe”

The study “Media Landscape of South East Europe 2002”¹² was implemented by the ACCESS-Sofia Foundation, Bulgaria, within SEENPM and presents quantitative “media data” of eleven countries (among which all of those that are also part of the present study) in South-Eastern Europe to identify basic parameters of the media scene in the region on a comparative basis.

“Media data” (or general media information) in the form of information on media companies and figures (such as audi-

Graph 2: Identified Existing Studies and Their Respective Thematic Scope



¹² The publication “Media Landscape of South East Europe 2002”, published 2003, is available at: <http://www.access-sofia.org/en/docs/Media%20Landscape.pdf>

ence reach, relevant turn-over and number of broadcasting stations) is presented in the fields of “print media” (e.g. print media circulation, top ten dailies), “internet media” (e.g. internet penetration rate), “television” (e.g. television companies and television channels), “radio” (e.g. radio companies and radio stations) and “media economy” (e.g. share of media revenues and number of full-time media staff). Beside these “facts and figures”, the report provided short, to-the-point narrative information on key issues like libel laws and broadcasting regulation in the individual countries.

The study “Media Landscape of South East Europe” followed an economic-empirical approach, as it presented various figures in the field of media. The quantitative data of this project show the enormous variety of media outlets of the observed time period as dozens of newspapers and magazines and hundreds of radio and television stations exist in South-Eastern Europe. As every country has one or more nation-wide commercial television and radio channels, the broadcasting sector in South-East Europe is not dominated by a single state-owned channel any more.

1.6 “Monitoring of AVMS Directive”

GfK Audimetrie in co-operation with the EMR and its EMR Media Network (i.e. national experts in the media sector) presents in its “Monitoring of AVMS Directive”¹³ the compliance of audiovisual media service providers in various Member States with the

provisions of the Audiovisual Media Services Directive (AVMSD) on audiovisual commercial communications¹⁴ based on country reports. The analysis is commissioned by DG Information Society and Media of the European Commission in the context of tender procedure SMART 2008/0001. The project includes two countries also focused on in the present study, namely Bulgaria and Romania.

The first part of this project presents the audiovisual sector, especially the regulatory framework, in the individual country and the transposition measures. The second “Monitoring of compliance” part covers the activities of the television broadcasters and/or providers of on-demand audiovisual media services. In the third part (“Assessment of effectiveness of measures”) the actual implementation of the relevant rules of the AVMSD and of the measures taken by the Member State concerned to ensure the application of such rules by media service providers under its jurisdiction are elaborated on the basis of the results obtained during the first two stages of the country monitoring. At this point, it is especially the regulatory authorities (and questions about their independence, regulatory measures taken, etc.) in the various countries which are observed.

1.7 “Political Debate and the Role of the Media”

In an IRIS Special, entitled “Political Debate and the Role of the Media”¹⁵, published and edited by the European Audiovisual Observatory (EAO), the issue of whether the media should be doing what they are able to do

¹³ More information about the “Monitoring of the compliance by audiovisual media service providers in the Member States with the provisions of Chapter IIa (Art. 3e – 3g) and Chapter IV of the Audiovisual Media Services Directive (Framework Contract)” is available at: http://ec.europa.eu/avpolicy/info_centre/tenders/archives/index_en.htm. Furthermore, it is expected that the results of the individual country monitoring reports will soon be published on: http://ec.europa.eu/avpolicy/info_centre/tenders/archives/index_en.htm

¹⁴ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive – codified version), OJ 2010 L 95, p. 1.

¹⁵ EAO (ed.), *Political Debate and the Role of the Media – The Fragility of Free Speech*, IRIS Special, Strasbourg 2004.

when it comes to political debate was examined. This IRIS Special is the result of a workshop under the heading “The Changing Hues of Political Expression” organised by the EAO and one of its partner organisations, the Institute for Information Law (IViR) of the University of Amsterdam, where participants discussed various aspects of political speech and the role the media plays in it. The publication contains, amongst others, numerous country case-studies by the workshop participants. Kosovo is one of the countries examined and the only one also dealt with within the present study.

“Political Debate and the Role of the Media” followed, like the “Labor relations and media” study an empirical approach with regard to a specific topic. But it was – in contrast to “Labor relations and media ” – not based exclusively on issues of law, as it rather came from a socio-political background. The country case-study dealing with Kosovo mapped the role of the media during the riots of March 2004 in Kosovo beginning with the (not necessarily neutral) broadcast report of the disappearance of three young boys in the Iber River near Mitrovica and the violence that followed. It questioned the role and the definition of (medial) hate speech in the context of a fragile Balkan region and presented various factors that – besides the news coverage – led to the public reaction in March 2004.

1.8 “Broadcasters’ Obligations to Invest in Cinematographic Production”

“Broadcasters’ Obligations to Invest in Cinematographic Production”¹⁶ is another publication of EAO focusing on the ways in which the television industry is required to support cinematographic film, and the instruments on

which these obligations are based. The study considered broadcasters’ (legal) investment obligations in 25 European countries, when it comes to supporting cinematographic (production). Bulgaria, Croatia, Macedonia and Romania can be named as the ones dealt with also in the present study.

In the publication various aspects relating to the broadcasters’ investments were investigated, such as obligations imposed through legal requirements on broadcasters in terms of support for cinematographic film, the more “voluntarily” engaged-in obligations of broadcasters laid down in special film funding agreements, the content of the main provisions or the differences between obligations on public and private broadcasters. In Bulgaria, for example, film funding has been mainly in the hands of the state-run Bulgarian National Film Centre; and only one provision has regulated the activity of broadcasters in respect of direct funding concerning films made for television in the period observed.

“Broadcasters’ Obligations to Invest in Cinematographic Production” has picked up a special theme and has given (within this special topic) an overlapping insight into various countries. This approach could be therefore qualified as empirical (mainly in the sense of legal stock-taking) with regard to a special topic. In general the study showed that cinematographic film funding remains a highly complex theme and that the remit of public service television will continue to play a key role in the establishment of legal obligations as well as the adoption of voluntary obligations.

1.9 “The Public Service Broadcasting Culture”

The publication “The Public Service Broadcasting Culture”¹⁷, edited and published by the

¹⁶ EAO (ed.), *Broadcasters’ Obligations to Invest in Cinematographic Production*, IRIS Special, Strasbourg 2006.

¹⁷ EAO (ed.), *The Public Service Broadcasting Culture*, IRIS Special, Strasbourg 2007.

EAO in 2007, examined the development of public service broadcasting, its *raison d'être*, and its perspectives in the digital media era in 14 European countries to provide an overview of the different regulatory models developed throughout Europe. Bulgaria and Romania, two of the countries portrayed, are also subjects of the present study.

Each country report described the foundations of the public service remit, the economic and financing model and the decision-making process. In addition, it examined the influence of a country's cultural, political or social aspects on the selection of the public service broadcasting system and its organisational structures. For example, the programme mandate of public service television in Romania in 2007 encompassed all general informational and educational responsibilities as well as the supply of entertainment programmes. The Romanian public service television's independent sources of income consisted mainly of radio and television licence fees plus donations, advertising and sponsorship. Relevant national and cultural aspects with Romanian origin were represented with at least 30% in the programme.

The study followed a general regulatory perspective with a special focus on public service broadcasting. It pointed out the connection between public service broadcasting and culture by examining how national rules reflect and account for an important part of the actual culture of public service broadcasting.

2 Impact on the presently-adopted approach

These already executed studies have had a certain impact on the design which was chosen for the structure and approach of the present study – in several ways:

- Firstly, it has been underlined that – when media law issues are concerned – a more

global approach is necessary in two respects, i.e. both the constitutional framework (particularly with its fundamental and institutional guarantees) and the sector-specific legislation must be included in the presentation, on the one hand and, on the other, the practice of relevant authorities, such as courts, administrative bodies, etc. must be taken into account too;

- Secondly, in order to establish an almost comprehensive picture of the media situation in the countries of South-East Europe, all relevant sectors with all relevant actors, in the field of broadcasting, for instance, state or public service broadcasters and commercial broadcasting organisations at different levels as well as regulatory bodies, should be looked at;
- Thirdly, attention has again been drawn to the fact that the analysis of the “public law” media order is not necessarily sufficient in order to identify possible shortcomings in effectively implementing the freedom of the media. Instead, the “private” media law with the definition of “internal” relationships between e.g. journalists and publishers governing issues of working in the media, like labour law and/or codes of ethics, has an important role to play as well;
- Fourthly, since for present purposes the emphasis is being laid on media law and policy issues, it will be important to also – to the extent possible – hold stock of the economic environment to be encountered, globally for the individual economies, but also specifically in the media sector. However, the present study does not aim at intensively dealing with empirical data on the economic situation, but rather will contrast the legal and policy framework for the media with already existing market information;
- Finally, it appears that the general frame-

work of instruments adopted at Council of Europe level, which mostly elaborates on the freedom of expression as enshrined in Art. 10 ECHR, but also covers issues, amongst others, such as the rule of law, governance, culture etc., is merely taken into account; however, this body of legal and policy acts deserves specific attention, not least because the body of European Union law is not – for all countries presently investigated into – decisive (already and fully).

II Transposition of the EU *acquis*, particularly the AVMS Directive

It is well known that, before joining the EU, countries have to bring their national laws into line with the EU *acquis*, including – in the audiovisual field – the AVMSD. When they do so, they become also eligible for funding under the MEDIA 2007 programme (covering the period 2007-2013). The candidate countries Croatia, Macedonia and Montenegro (with concrete negotiations regarding the latter two countries still to start) as well as the potential candidate countries Albania, Bosnia and Herzegovina, Kosovo and Serbia have already made substantial efforts to meet European standards on media, and the process of reform is ongoing. Information on their progress towards meeting the membership requirements in the audiovisual field is provided in the EU's annual progress reports or 'opinions' for the candidate and potential candidate countries.¹⁸ The main points of discussion are represented in the following. Besides the studies already undertaken,

¹⁸ See Communication from the Commission to the European Parliament and the Council of 14 October 2009, Enlargement Strategy and Main Challenges 2009-2010, COM (2009) 533, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2009/strategy_paper_2009_en.pdf; and the single progress reports of the countries, available at: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2009_en.htm.

the reports provide for an additional insight into the perception of the status quo of media freedom and the related legal framework in the countries researched in the present study. For those countries that are already Member States of the EU, i.e. Bulgaria and Romania, some recent information is given instead. In the case of Moldova, which cooperates with the EU in the context of the European Neighbourhood Policy (ENP), the available information has proven sufficiently interesting to also form a starting point in the present context.

1 Albania

Albania applied for EU membership in April 2009. Council Decision 2008/210/EC¹⁹ requires Albania to “[a]lign Albanian legislation with the European Convention on Transfrontier Television and the Television without Frontiers Directive” and to “strengthen the administrative capacity of the National Council on Radio and Television and adopt the strategy for development of the radio and television sector and an updated national analogue and digital frequency plan for radio and television”. The Council also calls on Albania to “ensure that electronic communications legislation is in line with the *acquis* and is enforced, and take measures to achieve a competitive market for electronic communications networks and services”.

In the Commission's progress report 2009 on Albania, it notices little progress in the area of electronic communications and information technologies. The Regulatory Authority for Postal and Electronic Communications (AKEP) harmonised all existing licences with the authorisation scheme of the 2008 Law on Electronic Communications in December

¹⁹ Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2006/54/EC, [2008] OJ L 80, p. 1.

2008. However, regulations to be implemented for the law on electronic communications are still pending adoption. Internal conflicts within the AKEPs Governing Council have hindered its decision-making process, bringing regulatory development to a standstill.

The Commission attested Albania “progress in the area of information society services”. Amendments to the Criminal Code and the Criminal Procedure Code were adopted, following the requirements of the Convention on Cybercrime, as well as the Law on Electronic Commerce and the Electronic Signature Law. However, there has been no progress as regards legislation on conditional access.

The audiovisual policy progress was, in the view of the Commission, “very limited”. The National Council for Radio and Television (NCRT) finalised the draft strategy for the switchover from analogue to digital broadcasting as well as the draft Broadcasting Law. The implementation of the Action Plan on media reform (already) agreed with the European Commission and the Council of Europe needs to be stepped up. Measures are also required to ensure sustainable funding for the public service broadcaster as the collection of licence fees remains low.²⁰

The Commission detects in its Analytical report 2010 that the main legislative acts in the field of audiovisual policies of Albania (e.g. the Law on public and private radio and television in the Republic of Albania, the Law on digital broadcasting, etc.) are only partly aligned with European standards on media regulation - particularly, they are not aligned with the AVMSD and fail to ensure some of the main standards, such as guaranteeing the independence of the National Council for Radio and Television (the broadcasting regulatory authority) and of the public service broadcaster. Besides, there is a need to ensure freedom of expression and a

better media climate by decriminalising defamation and libel.²¹ Finally, in its opinion the Commission points out that Albania needs to “strengthen media freedom and its independence”, and “address the prevalence of political influences” in the media.²²

2 Bosnia and Herzegovina

The Commission attested Bosnia and Herzegovina little progress in the area of information society and media. Although the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions²³ and rules on conditions for the provision and distribution of audiovisual media services and radio and TV programmes has been adopted, the Commission stated that

“(…) a deterioration of media freedoms in Bosnia and Herzegovina has been observed during the reporting period. Since January, the Free Media Helpline of the Bosnia and Herzegovina’s Union of Journalists has registered 16 verbal assaults and direct physical attacks, death threats and other violations of journalists’ rights. This represents an increase of 20% compared to 2008. The country is ranked in 115th place on the list of Reporters without Borders evaluating press freedom in 173 countries. There has been little cooperation between local media organisations responsible for media freedoms. In April the RTRS – the Republika Srpska public broadcaster – and the Republika Srpska daily newspaper Glas Srpski walked out of the association Journalists of Bosnia and Herzegovina, announcing the establishment of a separate, Republika Srpska only, association of journalists.”²⁴

²⁰ SEC(2009) 1337, Albania 2009 Progress Report, pp. 40 et seq.

²¹ SEC(2010) 1335, Albania, Analytical report, p. 67.

²² Commission Opinion on Albania’s application for membership of the European Union, COM(2010) 680, p. 12.

²³ <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

²⁴ SEC(2009) 1338, Bosnia and Herzegovina 2009 Progress Report, pp. 52 et seq.

²⁰ SEC(2009) 1337, Albania 2009 Progress Report, pp. 40 et seq.

Furthermore, efforts are necessary to implement the legal framework in the area of public broadcasting, to carry out the reform of this sector and to ensure the functional independence of the Communications Regulatory Authority.

The Commission notices in its progress report of 2010 that the public broadcasting system “Board of Governors” failed to adopt the statutes of the PBS corporation due to disagreements over ownership of equipment and revenue-sharing. Since its statutes have not been adopted, the PBS corporation could not be registered, which delayed the reform of the public broadcasting sector. The Entities’ laws on public broadcasting services are not aligned with the State-level law.²⁵

3 Bulgaria

In Bulgaria, the government recently undertook some urgent measures in order to implement the AVMSD in Bulgarian law. The Council of Ministers had approached all key stakeholders (e.g. the Council for Electronic Media, the Bulgarian National Television, the Bulgarian National Radio, the Television Producers Association, the Bulgarian Radio and Television Operators Association, etc.) to offer their opinions on the draft legislative acts that needed to be prepared for the transposition of the Directive.²⁶

4 Croatia

Croatia joined the MEDIA 2007 programme in April 2008 following the ratification of the UNESCO Convention and the alignment of Croatian legislation with the *acquis*. In the light of these achievements the Council of Ministers (provisionally) closed Chapter 10 on

information society and media on 18 December 2008. Council Decision 2008/119/EC²⁷ has made it a priority to complete

“(…) the alignment with the *acquis* concerning electronic communications, commerce, signatures and media, information security and the Television without Frontiers Directive” [as well as] “the planned review of audiovisual media legislation on the basis of public consultation, ensure regulatory independence and guard against undue political interference.”

The Commission stated that

“(…) freedom of expression, including freedom and pluralism of the media, is provided for in Croatian law and is generally respected. However, threats against journalists working on cases of corruption and organised crime have been increasing. Editors and journalists continue to report undue political pressure.”²⁸

The Commission attested Croatia in general “good progress (…) in the field of *information society and media*”:

“A good level of alignment has been reached. Efforts need to continue to strengthen the capacity of the national regulators to implement correctly the legal framework, as well as to sustain liberalisation of the electronic communications market.”²⁹

The “good progress” in the field of electronic communications and information technologies lies especially in the “necessary implementing legislation” and adoption of the Electronic Communications Act. Liberalisation of the sector has continued to progress significantly, in particular in the broadband market. However, the Commission sees a risk to the current EU strategy promoting Europe’s digital economy by a governmental

²⁵ SEC(2010) 1331, Bosnia and Herzegovina 2010 Progress Report, p. 51.

²⁶ Cf. R. Nikolova, Bulgaria – Progress on the Implementation of the AVMS Directive, IRIS 2010-1:10, available at: <http://merlin.obs.coe.int/iris/2010/1/Art.10.en.html>

²⁷ Council Decision 2008/119/EC of 12 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC, [2008] OJ L 42, p. 51.

²⁸ See Communication from the Commission to the European Parliament and the Council of 14 October 2009, Enlargement Strategy and Main Challenges 2009-2010, COM (2009) 533, p. 36.

²⁹ *Ibid.*, p. 39.

initiative in the form of a “crisis tax” on mobile services.³⁰

The Commission attested Croatia (only) “some progress” (...) in the area of information society services and electronic commerce as well as in the field of audiovisual policy:

In the area of information society services and electronic commerce

“further amendments to the Electronic Commerce Act have been adopted, aimed at completing legal alignment in this field and an e-Government Strategy for the period 2009–2012 has been adopted”,

and with regard to audiovisual policy

“preparations for the introduction of digital television are under way. The Croatian Audiovisual Centre has been established and it has joined European Film Promotion. However, some interference in the media landscape by mainly economic and partly political interest groups has continued. Also, anti-competitive State aid to the national broadcaster has continued.”³¹

“Good progress” in the field of audiovisual policy was also diagnosed in the 2010 progress report by the Commission. But interference in the media landscape by economic and political interest groups persists in Croatia. Also anti-competitive State aid to the national broadcaster has continued.³²

5 Kosovo

Council Decision 2008/213/EC³³ makes it a top priority to ensure

“(...) the independence of the regulatory bodies in Kosovo” and “stable and sustainable funding of the Public Service Broad-

caster RTK (Radio and Television of Kosovo), the Independent Media Commission and the media fund.”

The 2009 report states some progress in the area of electronic communications:

“The Telecommunications Regulatory Agency has obtained spectrum-monitoring equipment, enabling it to identify illegal activity in northern Kosovo and in the areas bordering neighbouring countries. Mobile telephony market penetration is at 60%; internet penetration is 5.4%. A third fixed telephony licence was issued in January 2009 but has not yet become operational. Two mobile virtual network operators have been licensed; one is already active in the market. The implementation of the sector policy adopted in 2007 is suffering delays.”³⁴

Information society services need, according to the Commission, to be further developed.

With regard to the progress made in the field of audiovisual policy and media, the Commission stated:

“The laws that cover the media industry - the Law on the Independent Media Commission and the Law on the Public Broadcaster - are up for amendment. Re-licensing of broadcasters has begun: at the end of August [2009], a first batch of 12 long-term licences was approved for existing broadcasters. The Independent Media Commission is now assessing applications for new frequencies. Cable operators in the north are not licensed by the Commission. The Commission’s independence, in particular as regards its staff and resources, needs to be guaranteed in the context of possible legislative amendments. The appointment of the Commission’s council member by the Assembly and the RTK board is yet to be completed.”³⁵

The Commission attested that, even though the regulation for broadcasters regarding the

³⁰ SEC(2009) 1333, Croatia 2009 Progress Report, p. 37f.

³¹ *Ibid.*, p. 38.

³² SEC(2010) 1326, Croatia 2010 Progress Report, p. 35.

³³ Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, [2008] OJ L 80, p. 46.

³⁴ SEC(2009) 1340, Kosovo under UNSCR 1244/99 2009 Progress Report, p. 41.

³⁵ *Ibid.*, pp. 41 *et seq.*

protection of children and minors from harmful programme content entered into force, no mechanisms to implement and enforce it have been provided for. Also no progress on the switchover from analogue to digital broadcasting can be reported. The Commission allocates problems in financing public broadcasting as the contract by which the licence fee was collected via energy bills expired in November 2009. The Public Service Broadcasting Law envisages annual tenders to purchase audiovisual works from independent producers, which should account for 20% of the programmes produced by RTK. This has not been fully implemented. Further problems are the lack of an independent minority channel with Kosovo-wide coverage, the full implementation of the Law on Access to Information (which hampers the work of journalists) and the weak enforcement capacity of the Press Council (a self-regulatory body which depends on donations for its finances).³⁶

The 2010 report comes to the overall conclusion that “limited progress has been made in the area of information society and media”. Regarding audiovisual policy and the media, the current draft, which addresses the Independent Media Commission (IMC) fails to preserve the Council’s independence in line with European standards on media regulation. In addition, the independence of the public service broadcaster RTK and its financial sustainability are not fully ensured.³⁷ Furthermore, there are inconsistencies between the “Law on Defamation and Insults” and the “Criminal Code”:

“According to European standards defamation should not be a criminal offence. Kosovo does not apply the penal provisions on defamation, but since they remain on the statute book, legal uncertainty persists. This will be resolved in the process of revising Kosovo’s criminal code.”³⁸

³⁶ *Ibid.*, p. 42.

³⁷ SEC(2010) 1329, Kosovo 2010 Progress Report, p. 46 *et seq.*

³⁸ *Ibid.*, p. 48.

6 Macedonia

Council Decision 2008/212/EC³⁹ identifies the following (short-term) priorities for Macedonia:

- “Reinforce the independence and administrative capacity of the regulatory authorities for electronic communications and media.
- Ensure a stable and sustainable source of funding for the public service broadcaster and the Broadcasting Council.”

On the 2009 developments, the Commission attested Macedonia “good progress in the area of electronic communications and information technologies”. Specifically concession contracts with operators with significant market power were terminated in accordance with the Law on Electronic Communications, Parliament adopted the national strategy on the next generation of broadband internet and the Agency for Electronic Communications (AEC) made important developments in its activities.⁴⁰

The Commission attested Macedonia also “progress in the area of information society services, where a good level of alignment has already been achieved”.

With a view to the progress made on audiovisual policy, the Commission stated that

“(…) the administrative capacity of the Broadcasting Council has improved, but is still not adequate to monitor the market effectively. The system for collecting the broadcasting fee has not been established yet. The sustainability and financial independence of the public broadcaster is therefore not ensured. The legal provisions opening up the possibility of initiating bankruptcy proceedings against the public service broadcaster are still in force. The Broadcasting Council and the public service

³⁹ Council Decision 2008/212/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and repealing Decision 2006/57/EC, [2008] OJ L 80, p. 32.

⁴⁰ SEC(2009) 1335, Macedonia 2009 Progress Report, p. 41.

broadcaster continue to be subject to political interference, partly because of their dependence on finance from the State budget. This dependence also undermines the authority of the Broadcasting Council *vis-à-vis* broadcasters. Public expenditure on State advertising is a significant source of revenue for some broadcasters, but is not sufficiently transparent and therefore has the potential to undermine editorial independence. The Broadcasting Law, including the provisions relating to concentration of ownership of the media, has not been fully implemented. It is not yet aligned with the Audiovisual Media Services Directive. (...)”⁴¹

With regard to audiovisual policy, in the 2010 progress report the Commission stated that the legislation on media ownership and concentration is not fully enforced. Especially, sustainable funding of the public service broadcaster and the Broadcasting Council is not secured and the media legislation is not in line with the AVMSD.⁴²

7 Moldova

The Commission stated in its country report of 2004 in the context of the European Neighbourhood Policy, that Moldova

“has an active and independent media”.⁴³ However, recent legislation and drafts (the 2003 amendments to the Law on Access to Information and a recent draft law on the restructuring of the public broadcaster) had, according to the Commission, raised concern notably on the independence of journalists: problems with registration for two local radios, a statement by the chairman of Teleradio Moldova about the reported imposition by the Board of guarantors of the programme “the hour of the government” and his sub-

sequent dismissal, and high fines imposed on local newspapers and opposition leaders for slander.⁴⁴ In a more general way, the EU’s Country Strategy Paper refers to concerns raised by the joint CoE and OSCE election observation mission in particular over the issue of the freedom of media and administrative pressures on opposition candidates.⁴⁵

In its Action Plan the Commission calls for Moldova to approximate relevant audiovisual legislation in full compliance with European standards (with a view to possible future participation in the MEDIA programme if prerequisites are fulfilled).⁴⁶

More recently, in its report on the ENP implementation progress in 2009⁴⁷, the Commission Services’ staff document in its sector-specific part mainly expands on achievements in the area of regulating electronic communications. However, in relation to the report’s part on the situation of political reform, more specifically within the chapter on human rights and fundamental freedoms, important remarks are being made:

“As regards freedom of expression and media pluralism, the situation worsened significantly in the first half of 2009 through, notably, severe restrictions of the right of access to information and the use of administrative means such as tax investigations, as well as restrictions on freedom of media and free reporting in the context of the elections. New laws on state secret and on transparency in the public decision-making process entered into force in 2009, as did modifications to the Criminal Code that only partly reflected Council of Europe’s recommendations on the decriminalisation of slander and libel. In the

⁴¹ *Ibid.*, p. 42.

⁴² SEC(2010) 1332, Macedonia 2010 Progress Report, p. 41.

⁴³ Commission staff working paper of 12 May 2004, European Neighbourhood Policy, Country report – Moldova, SEC (2004) 567, p. 8.

⁴⁴ *Ibid.*, p. 9.

⁴⁵ Country Strategy Paper 2007-2013, p. 6, available at: http://ec.europa.eu/world/enp/pdf/country/enpi_csp_moldova_en.pdf

⁴⁶ EU/Moldova, Action Plan, para. 77, available at: http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf

⁴⁷ Dated 12 May 2010, available at: http://ec.europa.eu/world/enp/pdf/progress2010/sec10_523_en.pdf

later part of the year a number of measures were taken, aiming to reverse the situation. In November 2009, the Audiovisual Code was amended – without consultation of the Council of Europe – to simplify the appointment procedure for the members of the Audiovisual Coordination Council and the Supervisory Council for Radio and Television. At the same time, in the last quarter of 2009, a private radio station was experiencing severe difficulties in having its licence renewed, and an opposition TV channel was required at very short notice to move out from its Government-owned premises.”

8 Montenegro

Council Decision 2007/49/EC⁴⁸ calls on Montenegro to

“ensure implementation of the law on access to public information and continue the transformation of Radio and Television of Montenegro into a public service broadcaster and provide appropriate means for it.” Montenegro should also “guarantee the operational independence of the broadcasting authority.”

The Commission attested Montenegro in its report “some progress (...) on electronic communications and information technologies”. While narrowband is still predominant for connecting to the internet, for instance in January 2009 the broadband penetration rate was 5.5% and alternative operators held around 20% of this important growth market.

With regard to information society services, further developments have been made, for instance a new Ministry for the Information Society was established on 3 January 2009 (which became the Ministry for Economic Pol-

icy and the Information Society), responsible for information and communication technology initiatives in all government bodies. The Conditional Access Directive has not yet been transposed and human resources at the Ministry for Economic Policy and the Information Society are still weak.

In the area of audiovisual policy and the media a Law on Public Service Broadcasting was adopted in December 2008, which abolished the steering committee of Radio Television Montenegro (RTCG) and transferred its powers to the RTCG Council. However, the Commission stated that

“(...) the political independence of the public service broadcaster has to be ensured. Licence fees for radio and television were abolished. RTCG is now financed from the State budget. It receives 1.2% of the annual budget. This provides the public broadcaster with stable financial resources. The responsibilities of the Agency for Electronic Communications and of the Broadcasting Agency under the Law on Electronic Communications regarding frequency licensing remain unclear. A disagreement between the two agencies regarding their competences contributed to delays in allocating a frequency to a private TV station.”⁴⁹

With the adoption of the Law on electronic media in 2010, the Commission attested Montenegro an overall alignment with the AVMSD. But increased efforts are necessary as regards the protection of minors in the media.⁵⁰

9 Romania

Romania transposed the provisions of the AVMSD as the first EU Member State into its domestic law through the *Ordonanța de*

⁴⁸ Council Decision of 22 January 2007 on the principles, priorities and conditions contained in the European Partnership with Montenegro, [2007] OJ L 20, p. 16.

⁴⁹ SEC(2009) 1336, Montenegro 2009 Progress Report, pp. 43 *et seq.*

⁵⁰ SEC(2010) 1334, Montenegro 2010 Analytical Report, p. 69.

*Urgență Nr. 181/2008 pentru modificarea și completarea Legii audiovizualului Nr. 504/2002 (Emergency Government Decree amending and completing Audiovisual Act no. 504/2002), which entered into force on 3 December 2008.*⁵¹

10 Serbia

Council Decision 2008/213/EC⁵² calls on Serbia to “start approximation to the *acquis* on the audiovisual sector and improve transparency and accountability, particularly of the Republican Broadcasting Agency” and also to “sign and ratify the European Convention on Transfrontier Television”.

On Serbia, the Commission remarked in its 2009 progress report that – although progress has been made in the areas of the information society and electronic communications –

“(…) the digital divide in electronic access and digital inclusion needs to be addressed and a broadband strategy needs to be finalised. IT capacity needs to be strengthened, especially at local level, with a view to e-government. Administrative capacity for implementation of the legislation in this area is insufficient.”⁵³

Furthermore, the Commission attested that “(…) the fixed telephony sector is not yet liberalised in practice and there is still a lack of competition on this market (…).”⁵⁴

The Commission reported progress in the

area of audiovisual policy. Serbia ratified the European Convention on Transfrontier Television and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Since 2008 the Broadcasting Agency has published all of its decisions on the internet and awarded until 2009 a total of 467 licences for broadcasting radio and TV programmes. A problem that is still unsolved is the privatisation of the broadcasting media in Serbia. This process is still blocked by certain provisions of the Law on Local Self-Government and the Law on the Capital City.⁵⁵

Also in the 2010 progress report, the Commission stated that in the audiovisual sector media legislation needs to be aligned with the *acquis*, and a number of provisions of the law on public information continue to raise concerns; especially as some provisions of the law include excessive fines for the violation of professional standards as well as for non-registration of media outlets.⁵⁶

III Approach Adopted for the Carrying-out of Country Reports

In the following, the different methodological steps applied for the present study are outlined:

- As already alluded to, the EMR – after having finalised the analysis of studies already undertaken – has developed a questionnaire that was intended to build the basis for the country reports, which subsequently were to be elaborated by the national experts.
- After having obtained and assessed the country reports, the EMR asked the national experts for clarification and/or addenda, where appropriate, and paid attention to ensuring a harmonised structuring of the reports.

⁵¹ See results/consequences of the transposition by M. Stoican, Romania – Emergency Decree Amends Audiovisual Act, IRIS 2009-2:29, available at: <http://merlin.obs.coe.int/iris/2009/2/article29.en.html>; M. Stoican, Romania – Emergency Decree Defines European Works, IRIS 2009-3:30, available at: <http://merlin.obs.coe.int/iris/2009/3/Art.30.en.html>

⁵² Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, [2008] OJ L 80, p. 46.

⁵³ SEC(2009) 1339, Serbia 2009 Progress Report, p. 48.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 49.

⁵⁶ SEC(2010) 1330, Serbia 2010 Progress Report, p. 47.

- Each report, as provisionally finalised, was submitted to the FES resident representatives in the respective country in order to allow for thorough preparation of a meeting between those representatives and the correspondents entrusted with the execution of the country report by EMR. In the course of those meetings, which in almost all instances have taken place, the opportunity has been seized to, firstly, obtain important initial feedback and, secondly, to enable an exchange of views regarding the formulation of possible remedies by the national experts to address shortcomings of the actual situation (recommendations).
- When developing the said recommendations, the correspondents were particularly asked to take into consideration the “European benchmark”, i.e. the requirements stemming from Council of Europe legal and political instruments as well as from the EU’s *acquis unionaire*; the main contents of this “benchmark” had been laid down and made available to the country experts by the EMR.
- The correspondents were then given the task of seeking feedback mainly from national stakeholders on the recommendations developed by them, and of noting with which representative of relevant institutions or which experts acting in a personal capacity they were able to exchange information and, where appropriate, what the essence of the reactions towards the recommendations had been.
- The EMR, on the basis of the country reports, has drafted so-called “evaluation sheets”, which aim at presenting a summary of the main threads of the individual reports, and submitted those documents to the national experts for final comment, enhancement and/or update. To those sheets, the recommendations have been added; in this format, the documents rep-

resent the summaries on the situation of the media in each country, which have been included in this publication.

B Summaries of the Country Reports

Christian M. Bron

This chapter of the study aims at providing core information on the situation of the media on a country-by-country basis. The single summaries are neither meant to replace the integral country reports which are made available within the present project as online publications, nor should it be left unmentioned that the initial reports have been enriched by concrete recommendations developed by the national correspondents, aiming at delivering proposals to remedy perceived shortcomings of the present situation in the country concerned.

These summaries are all structured according to a uniform pattern: in the first part (I) first of all, in the form of a table, some general data on the country and its media sectors is provided (1); followed by an overview of the main regulatory instruments that are applicable to the press, broadcasting, online services and film (2); thirdly the main challenges as encountered in media practice are touched upon (3). This last section, when read together with the second part (II) including the above mentioned proposals, sheds considerable light on the actual challenges that the media and also media politics are facing with a view to a sound development towards a healthy media system.

Media policy and law but also media practice should strive to be able to fulfil three main conditions, i.e. (i) to be economically viable as well as diverse, objective and trustworthy, thus being encountered, on the side of the general public, with the necessary degree of credibility, (ii) by this to be able to play its vitally important role for the individual and public formation of opinion and hence to serve the proper development of societies and democ-

racy, on the one hand, and also to be culturally rich in order to foster the overall development of the people and promote mutual understanding across different cultures, beliefs etc., and (iii) to be in line with European standards in the respective fields, so as to ensure sound progress in association with and future membership of the EU (where this is not yet the case) as well as respect for the commitments undertaken in view of the protection of human rights under the relevant Council of Europe instruments, foremost the ECHR.

Albania

Ilda Londo

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Albania, based on and taken from the country report by *Ilda Londo*, are (briefly) given.⁵⁷

1 General data

2 The regulatory status quo

2.1 Press

Print media is, to a minimal extent, regulated by the Law on the Press. There is no regulation regarding content and there are no obligations in this regard by law. The law on press only guarantees freedom of press and its independence, without making any demands on the press in return. Besides, there exists a self-regulation mechanism in form of a "code of ethics". However, there was never a formal

Country profile	
Basic data	
Country population	3,200,000
Official language/s	Albanian
Main ethnic groups (% of population)	98.6 Albanians, 1.4 Greeks, Macedonians, Serb-Montenegrins
Recognised minorities	Ethnic: Greek, Macedonian, Serb-Montenegrin. Cultural: Roma, Romanian.
Religious groups (% of population)	N/A
Average salary per month (€)	248.57
Media market data	
Total market volume advertising market (€)	N/A
Gross advertising budget in 2009 (€)	N/A
Press	
Newspapers	26 dailies 250 periodic publications prices for dailies between € 0.14 and € 0.36 per issue.
Magazines	N/A
Broadcasting	
Television	PSB: 1 (national coverage) Comm.: 2 (national coverage), 70 (regional coverage), 2 satellite stations, 50 cable TV stations
TV advertising revenues 2009-2010 period (est.) (€)	PSB: 3,393,770 Comm.: 38,456,464

⁵⁷ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

Radio	PSB: 1 (national coverage)	Comm.: 2 (national coverage), 48 (regional coverage)
Income TV & Radio (€)	9,306,905 (total) 3,763,369 (state funding) 5,543,536 (self generated) 2,149,766.43 (licence fee total, as part of the self generated income); 4.34 (licence fee per household per year)	
<i>Internet</i>	96 ISPs monthly tariffs between € 12.5 and € 29.16	
<i>Film</i>	170 productions in the last 14 years (29 long fiction, 17 short fiction, 63 documentary, 42 animated, 3 alternative, 6 development of project, 10 others); 6,765,546 (total state funding in the last 14 years) Ticket prices between € 1.08 and € 3.62	

commitment, endorsement, or subscription to the code by the media outlets and no self-regulatory body that would supervise the implementation of this code. Only the four main associations of journalists endorsed the code.

2.2 Broadcasting

The Law on Public and Private Radio and Television regulates the activities of the electronic media, including the public broadcaster *RTSH*, commercial television, cable and satellite television, and also digital broadcasting. In addition to the Law on Radio and Television, the Law on Electronic and Postal Communications is also relevant for broadcasting, in terms of planning and allocation of spectrum frequencies.

The various provisions of the Law on Public and Private Radio Television especially include a chapter on commercials. The latter should not be deceitful and should be clearly identified as such, while subliminal commercials are prohibited. In addition to these general requirements, the Law on Radio and Television bans commercials that influence the content of programmes, commercials that incite pornography and vio-

lence, indirect commercials, religious or atheistic commercials, and commercials for political parties or associations, with the exception of cases provided by law. Commercials for several products are also prohibited, including tobacco, armaments and military equipment, food products that are not approved by the competent bodies, etc. Commercials may be inserted between programmes as well as in the body of programmes, provided that they do not damage their integrity and value. The Law on Radio and Television obliges both public and private broadcasters to broadcast certain content without payment. This kind of content includes subjects of social benefit or public interest and is defined by the regulator.

RTSH is funded from several sources, such as the licence fee, contracts with third parties for various broadcasts, publication of video and audio musical productions, books, newspapers and journals related to various programmes, performance activities and public shows, advertisements and publication of other paid messages, donations and sponsorship, sale of *RTSH* programmes to any interested party, and the State budget.

Regulatory authorities are the National Council of Radio and Television (*Keshilli Kombetar i Radio Televizionit – KKRT*) as the main regulatory body and the Steering Council of Albanian Radio and Television (*Keshilli Drejtues i Radios dhe Televizionit Shqiptar – KDRTSH*) as the highest ruling body of the public broadcaster, *RTSH*. The *KKRT* is responsible for overseeing broadcasters' compliance with the Law on Radio and Television, administering the spectrum of frequencies, guaranteeing fair competition, and is legally obliged to ensure the existence and further development of the public broadcaster, *RTSH*. The *RTSH* Steering Council's main competencies include approving regulation of its own activity, appointing and dismissing other governing posts of *RTSH*, such as the General Director and Board of Administration, approving the strategy, organisational structure and programme structure of *RTSH*, monitoring the impartiality, objectivity and comprehensiveness of programming, advising the General Director concerning the programme, and drafting the annual report on *RTSH* activities for submission to Parliament.

2.3 Online services

Online services are regulated by Law No. 9918 on Electronic and Postal Communications. The main aim of this law is to promote efficient competition and infrastructure in the area of electronic communications, by applying the principle of neutral technology. The law does not interfere with or regulate the content of services offered in the networks of electronic communications.

There is no regulation at all for the content of online services, except with regard to the ratification of the additional protocol of the Convention on Cybercrime by Albania. Besides, the Code of Ethics can also apply in principle to online journalism.

2.4 Film

The Law on Cinematography determines the basis and principles of organisation, management and development of cinematography, along with economic support from the state. The *National Centre of Cinematography (QKK)*, subordinate to the Minister of Tourism, Culture, Youth and Sports, is the regulatory body in this field. The law determines the main duties of the regulator, the sources of funding, the manner of functioning of the main bodies of the centre, the main notions and obligations in the relations between the main actors in the area of cinematography as well as the role, duties, and structure of other bodies that are subordinate to the Ministry and that are related to film.

The statute of the *QKK* defines criteria for awarding state funds for movies or cinematographic works; for instance that two of the main authors of the production must be Albanian citizens, or that shooting should take place in Albania, except for special cases, which should be justified and motivated in the project.

3 Main challenges in media practice

3.1 For the press

About 90% of journalists work without contracts, therefore owners can easily put pressure on them to engage in self-censorship. The Labour Code in the country is generally poorly implemented, and media outlets are no exception. Against a background of informal and insecure labour relations and total dependence on media owners' policy and economic interests, qualitative and independent reporting could not be assured. Especially media owners determine editorial policy or topics to report on.

There is a trend of print media in increasing the numbers of newspapers, with no signs of consolidation of the Albanian print market.

The explanation for the lack of consolidation in print media could be seen in parallel funding from other businesses of the owners of print media outlets. Media ownership is often not transparent.

3.2 For broadcasting

There is political influence on the public broadcaster *RTSH*, especially during election periods. The extent of funding from the State budget is established in the Law on the Annual State Budget, based on the annual budget of *RTSH*, as approved by the Steering Council. Parliament approves the annual State budget, which includes the sum allocated to *RTSH*. But Parliament does not deal specifically with the *RTSH* budget, which is prepared internally. The level of the licence fee is established by law and advertising income depends mainly on *RTSH* itself. *RTSH* is still lagging behind in attracting healthy advertising sums. Advertising and notification services account only for 12% of self-generated revenue in 2009, although this marked a growth compared to the previous year. The difficulty in attracting higher advertising revenue shows that *RTSH* performance is still struggling in this field *vis-à-vis* its competitors, the commercial broadcasters.

The Law on Radio and Television contains certain restrictions on ownership, which aim to promote media pluralism and prevent concentration. The law forbids the same entity from holding more than two licences for the same (local) territory, whether for radio or television. But the law allows the same person to hold both a radio and a television licence for the same territory. There is no limitation on ownership stakes for a local broadcasting licence: the owner can hold 100% of the shares, whether they are a natural or a legal person. Only in the case of a national licence, no legal or natural person can own more than

40% of the broadcaster. The lack of any detailed press legislation means there are no restrictions on cross-ownership of print and electronic outlets. Local commercial media outlets face financial problems and often do not submit their annual balance to the regulator. There are no accurate and regular data on advertising, due to both a lack of media transparency in funding and the absence of regular, reliable, and comprehensive market research on advertising revenue and other similar data.

The independence of the regulatory authority *KKRT* is a serious issue in Albania. Also the performance and functioning of the *KKRT* members is questionable, as the appointment is not because of professional performance but dependent on political background. Another difficulty is the implementation of *KKRT*'s decisions, when these decisions go to court or depend on the will and functioning of other bodies, such as the tax police.

3.3 For online services

There is no requirement to obtain a licence or any other similar measures in order to broadcast or publish news online. Nor are there any obstacles of any form for persons that wish to access Internet. The regulation of electronic communications sets easy access for starting an Internet service as (only) a general authorisation for starting a service that provides Internet connection is required from the regulator. Apart from this, there are no other forms of regulations that affect content in the websites or other online services. There are no provisions on the liability of the owners of online services on the content that is published on their website; only the regulation on defamation may apply to content published on the web or in any other online content.

3.4 For film

QKK has allocated funding since 1996, but this funding remains limited and insufficient, and it is very difficult to find a production supported only by QKK funds. In principle all registered movie production houses can apply for funding. Nevertheless, it is impossible to speak of independent productions, both with private funds and state funds as almost all cinematographic productions realised in the two last decades result from co-productions, rather than works funded from a unique source, reflecting also the economic situation in this regard. Allocation of funds from QKK, especially with regard to the transparency of the decision-making process, is another problem.

II Proposals for remedying the situation

1 Constitutional law aspects

No specific suggestions are to be made for this section.

2 Cross-cutting issues

The continuous amendments and improvements in media legislation have addressed different aspects of media development, but an *en bloc* media legislation reform has never taken place. In 2007, Albania and the Council of Europe agreed upon an Action Plan that would address precisely the media legislation reform in the country. However, the implementation of this Action Plan has been delayed significantly, due to different reasons. The media reform according to this plan is still ongoing in Parliament at the moment. In addition to this process in Parliament a discussion opening the legal amendments debate to relevant stakeholders and the general public is essential to the success of the reform.

The most troubling current sector in leg-

islation is related to provisions in both the Criminal and the Civil Code in relation to libel and defamation. Both Codes need to be revised and amended in order to meet European Convention on Human Rights standards and freedom of expression standards in general. Currently there is a proposed bill for amending the relevant legislative sections, which has been lingering in Parliament for several years. The bill is intended to completely repeal insult and libel from criminal law and extend necessary and reasonable protection of citizens' rights to dignity by amending the civil law.

Due to other priorities and to a lack of political will, Parliament has failed to pass the bill through the years, in spite of constant criticism in EU progress reports on Albania on this matter. Hence, in the context of the overall media legislation reform, passing this bill or amending the libel and defamation provisions through another bill needs to be a priority. This amendment would bring legislation on defamation in line with the European standards and would contribute to greater freedom of expression. As such, it should be amended as soon as possible, and training for judges on this issue should follow approval in Parliament.

Along with this proposed amendment, other amendments to the Law on Classified Information have been proposed to Parliament. The proposed draft expands the obligation of bodies that are required to provide information to the public, in an effort for greater transparency over the use of public funds. In addition, other changes have been proposed, such as a shorter period for issuing information, the establishment or strengthening of a regulatory authority that would enforce the law, and the application of a public interest test as the only rule for disclosing or withholding information. Although the amendments to the current law on access to information are not as urgent as the provisions related to

defamation and libel, the amendment of this law is equally important in assuring a more appropriate legal framework for securing citizens' rights to information.

In addition, better functioning of information offices and a more open and transparent policy of state bodies in the matter of providing information would be essential in order to have more transparent and accountable governance. Finally, continuous monitoring of the implementation of the laws on defamation/libel and access to information by other bodies, such as freedom of expression organisations, would be essential in providing constant pressure on correct enforcement of the laws.

Transparency of ownership, or more importantly, transparency of media funding, remains an unresolved issue in the media sector, and one that leaves an indelible mark on media independence and professionalism. The lack of transparency regarding media funding has cast significant doubts and questions on editorial independence. In this context, it is essential to increase media transparency and guarantee continuous transparency in this area. Apart from stricter regulations on the transparency of media ownership and media cross-ownership, a better enforcement and monitoring mechanism would be essential to realisation of this purpose.

Along the same lines, the issue of state advertising and the criteria used to allocate state funds to the media have been and continuously are a point of controversy. In spite of the attempts made to increase transparency in this area, more should be done for a clearer and more accountable overview of the whole process and criteria used to allocate such advertising.

Apart from transparency of funding, a better observance of the Code of Labour is crucial in reinforcing editorial independence

and media professionalism. A problem pertaining not only to the media sector, this is an issue that needs to be addressed by regular monitoring of appropriate state authorities, and stronger and more organised movement of the journalistic community.

The signing of a collective agreement or the establishment of contracts of media outlets with their personnel is an urgent issue in this regard. To this effect, further consolidation of the trade union of journalists is essential in implementing the Labour Code and negotiating collective agreements with the media outlets in the country. In addition, civil society organisations should support individual journalists whose rights are violated by media owners, State authorities or other parties. Finally, apart from a safer working environment for journalists, more should be done in terms of separating editorial content from economic or other pressures that might exist inside the media outlet.

In this regard, self-regulation is also an important aspect. Continuous training of journalists and editors on ethical issues, along with a more general public debate on media ethics would be helpful. However, any attempt at self-regulation in the media would be useless without media owners recognising the importance of this process and the necessity for their media to become part of the overall effort. As a result, all efforts should be made for them to engage in the debate on self-regulation and facilitate a genuine commitment to self-regulation as a situation that benefits all.

More specifically, other methods of encouragement in the realm of self-regulation would be adopting personalised codes of ethics in newsrooms, and especially implementing mechanisms, such as Readers' Advocates, an Ombudsman, Council of Ethics, etc.

3 Sector-specific regulation

3.1 For the press

No specific suggestions are to be made for this section.

3.2 For broadcasting

There is an ongoing reform of the current Law on Public and Private Radio and Television, which is expected to be discussed soon in Parliament. The amended law will have to bring the existing provisions in line with EU requirements, more specifically the Audiovisual Media Services Directive (AVMSD). As such, it will have to properly address and reform areas such as programme quota, advertising, sponsorship, product placement, protection of minors, etc.

a) Public services broadcasting

The next urgent issue is related to the overall reform of the public broadcaster. While the current law provides some guidelines and general principles on the mission of the public broadcaster, better defined provisions on RTSH's public duty and tools for guaranteeing its accountability to the public would be appropriate. In order to increase accountability and efficiency of RTSH, a clearer, more transparent funding scheme of the public broadcaster would also be necessary. In this regard, better collection of the fee paid by the public and increased transparency regarding this matter would be helpful. Programme diversity and quality as well as visibly increased independence from political factions are also key priorities in the overall reform. Finally, the whole process should involve the discussions by and support of journalists' associations and intergovernmental organisations, producing a continuous public debate on this issue.

b) Role of the regulatory authority in practice
Another key issue remains guaranteeing greater independence and better functioning of regulatory authorities. Past legal reforms have attempted to address this issue, but over-politicisation of the issue has not led to satisfactory results. Moreover, providing the necessary competencies and mechanisms or tools for strengthening the authority of the regulator is also a priority. This is an issue that needs to be openly debated and solved through *inter alia* consultation of relevant stakeholders, as this remains an obstacle that needs to be overcome.

Although a Law on Digital Broadcasting was approved in 2007, and the Strategy of Switching to Digital Broadcasting is being drafted, no legal or administrative steps have been taken in this regard by the regulatory authority. In this context, an urgent drafting, discussion, approval and implementation of the Strategy is crucial, along with the need to reform the 2007 law, if necessary.

In this regard, efficient and fair implementation of the Strategy would be essential in strengthening the authority and independence of the regulatory authority. Moreover, the public broadcaster should be thoroughly and properly supported in this respect, given the current difficulties to economically and professionally carry out this reform on its own, and its role of catering to public interest in this important reform.

In addition, the regulatory authority should show particular attention in the licensing process. Given the peculiarity of the existing market of digital broadcasters, the licensing criteria should consider the current stage of development of this market and its history and experience, along with the need to protect the public against interests of a purely economic nature. Mechanisms should be in place for guaranteeing the correct conduct of the digital broadcasting operators *vis-à-vis*

potential competitors and, more importantly, the public. Finally, public information and awareness campaigns are essential in smooth and appropriate functioning of the digital switchover process, and a necessity and public duty of the regulatory authorities and other bodies in charge of the process.

3.3 For online services

Online media is slowly, but steadily developing in the country, hampered partly by the slow spread of the Internet until recently. For this purpose, ensuring wider public Internet access would also assist in the further development of online media.

Neither the law, nor government or other bodies have interfered with online media content so far, hence there is no potential freedom of expression issues to address. However, it would be necessary for some filtering of language in some online media, in order to protect the public. Hence, establishment of a moderator, administrator, or some ethical supervision that would allow for correct use of the language, while preserving the right to freedom of expression, would greatly benefit these media and the public.

3.4 For film

The need for transparency and accountability is an urgent one for the artists' community. Clearer and transparent, well-published and publicly accessible criteria on distribution and allocation of funds, in the past or in the future, are essential in providing a more evident overview of the situation. In this regard, publication of annual reports, decisions, and other relevant materials on websites or in other forms, is essential in order to increase transparency.

Better implementation of intellectual property legislation and strengthening of authorities or associations that cover this area would

further assist in the development of creativity and professionalism among Albanian movie-makers. In addition, increased funding is essential in encouraging greater creativity and increasing Albanian film production. Finally, consultation with relevant stakeholders, such as associations of artists, producers, etc. is relevant for future improvement of this area.

Bosnia-Herzegovina

Radenko Udovicic

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Bosnia and Herzegovina (BiH), based on and taken from the country report by Radenko Udovicic, are (briefly) given.⁵⁸

1 General data

2 The regulatory status quo

2.1 Press

There is no law which directly regulates the operation of press media outlets. Newspapers are registered at cantonal and entity level. The issue of journalistic professionalism and ethics is resolved through the Press Code of BiH, based on self-regulation. The Code lays down the foundation for the system of press self-regulation and is considered morally binding for journalists, editors, own-

Country profile	
<u>Basic data</u>	
Country population	3,842,537
Official language/s	Bosnian, Serbian, Croatian
Main ethnic groups (% of population)	48% Bosniaks, 33% Serbs, 15% Croats, 5% Others
Recognised minorities	Roma, Jewish, Albanian, Macedonian, Montenegrins, Slovenian, Chek, Slovakian, Romanian, Italian, Russians Rusinian, Polish, Ukrainian, Hungarian (only 2% in total of population)
Religious groups (% of population)	43% Muslims, 30% Orthodox, 12% Catholics, (15% Atheists and Agnostics)
Average salary per month (€)	360
<u>Media market data</u>	
Total market volume advertising market (€)	35 million
Gross advertising budget in 2010 (€)	587,000,000 (300 million for TV, 287 million for the press)
<u>Press</u>	
Newspapers	11 dailies (national coverage); 20 periodic publications, prices for dailies between 0.53 and 0.80 per issue.
Magazines	10 weekly magazines, prices for weekly magazines between € 1.59 and € 3.10
<u>Broadcasting</u>	
Television	PSB: 3 (regional/local coverage) Comm.: 29 (regional/local coverage)
TV advertising revenues 2009-2010 period (€)	PSB: 21 million Comm.: 31 million
Radio	PSB: 3 (regional/local coverage) Comm.: 81 (regional/local coverage)
Income TV & Radio (€)	N/A N/A
<u>Internet</u>	77 ISPs, monthly tariffs between € 3,5 – 26
<u>Film</u>	5 long fiction, 0 short fiction, 5 documentary, 2 animated film productions in 2010; 760,000 (total state funding per year); Ticket prices between € 2 and € 3.5

⁵⁸ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

ers and publishers of newspapers and periodicals. The Press Council for print media is the responsible agency in this field. Besides, the work of journalists and print media is affected by the Law on Protection from Defamation (the main purpose of the law is the abolition of criminal liability for defamation and moving defamation to civil proceedings) and the Law on Freedom of Access to Information (the law protects the media from the capriciousness of government representatives who avoid providing public insight into their work).

2.2 Broadcasting

The broadcasting sector is regulated by various laws. The Law on Communications regulates the entire fields of telecommunications, radio and television. It constitutes the general framework for different types of broadcasting in the country, including telecommunications, radio, television (also cable television), and related services and resources. Radio and television stations are not direct subjects of the law but, as the law establishes technical principles related to broadcasting as well as rules on management and the use of the frequency resources, it pertains to the radio and television media. The Law on the Public Broadcasting System of BiH prescribes standards for the founding and operation of public radio and television services. The public broadcasting system in BiH has three broadcasters: *RTV BiH (BHRADIO 1 and BHT 1)*, *Radio and Television of the BiH Federation*, and *Radio and Television of the Republika Srpska*. The law prescribes and elaborates in Arts. 17 through 20 the obligation of paying a subscription fee to *RTV*. The Advertising and Sponsorship Code of Practice for Radio and Television should also be mentioned. It regulates the basic principles of advertising, teleshopping and sponsorship in radio and

television programmes in BiH. The code does not regulate the issue of political advertising, to which the provisions of the Election Law apply as well as rules passed by the BiH Election Commission. Besides, there are various other laws and by-laws addressing the broadcasting sector.

The Law on Communications establishes the *Communications Regulatory Agency (CRA)* as the regulatory body for all types of telecommunications and broadcasting. In the broadcasting field, the agency allocates frequencies, protects freedom of expression and independent position of broadcasters, prescribes standards of professional media operation related to content and technical implementation, and promotes the principles of the dual radio and television system.

2.3 Online services

The Law on Communication placed internet services in the jurisdiction of the *CRA*. The agency defined requirements for general licensing of internet service providers in BiH which are exclusively related to the technical segment. Any legal person registered for this kind of activity may apply for a licence. The *CRA* has no jurisdiction or responsibility for published content which appears on websites hosted by holders of its licences. There is one provision, stating that “the responsible organ should by final judgement order the licence holder to remove from its service content which is established to be inadmissible, insulting, harmful or in violation of copyrights; the licence holder shall without delay act according to the judgement or be responsible for violation of the terms of the licence”. However, untrue or defamatory contents are regulated according to the provisions of the Law on Defamation and other laws covering particular crimes (incitement of violence, paedophilia, etc.).

2.4 Film

The film sector is subject to the Law on Film Activities of Sarajevo Canton of 2001, defining film activities as production, film-turnovers, public screening of films and safeguarding films and film material in the territory of Sarajevo Canton. The law envisions responsibility for film content, for which the producer is responsible with regard to defamation and slander. The Association of Film Workers of BiH operating in Sarajevo is a professional organisation of independent film workers, authors and artists, who perform work related to film activities in the form of a profession and is supposed to be the place for solving problems and disputes in the film branch. BiH does not have a regulatory body for the film industry (such as the CRA for broadcasters or the Press Council for print media). There is no code and the Association of Film Workers bases its operation on positive European achievements.

3 Main challenges in media practice

3.1 For the press

The Press Council barely manages to publish its views and press releases in newspapers. A number of political analysts believe that one of the reasons is self-regulation, in other words absence of sanctions. Print media are not obliged to adhere to the Press Code. The Press Council may declare them unprofessional, but newspapers have already developed a mechanism saying that such accusations are politically motivated. Laws on freedom of access to information are an important legacy of the citizens' rights to be informed about public affairs and they do affect availability of information, but the public sector is not yet fully able to fulfil these obligations. Decriminalisation of libel and

defamation has become an example of a good legal framework for the whole region and some EU countries. Courts have not yet stabilised their legal practices in this area and lawsuits in civil proceedings keep growing. Media outlets are not independent in their editorial policy as they are often close to the government or the opposition or are influenced by nationalistic, religious or economic lobbies/movements. There is also vertical ownership which has a negative impact on the press landscape. Rare are also newspapers and broadcasters, including the public broadcasting services, which have well organised newsrooms, independent and competent specialists, favourable financial situations, and which are able to deal with all the challenges of the new times.

3.2 For broadcasting

BiH Federation Radio and Television is a newly-created legal subject, but the dominant feeling within it is that it is the successor to the former *Radio and Television of Bosnia-Herzegovina*, i.e. *Radio and Television Sarajevo*, and it expresses that feeling in its programmes. *BiH Radio and Television* is practically a new subject, but legally it continues the former state radio and television and temporarily manages the assets from the radio and television building in Sarajevo. The asymmetric position of the subjects and the confusing legal solutions have caused numerous disagreements between the *BiH Federation RTV* and the *BiH RTV*, including mutual lawsuits. The three public broadcasters have not fully succeeded in providing in their programmes a balanced approach to the languages and national interests of all three constituent peoples and the interests of members of national minorities. The proclaimed independence of broadcasters is constantly jeopardised. This can be seen

in political party attempts in parliament to appoint “their people” to steering boards, in the taking of sides in internal conflicts in some newsrooms and programmes, and in encouraging the belief that national interest is the sole guiding line of their public service. Although there is a dual broadcasting system in BiH with equal requirements for the licensing and market position of public and commercial stations, the latter point out that they are in a less favourable situation because public services are allowed a lot of time for advertisements, taking a big part of the advertising share, although their function should primarily be supported through the collection of subscription fees.

Private radio and TV stations are in a grave economic situation, which reflects on their programme quality. Another important thing is that Qatar’s *Al Jazeera* plans to launch a news channel for former Yugoslavia seated in Sarajevo for the markets in BiH and Serbia. *Al Jazeera* is still in the phase of exploring legal opportunities in the two countries and it is uncertain when the programme/channel might start.

The CRA quite successfully oversees adherence to the Broadcast Code of Practice, although suspicion has already appeared regarding its applicability to some new forms of sophisticated violations of ethical principles, as well as so-called street language which is considered something that should be a matter of civil lawsuits. The CRA has certainly grown into the best equipped local institution created out of an international body, but its reputation has already been shaken by political back-room dealing.

3.3 For online services

The upward line in the number of Internet subscribers will continue. According to the CRA

with regard to Internet access, statistics show that in 2009 the dominant type was xDLS access, whose number of subscribers makes up 43% of the total number of Internet subscribers in BiH. Operators’ data says that fast connections have now by far exceeded 60%. This information shows that BiH citizens – who were previously mostly deprived of full multimedia use of the Internet because they were using so-called slow connections which do not allow easy downloading and following audio and especially video contents – are now increasingly using the latest technical achievements.

3.4 For film

Before the war in the former Yugoslavia, BiH had a relatively strong film industry, which mostly worked in collaboration with partners from Belgrade. After the war a new generation of film directors and actors appeared, which unfortunately did not have sufficient financial resources at their disposal. That is why since 1995 not a single film in BiH was made without co-production arrangements, mostly from abroad. In funding films, the Foundation for Cinematography of Sarajevo has become the most important place. Although it only operates at the level of the BiH Federation, it is the only foundation of its kind in the whole territory of BiH. With regard to film funding the application criteria state that applicants must be from BiH, but technical requirements stated thereafter require candidates to be registered in the BiH Federation. This shows that this is an entity project rather than a state project.

II Proposals for remedying the situation

1 Constitutional law aspects

No specific suggestions are to be made for this section.

2 Cross-cutting issues

No specific suggestions are to be made for this section.

3 Sector-specific regulation

3.1 For the press

The Press Council in BiH is a self-regulatory body for print and some online (since a few months ago) media and consists of newspaper publishers, web portal owners, journalists and citizens. It is a non-profit organisation, independent of any political or other influence and has an elementary multi-ethnic approach. It was established in 2000 with support of the international community and acts on a whole state level. The Press Council is a Member of the Alliance of Independent Press Councils in Europe (AIPCE) and co-operates closely with different Press Councils from the EU and SEE. The main task of the Press Council is the protection of the public against unprofessional and manipulative journalistic reporting: acting as a mediatory body between readers and the print media, the Press Council protects the public against untrue, unprofessional and manipulative media coverage. It enables – on the basis of the existing Press Code and its 16 Art.s and the formal complaints procedure – persons affected or discriminated against, to complain cost-free at the Press Council. By this procedure it protects the rights of individuals as a part of the democratic society system. In the case of untrue media coverage a court can file law suits for compensation, but no measures for speedy moral satisfaction.

However, the same as with *CRA*, journalistic and political forces in the Republika Srpska which want to set up an entity press council of the RS have been gaining in strength. This is increasingly talked about in the public, but there

has as yet been no official request. It is not unusual for some countries to have several press councils within their borders. This is mostly the case with ethnically (and linguistically) divided countries such as Belgium, Canada or Great Britain. However, in Bosnia-Herzegovina, a small country in which three nearly identical languages are spoken and which is inhabited by three related Slav peoples whose biggest difference is religion, the setting up of several press councils could create different approaches to self-regulation, as well as mutual wars of “your” and “our” media.

Ljiljana Zurovac, Director of the Press Council of BiH, says the body is strongly supported by the Alliance of Independent Press Councils of Europe (AIPCE), which assesses the work of the BiH Press Council as very professional, taking into consideration the conditions in this country. *Zurovac* believes that the Press Council needs to remain united at the level of the country; otherwise most professional achievements of print media related to adherence to the Press Code would be eroded. She says the Press Council’s Assembly, Steering Board and Appeals Committee are multiethnic (journalists from both entities) and far from any kind of political influence. *Zurovac* also says that nearly all print media in the Federation recognise the Press Council’s authority and co-operate with it. In the Republika Srpska, there are some media with which relations have cooled down, but no one has filed a request to step out of the circle that adheres to the body’s regulations.

Therefore, here are the basic principles that should be insisted on:

- The BiH Press Council must remain at state level as a professional self-regulatory body for the whole of BiH.
- The director as well as members of the Steering Board and Appeals Committee should be journalists with whom no political or any other kind of bias is associated.

- The Press Council must become more mobile and often hold sessions of its top organs outside Sarajevo, in other cities in BiH. Meetings should be organised with media editors and owners to present to them the principles based on which the Press Council decides on disputed and unethical contents appearing in the media and how it assesses sensitive, “between-the-lines” cases and disputes verging on the border of the admissible which have political weight. Meetings of this kind would be an opportunity to exchange information and hear the opinions of people outside the BiH capital, as well as to build mutual trust.

The Law on Freedom of Access to Information was passed in 2000 at state and entity levels. The journalists’ community in BiH welcomed the law, hoping it would make it easier to get information from government bodies and state-owned companies and institutions. However, the law slowed down the regular procedure of journalists for getting information. Namely, the law prescribes that every physical and legal person must receive information requested within 15 days. Before that, journalists would get some information right away, or in two or three days, but now they have to wait up to 15 days, which greatly slows down the process of day-to-day reporting and even weekly reporting. Therefore the law must be changed so that journalists can get information requested within 7 days, whereas the 15-day timeframe should remain in effect for other kinds of requests. By delaying until the last day, some institutions have wanted to prevent (slow down) journalists in reporting on an issue, while some have wanted to cover up their lack of work or slowness.

3.2 For broadcasting

a) Public Service Broadcasting

The crucial problem in this field is a stalemate in the completion of a modern system of public service broadcasting that serves all citizens of BiH and that is economically self-sustainable. The Law on the Public Service Broadcasting System was passed in 2005 but, due to the fact that it was passed under the pressure of the international community, some of its provisions have never been implemented.⁵⁹ In the ensuing vacuum, the three public services which carry the system (*BHRT*, *RTRS* and *RTVFBiH*) had to do what they could to ensure better economic (market) and programme positions. Instead of three partners that closely cooperate and share technical and financial capacities through a Corporation – the fourth subject of the system that was still not created – currently there are three, conditionally speaking, hostile entities which are not financially self-sustainable. In terms of programme there is the danger that they will lose the race to commercial television stations.

At the time of writing this report (January 2011), not one of the three public broadcasters had a clearly profiled position – or did not announce its position publicly, waiting for the right political timing – on how and to what extent the current system should be reorganised and what kind of legal changes should be made as a precondition for reorganisation. Everyone is aware that the law cannot be changed without consensus, but strong willingness to look for a mutually acceptable solution is lacking.

The current situation is such that *RTRS* does not want to accept the jurisdiction of

⁵⁹ Explained in the media situation analysis that was delivered earlier.

the Corporation at any cost (and is supported in that by the RS government). *Radmila Cokorilo*, President of the *RTRS* Steering Board, says that in 2010 the Board agreed on a so-called compromise statute of the Corporation which offered small, but significant powers to the Corporation, but the plan was rejected by the other two steering boards. According to her, it is unlikely that they will return to that plan. *RTRS* Director General *Dragan Davidovic* has a similar opinion and believes that "Sarajevo is in the habit of rejecting any proposals from the Republika Srpska and any international proposals which respect positions from that entity, which just slows down the country's development." The *RTRS* Steering Board has announced political initiatives from the Republika Srpska for fundamental changes to the Law on the Public Broadcasting System of BiH, but they have no answer as to how this can be done without consensus of all three sides (Serbs, Croats and Bosniaks) in BiH, i.e. both BiH entities (Republika Srpska and the Bosnian Federation). However, they express their willingness for a Corporation to be created in the future with limited powers, which would actually be a service to the three public broadcasters to help them operate more successfully. At the moment, they are unwilling to say what those powers may be.

RTV FBiH is seeking a solution in future changes to the law that would give it its own property and definitely allow it to keep its revenue from marketing. Following the October 2010 elections, which further deteriorated political and ethnic relations in Bosnia-Herzegovina, *RTV FBiH* has been waiting for the government to stabilise in order to clearly define its proposal for resolving its status. There is practically no dispute within the Steering Board and management that the Law on the Public Broadcasting System needs to be changed to allow each broadcaster to keep its own marketing revenue (this basically has

never started working because this provision of the law has not been implemented). What is also undisputable for the Federation RTV is that it must be allowed to have its own property (this is not possible under the state law on the public broadcasting system and *BHRT* disposes of all property until the setting up of a Corporation). This would alleviate numerous disagreements between *RTV FBiH* and *BHRT* resulting from the fact that *RTV FBiH* leases equipment and premises from *BHRT*. In addition to that, *RTV FBiH* could invest in its own technical capacities with the help of any donations and commercial revenue. *RTV FBiH* Steering Board President *Igor Soldo* says it is most important that legislative changes be made to give his company equal status with other two broadcasters and that it be allowed to provide better coverage of the Federation by developing its technical capacities and correspondent bureaus. There is a dispute among the management as to whether the media outlet should open in Mostar, a strong correspondent bureau, or a whole studio department from which complete programmes could be broadcast.

As far as *BHRT* is concerned, its officials, at least publicly, have not taken a stand on possible changes to the system. This is not surprising. Until a Corporation is set up, *BHRT* is the title holder to all property and collects huge funds for leasing it to *RTV FBiH*. The legislative solution that distributes the RTV subscription fee at a ratio of 50% to *BHRT* and 25% to each entity broadcaster (which has been implemented), and the same principle for distribution of marketing revenue (which has not been implemented), gives *BHRT* significant financial security. *BHRT* Steering Board President *Ahmed Zilic* says that he advocates consistent implementation of the Law on the Broadcasting System of BiH and only then is it possible to change the law. He warns that the members of the Broadcasting System Steer-

ing Board may be held legally responsible for not implementing the current law. However, Zilic says he too is aware that if incumbent politicians agree on something, laws can be changed irrespective of principles.

The *Office of the High Representative (OHR)*, which is still in charge of civil implementation of the Peace Plan for BiH and under whose pressure the current law was passed, as well as the *Communications Regulatory Agency (CRA)* advocate the implementation of the current law, but they leave room for the possibility that the law will be changed in legal procedure.

Evidently, the Law on the Public Broadcasting System has become a hampering factor for further development of the broadcasting service and changes need to be made to reduce the powers of the Corporation defined by the law. This would provide some kind of binding tissue among the three public services, which are obviously following the fate of the country's dissolution. Based on official and unofficial proposals by the managements of the three systems, as well as current (probably also long-term) political realities in BiH, we have defined a number of guidelines:

i) The Corporation should have four competencies prescribed by the law

- Management of the broadcasting network that would be owned by the Corporation. This would give all three public services equal access to the broadcasting network. A coherent body of the public broadcasting system would thus be created as none of the public services would be able to step out of the system because they would not be able to broadcast their programme.
- Representation at EBU, purchase of capital foreign programmes (major international sports events, EUROSONG).
- Co-ordination among the three public ser-

vices' technical, programming and organisational activities.

- Collection of a radio and television subscription fee.

The law should allow for the possibility of the public services transferring other jurisdictions to the Corporation if necessary for efficient operations.

ii) Radio and television subscription fee

The current system prescribed by the law on distribution of revenue from the subscription fee at a ratio of 50% for *BHRT* and 25% for the public broadcasters needs to be changed. What should be established is a ratio of 25% for the Corporation and 25% for each of the three public broadcasting services. This amount would be enough for the Corporation's operations in this scope.

iii) Marketing

Marketing revenue which is stipulated to be distributed according to the principle of 50% for *BHRT* and 25% for each entity broadcaster should be changed so that each broadcaster keeps the marketing it generates. The current solution in the law is not abided by anyway and it is contrary to logic that someone who earns something (thanks to their skill and quality of their programme) must share that revenue with other television stations, especially because this system would give the three broadcasting services a great deal of autonomy and, therefore, it is an illusion to support the current solution.

iv) Property

The broadcasters do not bring their property (except the transmission network) into the Corporation. As *RTV FBiH* does not have its own property, the *BHRT* building needs to be divided at a ratio of 20% for the Corporation, 30% for *RTV FBiH* and 50% for *BHRT*. As this is a huge building, these shares would be suf-

ficient for the operation of all entities seated in Sarajevo. Movable property would be kept by *BHRT*, while *RTV FBiH* would have the possibility of leasing equipment from *BHRT* or buying equipment that would become its property.

Requests to create a channel in the Croatian language within the broadcasting system in BiH seriously generate an unstable situation in the system as well as destabilising the overall political situation in BiH. Although Croat and Serb political parties support this option for now, this is a legislative and political issue and it would be hard to expect Bosniak political representatives to accept it because they believe it to be one more step toward the disintegration of the country. Thus it is necessary to add provisions to the Law on the Public Service Broadcasting System and Law on RTV of the BiH Federation prescribing that *BHRT* and *RTV FBiH* must have a strong IT and studio centre in Mostar (the city with the largest concentration of Croats, which leans on western Herzegovina, an area nearly 100% populated by Croats). For the sake of cost-effectiveness, one centre could be used by both broadcasters. The opening of the centre would considerably increase coverage of events in Herzegovina, informing citizens across the country about the people, their problems and thus also the political views from that part of the country. The absence of such content is one of the main objections raised by Croat political representatives.

The law should also introduce the possibility that all three broadcasters must have a programme once a week in which they could present the ethnic views of the three constituent peoples (separately for each people) on contentious issues. These solutions (the centre in Mostar and such programmes) would preserve the present integrity of the public service and maintain multiethnic newsrooms. They would also soften requests

coming primarily from Croats related to insufficient representation of their language and political views.

A weekly programme should also be created on all three public services in which representatives of ethnic minorities, first of all since the most numerous among them, the Roma, would be able to express their views through different forms.

The second crucial problem for the public broadcasting system in BiH is the collection of compulsory TV tax, which amounts to € 3.5 per month for each household (for each TV set in the case of legal persons). The collection rate is around 70% and the tax is collected via telecom operators together with landline telephone bills. Although a five-year agreement on collection expired last year, an annex was made according to which telecom operators agreed to collect the tax in the next six months. In the meantime, a new solution should be found or the current one redefined. However, especially in the BiH Federation, there are serious problems related to collection of TV tax from a technical point of view. Although the Law on the Public Broadcasting System of BiH states in Art. 25 that bills or statements from business books of public broadcasting services regarding TV tax claims are valid documents under the Law on Enforcement Proceedings, the Law on Enforcement Proceedings does not recognise these documents. In other words, the laws are not harmonised, resulting in the situation that it is not possible to collect overdue tax in court. Even the Constitutional Court of BiH in 2010 dismissed an appeal filed by *RTV FBiH* against decisions passed by cantonal courts in Zenica and Zepce, leaving collection of TV tax in the BiH Federation up to the good will of citizens. It should be noted that this problem does not exist in the Republika Srpska, where the Law on Enforcement Proceedings was amended more than a year ago. As a result

of this situation, all three public broadcasters in BiH, i.e. the Steering Board of the Public Broadcasting System in BiH, unanimously insist on the following solutions (this is a rare matter on which there is full consent):

In order for *RTV FBiH* to be able to sue those who do not pay the TV tax, the Law on Enforcement Proceedings must be amended in emergency procedure at the level of the BiH Federation to recognise as valid the bills and statements from business books of *RTV FBiH*, which is in charge of collecting tax in this entity. Non-recognition of these documents creates great financial difficulties not just for this broadcaster, but also for the whole broadcasting system.

The amount of court tax which must be paid right away for lawsuits should be reduced (now it is € 21 per case). In light of the efficiency of courts, due to the number of lawsuits (for example in Herzegovina around 100,000 x € 21), broadcasters often end up with more financial harm than benefit from suing.

The state needs to provide greater support for the financial stability of public broadcasters. Regardless of whether the subscription fees will continue to be collected together with telephone bills, electricity bills or using payment slips issued by broadcasters and by bill collectors, it is important for the state to sanction those who fail to pay the tax. This obligation is not a subscription; it is a tax – a kind of tax for possessing a TV set which is used to finance public broadcasters. It is proposed that those who have not fulfilled their obligation of paying the tax should not be allowed to register their car, obtain a passport or get any other state certificates. Those who fail to pay their traffic fines or various other taxes are already being sanctioned this way.

b) Regulatory authority

As a result of numerous attempts at dissolution targeting all institutional activities

in the country, the *Communications Regulatory Agency (CRA)* has been faced with criticism for quite some time now, mostly from the Republika Srpska. Journalists and politicians believe the agency favours Sarajevo-based media, showing understanding for them and often “forgiving them unprofessional conduct”, whereas it has stricter criteria for stations based in the Republika Srpska. In research carried out by the Media Plan Institute in 2010 through in-depth interviews for UNDP in BiH, encompassing 30 journalists and editors across BiH, entity differences in relation to *CRA* were confirmed. With regard to the *CRA*, there were no objections about the system of regulating broadcasters or against the Broadcast Code of Practice, but only about its implementation. The majority of representatives of media from the Republika Srpska maintained that *CRA* did not react strongly enough to what they considered were certain violations of professional norms. Several interviewees mentioned the case of Federal Television, which broadcast an item in the news programme claiming that the RS political leadership should be considered equal with Hitler’s government.

However, in the complex political situation, criticism of *CRA* has a lot of political weight. Authorities in the Republika Srpska want to minimise all jurisdictions at state level, including *CRA*. A fact in their favour is that as a result of disagreement within the Council of Ministers (the state government), the incumbent director of *CRA* has been working in technical mandate for the last two years. Serb political parties have accused him of working for Bosniak interests and have demanded that someone from the Republika Srpska take the place of director.

In relation to these events, we contacted *CRA* and asked for their position on the latest efforts to question the integrity of the agency.

They responded that they have not heard or received a single official request for reconstruction of the agency's jurisdiction, despite efforts to transfer powers from the state level to the entities.

"From the very founding of *CRA* in 2001, some representatives of political parties have unofficially advocated the creation of so-called entity regulatory bodies. However, an action of that kind would mean changes to the legislative framework that establishes and defines *CRA* as a state institution of BiH. As the Agency is a product of the international community, it continues to enjoy support and protection in maintaining its independence and there is no indication that the support will be denied. Quite the contrary, the international community is even more determined in its efforts to reinforce *CRA*'s financial and functional independence through revision of the Law on Communications of BiH and to thus enable one of the rare BiH institutions which is successful and which has justified its existence to continue to operate without political pressure",

is a special response stated by *CRA*. It further says:

"As for 'objections regarding the work of *CRA*' that are coming from some media, unfortunately, most of these objections are, in our opinion, unfounded. What the media community does not want to understand is that there are other institutions that also have powers to solve their problems. We will continue to work as we have worked before, we will process cases, pronounce sanctions if we establish violations of the Agency's rules, but by no means will we encroach upon the powers of other institutions."

The last part of the statement of *CRA* (on other institutions) refers to processing libel and defamation in courts, as well as requests for *CRA* to be an arbiter in various political

and ethnic wars waged via radio and television stations where, according to the opinion of *CRA*, the code has not been violated.

Therefore, the following direction should be insisted on:

- *CRA* must remain a body at state level which performs its activities independently, based on professional and expert stands and legislation.
- The director of *CRA* should be an expert in the communications sector (either in programming or technical terms) with management skills and experience. It may be made official that the position of director in principle is subject to ethnic rotation (Serb, Bosniak, Croat), but that the *CRA* Council has the right to appoint a director of a different ethnic background if he or she has the best competences and references.
- *CRA* representatives should organise meetings with media editors and owners approximately once in two months, each time in a different city, to present the principles of the work of *CRA* and to discuss disputed and unethical contents appearing in media. The evidently deep political divide and different views on events in different parts of BiH result in different views on individual radio and television contents. Meetings of this kind, which were customary more than 10 years ago when *CRA* was being set up, would be an opportunity to exchange information, feel the pulse of people outside the BiH capital and hear their opinions, as well as to build mutual trust.

3.3 For online services

There are 40% internet users in Bosnia-Herzegovina.⁶⁰ In terms of popularity, the internet is

⁶⁰ Data from 2010 from different research agencies. *CRA*'s last official figure for 2009 is 37 % users.

the no. 2 medium, just after television.⁶¹ For more and more citizens, the web is the predominant way through which they receive information. However, although the number of internet users in BiH has multiplied over the last couple of years, its regulation is more modest than for broadcasting and the press. This opens the way for a great deal of abuse on the part of individuals as well as so-called official media portals, and damage to credibility of information. Thus, to summarise different professional debates on this subject, we propose:

a) Establishment of two levels of self-regulation on the internet

- Self-regulation of journalistic contents

There is disagreement on how and even whether to regulate content in internet communication, apart from what most legislation declares as criminal acts. As this discussion continues, it is advisable to build self-regulation standards, the media's own responsibility for what they publish as well as of the citizens who participate in it. Positive experiences in implementation of the Press Code (BiH Press Council) and Broadcast Code of Practice (Communications Regulatory Agency) should be used in development of ethical standards of self-regulation. Support should be given to an initiative of the BiH Press Council to join internet portals to standards contained in the Press Code in BiH.

Namely, in the conference "Internet – Freedom without Boundaries" held in Sarajevo in September 2010, the Press Council initiated the inclusion of web portals in the self-regulation system. Most editors of web portals supported the initiative agreeing that professional postulates that are in effect for

traditional media should also be applied to the web. Web portals and traditional media in their web editions should carry a sign saying they recognise the Press Code, which should boost their credibility. This solution is good for journalistic Art.s, but looking at the overall context of internet content, it has its limitations. Namely, the internet is a multimedia platform which also contains video and audio content, as well as a large number of things that do not fall under journalistic work. How should this be regulated?

- Self-regulation of all content on the internet

The next step, due to the specific characteristics of the internet compared to mainstream media, should be aimed in the direction of developing a specific code for internet communication. Relevant experience of some internet media in the neighbourhood and elsewhere in Europe should be used, including the possibility that the more developed portals create their own codes. In developing these codes, one should take into account the already standardised guidelines on internet use in public communication, to which some internet portals point (<http://www.globalnetworkinitiative.org/>). This would also cover contents related to comments on Art.s, forums and blogs, i.e. channels of communication that are most susceptible to various violations of ethics, insults, intolerance and hate speech. Most certainly, this system would also include various video and audio contents which do not fall under the jurisdiction of the BiH Press Council.

- Creation of a self-regulatory body for the internet

The body should combine the first two principles of self-regulation: self-regulation of journalistic content according to the postulates of the Press Code and self-regulation of all other content. The body would have jurisdiction over all websites which have providers in BiH. This includes portals and websites of

⁶¹ According to a survey from 2009, carried out through a poll, television was chosen as the most popular medium by 79% of respondents, followed by the Internet with 11%, radio with 7% and newspapers 4%, Impact of Credibility on the Informational, Public Opinion and Educational Function of Media – R. Udovicic, 2010.

traditional media and websites of individuals. It would operate in line with an Internet Code of Communication which should be created taking into account international experience and the BiH context. As the internet is a worldwide medium, i.e. it cannot be controlled in line with national laws, if this body observes content related to BiH citizens on some other websites which incite hatred, instigate violence and so on, it would ask the relevant bodies of that country to react appropriately. The body would react to such content after receiving complaints (either from an individual or an organisation). Unlike acceptance of and adherence to the Press Code by news portals, by the very act of appearing on the web all producers of websites with providers in BiH would be obliged to adhere to the Communication Code that this body passes.

The body should create a register of web media for professional communication, i.e. a register of what we call mass media (web portals and traditional media websites). This would make a clear distinction from websites of various companies, individuals and so on, which often violate informative values on the web.

b) Continuous education in internet journalism
Internet media administrators, journalists and their web newsrooms have the opportunity to educate themselves using the huge potential offered by the internet for acquiring know-how and information skills. Most internet portals were created in the first place thanks to their founders' and owners' enthusiastic exploration of the potential of the internet and least of all through classical forms of journalist and media education.

Everything good and bad is visible on the internet; what is not visible are the standards, criteria and methods on which journalists and administrators build their performance toward the internet audience. It would be useful for internet media to introduce the prac-

tice of continuous education in specific forms of journalistic expression and internet editing skills in order to make better use of the information advantages of the internet. Portals should also foster their own journalistic resources so that they are not mainly carriers of information and comments, but also their primary creators, both in the written and audio-visual segments. In this regard, mainstream media portals have a lot of work ahead of them because they do not use the communication advantages which the internet offers enough and are often just an "electronic picture" of mainstream newspapers or radio and TV programmes. How to communicate with your users and how to best use the advantages of the internet should become standard themes in education and exchange of experience among journalists and media managers, as well as internet administrators, at journalism schools, journalism and media workshops and seminars. The media community in BiH should express its interest toward journalism faculties so that these issues become mandatory and more present in journalism studies, both theoretically and practically.

c) Culture of communication – in the education system

Use of computers and training in information skills is increasingly becoming part of the education system. But the BiH education system as a whole lags behind in conveying know-how and mastering practical uses in everyday life and work, including the use of the internet as a medium for information and free expression.

The culture of communication on internet portals can be built efficiently only within a general social movement for building an information society which contains, along with a digital culture, also a culture of communication. This process should start in elementary schools and encompass the entire education

process in continuity. The NGO sector and media should develop activities and campaigns to raise public awareness on the necessity of introducing appropriate education courses and advancing existing courses in the education process.

We have already presented and explained the idea of the BiH Press Council, the main self-regulation body for press, related to self-regulation of news contents on the internet. The Press Council has already started implementing the idea. However, so far only three web portals have agreed to publicly state that they adhere to the BiH Press Code. They say that at least ten others have accepted the idea, but have not officially joined the initiative. The Press Council, i.e. its Director *Ljiljana Zurovac*, believes that a big problem is regulation of other content on the web (video content, non-news content, forums and blogs) and supports the recommendation that a comprehensive regulatory body be established for the internet. But she says that changes need to be made to the legislative framework that covers media and communications, which is quite hard to achieve in the current political context. *Zurovac* totally supports systematic (within the education system) and individual (within media centres and NGOs, where the Press Council could also participate) education in new media and ethics in the new communication context.

The official position and practice of the Communications Regulatory Agency (*CRA*) is that it regulates only the technical aspect of the internet. At this moment they see no way that they can take over the regulation of contents on websites hosted by providers licensed by the *CRA* for web hosting services. *Helena Mandic*, Director for Legal Affairs and Broadcasting, and *Amela Odobasic*, Chief of the Communications Sector, say that the legal framework needs to be changed, notably the Law on Communications of BiH which gives

CRA its powers, in order to enable regulation of content on the internet. With regard to a separate self-regulation body for the internet, *CRA* has no position on that matter, but supports the idea in principle. It is willing to pass on its experience related to regulation, programme rules of conduct for broadcasters, as well as experience related to professional and ethical dilemmas.

As for newsrooms of web portals, most editors are not thrilled by the fact that there might be a body that oversees their work. However, everyone we talked to points out that they do not have any contentious or ethically unacceptable content and that if such a body is established by the law, either on the basis of regulation or self-regulation, they are willing to accept it. However, on the other hand, numerous journalists and editors of newspapers and radio and TV stations who participated in research on “Multiculturalism in BiH media”, implemented by Media Plan Institute in 2010, believe that regulation or at least self-regulation of the internet is essential because that is where most hate speech appears. Most editors said at the time that both *CRA* and the BiH Press Council should be involved in some kind of control of the internet.

3.4 For film

No specific suggestions are to be made for this section.

Bulgaria

2 The regulatory status quo

Evgeniya Nikolova

2.1 Press

I Most noticeable characteristics in the media sector

In the following some of the most significant characteristics of the media landscape of Bulgaria, based on and taken from the country report of *Evgeniya Nikolova*, are (briefly) given.⁶²

Art. 40(2) of the Constitution is an important provision for the press sector. It stipulates that an injunction on or confiscation of printed matter or other information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the in-

1 General data

Country profile		
<u>Basic data</u>		
Country population	7,563,710	
Official language/s	Bulgarian	
Main ethnic groups (% of population)	Bulgarian 83.9; Turks 9.4; Roma 4.7	
Recognised minorities	N/A	
Religious groups (% of population)	Orthodox 82.6; Catholics 0.6; Protestants 0.5; Muslims 12.2; Atheists 3.9; Jewish 0.2	
Average salary per month (€)	325.19	
<u>Media market data</u>		
Total market volume advertising market (€)	265.26 million	
Gross advertising budget in 2009 (€)	528.00 million	
<u>Press</u>		
Newspapers	7 (main) dailies, 6 (main) weeklies Prices for dailies BGN 0.90 (€ 0.46) per issue.	
Magazines	12 magazines Prices for magazines between BGN 2 (€ 1.02) and BGN 10 (€ 5.12).	
<u>Broadcasting</u>		
Television (terrestrial)	PSB: 1 (national coverage), 4 (regional coverage).	Comm.: 3 (national coverage); 16 (regional coverage).
TV advertising revenues in 2009 (€)	PSB and Comm. 198.07 million	
Radio	PSB: 3 (national coverage)	Comm.: 16 (national coverage)
Income TV & Radio (€)	30,677,983 (State subsidy TV) 24,569,486 (State subsidy Radio)	
<u>Internet</u>	10 main ISPs; Internet costs between € 8.2 Euro and € 20.5 monthly; as triple play (telephony, cable television and internet) up € 15.3.	

⁶² This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

Film	110 feature films (14 distributed by the cinemas, 94 broadcast, 2 other purposes). € 4,536,285 State film funding per year; financial means from BNT between 6% and 19%; European funds between 6% and 18%; other international funds between 2% and 23%; from international distribution companies between 1% and 11%. Ticket prices in the cinemas between € 3.6 and € 5.8.
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citement of violence against anyone. Such an injunction suspension shall lose force if not followed by confiscation within 24 hours. Following from this, it could be said that this constitutional provision narrows the possibility to enjoin printed material, as for example, actions by the police to confiscate print materials are not possible.

The press content is not subject to specific legal provisions. However, there exists a Code of Ethics which holds for provisions relating to the protection of freedom of speech, the rights of citizens to access full and reliable information, personal dignity and sanctity of personal life of citizens, defending the unified professional and ethical standards for journalistic activities, etc. The provisions do not apply if the action in question serves the public interest. The “National Council for Journalistic Ethics” Foundation is responsible for monitoring compliance with the Code. In cases of violation the Commission can only publicly reprimand the respective media by expressing its disapproval of the form or content of the contested material. There are no other sanctions that can be imposed. In consequence citizens prefer to use civil or penalty procedures, if their rights have been abused.

2.2 Broadcasting

Bulgaria has a dual broadcasting system. The Law on Radio and Television (LRT), which has also transposed the provisions of the AVMSD, is the main law regulating broadcasting. It regulates the access to the broadcasting mar-

ket by offering different licensing regimes, dependent on whether the broadcaster will broadcast its programmes through a terrestrial analogue network or a digital one. Art. 6(3) LRT is a special provision, applicable only for *BNR* and *BNT*: They have to provide media services for all citizens of the Republic of Bulgaria to foster, for example, the development and popularisation of the Bulgarian culture and Bulgarian language as well as of the culture and the language of the citizens in compliance with their ethnic belonging. The LRT also provides the obligation to encourage the production and distribution of European works in on-demand audiovisual services or radio services. But no sanction is stipulated, if the obligation is not fulfilled. Finally, the LRT contains detailed provisions regarding financing through fees of the public radio and television broadcasters as well as through state budget subsidies, advertising and revenues from other activities related to broadcasting. There is no mechanism stipulated regarding how to calculate the amount of the subsidy and how much is really needed to fulfil the public remit.

The competent regulatory authority on the content of radio and television programmes is the *Council for Electronic Media (CEM)* regulating radio and audiovisual activities (linear and non-linear media services) through registration or issuing of licences for radio and television activities, and through continuous supervision over the activities of radio broadcasters and audiovisual media services providers. The *CEM* decides whether to impose a

fine on the respective radio broadcaster or media service providers and the extent of it, or to revoke the licence or the registration, if activities are not in compliance with the legal provisions or with the conditions included in the licences. Especially the current electoral procedure for the *CEM* does not provide sufficient guarantees for independence from political powers or economic interests as the *CEM* members are directly elected by state institutions without a special legal provision for their nomination and without sufficient legal guarantees for their impartiality, professionalism and assurance that they represent the interests of significant society groups.

There is also the *National Council for Self-Regulation (NCSR)*, which promulgated Ethical Rules for Advertising and Commercial Communication in 2009, addressing radio and television commercial communications as well as print and other types of published media.

2.3 Online services

The online services are not specifically regulated. There are (only) Ethical Rules for Advertising and Commercial Communication, the common rules of the Bulgarian Penalty Act as well as the Law on copyright and neighbouring rights which apply to online services.

2.4 Film

The state, through an Executive Agency named the *National Film Centre*, supports the Bulgarian film industry which, under specific circumstances, may also include co-productions with countries/parties to the European Convention for cinematographic co-production or other countries Bulgaria has sealed arrangements with in the field of film industry and audiovision, on an annual basis. According to Art. 17 of the Law on film (LFI), the

amount should not be less than the total of the average budgets for the previous year of 7 feature films, 14 full-length documentaries and 160 minutes of animation.

3 Main challenges in media practice

3.1 For the press

The press is subject to self-regulation. The "National Council for Journalistic Ethics" has reviewed and decided only 17 cases since 2006; stated violations are mostly incorrect given information, one-sided data entry and biased selection of the sources of information. In cases of violation the Commission can only publicly reprimand the respective media by expressing its disapproval of the form or content of the contested material. There are no other sanctions that can be imposed.

The main problem with regard to independent journalism is that the real owner relationships in press enterprises are not clear.

3.2 For broadcasting

Although the LRT contains detailed provisions regarding the financing of the public radio and television broadcasters and *CEM* through fees, the practical implementation of those provisions has been postponed every year since 2002 through amendments of the law. In addition, there is no mechanism stipulated regarding how to calculate the amount of the subsidy and how much is really needed to fulfil the public remit. The independence of the public service broadcasters is therefore not secured.

The huge number of Bulgarian television and radio programmes does not automatically indicate media diversity, respectively diversity of opinion. There is no regulation on media concentration, nor are there measures or a political will to work on this subject. For example, the television market is dominated

by two major players and, moreover, they offer similar mass-orientated formats.

3.3 For online services

Content providers are subject to the general legislation. This means that everything that is forbidden offline is similarly not allowed online.

3.4 For film

There is a discrepancy between the legal framework for film funding and actual practice. The National Film Centre calculates the amount of the state support due to the legal provisions and requests it from the state. Since 2005 until now there has been a difference between the requested amounts and the state donations of BGN 19,772,066 (€ 10,109,452) whereas the missing financial means in 2010 are BGN 10,900,000 (€ 5,573,167).

II Proposals for remedying the situation

1 Constitutional law aspects

No specific suggestions are to be made for this section.

2 Cross-cutting issues

2.1 General remarks

The content obligations of the journalists in mass media are sufficiently regulated by the Code of Ethics of the Bulgarian Media and the Law on Radio and Television with one exception, which will be presented below. The Code of Ethics determines obligations for correctness of the information and for distinction between value judgements and statements of fact. There are no restrictions stipulated for issuing critical statements. Besides, there are provisions for the protection

of the rights of defendants in criminal proceedings and the right of personal and family life. The Code of Ethics provides that public persons enjoy a lower degree of protection of their private sphere according to the jurisprudence of the ECtHR, whereby public interest can justify appropriate information about the person in question.

In addition to the regulations, jurisprudence of the Bulgarian courts generally applies the standards set by the ECtHR in a sufficient manner. This was verified by the ECtHR in the case of *Rumyana Ivanova v. Bulgaria* (application No. 36207/03) whereas the Court holds unanimously that there is no violation of Art. 10 ECHR on the part of Bulgaria. The applicant, *Rumyana Dencheva Ivanova*, a reporter for *24 Hours*, one of Bulgaria's leading daily newspapers, wrote an Art. about Mr. M.D., a well-known politician and Member of Parliament, which was published in the daily. Her statements were defamatory and she published facts which she knew or ought to have known to be dubious. Ms *Ivanova* complained that the proceedings against her in Bulgaria were unfair and that her ensuing conviction for defamation infringed her right to freedom of expression. The decisions of the Bulgarian City Court found that the applicant did not sufficiently verify her information prior to its publication and that, in her desire to publish quickly and against best journalistic practice, she failed to consult trustworthy sources. The ECtHR was therefore satisfied that the reasons given by the Bulgarian courts for convicting the applicant were relevant and sufficient and that the manner in which the case was examined showed full recognition of the conflict between, on the one hand, the right to impart information and, on the other hand, the protection of the reputation and the rights of others.

*Radomir Cholakov*⁶³ and *Grisha Kambourov*⁶⁴ confirmed the conclusion that the right and obligations of Bulgarian journalists are sufficiently regulated by the Code of Ethics of the Bulgarian Media and the Law on Radio and Television.

2.2 *Incitement to discrimination, violation and hatred*

As well as the Code of Ethics the LRT provides content restriction for hate speech, gratuitous portrayal of violence and discrimination. Nevertheless, the European Commission against Racism and Intolerance (ECRI) noted in its Fourth Report on Bulgaria that the Commission is concerned about information from ethnic and religious minorities concerning manifestations of intolerance and incitement to racial, ethnic and religious hatred in the press and on television.⁶⁵ The ECRI recommended that the Bulgarian authorities make every effort to prosecute and punish members of the media who incite racial hatred.⁶⁶ In 2010, the Bulgarian government made a remarkable step forward concerning this matter by adopting a supplemented draft to the Bulgarian Penalty Code. It provides imprisonment up to four years or sanctions from BGN 5,000 (€ 2,556) to BGN 10,000 (€ 5,113) for incitement to discrimination, violation and hate by mass media based on race, nationality, ethnic belonging or other characteristics. This amendment has been criticised by journalists as a violation of freedom of expres-

sion and has not yet been adopted by parliament.⁶⁷ The provision which is still in force (amendments State Gazette No. 27 from 10 April 2009) provides the same penalties, but only in the case of incitements to national and ethnic violation as well as hate and race discrimination. The other types of discrimination, e.g. because of gender, age, family and financial status, are not included in the provision at present. On the one hand the adoption of the government's draft could be recommended as a contribution to the protection of personal rights against violation by discriminating against speech, which could not be achieved sufficiently through all the years after the challenges in 1989. On the other hand it has to be seen that the nature and severity of the penalties could hamper journalistic work and discourage journalists (the so called "chilling effect"). *Radomir Cholakov* affirmed that this amendment may have very dangerous consequences restricting the freedom of expression. *Grisha Kambourov* is of another opinion and stated that such a kind of rule could have a "disciplining effect".

Besides, the ECRI recommended that the Bulgarian authorities provide the Council of Electronic Media (CEM) with human and financial resources which ensure sufficient professionalism and the capacity of its members to be more aware of those issues.⁶⁸ This recommendation can be fully supported.

2.3 *Protection of journalists sources*

In 2003, the Law on protection against discrimination was adopted (State Gazette No. 86 from 30 September 2003, last amendments State Gazette No. 103 from 29 December 2009). It

⁶³ *Radomir Cholakov* is chairman of the self-regulatory Ethic Commission on Printed Media and chief legal adviser of WAZ. He is vice chairman of the working group which is preparing the new draft of the law on broadcasting. He has been interviewed by the national correspondent regarding press issues and issues concerning the new draft of the law on broadcasting.

⁶⁴ *Grisha Kambourov* is executive director of the Association of the Bulgarian Broadcasters (ABBRO). He has been interviewed by the national correspondent regarding broadcasting issues.

⁶⁵ ECRI, Report on Bulgaria, adopted on 20 June 2008 and published on 24 February 2009, p. 31.

⁶⁶ *Ibid.*, p. 32.

⁶⁷ Art.s available at:
<http://www.trud.bg/Art..asp?Art.Id=648770>
<http://www.trud.bg/Art..asp?Art.Id=648733>.

⁶⁸ ECRI, Report on Bulgaria, adopted on 20 June 2008 and published on 24 February 2009, p. 32.

provides a special Commission for Protection against Discrimination. The provisions of the Law require all natural and legal persons to submit on the demand of the Commission all available information concerning a given case of discrimination. Refusals to submit information are liable to administrative sanctions between BGN 250 (€ 104) and BGN 2,000 (€ 1,023). This provision might be in conflict with Art. 10 ECHR, conceived as a guarantee of the confidentiality of journalists' sources of information.⁶⁹ Therefore, a special provision in the law could be provided which would protect the journalists' sources and would require submitting information in this regard only if there is a grave interest in knowing the identity of the source, which overrides the interest in concealing it.

The protection of journalists' sources might also be contravened by Art. 15 LRT, which stipulates in its section (1), that the media service providers shall disclose their sources of information not only in cases of pending court proceedings but also in the case of pending proceedings by CEM. According to Art. 15(2) LRT journalists are in the former case also obliged to disclose the sources of information not only to the audience but also to the management of the media service providers. And Art. 15(4) LRT says that "journalists shall be obliged to keep secret of the source of information if this is explicitly requested by the person who has provided it".

These regulations provide obligations which weaken the freedom of expression in broadcasting. Not only that they stipulate the active obligation to disclose sources of information also in case of a simple authority's demand and also to the management of the media service providers, moreover the person who has provided the information must explicitly request their protection. Therefore, it is recommendable to abolish Art. 15(2) and (4) LRT and to amend Art. 15(1) where disclosure of journalistic sources has to

be mandatory only in the case of pending court proceedings and if the legitimate interest of disclosure clearly outweighs the public interest in the non-disclosure.

In the opinion of *Grisha Kambourov* the journalists' sources are protected sufficiently by the private broadcaster and especially by the big broadcasters e.g. *Nova* and *bTV*. Nevertheless, these provisions of LRT have to be seen as critical. They could particularly impair investigative journalism in the small regional and local media.

2.4 Self-regulation

As described in more detail in the full report, the self-regulatory mechanisms are not broadly accepted yet, because of a lack of a long-lasting tradition and because of the missing effective sanctions. This conclusion has been affirmed by *Elly Guerganova*, chairperson of the National Council for Self-Regulation.⁷⁰

a) Press

Radomir Cholakov commented on the efficiency of the self-regulation of the press that it is better to convince and educate than to impose sanctions. Correspondingly, the Ethic Commission on Printed Media has only reviewed and decided 17 cases from its founding in 2006 up to now. Therefore, and to foster the acceptance of the self-regulatory mechanism and faith in it, it could be advisable to intensify the publicity of the Commission and its work.

b) Broadcasting

With regard to the self-regulation for the broadcasting sector according to the new Art. 126g LRT, the CEM is obliged to impose penalties between BGN 2,000 and BGN 5,000 on media

⁶⁹ In this spirit *Dinko Kanchev*, IRIS 2003-10:24.

⁷⁰ *Elly Guerganova* has been asked by the national correspondent regarding the self-regulation.

service providers who do not comply promptly with resolutions of the self-regulatory authorities - Ethic Commission of the "National Council for Journalistic Ethics" Foundation and/or National Council for Self-Regulation. But the CEM has not been authorised by law to review the case again before imposing the penalties. Whether such an administrative act, based (merely) on the violation of the Ethic Codes is legal, remains to be seen in future proceedings before the Bulgarian administrative courts.

According to data given by *Elly Guerganova*, there are no sanctions imposed by the CEM according to Art. 126g LRT yet. She confirmed that there are different opinions among the media experts concerning the legality of self-regulation, because it might conflict with the legal responsibilities of CEM.

In order to clarify this matter a recommendation might be to adopt legal provisions in the new broadcasting act, which declare self-regulation by certified institutions permissible in principle, by maintaining the competence of CEM as legal supervision ("co-regulation"). This view was also expressed by *Elly Guerganova*, who stated furthermore a will of the working group, which drafts the new broadcasting law, to provide rules concerning co-regulation.

But both *Elly Guerganova* and *Grisha Kambourov* expressed concern over the lack of dialogue with the regulatory authority (CEM) on this issue.

3 Sector-specific regulation

3.1 For the press

Transparency of the media (ownership situation) has been underlined by the Committee of Ministers as "necessary to enable members of the public to form an opinion on the value which they should give to the information, ideas and opinions disseminated by the

media."⁷¹ Press transparency is a problem in Bulgaria, which the cabinet intends to solve with new amendments on the Law on compulsory deposit of printed or other works (State Gazette No. 87 from 5 November 2010). According to the adopted Art. 7a (1) LCDPOW every periodical printed work shall publish information about the "real owner" of the publication in the first issue of the year and in case of a public company according to the Law on public offer of securities it shall only publish information about the competent regulatory authority. According to Art. 7a (3) the publisher is obliged to submit a statement to the Ministry of Culture which names the "real owner" of the publication or the competent regulatory authority. The efficiency of this regulation has to be seen as critical because of the facts that it has neither been stipulated that documents have to be added as proof nor is there a procedure for checking the statements and asking for additional evidence if required. The Law does not provide content examination of the statements but only supervision if the statement has been published and submitted by the Ministry of Culture respectively. The sanctions for not fulfilling the obligations according to the Law are between BGN 1,000 (€ 511) and BGN 2,000 (€ 1023). There is of course a penalty liability for statements with untruthful content, but the penalty procedure strives for another goal and takes a long time.

Otherwise, it is clear that one Ministry could not act as a regulatory authority and there is no regulatory authority on the press. Moreover, as mentioned in the main report, the purpose of the LCDPOW is to save the Bulgarian cultural heritage and not to regu-

⁷¹ Recommendation No. R (94) 13 of the Committee of Ministers to Member States on measures to promote media transparency, adopted on 22 November 1994.

late press ownership. However, there is no other law concerning the press.

The problem with transparency of the press ownership has to be reviewed together with the broader media concentration issue and the fact that Bulgaria does not have specific regulation on media concentration. The Commission on Protection of Competition (CPC) checks media concentration cases according to the general rules of the competition law. It has the expert knowledge concerning ownership and especially media ownership and a large databank. If Bulgaria adopts special rules for regulating the media concentration, the CPC will be the “natural” selection as a competent authority. But independent of this the CPC could efficiently review the ownership relations in the press and do the supervision.

The amendments of LCDPOW were adopted at the beginning of November 2010. Therefore, it could not be expected that the Bulgarian government will change its point of view and shift the responsibility to another authority for the immediate future, but only after having experience with the application of the Law. *Radomir Cholakov* is optimistic and believes that new regulation will contribute to (increased) transparency of press ownership.

3.2 For broadcasting

a) Public service broadcasting

- Structure and risk of state intervention

According to the jurisprudence of the ECtHR⁷², in which the Court refers to Recommendation Rec. (2007)3 on the Remit of public service media in the information society and the Recommendation no. R(96)10, on The Guarantee of the Independence

of Public Service Broadcasting, “the legal framework governing the public service broadcasting organisations should clearly stipulate their editorial independence and institutional autonomy”.

In accordance with Art. 55 seq. LRT, the public broadcaster BNT and BNR have a management board and a director general. The directors general are elected and released by CEM. The management board consists of five members, approved by CEM on the proposal of the respective director general. The directors general and the members of the management boards perform their activities according to contracts signed by the Chairperson of CEM. There is no independent supervisory board within the organisation of the public broadcasters which controls the work of the management. Supervision of the activity of radio and television operators for the observation of the LRT is carried out by CEM (Art. 32(1) No.1).

These rules on appointment and dismissal of the directors general and the members of the management board as well as those on supervision cast serious doubts on the independence of BNT and BNR from CEM and entail a high risk of at least indirect state intervention, especially since similar doubts exist with regard to election/appointment of the members of CEM.

There is no specific EU legislation which prohibits the solution provided for in the present Bulgarian media laws. However, again there is recognised European guidance on the question of how to establish and preserve the independence of public service broadcasters. The Council of Europe has shown the way to follow with the adoption of Recommendation No. R (96)10 on the Guarantee of the Independence of Public Service Broadcasting and has elaborated and adjusted these basic principles

⁷² *Wojtas-Kaleta v. Poland*, judgement of 16 July 2009, Appl. 20436/02, § 21; *Manole and others v. Moldova*, *op. cit.*, § 102.

in further documents⁷³. This Recommendation stipulates that “the rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference”.

A restructuring of CEM as described below would already help to improve the independence of BNT and BNR. However, a true institutional autonomy of public service broadcasting could be much better served by BNT and BNR establishing their own supervisory boards consisting in their majority of representatives of relevant civil society associations nominated by law (e.g. trade unions, employers and industry associations, churches, consumers, education, science, arts, culture, sports, children and youth, family and political parties). Even representatives of local, regional or national governmental institutions could be included, provided that they constitute only a clear minority. These supervisory boards should have the right to elect and dismiss the directors general, approve the appointment of the members of the boards of management proposed by the directors general and supervise their activities. These recommendations have been fully supported by *Radomir Cholakov*, the vice chairman of the working group, who is preparing the new draft of the broadcasting act. But a political will is needed.

- Rules with respect to new services

One of the main modifications of the new Communication on the application of State aid rules to public service broadcasting of the

European Commission⁷⁴ is adjustment in the light of the technological changes which have fundamentally altered the broadcasting and audiovisual markets. Therefore the Commission emphasises the need to clarify the State aid rules with respect to the diversification of the publicly funded activities. On the basis of technological neutrality the Broadcasting Communication states clearly that Member States are of course free to allow public service broadcasters to offer new services. But the Member States can either clarify in a very precise manner the public service remit with respect to the application of the new technologies and clearly entrust public service broadcasters with these tasks or they must introduce a new *ex ante* assessment before significant new services are launched on the market.

Art. 7(5) of the Bulgarian LRT includes rules on the possible diversification of public service broadcasters: “(...) National public service broadcasting, who: (...) 5. apply the new information technologies.” In addition Art. 45 LRT includes entrustment with respect to new activities: “(1) The Bulgarian National Radio and the Bulgarian National Television shall introduce and offer new radio and television services. (2) Bulgarian National Radio and Bulgarian National Television shall create conditions for distribution and implementation of digital and other new technologies in the radio and television activity.”

In the light of the new Broadcasting Communication, these provisions of the Bulgarian LRT seem to be too broad and not precise enough. This could be even more problematic, since the Bulgarian law does not provide for an *ex ante* test for significant new services.

Therefore, it is recommendable, that Bulgaria either clarifies in a very precise manner the public service remit with respect to the

⁷³ Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in the member states (adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers’ Deputies); Resolution No. 1 “The Future of Public Service Broadcasting” of the 4th European Ministerial Conference on Mass Media Policy (Prague, 7 and 8 December 1994); Recommendation CM/Rec (2007)3 on the remit of public service media in the information society.

⁷⁴ Official Journal C 257 of 27 October 2009, p. 1-14.

application of new technologies and clearly entrusts public service broadcasters with these tasks, or that they introduce a new *ex ante* assessment before significant new services are launched. The *ex ante* assessment shall include two steps (Para. 88 of the new Broadcasting Communication):

- Assessment of whether the new services meet the democratic, social and cultural needs of society (otherwise called the “public value” or “character”). The assessment of the public character of a service is within the competence of Member States. The new Broadcasting Communication contains no restrictions in this regard; and
- Assessment of the impact of the service on the market. In assessing the impact of the service on the market, Member States have to take into account a number of criteria (the existence of similar or substitutable offers, editorial competition, market structure, market position of the public service broadcaster, level of competition and potential impact on private initiatives).

The outcome of the assessment is the result of a balancing exercise of both components: the impact on the market with the value of the services in question for society.

- Financing

The Commission considers in general that State funding of public broadcasters is normally necessary for the undertaking to carry out their public service task; as a general rule it is necessary that the amount of public compensation does not exceed the net costs of the public service mission. However, public service broadcasters may retain yearly overcompensation above the net costs of the public service to the extent necessary for securing the financing of the public service obligations.

The new Broadcasting Communication provides for specific rules on how *financial reserves* can be built up, used and maintained from year to year. On this point the new Broadcast-

ing Communication codified the Commission’s decision-making practice. The latter was improved by clarifying that the 10% cap for general reserves was to be calculated by reference to the total budget, and not the level of public funding. In concrete: this means that, by way of exception, public service broadcasters may be allowed to keep an amount in excess of 10% of the annual budgeted expenses of their public service mission in duly justified cases.

According to Art. 70(6) LRT, the excess of the income over the expenses at the end of the year shall be included in the budget for the following year. Bulgarian law does not limit the annual amount transferable into the following year’s budget, whereas - as described above - the Commission considers 10% of the annual budget an acceptable limit. Therefore, the amendment of Art. 70(6) LRT in this spirit is strongly recommended.

Besides, the LRT does not include rules on how to determine the financial needs of the public service broadcasting companies. The inclusion of such rules designed to exclude overcompensation incompatible with State aid rules would help to prevent incompatibility with EU State aid provisions.

Also, as regards the risk of under-funding, the setting up of an independent commission examining the financial needs of the public service broadcasters, based on their legally prescribed remits and their implementation by programmes and predefining the amount necessary which will be included in the State budget for the financing of the public broadcasters, could be considered.

b) Commercial broadcasting

- Licensing

There is one considerable case about the licensing procedure for radio broadcasting, where Bulgaria was found guilty of infringing Art. 10 ECHR by the ECtHR (*Glas Nadezhda*

*EOOD and Elenkov v. Bulgaria*⁷⁵). The Court noted in its judgement that the NRTC (the forerunner of CEM)

“had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Furthermore, the NRTC had merely stated in its decision of 2 October 2000 that Glas Nadezhda EOOD had not or had only partially corresponded to a number of its criteria. No reasoning was given to explain why the NRTC came to that conclusion or why it had exercised its discretion to deny a broadcasting licence.”

Furthermore, in Para. 51

“the Court notes that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for open and transparent application of the regulations governing the licensing procedure and specifically recommended that “all decisions taken [...] by the regulatory authorities [...] be [...] duly reasoned [and] open to review by the competent jurisdictions”.⁷⁶

It has to be noted that there was some progress after these judgments. Today the decisions of the CEM include a justification, the sessions of the members of the CEM are held publicly and the minutes of the meetings must be published on the website of CEM within three days. As the relevant court for the review of CEM decisions, the Administrative Supreme Court takes all relevant protocols into consideration.

Nevertheless, it should be mentioned that there is still a lack of independence and impartiality (see above), which impacts on the administrative discretion of CEM in the licensing procedures and shows an effect in the results.

This conclusion also confirmed the statement of *Grisha Kambourov* that “transparency and objective criteria are missing by ranking the applicants for licence and taking the final decision. Therefore, the Administrative Supreme Court repealed most of them.”

- Licensing and registration procedure

The Bulgarian LRT and the Law on Electronic Communication provide four different procedures for broadcasters to acquire access to the media market, depending on which way of technical distribution is sought: the CEM is responsible for licensing procedures for analogue terrestrial broadcasting, different licensing procedures for digital terrestrial broadcasting, and registration procedures for cable and satellite broadcasting, while the CRC is responsible for the permitting procedures for analogue terrestrial broadcasters, which are registered by CEM.

Bearing in mind the European principles of equal opportunities and technical neutrality, it must be strongly recommended that the Bulgarian legislator provides only one content licensing procedure independent of the technical way of distribution. Besides, such a regulation would regulate the legal loophole in the Bulgarian legislation concerning television and radio programmes which are only broadcasts via internet (online streaming). According to the legal acts in force these programmes neither have to be licensed nor registered. Therefore, CEM does not supervise them at all. With respect to the television programmes this can be regarded as an incomplete transposition of the Audiovisual Media Services Directive (AVMSD).

This single licensing procedure must be based on equality, transparency, non-discrimination and impartiality.

- Media concentration

As described in the full report, the Bulgarian media market and its economic ties have been subject to considerable changes in the last few years. This concerned the broadcast-

⁷⁵ *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, judgement of 11 October 2007, Appl. 14134/02.

⁷⁶ *Ibid.*, § 50.

ing content as well as the terrestrial digital distribution of broadcasting. Because of non-existing specific media concentration rules, only the general competition law was applicable. The concentrations were approved only from a financial point of view, but not according to media diversity criteria. Moreover, the real owners of big players in the concentration process, like the offshore company *NURTS (Mancelord Limited)*, were not clear. Nevertheless, the Commission on Protection of Competition (CPC) decided the case without further investigation and without consideration of other aspects than competition/market criteria.⁷⁷

Concerning the diversity of media content the association of private broadcasters (AB-BRO) is opposed to specific media concentration rules,⁷⁸ like e.g. limiting the number of licences one broadcaster may have or restrictions with regard to the share of audience or in case of a dominant position in other media-relevant markets. The political will to implement this kind of regulations yet is missing. Given this, it can realistically only be recommended that the competent regulatory authorities should at least fully implement the applicable law. This conclusion has been confirmed by *Radomir Cholakov*, who stated that the solution of the problems is “*not question of law, but efficiency of the executing authorities: CPC, tax authorities and the police.*” His suggestion to provide transparency with regard to the ownership relations of broadcasters through a regulation which is similar to the new regulation of press ownership has not been taken up by the working group which prepared the new law on broadcasting.

The representative of the private broadcaster, *Grisha Kambourov*, considers that “*the published data in the register of CEM and the Registry Agency are enough and everyone can see who the owner is.*”

Media pluralism can and should be secured (also) by licensing through the choice of a certain broadcaster and the selection of a certain programme and thereby the content which will be transmitted in it. According to the LRT, the multiplex operator has to transmit three type of programmes: programmes which have must-carry status according to law (for the first stage of digitalisation these are *bTV, Nova, Pro.BG, TV7* and *M.Sat*); programmes whose type and profile have been assigned by the CEM and programmes whose type and profile have been agreed with the CEM. Which criteria CEM has to apply by assigning or agreeing respectively the type and profile is not regulated by the LRT. Therefore, providing criteria in the law such as the contribution to diversity of opinion and the contribution to regional and local identity could be recommended. Ownership could be an additional indication by reviewing this kind of criteria. Moreover, clear and strict transparency rules on this issue could be considered, especially in view of the above cited Recommendation of the Committee of Ministers on measures to promote media transparency.

c) Role of the regulatory authority in practice
The 47 Member States of the Council of Europe, including Bulgaria, have adopted a Recommendation⁷⁹ and a Declaration⁸⁰ concerning the independence and functions of

⁷⁷ CPC, Decision No. 709 of 22 June 2010.

⁷⁸ The opinion was expressed by the executive director of AB-BRO, *Grisha Kambourov*, during the discussions on the new broadcasting law, available at: http://www.capital.bg/biznes/media_i_reklama/2010/07/30/940336_opit_poreden_greshki_ne_sa_razresheni/; and personally when contracted by the national correspondent.

⁷⁹ Recommendation No. R (2000) 23 of 20 December 2000 of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector.

⁸⁰ Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector (adopted by the Committee of Ministers on 26 March 2008, at the 1022nd meeting of the Minister's Deputies).

regulatory authorities for the broadcasting sector. The Recommendation states that “the rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests”. Furthermore, the Recommendation demands that “the rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence”.

One of the most important provisions for securing the independence of regulatory authorities (with possible subsequent effects on the independence of public service broadcasting) is the rule on election/appointment and dismissal of the members of its leading body. The solution chosen by the Bulgarian LRT (three members elected by the National Assembly and two appointed by the President of the Republic) does not seem to be *per se* in contradiction with European rules. There are similar examples in other European states. Whether it achieves its aim of securing independence depends very much on the interplay and cooperation of the institutions concerned and on the political culture in the country.

However, the model used in Art. 24 LRT bears inherent dangers for independence due to the very limited number of institutions electing or appointing the Council members and the possibility of a dominant political power deciding on the majority of the Council. This procedure, combined with the right of the Council to elect and release the Directors General of BNR and BNT and to approve the members of their management boards, could also have serious consequences for the independence of public service broadcasting.

To avoid, or at least minimise, this danger different possibilities could be considered:

- Parties in the National Assembly acquire

the right to nominate members of CEM in proportion to their seats in the Assembly. Advantage: opposition parties also have an influence on the composition of CEM;

- The number of institutions having the right to appoint/elect members of CEM is expanded, preferably by civil society organisations; or
- CEM is restructured (like the model in Germany): The Council is enlarged. It consists mainly of honorary representatives of civil society organisations fixed by law, possibly also of the National Assembly, of political parties or even of the government under the condition that the representatives of the latter can never form a majority. This new Council takes the basic important decisions and elects the reinforced full-time management board, which does the day-to-day business and prepares the decisions of the Council.

d) On-demand services

Art. 19(3) LRT includes some obligations concerning the on-demand-services and sanctions, but no sanctions can be imposed in cases where these obligations are not fulfilled. The provision of appropriate sanctions could be considered.

3.3 For online services

At present there is no competent authority for online services. As shown above, CEM does not have the competency to license, respectively to monitor, content which has been distributed only online. With regard to television programmes this can be evaluated as an incomplete transposition of the AVMSD and thus a violation of European law.

Concerning the commercial communications there is a self-regulation, but it is not efficient yet. As regards protection of minors there is neither co-regulation nor self-regulation. Since especially children must be protected from the dangers of the use of in-

ternet⁸¹ and because of the fact that other countries have positive experience with co- and self-regulation instruments, particularly with regard to the protection of minors in the internet, the following recommendations could be made:

- CEM gets the right to license and monitor broadcasting content independent of the way of its distribution;
- The new Broadcasting Act provides co-regulation mechanisms with regard to commercial communications and protection of minors, which declare self-regulation by certified institutions permissible in principle, while maintaining the general competence of CEM as legal supervision.

These suggestions to foster the current situation have been supported in principle by the chairperson of the National Council for Self-Regulation, *Elly Guerganova*.

3.4 For film

The provisions of Bulgarian Law on the film industry (LFI) concerning the State support to it are in accordance with the criteria stipulated in the Cinema Communication⁸² of the Commission. The Bulgarian provisions are even more strictly formulated in some aspects. The Communication provided that the aid incentive must in principle be limited to 50% of the production budget. Difficult and low budget films are excluded from this limit. The Commission considers that it is up to each Member State to establish a definition of difficult and low budget film, according to national

parameters. The Bulgarian LFI includes only the exception in the case of low budget films. It does not define “low budget” films according to national criteria, but according to the budgets of the European films and the data given by the European Audiovisual Observatory (EAO).

Furthermore, with regard to this criterion, the Commission is willing to accept aid incentives of the Member States higher than 50% in the case of limited geographic extension of certain languages and cultures, given the limited circulation of those cultural products within the European Union and world markets.⁸³ Such projects must especially not be “difficult” and/or “low budget” films.⁸⁴ Bearing in mind the specifics of the Bulgarian film market, culture and language such an acceptance often is/will be the case. However, Art. 28(6) LFI provides that the State support shall not be higher than 50% and in case of low budget films shall not be higher than 80%. Therefore the following amendments of the Bulgarian LFI to foster the Bulgarian film market could be considered:

- LFI provides aid incentives higher than 50% in the case of “difficult” films and the legislator establishes a definition of “difficult” film according to national parameters;
- the legislator establishes a definition of “low budget” film according to national parameters;
- LFI provides aid incentives higher than 50% in certain cases which meet the criteria shown above.

But in view of the current situation in Bulgaria it is unlikely that Parliament will adopt such amendments. As described in the full report, even the amount of the State support due to the legal provisions in force has

⁸¹ Recommendation CM/Rec(2009)5 of the Committee of Ministers to Member States on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communication environments adopted on 8 July 2009.

⁸² Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 26 September 2001 on certain legal aspects relating to cinematographic and other audiovisual works, COM (2001), 534 final, [2002] OJ C 43, p. 6.

⁸³ *EMR*, European Media Law and Policy Framework, 2010, p. 60.

⁸⁴ *Ibid.*

not been granted. There is a big discrepancy between the requested sum according to the law and the State donations. Many distinguished film makers have complained to the Bulgarian Administrative Supreme Court on this regard. The state prosecutor defined their claim during the sitting on 20 October 2010 as allowable and lawful because Art. 17(1) LFI determinates mandatory the amount of the sum which the State has to grant. The Court found the case factually clarified. The decision was expected, but on the next Court's sitting on 21 November 2010 the Court postponed the case. The chairman of the Union of Bulgarian Film Makers, *Georgi Stoyanov*, stated to the national correspondent that the court postponed the case "*obviously under political pressure*".⁸⁵ However, on 1 January 2011 new rules concerning the State funding for the Bulgarian film industry came into force. According to the amendments to Art. 17 of the Film Industry Act the subsidy for the National Film Centre – which is an Executive Agency of the Ministry of Culture – shall be granted only "if possible" and its annual rate shall be based on the sum of the average budgets for the previous year, of "up to" 7 feature films, 14 feature-length documentaries and 160 minutes of animation. The addition of the phrases "if possible" and "up to" gives the Ministry of Finance the opportunity to decide alone that there is not enough money in the State budget for the film industry and to determine a subsidy less than that determined by Parliament in the law.

According to the three-years (2011-2013) budget forecast of the Ministry of Culture, the State support will not exceed BGN 9,090,000 (€ 4,647,715) *per annum*, whereas the missing financial means for 2011 are BGN

8,610,000 (€ 4,402,291). Ten associations expressed their protest in statements to the chairman of the Bulgarian Parliament, to the Prime Minister and to the Minister of Culture. The chairman of the Union of Bulgarian Film Makers confirmed the protest in his opinion on the problems discussed.

As mentioned in the full report in view of the bad financial situation, the option should be considered of creating a special cinema fund, which raises new financing sources such as revenues from advertising, cable operators' fees and in the context of the film distribution in cinemas or on DVD or VHS. The chairman of the Union of Bulgarian Film Makers and the chairman of the Association of the Film Producers, *Georgi Cholakov*, also confirmed this idea. *Georgi Stoyanov* stated when interviewed that the governing party GERB promised during its election campaign the creation of a special cinema fund. But from his point of view the government will not keep its promise.

⁸⁵ The national correspondent interviewed the chairman of the Union of Bulgarian Film Makers, *Georgi Stoyanov*, and the chairman of the Association of the Film Producers, *Georgi Cholakov*, on the film issues.

Croatia

2 The regulatory status quo

Nives Zvonaric

2.1 Press

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Croatia, based on and taken from the country report by *Nives Zvonaric*, are (briefly) given.⁸⁶

The Media Law regulates the rights and obligations of newspaper publishers, i.e. natural or legal persons publishing their contents through printed media. Printed media are considered to be newspapers and other periodicals published at least once every six months, with a circulation of more than 500 copies. A printed work published occasionally with a circulation of less than 500 copies shall be considered a printed

1 General data

Country profile	
Basic data	
Country population	4,437,460
Official language/s	Croatian
Main ethnic groups (% of population)	89.6% Croatians, 4.5% Serbs, 5.9% Others
Recognised minorities (by - constitution)	Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians, Bosniaks, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Romani, Rumanians, Turks, Vlachs and Albanians
Religious groups (% of population)	Catholic 87.83%; Greek Catholic 0.14%; Orthodox Church 4.42%; Islamic Religious Community 1.28%; Jewish Religious Community 0.01%; Adventist Church 0.07%; Baptist Church 0.04%; Evangelic Church 0.08%; Jehovah's Witnesses 0.14%; Calvinist Church 0.09%; Christ Pentecostal Church 0.01%; Other religions 0.11%
Average salary per month (€)	748.00 (net)
Media market data	
Total market volume advertising market (€)	250,333,231
Net advertising budget in 2009 (€)	N/A
Press	
Newspapers	2 dailies (national coverage); 3 dailies (regional coverage) price for dailies around € 0.954 per issue.
Magazines	25 price per issue around € 1.90
Broadcasting	
Television	PSB: 1 (national coverage) Comm.: 2 (national coverage), 1 (regional coverage), 7 (county coverage), 13 (city coverage)
TV advertising revenues in 2009 (€)	106,899,055

⁸⁶ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

Radio	PSB: 1 (national coverage)	Comm.: 3 (national coverage), 1 (regional coverage), 21 (county coverage), 132 (city coverage)
Income TV & Radio (€) public broadcaster (HRT)	197,638,534.95 (total) 0 (state funding) 45,061,585.96 (self generated) 152,576,948.99 (licence fee total); 10.98 (licence fee per month)	
<i>Internet</i>	62 ISPs monthly tariffs between € 5.21 and € 45.56	
<i>Film</i>	59 state supported films in 2010 (6 feature films, 2 first feature films, 18 documentaries, 14 animations, 19 experimental films) € 5,174,527.71 (total state funding in 2010) Ticket prices around € 4	

media if it is intended for sale. All publishers must respect the right of the public to be informed truthfully, impartially and in a timely manner on events, phenomena, persons, subjects or activities. For this reason the media must adhere to the rules of the journalistic profession and ethics in publishing contents. The Law also provides the possibility for publishers, editors and journalists of a media organisation to adopt a statute of the relevant media organisation as a self-regulatory act establishing in particular the manner of journalists' participation in the procedure of appointment and dismissal of the editor-in-chief, the freedom of work and journalists' responsibility, as well as the conditions and procedure pursuant to which the editor-in-chief, editors and journalists have the right to a resignation with a fair severance pay, in cases where changes in the ownership or management structure of the media lead to significant alterations in the editorial basis or content (the so-called "conscience clause"). The so-called Code of Honour *inter alia* stipulates that all the obligations and rights of journalists arise from the right of the public to be informed of facts and opinions. When performing their work journalists are obliged to defend human rights, dignity, freedoms and values, respect the pluralism of ideas and world views, resist all forms of

censure, contribute to the strengthening of the rule of law and participate, as a part of the public, in the democratic control of political power and government.

The *Croatian News Agency (HINA)*, a legal person with the status of a public institution whose founder is the Republic of Croatia, has to collect and disseminate news agency information which is as factual and objective as possible about the events in the Republic of Croatia and the world for the purposes of the media and other subjects from the social, political, cultural and economical spheres.

There is no regulatory authority for printed media in the Republic of Croatia. But the Croatian Journalists' Association with the support of a German political foundation and an initial board consisting of journalists, publishers, broadcasters and others from different spheres of the society launched a new initiative in June 2010 for the establishment of the Croatian Media Council as a self-regulatory body, monitoring media and sanctioning those who violate the principles of journalism.

2.2 Broadcasting

Firstly, the broadcasting sector is addressed by the Constitution as the Constitutional Law

prescribes that radio and television broadcasters on national, regional and local levels have a special task to promote specific targets (e.g. understanding for members of national minorities, producing and/or broadcasting programmes designed to inform members of national minorities in minority languages, etc.).

Secondly, the Electronic Media Law regulates the rights, obligations and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, as well as the interest of the Republic of Croatia in the field of electronic media. According to the Law it is, for instance, not allowed to publish or broadcast information revealing the identity of a child up to 18 years of age involved in cases of any kind of violence, regardless of the child's status as a witness, victim or perpetrator, or in cases of attempted suicide or committed suicide, or to introduce details of a child's family affairs and private life; also audiovisual or radio programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence, are prohibited, etc.

Public Service Broadcasting is regulated by the Croatian Radio Television Law. *Croatian Radio (HR)* and *Croatian Television (HTV)* must satisfy the interests of the public on the national and local level, as well as taking care of the balanced representation of current affairs, cultural, educational and entertaining contents by, for instance, informing the public on political, economic, social, health, cultural, educational, scientific, religious, ecological, sporting and other events and phenomena in the country and abroad, etc.

The Council for Electronic Media is the regulatory authority in the field of electronic media (television and radio services, on-demand media services and electronic publica-

tions). The Council, for instance, conducts the procedures of granting concessions in compliance with the Electronic Media Law, the Concessions Act and secondary legislation, concludes contracts on granting concessions with the most advantageous bidders in compliance with the Electronic Media Law and adopts decisions on withdrawal of granted concessions and licences in cases anticipated by the Electronic Media Law, etc. In cases of a violation of the provisions, the Council may issue an admonition, a warning (after the third warning the Council may withdraw, temporarily or permanently, the concession for providing radio and television services), or a fine (up to € 13,750 for the relevant provider and up to € 1,400 for the responsible person).

2.3 Online services

The Electronic Media Law regulates the activities of providing on-demand audio and/or audiovisual media services. Legal or natural persons must have a licence issued by the Council for Electronic Media for providing such services. The licence is issued on the basis of a request of an on-demand media service provider. The request must contain evidence that the technical conditions for the transmission of an audiovisual and/or radio programme are fulfilled and information on the editorial basis with a specification of the programme orientation (general or specialised) of the relevant on-demand media service provider. To a media service provider who has not been awarded a concession and is not an on-demand media service provider the Council issues a licence for satellite, internet, cable and other permissible ways of transmitting audiovisual and/or radio programmes. Such media service providers must fulfil the technical conditions for the transmission of programmes and the conditions prescribed by the Electronic Media Law.

2.4 Film

The Audiovisual Activities Law regulates the performing, organising and funding of activities relating to films and other audiovisual works, such as production, showing in cinemas and/or broadcasting. The *Croatian Audiovisual Centre (HAVC)* promotes audiovisual creativity in Croatia by, for instance, collecting and allocating through public tenders the funds for the promotion of audiovisual activities in compliance with the Law and other regulations, or supporting and organising expert and professional training in the field of audiovisual activities, etc.

3 Main challenges in media practice

3.1 For the press

Independent journalists and the independence of media in the sense *inter alia* that editors have more influence over editorial policies and the selection of editors-in-chief in public and commercial media are the basic principles of independent journalism. In the last couple of years no threats to or attacks on journalists, provoked by their investigative journalism, have been recorded in Croatia. There are certain indications of some attempt to prevent publishing information but no material proof has ever been presented on the identity of the person who allegedly tried to do so.

3.2 For broadcasting

HRT is currently experiencing some operational difficulties, due to the fact that the highest executive positions (operational and editorial) are occupied by acting managers. In December 2009, the Programme Council of *HRT* adopted a decision on relieving from duty the General Director of *HRT*, while in 2010 both the Director of *HR* and *HTV* as well as the Editor-in-Chief of Informative Programme and the Director of

the *HTV* Programme were also relieved from duty. The Croatian Radio Television Law has prescribed the procedure for selecting the *HRT* executives, according to which the Programme Council of the *HRT* must approve all appointments. After several unsuccessful attempts to appoint the General Director of the *HRT*, four members of the Council have resigned their posts, thus making it necessary to conduct the procedure of appointing new members of the Council before a new General Director may be appointed and, thereafter, other executives. The programme of the *HRT* has also been under increased criticism from the public and especially civil society organisations. It is considered that it does not entirely fulfil its remit as a public service broadcaster as prescribed by the Croatian Radio Television Law.

From the establishment of the Council for Electronic Media up to 2010 there were no registered complaints of the public regarding the independence of the Council's work.

3.3 For online services

There are no major challenges to be reported for this sector.

3.4 For film

The *HAVC* allocated the funds for the promotion of audiovisual activities through public tenders to various movies in 2009. A problem is that there are no large independent film producers in Croatia.

II Proposals for remedying the situation

1 Constitutional law aspects

The Republic of Croatia was established as an independent state in 1991. The new statehood required the establishment of a new legal framework, whereby the entire range of legislative acts

was drafted and adopted, from the Constitution and various laws to secondary legislation.

The issue of media, online services and film has been regulated by the Constitution of the Republic of Croatia, the Constitutional Law on the Rights of National Minorities, the Media Law, the Croatian News Agency Law, the Electronic Media Law, the Croatian Radio Television Law, the Audiovisual Activities Law as well as other secondary legislation.

It must be underlined here that the Republic of Croatia is currently negotiating its accession to the European Union and that therefore Croatian legislation is still in the process of being fully aligned with the *acquis* of the European Union. Since many provisions of the present laws are relatively new, there have not yet been many major irregularities perceived, or a need for their immediate amendment.

The Constitutional Law on the Rights of National Minorities has been adopted by consensus. The Law, which has established conditions facilitating access to media for the members of national minorities, obliges radio and television broadcasters on national, regional and local levels to promote understanding for members of national minorities, to produce and/or broadcast programmes designed to inform members of national minorities in minority languages, to encourage and promote the preservation, development and expression of cultural, religious and other identity definers of national minorities and the preservation and protection of their cultural heritage and traditions, as well as to inform members of national minorities in the relevant region about the work and tasks of their minority councils and representatives. Likewise, legal entities providing public information services (the press, radio and television) are obliged to enable minority organisations and institutions to participate in the creation of programmes intended for national minorities. Recent amendments to this legal act have also been adopted by a consensus whereby it may be concluded that the Republic

of Croatia has invested great efforts in aligning with the European countries regarding the issue of the protection of national minorities.

The Government's Office for National Minorities executes an Action Plan for the Implementation of the Constitutional Law on the Rights of National Minorities every year, thereby protecting national minorities by specific plans and actions.

2 Cross-cutting issues

The Media Law regulates the preconditions for the realisation of the principles of the freedom of media, the rights and obligations of publishers, the rights and obligations of journalists, the method of ensuring publicity of media ownership, as well as exercising the right to correction and replay.

It is worth noticing regarding the Media Law that, although European practice was used in its drafting, its implementation has demonstrated the need to amend some of its provisions, especially in connection with the protection of minors.

The media principles and obligations constitute an important component of this legal act, requiring that the media respect privacy, dignity, reputation and honour of the citizens, particularly of children, minors and the family, regardless of their gender and sexual orientation as well as prohibiting the publishing of information which discloses the identity of a child in cases where such a disclosure could jeopardise the child's well-being. However, there have been cases of sensationalistic reporting on children with complete disregard for the obligation to protect a child's privacy, whereby both the legal provisions and the journalists' Code of Honour have been ignored.

If there were more effort invested in self-regulation in the field of journalism in Croatia and if there could be a constructive dialogue and understanding between media owners (publishers/broadcasters) and journalists, such a consensus

within the industry would raise its ethical and professional standards. That would also be a valuable contribution to the efforts to protect the privacy of minors in the media, enabling journalists to confidently uphold the aforementioned principles even when they are expected to bow to the laws of marketing and media sensationalism.

3 Sector-specific regulation

3.1 For the press

No specific suggestions are to be made for this section.

3.2 For broadcasting

The Electronic Media Law came into effect on 29 December 2009, whereby the Republic of Croatia became one of the European countries which had transposed the Audiovisual Media Services Directive (AVMSD) into their legal framework on time. As mentioned above, it is still too early to discuss eventual significant problems which might surface in the course of its implementation or to propose any amendments to the relatively new provisions. However, a more liberal procedure of granting concessions for providing radio and television services (free to air) should be considered, since the present procedure obliges the Council for Electronic Media, in accordance with the Concessions Act, to conduct a viability study on any concession prior to announcing the relevant public tender for granting it.

The Croatian Parliament adopted a new Croatian Radio Television Law, which came into effect on 8 December 2010. The period from the adoption of the preceding Croatian Radio Television/HRT Law in 2003 to the present Law has brought significant changes regarding the approach of determining the content and remit of a public service broadcaster with a view to its public function as well as regarding the technological development which anticipates

the diversification of public service broadcasting in accordance with various distribution platforms and the digitalisation process.

3.3 For online services

No specific suggestions are to be made for this section.

3.4 For film

Film production in the Republic of Croatia has been financed from different sources. The Audiovisual Activities Law prescribes that the Funds for the implementation of the National Programme are to be secured *inter alia* from the State Budget, from a part of the total annual gross revenue gained by the performing audiovisual activities as well as from a part of the total annual gross revenue gained by showing audiovisual works and by their sales at retail levels (DVD etc.).

Persons who are subject to the provisions on the funding of the National Programme have an obligation to conclude a Contract with the Croatian Audiovisual Centre on the payment from their total annual gross revenue gained by performing audiovisual activities in the preceding year. Such a Contract is to be concluded on the Centre's request for an indefinite period of time.

In practice, this obligation has proven to be a difficult issue. Although the Law has prescribed court protection in cases where this obligation is not fulfilled, the very procedure of drafting such a Contract is an exhaustive activity, which requires both parties to concur. It would be therefore more practical to amend the Audiovisual Activities Law in line with the Electronic Media Law. Namely, it would be much simpler to ensure the prescribed financial resources. The Centre should have the possibility to adopt, on the basis of annual financial data provided by the authorised bodies, annual decisions on the relevant amounts required to be paid by persons subject to the aforementioned provisions.

Kosovo

2 The regulatory status quo

Vjollca Krasniqi

2.1 Press

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Kosovo, based on and taken from the country report by *Vjollca Krasniqi*, are (briefly) given.⁸⁷

The press sector in Kosovo is subject to self-regulation. The “Press Council” is the self-regulatory body in this field. Its mission is laid down in the journalism Code of Ethics adopted by press journalists aiming at enhancing ethical and credible journalism in Kosovo deriving from the agreement by the journalists themselves. The Press Code of Kosovo fosters factual and truthful reporting. It bans incitement and hate

1 General data

Country profile		
<u>Basic data</u>		
Country population	Estimated around 2,100,000	
Official language/s	Albanian, Serbian; Turkish, Bosniak and Roma have the status of official languages at the local/ municipal level.	
Main ethnic groups (% of population)	Albanians 92%, Serbs 5.3%, other ethnic groups (Turkish, Bosniaks, Roma, Ashkali, Egyptians (RAE), Gorani) 2.7%	
Recognised minorities	Serbs, Turks, Bosniaks, Gorani, RAE	
Religious groups (% of population)	Muslim 90%, Catholic 4%, Orthodox 5.2%, Others 0.8%.	
Average salary per month (€)	240	
<u>Media market data</u>		
Total market volume advertising market (€)	Around 10,000,000	
Gross advertising budget in 2009 (€)	Around 10,000,000	
<u>Press</u>		
Newspapers	8 dailies; 3 weeklies/periodicals; Price for dailies between € 0.10 and € 0.30 per issue; for weeklies € 1.5 per issue.	
Magazines	4 prices between € 2 and 3	
<u>Broadcasting</u>		
Television	PSB: 1 (national coverage)	Comm.: 2 (national coverage) 16 (regional coverage)
TV advertising revenues in 2009 (€)	PSB: 2,541,000	
Radio	PSB: 2 (national coverage)	Comm.: 2 (national coverage) 90 (regional coverage)
Income TV & Radio 2009 (€)	total – 7,080,000; 3.5 (broadcasting fee per household per month?), 42 (licence fee per year)	

⁸⁷ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the “whole picture”.

<i>Internet</i>	3 main ISPs; 1 month of broadband Internet access to households (for two computers) ranges from € 10 to € 15
<i>Film</i>	More than 12 films of different genres received financing from the Public Fund on Cinematography in 2010; Only 1 cinema; ticket price: € 3

speech; it guarantees the right to reply; it protects children and minors, respects privacy; etc.

2.2 Broadcasting

The Law on *RTK* regulates the public broadcasting service. The Law on the Independent Media Commissioner regulates all broadcasting services. Other regulatory measures for broadcasting are the Broadcasting Policy, the Code of Conduct for the Broadcast Media, the Advertising Rule Book, and the Regulation on Minor Protection.

RTK is required by law to dedicate 10% of its budget and no less than 15% of its total schedule, including primetime news coverage, to minority communities. On the other hand, commercial media outlets are not obliged to provide programming in minority languages. Instead, there is an unwritten quota that commercial broadcasters are to have 40% of the programming with domestic production. *RTK* is prohibited from broadcasting any material that could incite national, religious, racial or sexual hatred, or intolerance or discrimination against individuals or groups. Protection of the physical, mental and moral development of children is also required. Pornography and the dissemination of false or misleading information are also prohibited.

The Advertising Rule book regulates the content and the quantity of advertising in broadcasting. It especially bans advertising during news programmes shorter than 30 minutes, prohibits subliminal and deceitful advertising and limits the amount of advertising and teleshopping on *RTK* to six minutes an hour as well as totally banning advertising and teleshopping on *RTK* from 07:00 to 09:00 and 18:00 to 23:00.

RTK is funded from the licence fee, supplemented by other sources, such as programme services and sales, advertising (limited to a maximum 20% of an hour of broadcasting) and sponsorship as well as state support to cover programmes for minorities and for Kosovars living abroad, to support cultural, scientific and educational projects sponsored by a government ministry and to maintain the transmission network. The *RTK* Law sets the monthly licence fee at € 3.50. The Energy Corporation of Kosovo responsible for collecting the licence fee for the *RTK* objected to the collection on the grounds that the fee increased the average electricity bill by 11%, contributing to decreasing payment rates for the electricity supply.

Commercial media outlets and platforms reach diverse audiences in Kosovo and can rely on secure funding, mostly from advertising. But the lack of data about the advertising market makes it difficult, if not impossible, to provide a solid analysis of the media industry, in general, and commercial broadcasting, in particular. The Rulebook on Advertising imposes a limit on advertising of 20% of broadcast time and bans advertising of tobacco and prescription-only medicines. It also regulates the manner of interrupting programmes for commercial breaks and forbids sponsorship of news, current affairs and religious programming.

The *Independent Media Commission (KPM)* is the sole regulatory body for the radio and television sector. Its mandate is given by the Broadcasting Law, which defines the *KPM* as “a body independent of any political influence, of whatever type it may be”. The Constitution guarantees the independence of the *KPM*. It consists of three separate bodies: the

Council, the Office of the Executive Manager and the Media Appeals Board. The *KPM* oversees the distribution of broadcasting frequencies and issues licences for public and private broadcasters. The *KPM* also issues rules and regulations for the broadcasting sector.

2.3 Online services

Regulation No. 2003/16 on the promulgation of a law adopted by the assembly of Kosovo on telecommunications provides legal grounds for the functioning of the Telecommunication Regulatory Authority (*Autoriteti Rregullativ i Telekomunikacionit, ART*) and on regulation supervising the telecommunication services.

The distribution of Internet access in Kosovo has spread rapidly in recent years. Today, the Internet reaches more than 63% of Kosovo households.

2.4 Film

The Law on Cinematography aims at supporting cinematography/film productions in Kosovo. The *Qendra Kinematografike e Kosovës (CCK)* manages all film activities that reflect the public interest. The main criteria set out by the *CCK* for financial support to film projects are that films should have a Kosovo theme, with 51% of the composition of the team being from Kosovo, and the film producer, director, script writer and the actors also being from Kosovo. The Law on cinematography forbids censorship as well as ideological, political, and pressures in production, distribution and public screening.

3 Main challenges in media practice

3.1 For the press

Most newspapers are not financially sustainable and over-politicised. Media outlets have been

criticised for offering protocol news, a defensive strategy that some outlets employ to avoid clashing with political parties, the Government and international institutions. Self-censorship remains a problem, with many journalists fearful of tackling issues deemed to be close to strong political and business elites. There have been cases of threats against journalists and media organisations facing intimidation.

Foreign direct investment in the press sector is non-existent. The newspapers are rendered dependent on advertising revenues. Lack of investment and the fragile business environment make the Government of Kosovo the biggest employer and advertiser. Regarding this, the Government "rewards" and "punishes" the newspapers by giving ads in different quantities to different media, mostly by the 'formula' of the political proximity of the newspaper and the political party in power.

There are several media and journalists' associations, but journalists lack a proper trade union, making them more vulnerable to outside pressure.

3.2 For broadcasting

The de-coupling of the monthly licence fee from the electricity bill, following a decision of the Constitutional Court of Kosovo, made the *RTK* financially vulnerable and prone to a subservient position *vis-à-vis* the state. The financing of the *RTK* through the fee is the only guarantee for the public broadcaster to fulfil its role and to not be subjected to state and political influence. Thus, the amendment of the *RTK* law on financing is needed. Another source of income for the *RTK* is advertising. But the new regulation of advertising, which bans any advertising in prime time *RTK* programming, has had a negative impact on the *RTK's* overall work, and especially its editorial policy/independence. The State has been in-

terfering in the election of the board of the RTK. In the last round of nominations, the deputy head of the government took part in the Assembly committee meeting responsible for selecting the RTK board.

There are no research and no data on the advertising market, nor is there a monitoring mechanism to evaluate whether the broadcasters are fully implementing the advertising rulebook.

The KPM stands for an impartial and independent media regulator. But it lacks capacities and resources to monitor compliance with legal provisions and the professional conduct of the broadcasting media. The KPM is financed by the Kosovo budget. The management of the KPM argues that the budget is too small and the salaries of KPM staff are too low. This makes the staff, especially experts, move away from the KPM in search of better paid jobs.

3.3 For online services

There has been a rise in web blogs in Kosovo, but little debate and discussion on the news or information which is presented thereon.

3.4 For film

The Ministry of Culture in accordance with the law on Cinematography finances the Public Fund managed by the CCK. But there is no public information on the amount of the Public Fund on cinematography. Only the bidding process for financial support with the CCK is opened through a public announcement.

There is no data available on the average budget of the Public Fund or data on the average budget of a film project.

There is only one cinema in Kosovo, the cinema ABC in Prishtina. It is not financially viable due to lack of funding and a limited number of movies screened during the year.

II Proposals for remedying the situation

1 Constitutional law aspects

No specific suggestions are to be made for this section.

2 Cross-cutting issues

An information campaign should take place to increase awareness of the Law on Access to Official Documents and its significance for all citizens, as well as training for local government officers that have to implement it.

A database of media experts and organisations should be developed and make the data base available to the public.

The Government and the Assembly should establish an advisory committee, comprising representatives of media outlets, civil society groups and the KPM, to deal with issues of media independence, protection of journalists, access to public information and media compliance with legislation.

The Government and the Ministry of Culture should establish an agency for intellectual property rights responsible for implementing legal provisions on IPR in the media sector.

The KPM should adopt secondary legislation against concentration of ownership and on cross-ownership.

Public and private broadcasters, media associations and associations of journalists should work together to adopt self-regulatory mechanisms for the profession, such as obligatory codes of conduct.

The Association of Professional Journalists of Kosovo, the Press Council, AMPEK and the KPM should actively pursue and monitor compliance by journalists with codes of conduct.

International media associations and organisations such as the IFJ, Freedom House, the Open Society Foundation and Reporters without Borders, and donor organisations

should strengthen the Kosovo journalists' associations through training. They should aim at making journalists' associations relevant actors in the media policy scene.

3 Sector-specific regulation

3.1 For the press

Associations of journalists, NGOs and other civil society groups should foster a broader dialogue among each other and with international and European organisations on how the media affect the daily life of ordinary citizens and the overall development of society. This debate should focus on the depoliticisation of the media and on mechanisms to guarantee freedom of expression and of the journalistic profession. It should also seek mechanisms against interference and coercion against journalists.

The KPM should adopt secondary legislation against concentration of ownership and on cross-ownership.

The Association of Professional Journalists of Kosovo should work more energetically to protect the rights of journalists through education projects that respond to concrete needs of the profession.

The Association of Professional Journalists of Kosovo, the Press Council, AMPEK and the KPM should actively pursue and monitor compliance by journalists with codes of conduct.

Newspapers should diversify their content to better serve their audience.

The Government should stop unbalanced advertising where some newspapers are directly sponsored and some others discriminated against.

The Press Council of Kosovo should amend its Press Code to regulate and limit political influence over print media.

3.2 For broadcasting

Legislation on new technologies, in particular on cable television and digitalisation, should be developed and implemented. The Government should prioritise the adoption of a plan for digital broadcasting.

The RTK Law should be amended to introduce a clear system of collection of the licence fee.

The Government and the KPM should enhance their work to secure Kosovo's membership of the ITU.

The KPM should encourage and provide support for continuous research on audience and advertising.

The Government and the Assembly should secure more financial and human resources and monitoring technical equipment, so that the KPM can fulfil its duties as stipulated in the Broadcasting Law.

The KPM should adopt secondary legislation against concentration of ownership and on cross-ownership.

The KPM should develop and allocate the capacity to monitor the compliance of broadcasters and cable operators with legislation and licence conditions.

The KPM should develop public service obligations and local production quotas for commercial broadcasters.

3.3 For online services

No specific suggestions are to be made for this section.

3.4 For film

The Ministry of Culture and the CCK should make public the budget and funding available for films.

The CCK should develop further funding criteria.

The CCK should publish the appraisals of funded film projects.

The CCK and the Ministry of Culture should appoint female professionals and female filmmakers in the decision making structures (steering committee, jury, etc.).

Macedonia

Borce Manevski

Andriana Skerlev-Cakar

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Macedonia, based on and taken from the country report by *Andriana Skerlev-Cakar* and *Borce Manevski*, are (briefly) given.⁸⁸

1 General data

2 The regulatory status quo

2.1 Press

There is no legal act that regulates the press in form of a law on media or informing the public. The only mechanism for detailed regulation of content in the printed media is self-regulation in the form of a “Code of Conduct of Journalists”. This Code sets basic rules, which every journalist has to respect and comply to, which are monitored by the Association of Journalists of Macedonia (AJM). Besides, general laws apply such as the Criminal Code, which stipulates sanctions

Country profile	
Basic data	
Country population	2,100,000
Official language/s	Macedonian
Main ethnic groups (% of population)	64.2 Macedonians, 25.2 Albanians, 3.9 Turkish, 2.7 Roma, 1.8 Serbs, 2.2 others.
Religious groups (% of population)	N/A
Recognised minorities	Albanians, Turks, Roma, Serbs, Vlachs and Bosniaks
Average salary per month (€)	273.58
Media market data	
Total market volume advertising market (€)	N/A
Gross advertising budget in 2009 (€)	N/A
Press	
Newspapers	11 dailies; prices for dailies between € 0.08 and € 0.24 per issue
Magazines	4 main weekly magazines
Broadcasting	
Television	PSB: 3 (national coverage) Comm.: 17 (national coverage), 10 (regional coverage), 47 (local coverage)
TV gross advertising revenues 2009 (€)	471,823,989
Radio	PSB: 6 (national coverage) Comm.: 3 (national coverage) 16 (regional coverage) 58 (local coverage)
Income TV & Radio (€)	38,008,224 (total) 5,901,639 (state funding) 29,746,610 (self generated) N/A (licence fee total); 2.11 (licence fee per household per year)

⁸⁸ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the “whole picture”.

<i>Internet</i>	2 main ISPs monthly tariffs around € 10
<i>Film</i>	79 film projects supported (27 feature films, 20 short featured, 25 documentaries, 7 animated films) in total in 2008, 2009 and 2010 N/A (total state funding) Ticket prices between € 1 and € 3

for those who commit crimes against honour and reputation. According to the provisions in the Criminal Code a journalist will not be held responsible for libel or defamation if he/she has published untruthful information, due to violation of his/her right to free access to the relevant information.

2.2 Broadcasting

The Broadcasting Law (with its by-laws) is the only legal act, which regulates the conditions for and the manner of pursuing broadcasting activity and matters of public interest in the field of broadcasting. The law established the Broadcasting Council as a regulatory authority and the Macedonian Radio and Television (*MRT*) as a public service broadcaster and sets rules for the protection of pluralism, diversity and the transparency of the work of broadcasters as well as programme standards, the right to reply, etc. *MRT*, for instance, is obliged to broadcast one television programme service in the Macedonian language, and one programme service in the language spoken by at least 20% of the citizens that is different from the Macedonian language, as well as in the languages of the other non-majority communities. The broadcasters that hold a licence to pursue broadcasting activity for television programme services at national level are, for instance, obligated to provide for representation of European audiovisual works to the amount of at least 51% of the total annual broadcast programmes. The total annual broadcasting time does not include the air-time dedicated to the broadcasting of news, sports events, game-shows, advertising, tele-text and teleshopping services.

The Broadcasting Council, as the regulatory authority for broadcasting, has several tasks. For instance, it decides on the allocation, revocation and renewal of licences to pursue broadcasting activities; supervises the work and operations of the entities involved in the pursuit of broadcasting activity in terms of their compliance with the provisions of the Broadcasting Law, the licence to pursue broadcasting activity, and the by-laws adopted by the Council regarding the programme content; adopts decisions, rules, conclusions, recommendations, instructions and other acts; adopts views and proposals for implementation of the Law on Broadcasting Activity.

2.3 Online services

The online audio visual media services are not regulated. The current Broadcasting Law and other legal acts stipulate no regulation in the creation, distribution and consumption of online media services. The other areas of the online services are regulated by the Law on Electronic Management, the Law on E-Commerce, the Law on Free Access to Public Information, the Law on Electronic Communications, the Law on Privacy Protection and the Law on Construction.

2.4 Film

The Law for Culture is the basic regulation for the film sector as this law sets the rules for the forms of realisation of "culture", the manner and the conditions for its funding, as well as other issues of interest. The Law for Audio visual Goods regulates the conditions and manner of work of the film libraries, performing of

the activity of film libraries, establishment and types of film libraries, organisation, coordination, rights and duties of the owners of audio visual goods, supervision, professional titles and other common questions important for the protection of audio visual goods. There is also a Law for Film Fund which provides mechanisms for good quality and continuous film production, transparency of the market, accountability and transparency in working.

3 Main challenges in media practice

3.1 For the press

Print media suffer from financial difficulties. They are in principle not regulated and there is no official information about their gain/loss balance (as is the case with the broadcasting industry).

Some of the main players on the press market are connected with TV channels. This violates the Broadcasting Law's provisions as regards media concentration, but the Broadcasting Council has no legal means to obtain evidence of hidden joint ownership, because it has no authority over the print media. From a formal legal point of view, newspapers and TV stations have different owners, but cross-promotion reveals the hidden relations.

3.2 For broadcasting

MRT does not fulfil its obligations as a public broadcasting service. The Law on Broadcasting Activity does not have specific provisions that determine the representation of various political viewpoints by percentages. The public broadcasting service is not allowed to interrupt programmes for the purpose of advertising, except for film, sport and entertainment programmes. Advertising on the public broadcasting service is not allowed in the period from 17:00 to 21:00 on the television programme services and from

09:00 to 14:00 on the radio programme services, with the exception of live coverage or integral recording of a sport matches, cultural demonstrations or major events laid down in compliance with the Law on Broadcasting. Public broadcasting cannot run advertising for political parties and candidates.

In general, the media landscape in the country is pluralistic, so the audience is offered different opinions. But this does not mean that all the media outlets could serve as a role model for professional journalism. Some of the main media outlets are influenced by different business and political lobby groups. The editorial policy of the broadcasters that are one asset of the overall businesses their owners have, supports the business interests of their owners.

The EU 2009 Progress Report underlines the following: the Broadcasting Council is underfunded due to the lack of an effective system for the collection of the broadcasting fee. The media regulation authority is subject to political interference and did not fully implement the Law on Broadcasting. The most problematic areas are the provisions relating to the concentration of ownership of media, which were not fully implemented, and that the Broadcasting Council could not research the media market in a proper manner because, although the administrative capacity of the Council was improved, it is still not adequate to monitor the market effectively (the Research Department is functioning with no head and only with one assistant). Due to the lack of stable financing the Broadcasting Council is also seriously understaffed, which causes ineffective implementation of the legal provisions in the broadcasting sector.

3.3 For online services

Internet content and new media content are not regulated in the current legislation. All

major broadcasters have websites and besides textual information they also offer multimedia content. But there is no separate online editorial policy: the web content strongly depends on the offline content of the mother media outlet. The websites of the printed media do not have online desks, which would produce online specific content. The print media use their website for publishing the Art.s from their offline editions by just “copy and paste”. The content does not fulfil the basic criteria for online texts, which are: topicality, multimedia, individuality and hypertext. The content is updated by comparing the content of the printed edition once per day.

3.4 For film

There are no significant indications that there are irregularities in the operation of the Film Fund and in the manner in which this institution divides the assets, except the few debates at the time when competition is announced and resources are shared. However, given that the filmmakers did not raise any serious issues in public, it appears that they are not so dissatisfied by the application of the respective criteria in general.

II Proposals for remedying the situation

1 Constitutional law aspects

No specific suggestions are to be made for this section.

2 Cross-cutting issues

With prison sentence having been abolished for libel and defamation for journalists, the general pressure on media outlets has decreased, although also in the past there was no imprisonment of journalists. However, the amounts which have been demanded

have been rather high (up to € 25,000) and could endanger the existence of a whole media outlet. Limitation of the amounts could improve this.

3 Sector-specific regulation

3.1 For the press

Bringing about regulation for press media would be recommendable.

3.2 For broadcasting

The provisions of the Broadcasting Law, which foresaw the possibility of bankruptcy of the public broadcasting service, were taken out in 2010. Due to the rapid technological developments, the Broadcasting Law, although adopted in 2005, needs provisions which would allow new media services to enter the market. It is a promising fact that a working group on the preparation of a new Law on Audio-Visual Media Services started its work in November 2010. In general, for the audiovisual sector transposition of the EU Directive on Audiovisual Media Services (AVMSD) will bring a benefit in this field.

a) Public services broadcasting

Bearing in mind the results of the analysis regarding Macedonia, the public broadcasting service should increase the representation of various political viewpoints in its programming. Taking into consideration the intensity and the significance of the Government's activities, it is expected that they shall be most common, but the public service has to be careful not to turn itself into a service to the Government and its programmes should not serve as an instrument for promotion of mostly governmental policy and projects. Actually, as it is pointed out in Recommendation R (2007)3 of the Committee of Ministers to the

Member States on the remit of public service media in the information society, public service media should play a leading role in public scrutiny of national governments and international governmental organisations, enhancing their transparency, accountability to the public and legitimacy, helping eliminate any democratic deficit, and contributing to the development of a European public sphere.

b) Commercial broadcasting

In general the media landscape in the country is pluralistic, so the audience is offered different opinions. However, this does not mean that all the media outlets could serve as a role model for professional journalism. Some of the main media outlets are influenced by different business and political lobby groups. The editorial policy of the broadcasters that are one asset of the overall businesses their owners have, with no hesitation would support the business interests of their owners. Nor do the owners shy away from being interviewed by their journalists and presenting their opinion on certain issues in politics. Art. 11 of the Broadcasting Law, which stipulates who cannot perform the broadcasting activity or be a founder of a TV or radio station, should be clarified, since the term "public office holders" in Art. 11 is subject to different interpretations.

The general trend for revenues of the broadcasting industry is a rising one. Compared to 2009 one can notice that the economic crisis has had certain negative effects on the revenues. One should also not underestimate the money which the Government has paid to some media for broadcasting the commercials of Government or State institutions, which are over € 15,000,000 per year (according to the official price lists of the broadcasters; it is not unusual for the broadcasters also to give discounts for certain clients). The broadcasters which would

broadcast the ads of the Government are not chosen through a transparent process. The Government should choose the broadcasters that will broadcast its commercials through a transparent tender procedure. The general public opinion is that usually those media which support the Government get the business with the Government's commercials.

c) Role of the regulatory authority/ies in practice

The funding of the Broadcasting Council needs to be improved; the regulatory authority needs to be better protected against political interference. These most important measures are indispensable foremost for allowing the necessary improvement in implementing the existing regulation.

In general more clarification is needed regarding "media concentration". Art. 13 of the Broadcasting Law should be specified. The Art. sets out what is considered as "illegal media concentration" in terms of the Broadcasting Law. Art. 15 of the Broadcasting Law stipulates that the existence of illegal media concentration is determined by the Broadcasting Council, except in cases where the Competition Protection Commission is responsible in accordance with the Law on Protection of Competition. However, the Law on Protection of Competition does not operate with the term "illegal media concentration". "Concentration" in terms of competition law is assessed in terms of distortion of the competition in a market (i.e. concentration that is caused by change of control of long-term basis of undertakings or parts thereof in their merger, etc.). Therefore, a specification of the provisions of the Law on Protection of Competition as well as of the Broadcasting Law is desirable. This could especially lead to a clear distinction between the competencies and the conduct of each of the regulators. Among other provisions, it may be beneficial to be more specific when it comes to determining

“illegal media concentration”, or in cases of “conflicts of competencies”. With regard to the latter, both regulatory bodies should establish a mutual working group with precise competencies. This working group should present its findings to the regulators, so they would be able to build their own opinions and bring up relevant decisions within their competencies.

It is also necessary to determine stricter penalties for the violation of Art. 13 of the Broadcasting Law in a case where the Broadcasting Council detects the existence of illegal media concentration. At the moment there is (only) Art. 15(2) of the Broadcasting Law, stating that

“if the Broadcasting Council has determined the existence of illegal media concentration, it shall order the broadcaster to bring into accord its operations with the provisions of this Law within a deadline not longer than three months from the day the existence of the illegal media concentration was determined.”

Only in the case where the broadcaster does not act on the indications of the Broadcasting Council under Art. 15(2) of the Broadcasting Law may it be deprived of the licence as the Council could apply Art. 63(1) (line 3) of the Broadcasting Law. This provision allows the withdrawal of the licence, if “circumstances arise representing legal obstacles to prevent the holder from pursuing the broadcasting activity”. So in cases where the broadcaster is found to be in an illegal position concerning media concentration, but follows the orders of the Council under Art. 15(2) of the Broadcasting Law, it will not be punished for its violation (i.e. the existence of illegal media concentration). Only if the broadcaster does not respect the orders of the Council could it be sanctioned in the proper way.

According to the EU 2010 Progress Report, the Broadcasting Council is still not able to monitor the broadcasting market effectively:

“The Broadcasting Council stepped up its

market monitoring activities and started cooperating with the competition authority. This cooperation led to the identification of a few cases of breaches of competition rules. However, the legislation on media ownership and concentration is not fully enforced. The regulator is not able to monitor the market effectively. The re-introduced system for collecting the broadcasting fee has started to yield results, but sustainable funding of [...] the Broadcasting Council still needs to be secured.”

The Revenue office that is in charge for collecting the broadcasting fee should continue to be determined in collecting it. The register of the broadcasting fee payers should be fulfilled and clarified.

According to this report the Broadcasting Council must also revise its licensing policy. Non-payment of the allowance for licences should not be the only reason for withdrawing the licences for broadcasting, but also the non-fulfilment of other criteria stipulated in the licence and relevant provisions from the Broadcasting Law. The EU concluded in its 2010 report: “The broadcast licensing process is strongly influenced by economic and political interests.” The Broadcasting Council will have to make more efforts in implementing the Art. 21 of the Broadcasting Law, which states:

“The Broadcasting Council, in the course of performance of its competencies laid down in this Law, shall ensure the freedom and pluralism of expression, existence of diverse, independent and autonomous media, economic and technological development of broadcasting activity, and protection of the interests of citizens in broadcasting.”

The official nominators must also pay attention to the profiles of the experts they nominate to be members of the Council, and thus fully implement Art. 24 of the Broadcasting Law. The number of the members of the Broadcasting Council should have the same

amount as in most of the regulatory authorities in the Republic of Macedonia. Instead of nine, five members would be optimum.

The process for employment of the General Manager of the Agency for Electronic Communications should be more transparent. The Law for Electronic Communications stipulates that the Commission of the Agency, which consists of five independent experts, chooses the General Manager of the Agency. The general public opinion in this regard is that every Government influences the selection process of the General Manager of the Agency. The change of the official nominator stipulated in the Law for Electronic Communications should overcome this problem. Instead of just the Commission of the Parliament for elections and nominations, which is the only official nominator of the members of the Commission of the Agency, different official nominators should be introduced in the Law. The provisions from the Broadcasting Law for nomination of the members of the Broadcasting Council should be a good example (only nominating different profiles of the experts). This can also contribute to a higher degree of independence of the Agency for Electronic Communications.

The official nominators of both regulatory authorities should ask on a regular basis for accountability of the experts that they nominate.

3.3 For online services

The internet content and the new media content are not regulated in the current legislation. The transposition of the AVMSD, at least to a certain extent, should fill these gaps. Those operators which want to offer on-demand services should sign protocols with the Broadcasting Council, which serve as a legal basis for guaranteeing minimal standards, like the protection of minors, prevention of hate speech, etc. These protocols have no legal ba-

sis, they are rather courtesy agreements that all players on the market will play fair.

There is a small active blog-community, whose representatives also participate in different public discussions on e-Society issues and are working on the raising of public awareness about the blogs in developing the e-Democracy jointly with some NGOs, active in this area. However, there is a need for the blog-community to develop an effective self-regulatory mechanism in order to prevent using abusive language, spreading intolerance towards different social groups, xenophobia or the like.

The civil sector could contribute a lot in educating the bloggers in how to support the democratisation efforts in the country instead of supporting social exclusion.

3.4 For film

There are no significant indications that there are irregularities in the operation of the Film Fund and in the manner in which this institution divides the assets. In order to fix some other criteria for asset-sharing, it would be a good idea to organise public hearings and debates to improve the criteria and make the process of creation of the criteria more transparent. In this process, the Film Fund should have a more significant role. The filmmakers and the civil sector should be more active and contribute more with their propositions.

Moldova

Nadine Gogu

2 The regulatory status quo

2.1 Press

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Moldova, based on and taken from the country report by Nadine Gogu, are (briefly) given.⁸⁹

The press sector is subject of a diverse regulation. The *Law on Freedom of Expression*, which provides for guarantees for exercising the right to freedom of expression, the *Press Law*, which guarantees political pluralism, freedom of the press and freedom of expression, and which establishes advertising limits, the *Contraventional Code*, which upholds the contraventions of “insults” and “calumny”,

1 General data

Country profile	
<u>Basic data</u>	
Country population	4,320,748
Official language/s	Moldovan, Romanian
Main ethnic groups (% of population)	78.2 Moldovans/Romanians, 8.4 Ukrainians, 5.8 Russians, 4.4 Gagauz, 1.9 Bulgarians, 1.3 Others
Recognised minorities	Ukrainian, Russian, Gagauz, Bulgarian, Roma
Religious groups (% of population)	98.5 Eastern Orthodox Church, 1.5 Others.
Average salary per month (€)	163.7 (2009) 182.3 (2010)
<u>Media market data</u>	
Total market volume advertising market (€)	32,000,000 (in 2009) 50% TV advertising market, 24% outdoor commercials, 26% are distributed among radio, print and online media and cinemas.
Gross advertising budget in 2009 (€)	N/A
<u>Press</u>	
Newspapers	36 weeklies and 5 dailies prices for dailies: Lei 3 (€ 0.2); for weeklies between Lei 3 and 6 (€ 0.2 and € 0.4).
Magazines	38 magazines; prices for magazines between Lei 15 and 35 (€ 0.9 and € 2.2)
<u>Broadcasting</u>	
Television	PSB: 1 (national coverage) Comm.: 59
TV advertising revenues 2009 PSB and Comm. (€)	16,000,000
Radio	PSB: 1 (national coverage) Comm.: 50
Income TV & Radio (€)	3,383,879 (state funding) 1,200,000 (self generated)
<u>Internet</u>	40 ISPs monthly tariffs between € 13 (for legal entities) and € 65 (for individuals)
<u>Film (€)</u>	310,000 (average budget of a feature film); ticket price € 2.2

⁸⁹ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the “whole picture”.

and the *Law on Fighting Extremist Activities*, which provides for legal liability of the media for disseminating extremist material and conducting extremist activities, especially are to be mentioned. Advertisements in print media as well as in broadcast media and cinema are regulated by the *Law on Advertising*. It states that advertisements in periodicals funded from the state budget and in those that do not specialise in disseminating advertising materials should not exceed 30% of the total space of one issue.

Self-regulatory bodies are the National Commission of Professional Ethics of Journalists, which mainly monitors the manner in which the norms and ethical principles of the Code of Professional Ethics for Journalists are observed, but which does not have any executive prerogatives, and the Press Council of Moldova, which considers complaints about editorial activities of Moldovan newspapers, magazines, news agencies and information portals as well as making recommendations for strengthening professional standards in the media, proposes public policies for the media and conducts campaigns for promoting responsible journalism. The Code of Professional Ethics for Journalists, especially, urges journalists not to allow discrimination against individuals and groups of individuals on the basis of racial, ethnic or religious affiliation, to respect the right of individuals to privacy, to observe the presumption of innocence, to respect the honour and reputation of the individuals who are subjects of their professional interest, etc.

2.2 Broadcasting sector

Broadcasting media are regulated by a series of laws; more specifically these are the *Broadcasting Code*, the *Broadcasting Coordinating Council Statute*, the *Law on Authors' Rights*, and the *Law on Electronic Communications*. The *Broadcasting Code* regulates the activity

of public and commercial broadcasters, advertising, exclusive rights, protection of journalists, consumer's rights etc. It provides for the independence of the editorial policies of the public broadcasters, the right of a person to have free access to broadcasters, and for socio-political pluralism. The Code guarantees protection of morality and of minors and prohibits programmes that may incite hatred based on race, religion, ethnicity and sex. The public service broadcaster, *Teledio Moldova*, is especially addressed by the *Broadcasting Code*. In this regard, the Code includes Art.s on the legal statute of the public broadcaster and stipulates that it should provide programmes to the whole society, covering the entire territory of the country; its programmes should promote human dignity and tolerance, and take into account the moral, political and religious convictions of the population, etc.

The Broadcasting Coordinating Council (BCC) is the regulatory body for radio and television stations. It submits warnings, applies fines, and grants/withdraws licences. The BCC is an autonomous public authority. It is the public representative that guarantees public interest in the audio visual field. It is responsible for implementation of, and securing compliance with, the Broadcasting Code, with international treaties in the present field which Moldova is party to. The public service broadcaster *Teledio Moldova* is supervised by a Supervisory Board, which is responsible for approving the company's statute and "task book" (which includes its financial plan and broadcasting plan), monitoring its performance, appointing the company's director and the radio and television directors, meeting with viewer's panels and issuing annual reports.

2.3 Online services

There are no specific laws that regulate online media. But online services could be subject to

the laws common for print or broadcasting media, especially the *Contraventional Code*, the *Law on Freedom of Expression*, and the *Law on Fighting Extremist Activities*.

There is no regulatory body for online services. In terms of self-regulation, complaints about online media content are examined by the Press Council of Moldova.

2.4 Film

The *Law on Culture*, the *Law on Cinematography* and a series of decisions and ordinances of Parliament regulate the film sector. The *Law on Culture* sets out the state obligations in the cultural field by providing rights and freedoms, defining the national cultural patrimony, and regulating the economic aspects in the field. The *Law on Cinematography* regulates the cinematography industry. It establishes the relevant State policy that is based on such principles as freedom of creation and of artistic expression, promotion of national cultural identity and of ethnic minorities, protection and development of cinema patrimony, etc.

The Ministry of Culture is the main regulatory body for the film industry.

3 Main challenges in media practice

3.1 For the press

Most print media face a difficult economic situation, especially regional and local media; the latter cannot provide their employees with competitive salaries.

The Code of Ethics contains general and specific provisions, but journalists often do not know them. There are also cases where a clear understanding of what an “ethics code” means, seems to be lacking. Some journalists confuse a code of professional journalists’ ethics with the “labour code”.

The Moldovan press is subject to a kind of

a self-censorship as some editors/media outlet owners refuse to publish or broadcast Art.s for fear of being sued in court or because of “friendly pressure” from politicians who may ask journalists not to publish certain items or to promote a specific point of view on important issues. In many cases, journalists agree to comply with the editorial policy that is established by their employers, i.e. to promote the positive image of certain actors or to harshly criticise others.

The *Law on Access to Public Information* does not provide a distinct delimitation between information on public personalities that can be released by the media and data that can be perceived as interference in their private life. In some cases, public officials do not know the provisions of the law or they simply ignore the law in an effort to hide their professional inactivity. Although most officials no longer refuse to release information, many of them rely on a set of formal answers to requests for information.

3.2 For broadcasting

Teleradio Moldova is not able to fulfil its public mission. Among the major reasons there is a lack of financial revenues, poor logistics, and a lack of professional abilities. The public broadcasting service is financed by public money, from the state budget; by donations and sponsorships for specific projects; by revenues from advertising; by income generated from organising public events; from transferring the right on properties, including programmes. No licence fees are applied in Moldova. Besides, actions by the Supervisory Board of *Teleradio Moldova* were sporadic, superficial and lacking in impact.

There is no internal pluralism in the media, i.e. pluralism of content offered by individual media. The financial situation of commercial broadcasting media, especially those with nation-wide and regional coverage, is good.

The major commercial TV stations are prospering, in some cases being backed either by businessmen or political parties. No cases of insolvency of commercial broadcasters have been registered in Moldova so far.

The current term of the broadcasting licences (7 years) does not appear to stimulate the activity of news outlets.

3.3 For online services

The number of internet subscribers increased in the second quarter of 2010 up to 235,000 users; it was expected that by the end of 2010, the number of Internet subscribers would reach 270,000. People in rural areas have limited access to Internet mainly because of financial reasons. Most people in villages do not have computers, i.e. means to access the Internet.

There are no specific regulations and laws with regard to the liability of content of online services. Online media are subject to the Code of Ethics, and complaints against online content may be filed with the Press Council. Managers of online media are responsible for ensuring moderation of the forums and chat pages so as to avoid language that infringes human rights and liberties and incites hatred and violence.

3.4 For film

Teleradio Moldova cannot afford to contribute to film funding because of its own financial situation. *Telefilm-Chisinau Studio*, which used to operate under the premises of *Teleradio Moldova*, has therefore temporarily suspended its activity.

Every individual and legal entity can apply for State funding in order to conduct cinema projects and products according to State order. In fact, independent cinema producers do not have access to the National Fund on Cinema as the whole budget is distributed to support *Moldova-Film Studio*. The state

does not fund projects that promote slander against the state or nation, incite violence or hatred on national, race, class and religious criteria, discrimination on ethnic, confession or sex basis, or incitement to territorial separatism. In addition, movies that may defame a person, or that are antisocial and may be qualified as electoral, political or religious propaganda are not supported by the State.

II Proposals for remedying the situation

1 Constitutional law aspects

There are some laws and draft laws that do not correspond to European norms and, in the experts' opinion, unreasonably limit the right to freedom of expression. In order to comply with commitments pledged by the Republic of Moldova as a member of the Council of Europe, i.e. to ensure full exercise of access to information, of freedom of expression in general, and of press freedom in particular, a series of laws, including the Moldovan Constitution, should be amended so as to bring them in line with Art. 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR).⁹⁰

There are several provisions in the Moldovan Constitution that are ambiguously formulated and leave room for interpretation. For example, Art. 32(3) says that

“the law shall forbid and prosecute all actions aimed at denying and *slandering the State or the people*. Likewise shall be forbidden and prosecuted the instigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or *other actions* threatening constitutional order.”

⁹⁰ Recommendations were developed based on a review of a series of studies and reports conducted during recent years, as well as on consultations with the media law experts: *Doina Costin*, the legal coordinator with the Independent Journalism Centre, and *Eugeniu Rabka*, the chairman of the Supervisory Board of the public service broadcaster *Teleradio Moldova*.

Most media and legal experts believe the wording “slandering the State and the nation” can be used by those in power as a tool to repress freedom of expression. According to international standards, the State and the nation are not untouchable and should legitimately be subject to criticism; otherwise the freedom of expression of a person will be infringed. A person can criticise the State, while the State and the nation are not personalities in law and cannot be defamed *per se*. Also, the wording “other actions” is too broad and vague. By its broadness, it may imply that many public demonstrations against governmental policies can be sanctioned or prohibited.

Art. 34(4) on the right of access to information stipulates that “*the State and private media are obliged to ensure that correct information reaches the public.*” This provision raises questions related to the status of media: the State should not have ownership in print media, while broadcasters funded by the state budget should have the status of public institutions. Consequently the term “State media” is not an appropriate one, especially after the state broadcasters were either transformed into public ones or privatised and also after the Parliament passed the Law on denationalisation of the public print publications in 2010. In order to align the Constitution of Moldova with the European standards, para (4) should be omitted from Art. 34. A new provision should tackle the relationship between the public authorities and media – the former should not be owners of periodicals, while the latter (specifically broadcasters) should have the status of public institutions if funded by the state budget.

From another perspective, since it is not a state institution, the press is not obliged to guarantee the right of an individual to have access to information. In accordance with European law, media have the mission to dis-

seminate information and ideas of any kind, including the ones which offend, shock and disturb, or which can be considered by many, including the government, to be partial, inexact or false. The State should not interfere in the relation established between the media and (members of) the public and should not identify the media as a provider of official information.

2 Cross-cutting issues

In general, the Law on Access to Information complies with the international standards in the field. However, the implementation of the law is difficult. There is a series of laws and legislative documents that contradict and impede the enforcement of the Law on Access to Information.

The Law on the Code of Conduct of the Public Servant provides that “communication with the media in the name of public authorities is done exclusively by the civil servant empowered with this right” (Art. 8(3)). The law stipulates that any breaking of the Code constitutes a disciplinary infringement that falls under the incidence of the Law on the Public Function and the Statute of the Civil Servant. Media and legal experts believe that the above provision aims at intimidating civil servants against speaking out their opinions and criticism or reporting some frauds. The named provision is in contradiction with the Moldovan Constitution that clearly states that “The right of a person to have access to any information of public interest shall not be restricted” (Art. 34(1)) and infringes the Universal Declaration of the Human Rights that stipulates: “Every person has the right to freedom of opinion and expression” (Art. 19). Also, Art. 10(10) of the Law on the Code of Conduct of the Public Servant says that “in respect to representatives of other states, the civil servant is forbidden to express his per-

sonal opinion about national aspects or international disputes”, which is in contradiction with the International Convention on Civil and Political Rights: “No one shall suffer because of his opinions” (Art. 19).

The Law on State Secrets establishes restrictions on materials that can be published by media and limits public access to official information. The Law defines “state secrets” and different categories of State secrets in broad terms, with the effect that a wide variety of types of information may be classified as State secrets. This is in conflict with the right to information provided for by both the Moldovan Constitution and the Moldovan Law on Access to Information. The Law on State Secrets provides extensive power to public authorities and the Security and Information Service through enabling them to list as classified any information they consider to be a state secret. The Moldovan authorities were notified by international organisations that the document needed improvement because the law did not encourage access to governmental information; however, nothing has yet been done in order to resolve the problem.

The Law on Fighting Extremist Activities provides for accountability of the media for dissemination of materials that promote extremism. Experts believe its provisions are too general and vague and under the “extremist activity” category expressions and actions may be listed that are usually tolerated in democratic societies. Such sanctions as ceasing the media outlet for “extremist activities” (Art. 7) may lead to censorship and self-censorship and discourage the media from participating in debates over matters of public concern. If used in bad-faith, the Law can restrict some human rights, especially the right to freely express opinions and the right to freedom of creation, both provided by the Constitution of Moldova (Art. 32 and Art. 33).

The law does not comply with international standards on freedom of expression, mainly because it does not comply with the principle providing that speech can be prohibited only if there is a strong relationship between the speech and the imminent risk of violence or other social danger that can derive as a result. The anticipated malice should not be hypothetical and must be of real danger for the public safety/order. In accordance with European standards, speech that incites hatred or violence should be prohibited. However, because the notion of “extremist speech” in the Moldovan law is too large and vague, there is a risk that speech that should be tolerated in a democratic society will be prohibited and punished. According to the ECtHR, a law shall be formulated in a precise way, so that people are able, when necessary with the help of advice, to predict in a reasonable way the consequences that their actions can lead to.

The Contraventional Code provides for insignificant sanctions in cases when a public servant restricts access to information. Art. 71(1) says that infringements of legal provisions on the access to information by public servants are to be sanctioned with fines from 40 to 50 conventional units (1 conventional unit = MDL 20 / € 1.25). Art. 71(2) specifies that those servants who deliberately provide the solicitor with erroneous information will be sanctioned with fines from 45 to 55 conventional units. However, these provisions are not functional and are not applied in practice. Also, the Contraventional Code contains provisions according to which a person may be sanctioned for an unlawful exercise of the right to freedom of expression with fines from 80 to 120 conventional units or unpaid community work from 20 to 60 hours or may serve up to 15 days in prison if found guilty of “calumny” (Art. 70). For “insults”, including through the media, one may be sanctioned with fines from 50 to 100 conventional units or with unpaid

community work of up to 60 hours (Art. 69). Given these provisions, journalists will be more cautious while gathering evidence in investigative reports and in some cases may refrain from conducting investigations.

Therefore, the Law on Publishing Activity, the Law on the Code of Conduct of the Public Servant, the Law on State Secrets and the Law on Fighting Extremist Activity should be amended so as to exclude the unreasonable limitation of the right to freedom of expression.

The Law on Publishing Activity should clearly specify the categories of literature that “infringe the legislation in force”.

Art. 8(3) and Art. 10(3) should be omitted from the Law on the Code of Conduct of the Public Servant.

The types of state secrets and type of information that has to be kept secret should be defined more narrowly. The categories of information listed as state secrets should be reduced, clear provisions on the priority of public interest should be included, efficient mechanisms for desecretisation of information should be established.

The expression “extremist activities” and “extremist speech” should be clearly and narrowly defined so as not to allow for interpretations and exclude abuses by those in power against the media.

The Contraventional Code should be amended so as to omit from Art. 69 the provision that stipulates unpaid community work and from Art. 70 the provision that stipulates unpaid community work or administrative arrest for up to 15 days. This is an excessive mechanism for protecting the professional reputation that contradicts European practice. The dissemination of certain information should not attract even civil responsibility, unless malicious intent can be proven. In defamation suits the primary purpose must be the compensation of the damages done to plaintiff's reputation and must avoid punishing the

person who disseminates the information. A mechanism that would make Art. 71 of the Contraventional Code functional should be developed and introduced in the Code. It will make the implementation of Art. 71 more efficient, ensuring that sanctions are applied every time the Law is infringed.

There is a series of Government decisions setting fees for receiving information from the State Registration Chamber, State Enterprise *Cadastru* which, in the experts' opinion, restrict access to information. Therefore, the Government decisions setting fees for receiving information from State institutions should be amended in accordance with the Law on Access to Information that provides that “fees shall not exceed the costs incurred by the provider for making copies, sending them to the solicitor and translating them upon request by the solicitor.”

Although calumny was decriminalised in 2004, the Criminal Code still contains a number of provisions that limit the right of people to freely express their thoughts. Thus, Art. 347 provides for fines of up to 700 conventional units or imprisonment up to 1 year for profanation of state symbols. Also, Art. 177 incriminates the illegal gathering and dissemination on purpose, without a person's consent, of private information and provides for sanctions: fines of up to 300 conventional units or unpaid community work of up to 240 hours. Dissemination of such information through the media is punished with a fine of up to 500 conventional units or with unpaid community work of up to 240 hours. When examined from the perspective of freedom of expression, the imposition of such harsh penalties, especially the sanction of imprisonment, is unacceptable.

Art. 347 should be excluded from the Criminal Code. Art. 177 should be amended so as to omit unpaid community work.

3 Sector-specific regulation

3.1 For the press

The Law on Publishing Activity was amended in 2008 with the goal of banning printing literature that defame the State or, as was formulated in the final reading, literature that “infringes the legislation in force” (Art 12(2)). Most publishers, writers and NGO representatives believe the main goal of the amendments was to censor the literature published in Moldova and, in this way, to limit freedom of expression. The wording “infringes the legislation” is too broad and may have the so-called “chilling effect” on publishers and, in this way, hamper their work. Also, this provision is not in line with Art. 10 ECHR, which clearly states that everyone has the right “to hold opinions and to receive and impart information and ideas without interference by public authorities”.

The Press Law of the Republic Moldova has been changed eight times since its adoption. There are numerous amendments to this normative act designed without taking into account international practice. According to media and legal experts, the law does not guarantee the independence of periodical publications; it only describes their structure and contains provisions that may endanger principles of freedom of press and pluralism of opinion. The provision that regulates financing of periodicals and press agencies may serve as an example in this respect. It says that “financing or sustaining periodicals by governments of foreign states in any other form is prohibited, but cases provided for in bilateral interstate treaties” (Art. 12(4)). This provision is in conflict with the position of the ECtHR which held that the financing or any other form of foreign support of the media is interpreted as activity in favour of freedom of expression, because the financing institutions

do not affect the content and do not influence editorial points of view.

The Press Law should be abolished as it is an obsolete one and many of its provisions are included in other relevant laws. Those specific provisions that are not found in local legislation should be preserved and included in other legislative acts, such as the Law on Publishing Activity or in the Law on Freedom of Expression.

According to recommendations of the Council of Europe, Member States should sustain and promote media pluralism and diversity, through indirect and direct financial means, in conditions of full transparency, under the supervision of independent structures.

In order to limit (unhealthy) competition in the print media, the Draft Law on the State Support for Print Media should be enacted by Parliament. If adopted, it would enforce the support and promotion by the State of the economic development and editorial independence of print media, the protection of fair competition by public administration, and it would fight the actions of public authorities aimed at limiting the competition in print media.

The Draft Law on amending the Law No. 96-XVI of 13 April 2007 on Public Procurements, which aims to establish legal guarantees for the transparent and responsible use of public money in media within the public procurement procedures, should be passed. This Draft Law will allow the creating of equal conditions for all media outlets in terms of access to public funds, including those used for advertising by institutions and businesses subsidised in different ways from public funds.

The Law on Advertising will be supplemented with a new definition – “public advertising – advertising purchased with public money”. A delimitation among “commercial advertising”, “social advertising” and “public advertising” definitions should be made through providing a series of obligations for the public sector.

3.2 For broadcasting

Art. XIX Global Campaign of Free Expression as well as OSCE assessed the Broadcasting Code passed in 2006 and came to the conclusion that it does not comply with EU recommendations and some provisions are far from being in accordance with European standards.

Thus, there are problems related to ensuring the independence of the regulatory body – Broadcasting Coordinating Council, to the funding and managing of the public service broadcaster, to the licensing procedure, to ensuring transparency of media ownership etc. Also, some Art.s are in conflict with provisions of other laws, for instance Art. 47 regarding the annual taxes of covering the regulatory expenses trespass provisions of Art. 7 of the Fiscal Code that states that “the general State and local taxes and fees shall be imposed, modified or cancelled exclusively by amending this Code”.

a) Public services broadcasting

Genuine financial independence of the public broadcaster *Teleradio Moldova* should be ensured by developing and adopting multi-annual budgets for periods longer than the government term as well as by introducing a fee for the public broadcaster’s services. Provisions on ensuring financial transparency of the public service broadcaster should be added.

Attributions of competencies of the Supervisory Board (SB) and TRM management should be delimited so that each of them has clear obligations and responsibilities. The possibility of institutionalisation of the SB should be assessed and considered.

The Code will be amended so as to eliminate the interference of the state (government representatives) in the editorial policy of *Teleradio-Moldova*.

A new provision on the status of the community broadcasters should be developed and included in the Broadcasting Code.

b) Commercial broadcasting

The Code will be amended in order to have clearer provisions related to media ownership so as to ensure media pluralism and transparency of ownership and prevent concentration of proprietes, in accordance with the recommendations of the Committee of Ministers.

c) Role of the regulatory authority in practice

A legal mechanism that will ensure the transparency of issuing broadcasting licences will be developed and included in the Code.

A legal mechanism that would ensure the accountability and transparency of the selection of members of the Broadcasting Coordinating Council should be developed and included in the Code.

A legal mechanism to ensure that candidates to the membership of the SB of the public broadcaster *Teleradio Moldova* are designated on non-political criteria should be developed and included in the Code. It should guarantee the transparency of the designation process as well as a credible representation of the SB.

3.3 For online services

There are no specific laws that would regulate the Internet and online media in Moldova. Since the Internet is seen as a provider of multiple possibilities for access to information, for self-expression and exchange of opinions, for participation in debates, the State will take the necessary steps to promote the public service value of the Internet by ensuring access to it, in accordance with the Council of Europe’s recommendations.

To enhance the protection of freedom of expression, information and communication, the State should adopt the European standards and strategies to promote guidance and assistance to the individual users of Internet technologies and services.

Although the Internet favours freedom of expression, the European trends are to limit some online content, through developing clear and strict regulations and self-regulation through codes of conduct and monitoring the content. The government should examine possibilities of establishing some legal mechanisms on ensuring protection of minors when using the Internet, in accordance with CoE recommendations.⁹¹

cinematographic heritage, adjusting the norms and practices of Moldova to EU standards, establishing a partnership among the state institutions, private sector and civil society in the field of safeguarding cultural heritage.

3.4 For film

The legal framework in the cinema field does not ensure the good functioning of the movie industry in the Republic of Moldova. In order to revitalise the cinematographic sector, a series of steps that would ensure the speeding-up of reforms should be undertaken.

The Law on Culture and the Law on Cinematography should be amended and brought in line with European standards. The Regulation on the State order should be re-examined so as to make it more efficient. A mechanism on ensuring transparency in administering financial means aimed at implementing the State order should be developed and included in the Law on Cinematography. Other amendments should focus on stimulation of competition between the State and the commercial sector in cinematography, as well as on promoting reforms at *Moldova-Film Studio*, according to national and European priorities in the field.

Funds should be identified to implement the Programme on Safeguarding the Cultural Heritage of the Republic of Moldova, developed in 2010. Among other objectives, it provides for developing a State strategy on safeguarding the cultural heritage, including the

⁹¹ Recommendation CM/Rec(2009)5 provides that the states shall ensure that there are safe and secure spaces for children on the Internet and develop the responsible use of labelling systems for online content, for example by creating a pan-European trustmark for labelling systems of online content.

Montenegro

2 The regulatory status quo

Daniela Seferovic

2.1 Press

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Montenegro, based on and taken from the country report by Daniela Seferovic, are (briefly) given.⁹²

The work of the press is regulated by the *Media law*. This Law guarantees the right of free founding and undisturbed work of media based on freedom of expression, investigation, collection, dissemination, publicising and receiving information. For instance, Art. 10 of this law prescribes free distribution of domestic and foreign media in the Republic, Art. 22 protects the integ-

1 General data

Country profile	
<u>Basic data</u>	
Country population	670,000
Official language/s	Montenegrin, Serbian, Bosnian, Albanian and Croatian
Main ethnic groups (% of population)	5% Albanians, 8% Bosniaks, 4% Muslims and 4% Croats
Recognised minorities	Albanians, Bosniaks, Muslims and Croats
Religious groups (% of population)	74 % Orthodox, 18% Muslim, 4% Roman-Catholic
Average salary per month (€)	504
<u>Media market data</u>	
Total market volume advertising market (€)	6-8 million (est.)
Gross advertising budget in 2009 (€)	12,000,000 – 14,000,000
<u>Press</u>	
Newspapers	3 dailies; 1 weekly prices for dailies € 0.5
Magazines	about 12 prices for magazines € 1.5
<u>Broadcasting</u>	
Television	PSB: 1 (national coverage) Comm.: 19
TV advertising revenues 2009-2010 period (€)	6 million in total (incl. commercial TV) (see left column)
Radio	PSB: 1 Comm.: 43
Income Radio & TV (€)	9,700,000.- (state funding in 2008 for pbs) N/A
<u>Internet</u>	1 main ISP monthly tariffs around € 20
<u>Film</u>	N/A (state funded productions in 2009 or 2010) € 345.000 (total state funding in 2010) ticket price € 3.5

⁹² This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

rity of minors in a manner that any media programming that could endanger health, moral, intellectual, emotional and social development of a child shall be previously clearly and visibly marked as such and distributed in a way with the least possibility for a child to use it, and Art. 23 of the Law forbids publication of information and opinions that instigate discrimination, hatred or violence against persons based on their belonging or not belonging to a certain race, religion, nation, ethnic group, sex or sexual orientation. The Law also contains provisions that regulate the advertising content in media in general.

The Montenegrin Journalists' Self-regulatory body (NST) monitors the practice of media and its compliance with the Code of Ethics. Based on its periodic reports, the Council of this organisation continues to warn journalists and media on most common forms of violations of the Code of Ethics.

2.2 Broadcasting

The broadcasting sector is regulated by the Law on Electronic Media, the Broadcasting Law and the Law on Public Services Broadcasting Radio and Television of Montenegro.

The Law on Public Service Broadcasting abolished the steering committee of Radio Television Montenegro (RTCG) and transferred its powers to the RTCG Council, which has nine members appointed by Parliament. Licence fees for radio and television were abolished and RTCG is now financed from the State budget. It receives 1.2% of the annual budget, which provides the public broadcaster with stable financial resources. The Law on Electronic Media regulates, amongst others, the competencies, status, and financing of the Agency for Electronic Media, as the regula-

tory body. This new body is to replace the existing Broadcasting agency which, except for the one year period of legal confusion and drafting of new law, was and will remain eligible for issuing of broadcasting licences in a procedure of public tender. The Law on Electronic Media also contains provisions encouraging media pluralism through allocation of funds for commercial broadcasters from the revenues collected from games of luck.

The Agency for Electronic Media functions as an independent regulatory body, established by the State. The competencies of the Agency include the designing of the programme for development of the audiovisual media services sector and preparing, in cooperation with the Agency for electronic communication, the planning of allocation of radio frequencies, in part referring to terrestrial broadcasting, issuing licences for broadcasting stations as well as for providing audiovisual media services on request, determining the amount of compensation for renting and using licences for providing audiovisual media services, keeping registries of audiovisual media service providers and of electronic publications, and making decisions on complaints and objections filed by physical and/or legal person(s) regarding the work of audiovisual media service providers.

2.3 Online services

Montenegro does not have a separate law regulating the work of online media. Those services fall into the scope of the Law on Electronic Media, which defines a special category of *electronic publication*, as an "editorially formatted web page" and/or "portal that contains electronic versions of print media" and/or "information from the media in

a way that it is available to the general public regardless of its range”.

The regulatory body in the field of online services is the Agency for electronic communications and postal affairs, which controls the work of operators. When it comes to online media services, the operators are subject to the Law on Electronic Media, which defines them as electronic publications. Adherence to content regulations shall be monitored by the Agency for electronic media.

There are neither legal obligations to internet service providers regarding the content, nor an eligible body that would deal with content control of Internet services. There is also no code of conduct that the ISPs may stick to.

2.4 Film

The Law on Cinematography of Montenegro regulates the film sector. The law stipulates openness for overseas film productions in Montenegro and defines conditions for film distribution and licensing, as well as for the cinema network. The task of safeguarding of film archive material has been allocated to the Montenegrin Cinematheque (National Film Archive).

3 Main challenges in media practice

3.1 For the press

The Law on media defines media as free, especially “censorship free”. But judiciary practice raises doubts on this formal approach as there are forms of censorship and self-censorship in/on journalistic works. Montenegro guarantees the freedom of information in line with standards contained in international documents on human rights and freedoms. Penalties for defamation still remain to pose

potential pressure and risk of self-censorship. Defamation was partly decriminalised in the Criminal code in 2003, abolishing prison sentences for this deed. However, defamation is still punishable by fines of up to € 14,000. This hampers the freedom of expression. Practice shows that most often the penalties are brought upon those media who are more critical towards the work of the government.

In privately-owned media outlets there are no collective contracts that would proscribe minimum conditions for journalists’ labour rights. Journalists conclude individual contracts with employers, which private employers tend to violate.

3.2 For broadcasting

The major problem for the public broadcaster RTCG is its financing. 84% of its total income is state funded. Therefore the independence of the public service broadcaster is not safeguarded and the situation could lead to “state television”. The procedure for appointing members of the governing RTCG Council is problematic, as it does not ensure the independence of the public service broadcaster, since Parliament has the final decision over the candidates for the RTCG Council, despite the fact that they are nominated by various institutions, including academic bodies and NGOs.

There is a variety of private broadcast outlets in Montenegro, and their role is crucial for media pluralism in the country, although often criticised as bipolarised with a division into government supporters and government critics. The economic situation of private broadcasters could generally be described as not-prospering. The majority of commercial broadcasters are dealing with substantial financial problems.

The independence of regulators in the

electronic media field is questionable after the procedure of issuing broadcasting frequencies has stopped for more than two years due to legal changes. Besides the Journalists' self-regulatory body, which has no stable financing, there are other media associations in Montenegro (UNEM, AKEM, ULES) designed to protect member interests, but their engagement is temporary and insufficient. Media do not invest funds in associations. Therefore, performance is usually limited to individual campaigns for legislative changes or financial assistance.

3.3 For online services

The Agency for electronic communications has no legal grounds as a regulator to act in cases of illegal internet content that may harm human dignity. Thus, there are no initiatives for establishing a system of content control of internet services under way or foreseeable yet.

3.4 For film

A lack of financial means to support film production as well as insufficient and/or non-existent institutions that would have capacities to round up the cinematographic process (production, distribution, screening) limit the development of Montenegrin cinematography. Public and private broadcasters in general do not contribute to film production funding. There is no independent or commercial film funding institution, nor are there related programmes. Thus, the film financial support system is concentrated in the hands of the Ministry of Culture and Media, which makes it the sole decision-maker in awarding the financial support.

II Proposals for remedying the situation

1 Constitutional law

Regarding the freedom of expression, this question was addressed by a legal team⁹³ gathered by a Montenegrin NGO – Human Rights Action (HRA) – which defined the suggested improvements through the Reform Proposal for Liability for Violation of Honour and Reputation in Montenegro⁹⁴, which was delivered to the Montenegrin Parliament.

In this Proposal, HRA starts from the Constitutional provisions regarding the Freedom of expression (Art. 47) and Freedom of the press (Art. 49).

Art. 47 states that:

"Everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner.

The right to freedom of expression may be limited only by the right of others to dignity, reputation and honour and if it threatens public morality or the security of Montenegro."

Reform proposes that in paragraph 2 the words "by the right of others to dignity, reputation and honour and" should be replaced with words "in order to protect the reputation or rights of others or", so that paragraph 2 would read as follows:

"The right to freedom of expression may be limited only in order to protect the reputation or rights of others or if it threatens public morality or the security of Montenegro."

The proposed change would thus mean ensuring accordance with the provision of Art. 10 (2) of the European Convention on Human

⁹³ Ana Vukovic, judge of the Higher Court in Podgorica, Dusan Stojkovic, lawyer from Belgrade, Tamara Durutovic, lawyer from Podgorica, Veselin Radulovic, lawyer from Podgorica, Tea Gorjanc-Prelevic, executive director of Human Rights Action and project editor, and Peter Noorlander, lawyer, Director of Media Law Defense Initiative from London, project advisor.

⁹⁴ Content available at: http://www.hracion.org/wp-content/uploads/reform_proposal-3.pdf

Rights (ECHR) and Art. 19 (3) of the International Covenant on Civil and Political Rights.

Both of these international agreements allow the limitation of freedom of expression in order to protect both general public and individual interests so as to protect "the reputation and rights of others", but restrictions on freedom of expression permitted by the Montenegrin Constitution to protect the interests of society are much narrower than those provided by international treaties, while the restrictions in order to protect individual interests are prescribed so as to allow a broad interpretation. Restriction of freedom of expression by "others' right to dignity, reputation and honour" leads to the broad interpretation of allowable restrictions on freedom of expression under international agreements "in order to protect the reputation and rights of others", especially in combination with a particularly arguable guarantee to the right to damages for publishing false information or notice under Art. 49 (3).

Protection of "dignity" of a person, including privacy and personal rights, is prescribed in Art. 28 of the Constitution, while the right to privacy is particularly protected in Art. 40. HRA finds it excessive to emphasise dignity and honour in the context of permitted restrictions on freedom of expression, especially because it can lead to neglecting the jurisprudence of the European Court of Human Rights (ECtHR). According to this court's practice, freedom of expression in the proper context may involve a degree of exaggeration and provocation, which may lead to an interference with the honour and dignity of another person (i.e. the subjective perception of oneself).

The ECHR has ruled many times that freedom of expression protects not only information that is favourably received or regarded as inoffensive or something that does not cause reactions, "but also those that offend, shock or disturb, because such are the demands of

that pluralism, tolerance and broadmindedness without which there is no 'democratic society'".

In order to limit the debate of general interest, for example, about the democratic development of the country which has recently gained sovereignty, in its verdict protecting individual rights, the Court requires to prove "a pressing social need" for such restrictions, emphasising thus the overall importance of freedom of expression at the cost of protection of subjective feelings and violation of the dignity of the individual. Given the complexity of establishing a balance between the protection of these freedoms and personal rights of individuals, HRA believes that the broad wording of allowed restrictions on freedom of expression, which may lead to erroneous interpretations of international standards in this area, should be kept to a moderate wording used by international instruments for protection of human rights, binding on Montenegro, and thus ensure their proper implementation, that is, the protection of human rights in accordance with international standards.

According to HRA, changes are necessary to the Constitutional provision regarding the Freedom of press (Art. 49) which states that:

"Freedom of press and other forms of public information shall be guaranteed.

The right to establish newspapers and other public information media, without approval, by registration with the competent authority, shall be guaranteed.

The right to a response and the right to a correction of any untrue, incomplete or incorrectly conveyed information that violates a person's right or interest and the right to compensation of damage caused by the publication of untruthful data or information shall be guaranteed."

Reasoning that the Constitution introduces a guarantee that is not fully consistent with European standards set forth in the practice

of the ECHR, and in view of the provisions contained in the Law on Obligations, because it neglects the standard of “reasonable publication”, HRA proposes deletion of paragraph 3 of Art. 49. This ECHR standard means that if a journalist acts in good faith, i.e. adheres to the standards of professional ethics, even defamatory statements on matters of public interest can be protected from liability.

Also, Art. 205 (2) of the Law on Obligations (Official Gazette of Montenegro, No. 47/2008) contains the following provision:

“One shall not be liable for damages caused by a false statement about another person if one was unaware that the statement was false, and if the one or those to whom the statement was communicated had a serious interest in the matter.”

This formulation is in accordance with the above international standards, but not in accordance with the disputed constitutional provision, which “guarantees” the responsibility for publishing false information.

2 Cross-cutting issues

Montenegro has laws more or less harmonised with European standards, as well as recognising supremacy of international norms, but, according to *Mirsad Rastoder*⁹⁵, head of the Montenegrin Journalists’ Self-regulatory Body, in Montenegro freedom of expressions is being suppressed both directly and indirectly. Another contradiction is that media are free to publish anything, and still the real freedom is missing, together with the quality of public debate. The problem lies, according to *Rastoder*, in inadequately transposed regulation in subordinate, secondary acts and in practice. He claims that a habit of media being used by politicians, parties and other influential groups has not vanished but it is

only being practised through other mechanisms. Therefore, he calls upon an incessant public debate on the necessity of changes to the Criminal Code⁹⁶ in order to decriminalise defamation, while strengthening responsibility for violation of honour and dignity through laws on civil responsibilities and media. As a consequence, “those who write and speak would not be compared to criminals” when it comes to penalties, and the responsibility would be transferred to the civil law sphere and public debate as a space for demystification of all kinds of manipulations.

As an alternative for decriminalisation of defamation, *Rastoder* suggests reform of the Criminal Code, by making Art. 196 (“A journalist and editor who acted with due professional care shall not be punished”) more precise in reading and application. What should be guaranteed is that any possibility of conviction for value judgment, overcriticising, incomplete information, or simple quoting of someone’s words or attitudes is ruled out. On the other hand, the law should support the publishing of all information which is of public interest.

Rastoder also pointed out that in Montenegrin legislation there is no protection afforded to journalists in cases of journalists being hindered in executing their professional tasks.

The President of the Association of Independent Electronic Media (UNEM) *Ranko Vujović*⁹⁷, also agrees that differentiating value judgments from facts in court practice poses a problem. This difference has never been clarified in relevant laws. The Law on media enables judges to call upon the practice of the ECtHR, but *Vujović* suggests that the difference should be defined in the Criminal Code.

⁹⁶ Criminal Code, Official Gazette of Montenegro, No. 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro, No. 40/2008 and 25/2010

⁹⁷ Interview from 28 November 2010.

⁹⁵ Interview from 17 December 2010.

The Montenegrin Criminal Code (CC) (Art. 195 – Insult) prescribes that anyone who insults another person shall be punished by a fine to the amount of € 1,200 to 4,000, while if the insult is made through media or at a public gathering, the fine increases to the amount of € 3,000 to 10,000. Exceptions are statements given within serious critique in a scientific, literary or artistic work, performance of a public service, or journalistic writing, political activity, or to defend a right or protect justifiable interests, if the manner in which the statement is expressed or other circumstances indicate it is not done on the grounds of discrediting a person.

Provisions on Defamation (Art. 196) say that anyone who speaks or transmits untrue information about someone that may harm his/her honour and reputation shall be punished by a fine to the amount of € 3,000 to 10,000, while the amount of punishment in case of media rises to € 5,000 to 14,000. If untrue information said or transmitted has caused or could have caused significant harm to the injured party, the perpetrator shall be punished by a fine to the minimum amount of € 8,000. In order not to be punished for charges with defamation, the perpetrator may prove to have had well-founded reasons to believe in the truthfulness of what he/she said or transmitted, while a journalist and editor has to prove that he/she “acted with due professional care”.

Very similar provisions (Art. 197-200) refer to the criminal acts of stating information from personal and family life, damaging the reputation of Montenegro, damaging the reputation of the people, minorities and other minority ethnic groups and damaging the reputation of a foreign country or an international organisation

The Reform Proposal of the Criminal Code of Montenegro (Chapter XVII: Criminal offences against honour and reputation and

Arts. 28-30) that was suggested by the HRA is trying to align these provisions fully with ECtHR practice. It refers to continuous calls from the Court which say that State parties should resort to criminal liability for publishing false information only in extreme cases. As an optimal solution, the working group of HRA proposes complete decriminalisation by deletion of all criminal offenses against honour and reputation, provided for in Chapter XVII of the CC (Art. 195 - Insult, Art. 196 - Defamation; Art. 197 - Spreading information about private and family life; Art. 198 - Damaging the reputation of Montenegro (flag, emblem, anthem); Art. 199 - Damaging the reputation of people, minority groups and other minority ethnic groups; Art. 200 - Damaging the reputation of a foreign state or international organisations), including Arts. 28 to 30 - Special provisions on criminal liability for crimes committed through the media, providing for the liability of editors and liability of publishers, printers and manufacturers.

In such a way, HRA argues, inability to clearly and precisely define the crimes would be removed. The subjective nature of the crimes of Insult, Defamation and Spreading information about private and family life, makes it difficult to define the notion of these crimes by the law, and that their definitions are inevitably too general and allow for arbitrary interpretation by courts, which is not in accordance with the principle of *nulla poena sine lege certa*, stating that imprecise norm be avoided as much as possible (*certus-precise*), also accepted by the ECHR. Another reason is the availability of more lenient, alternative solutions. Although the previous reform of the Criminal Code in principle excluded prison sentence for criminal offenses against honour and reputation, except for the criminal offence of Damaging the reputation of Montenegro, there is still a realistic danger in Montenegro that a per-

son convicted of any of these crimes spends some time in prison, if he/she does not pay the fine by a deadline set in the verdict. The case of Milorad Mitrovic, president of the Ecological Society “Breznica”, whose fine of 5,000 Euros has recently been replaced by imprisonment, proves that this danger is not just theoretical.⁹⁸ The very possibility of serving prison sentences for these crimes, in the opinion of the ECHR, has the effect of censorship and is especially discouraging for freedom of expression.

Further arguments are disproportion of punishment, due to double prosecution and sanctioning in criminal as well as in civil proceedings, and the fact that the offender is considered to be convicted of a crime. According to current legal solutions in cases of insult and defamation it is possible to have two separate proceedings, as most often happens in practice. Starting from the prescribed range of fines for such offences (for insult € 1,200 to 4,000, and for defamation € 3,000 to 14,000), and unlimited amounts that may be imposed in a civil law action for compensation of non-pecuniary damage, it is almost certain that the total amount in any case will be disproportionate and excessive when compared against the standards set by the ECHR. Also, the penalties for these crimes, prosecuted by private action, have a predominantly retributive character, since the penalties are paid to the state budget and do not represent any sort of compensation for the victim. The fact that the offender is being convicted and that his/her offense remains in the criminal records has a stigmatising effect on that person and may also have other negative consequences: for example, in employment, although these are less serious offenses, a result of issues that

are not of general importance, and where the state has no interest in taking prosecution of those crimes.

Instead, HRA proposes new criminal offences: Prevention of journalists from performing professional duties, and Assault on journalists in the performance of professional duties in order to level the protection of public officials and journalists on duty.

Since the last year reform of the Criminal Code in principle excluded prison sentence for criminal offenses against honour and reputation, and introduced exceptional provision or, better, wording “due professional care” which defends journalists and editors from guilt, HRA proposes for this phrase to be defined in the Media Law.⁹⁹

The proposed new Art. (Due professional care, Art. 4) would state that:

“A journalist is obliged to reasonably verify the truthfulness and completeness of any information before its publishing. Before publication of information, a journalist and responsible editor has to make a reasonable effort to give an opportunity to the person, to whom the information relates, to express his/her opinion, if that does not prevent timely disclosure of the information. A journalist is obliged to publish other people’s information, ideas and opinions credibly and completely and, if the information is taken from other media, a journalist is obliged to cite that media.

The degree of due professional care is proportional to the gravity of the possible consequence of the published information.”

According to HRA, specifying standards of due professional care is necessary for this duty to be prescribed as a legal one and to ensure proper understanding of the standard of accountability by both the courts and the media.

⁹⁸ Večernje novosti, Ponovo u aps (Back to the joint), 13 November 2010, p. 19

⁹⁹ Media Law, Official Gazette of MNE, No. 51/2002, and 62/02, Official Gazette MNE 46/10. 14

Another disputable provision concerns the liability for damages caused by the media. Art. 20 of the Media Law prescribes that the founder of the media is responsible for the published programme content. If the media publishes programme content that violates legally-protected interests of a person to whom the information relates, or harms the honour or integrity of an individual, states or transmits false statements about his/her life, knowledge and abilities, the person has a right of action to the competent court for damages against the author and against the founder of the media.

HRA proposes that the author, responsible editor and founder of the media should have the joint responsibility for damage caused by publication of false, incomplete or other information, whose publication is prohibited by this Law, and which violates the reputation or rights of a person, if it is proven that the author or responsible editor acted contrary to due professional care. Also, the media founder, editor and author of the programme content should not be liable for damages if they acted with due professional care, and especially if the programme content that caused the damage was

- essentially true, and false only in unimportant elements;
- based on facts that the author had reasonable grounds to believe were complete or accurate, while there was a legitimate public interest to be familiar with this information;
- accurately transferred from discussion at the session of the legislative, executive or judicial authorities, bodies of local self-government or at a public meeting; or from the act of the state bodies or other legal persons entrusted by public authority, and its meaning has not been changed by the journalistic editing;

- of public interest, transmitted as a quote from other media or published within an authorised interview;
- from private life, true or complete, and the circumstances of the case show that the author in good faith concluded that the damaged party agreed to its publication;
- from private life or personal recording, which may have been published without authorisation of the person in question;
- an opinion of the author, whose publication was of public interest, and if given in good faith.

HRA proposes that the responsibility of state authorities should also be the subject of Media Law, stating that it would provide the state's liability for all damages caused by the publication of false, incomplete or other information published by its organ. In this sense, the responsibility of journalists for damages resulting from the publication of false, incomplete or other information is excluded, since journalists cannot be required to verify information obtained from the authorities. Furthermore, it would be useful to provide that state authorities are not allowed to file claims for harm to reputation.

3 Sector-specific regulation

3.1 For the press

Press falls under the general Law on media which has been harmonised with European standards. However, despite the proper legal norms, their implementation is obviously problematic, starting from the fact that the Law forbids the state ownership over media while one of the three existing dailies, *Pobjeda*, is still state-owned.

In addition, the obligation of the press media to publish their print circulation is completely neglected in daily papers.

3.2 For broadcasting

a) Public service broadcasting

The latest changes to the Law on PBSs (December 2008) provided a stable financing mechanism for national PBS. With a fixed percentage from the national budget, Radio-Television of Montenegro got preconditions to become a promoter of democratic needs in society.

Public service Radio and Television of Montenegro, according to *Rastoder*, has not yet become a true guardian of public interests, nor is it a measure of professionalism in the media scene. Its efficacy and transformation depend on some legal and statutory corrections, but mostly they depend on the will of political elite to cease to influence (indirectly) the management of PBS.

The unsuccessful implementation of the financing model for PBS in which the citizens would pay for programmes they watch on public service channels, due to the general economic situation in the country, discouraged a more demanding behaviour of consumers, which might have given a boost to better quality programming.

Improvements to the functioning of PBS are not only of a legal nature, but might include other mechanisms of satisfying public interests, such as introducing the institution of an in-house Ombudsman, for example.

b) Commercial broadcasting

The fact that Montenegro has 8 television stations with national coverage, and that there are over 60 radio stations has not yet given the expected quality. This fact, nevertheless, proves the premise that the foundation of media is free. However, some examples from practice where there were obstructions in issuing licenses to broadcasters show the necessity of further improvements to regulation. These changes should provide for a clear position of the regulators, open access to owner-

ship structure in the media, capital origin, as well as some kind of protection of domestic media from aggressive productions from the neighbouring region. Also the income from political marketing and donations for programme production and sustainability should be made public.

The non-existence of a special law on illegal media concentration brings into question the quality of regulation on market transparency, monopolistic behaviour and editorial centralism, which should be more strongly regulated.

The Law on Electronic Media from December 2009 (Art. 128) demands from AVM service providers to publish data on all legal and physical persons with direct or indirect share in its ownership, exceeding 10% of total ownership in companies that are providers of AVM services, as well as their ownership share in other companies which provide AVM services.

The Law (Art. 130) also defines cases of illegal media concentration, i.e. if a broadcaster or persons related to him/her own(s) a share in the founding capital of another broadcaster, a publishing company involved in the publication of a daily newspaper, or vice versa, or in a news agency and vice versa. Illegal media concentration is also existent when a broadcaster owns at the same time more than one broadcaster license; when it is simultaneously involved in broadcasting radio and television programmes, or when it is simultaneously involved in broadcasting radio and/or television programmes as well as in the publication of a daily newspaper distributed on the territory covered by the broadcast radio and/or television programmes or conducts the activities of a news agency. The existence of illegal media concentration is also determined if the broadcasters are established by natural or legal persons that simultaneously appear as founders of other broadcasters; founders

of a publishing company that publishes a daily newspaper distributed on the territory covered by broadcast radio and/or television programmes, or founders of a news agency.

To be regarded illegal (Art. 131) media concentration must be such that a broadcaster licensed for broadcasting on the national level of coverage has more than a 25% share in the capital assets or voting rights of another broadcaster with the same kind of license; owns more than a 10% share in the capital assets of a publisher of a daily newspaper with a circulation exceeding 3,000 copies or in a company involved in news agency activities, or is simultaneously a publisher of a daily newspaper with a circulation exceeding 3,000 copies. In cases of local or regional broadcasters, illegal media concentration refers to more than a 30% additional share in the capital assets of a broadcaster licensed for broadcasting on the regional or local level of coverage in the same area, or simultaneous publishing of a local daily newspaper, in the same or neighbouring areas.

The only study that has been done on this topic was "media ownership", published in 2004 by the Montenegro Media Institute which states that "the legal provisions on illegal media concentration have been broken in several cases of intertwined media ownership". Among the biggest cases of media owners, this study mentions the company Jumedia Mont which owns daily Dan, weekly Revija D and Radio D. Another case was that of Miodrag Perović, professor at the University of Montenegro, who was the founder and co-owner of several Montenegrin media: daily Vijesti, Vijesti television, weekly Monitor, and radio station Antena M. The Director of Jumedia Mont later explained that Radio D did not have national frequencies and the Law therefore was not broken. Miodrag Perović also later explained that this legal moment was only temporary and that he later

transferred the ownership shares to the employees of the media.¹⁰⁰

In April 2004, the Government of Montenegro signed the initiative on drafting the Law on Media concentration with the Council of Europe and the European Agency for Reconstruction. Several versions were drafted, but none of them ever became a bill. The Ministry of Culture, Sport and Media said that there was no need for it since, in 2005, Parliament passed the general Law on protection of competition. The Broadcasting Agency, however, said that nothing in the existing legislation forbids someone to buy all three Montenegrin dailies. This proved a possible scenario when German concern WAZ (Westdeutsche Allgemeine Zeitung), at the time owner of stakes in Daily Vijesti (2003-2007), also negotiated the purchase of another national daily Pobjeda.

The broadcasting sector has to be more strongly regulated when it comes to the protection of intellectual property rights, especially considering the transformation of this market into the digitalised world, where the role of the regulator (the Agency for Electronic Media) must be greater. The Law on the protection of author's rights in preparations and its adoption is strongly needed, considering the speed at which the market is developing. This would clarify the situation when it comes to broadcasting rights and protect domestic TV stations from losing their viewership against the programmes of foreign media broadcast via cable operators.

This might eventually provide a healthier atmosphere on the market of AV operators and test its viability, which proved to be very fragile in the last several years where the market in particular has suffered from the

¹⁰⁰ Weeekly Monitor, Without Clear Rules (Bez jasnih pravila), March 12 2010, p. 24-26

global financial crisis. As a consequence of this poor state in media funding, in February 2011, the government of Montenegro announced the Media Aid Package, consisting of a total support amount of € 5.2 million. (This includes € 880,000 debt reliefs to the biggest press distributor “Bega Press”. 85% of this money went to three dailies: Dan, Vijesti, Pobjeda and weekly Monitor.) The state wrote off all broadcasters’ debts to the Broadcasting Centre for 2009 and 2010, worth € 3.4 million, as well as to the Agency for Telecommunications, amounting to € 0.9 million. Another step in the Media Aid package was a 20% decrease in the transmission tariffs paid to the Broadcasting Centre.

This move was motivated by the announcement of the Broadcasting centre on cutting out the signal of 15 TV and radio stations in an attempt to force them to pay overdue debts. This situation showed that a large number of media organisations were unable to pay the basic costs of their business, and consequently forced the Government to intervene.

Although necessary to secure the survival of several media these measures, however, cannot be regarded as a trend as otherwise they could make the media dependent on state support, thus questioning their editorial policy and independence. Although this can be attributed to somewhat special circumstances, it still shows that a stronger framework for a functioning media market is needed in order to preserve their plurality.

An additional burden to commercial broadcasters would be the digital, switchover scheduled for the end of 2012, when, according to the current strategy, the state is not planning to help them with the transformation. This calls for special attention to the legal framework concerning the digital switchover, primarily the Law on digital

broadcasting which was drafted in December 2010.¹⁰¹

c) Regulatory authorities with an impact on the media sector

Montenegro’s policy in the field of electronic communications is set out in the five-year strategy for the electronic communications sector, adopted by the government in June 2006. Based on this strategy, the Law on electronic communications (LEC) was adopted in July 2008, replacing the Telecommunications Law of 2000 and establishing a new legislative framework aiming for alignment with the EU regulatory framework. Amendments to the LEC and the Law on Electronic Media were adopted in July 2010, which are aligned with each other and together clarify the funding of the future Agency for Electronic Media (formerly Broadcasting agency) and its role in the procedure for granting broadcasting licenses. However, as the amendments entered into force only in August 2010, their actual implementation cannot be assessed at this stage. Implementation of the LEC so far, through the adoption of secondary legislation and through the enforcement of regulatory decisions, is still at an early stage. However the provisions on the transparent, representative parliamentary election of the management council, and transparency of the licensing procedure are promising the adequate functioning of this regulator. However, their other important function – monitoring of media content – should be strengthened, considering the entrance into the market of a large number of media starting via cable operators in the previous years.

Despite the alignment of the LEC with the Law on Electronic Media, there are still concerns about several provisions of the LEC,

¹⁰¹ Full text of the Draft Law on digital broadcasting: <http://www.mid.gov.me/biblioteka/nacrti-zakona>

regarding the other regulatory body – the Agency for electronic communications and postal services (EKIP).

The LEC established the EKIP, which became operational at the end of 2008. The five members of the agency's board are appointed directly by the government, which carries the potential risk of political influence. The regulatory oversight function of the ministry over the regulatory authority brings into the question the latter's independence.

This appointment procedure is also not in line with the EU regulatory framework, which aims to ensure that national regulatory authorities are protected against any external intervention jeopardising their independent functioning. The LEC further grants comprehensive supervisory powers over EKIP to the Ministry of Transport, Maritime Affairs and Telecommunications, which also endangers the agency's independence.

3.3 For online services

In the field of information society services, Montenegro adopted a strategy on the information society 2009-2013 in early 2009; however, broadband policy is not addressed.

The Ministry for the Information Society, established at the beginning of 2009, is in charge of its implementation and co-ordination with other government bodies and institutions. A dedicated budget is available, but the administrative capacity of the ministry is limited.

Considering the fact that Montenegro does not have a legal framework for online media, meaning that there are neither legal obligations to internet service providers regarding the content, nor a competent body that would deal with content control of Internet services, there is no doubt that this sector should be regulated as soon as possible. The Agency for electronic communications has no

legal grounds as a regulator to act in cases of illegal internet content that may harm human dignity. Finally, there are no initiatives for establishing a system of content control of internet services under way or foreseeable yet.

The legislation on conditional access will need to be improved and brought into line with the *acquis*.

3.4 For film

For the Montenegrin film industry a new legal framework has been set up by adopting the Law on Cinematography. The last year proved to be very successful, with 4 full-length feature films produced.

However, further development of the film industry is strongly limited by numerous factors. As the Ministry of Culture states in its National Strategy for development of culture, the problems range from non-existence of institutions and infrastructure that would round-up the process of production, distribution and broadcasting of films, to the lack of technical and technological conditions for work, which makes film workers dependent on foreign services. Domestic producers embark on new projects only when they secure initial financial support from the state, because in the small Montenegrin market it is impossible to make any significant return on investment from exploiting the film works. There are fewer cinemas in Montenegro today than half a century ago, and they are for the most part archaic. In the capital Podgorica there is only one modern cinema, the privately owned multiplex "Ster", visited last year by 230,000 visitors, by the way, which is the population of the capital city!

The ministry admits that state grants are too small and that they make it difficult for cinematographers to make any co-operation with surrounding countries. Cinematographic human potential is growing, thanks to the

Faculty for drama, but in the current situation it is impossible for all of them to be professionally engaged.

There is a lot of criticism in the country, due to the weak co-operation with other countries and funding film production (Daily Vijesti, October 16 2010, Out of all European cinematographic streams (Izvan svih evropskih filmskih tokova), p. I, III). For example, Montenegro is the only ex-Yugoslavian country which is not a member of Eurimages, the Council of Europe's fund for co-production, distribution, exhibition and digitalisation of European cinematographic works.

In its National Programme for Development of Cinematography, the government of Montenegro plans to join Eurimages and the MEDIA programme of the European Union by 2012 at the latest. The problem is the discrepancy in the range of values. The membership fee for joining Eurimages would cost Montenegro not less than € 100,000, which is comparable with the total amount the state provides for funds to the film industry annually, and there are no guarantees that Montenegro would benefit from this organisation in financial terms.

However, only by being enabled to enter a wider market could this sector prosper.

Romania

2 The regulatory status quo

Manuela Preoteasa

2.1 Press

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Romania, based on and taken from the country report by *Manuela Preoteasa*, are (briefly) given.¹⁰²

The print media is self-regulated through different codes of conduct, but there is no implementation unit for those codes. The Convention of Media NGOs, an informal alliance of about 30 NGOs across the country, has strongly advocated the implementation of the adopted Unified Deontological Code (*Codul Deontologic Unificat – CDU*) and the implementation of a Certificate of Good Journalistic Practices (*Certi-*

1 General data

Country profile		
Basic data		
Country population	21,400,000	
Official language/s	Romanian	
Main ethnic groups (% of population)	(besides Romanian:) 6.6% Hungarians, 2.5% Roma	
Recognised minorities	Hungarian 6.6%, Roma 2.5%, other recognised minorities, totalling 2%: German, Ukrainian (0.2 percent each), Serbian, Russians (Lipovan), Turkish,, Jewish, Crimea Tatar, Serbs, Slovaks, Bulgarians, Croats, Greeks, Albanians, Italians, Polish, Czechs, Armenians	
Religious groups (% of population)	86.7% orthodox, Romano-catholic (4.7%), Protestant (3.7%), Pentecostal (1.5%), Greek-Catholic (0.9%)	
Average salary per month (€)	319	
Media market data		
Total market volume advertising market in 2010 (€)	N/A	
Net advertising budget in 2010 (€)	308,000,000	
Press		
Newspapers	N/A (dailies) N/A (periodic publications) price for dailies around € 0.28 per issue.	
Magazines	N/A	
Broadcasting		
Television	PSB: 1 (national coverage)	Comm.: more than 25 (national coverage), > 3 (regional coverage), > 6 satellite stations, N/A cable TV stations
TV advertising revenues in 2010 (€)	PSB: 8,388,468	Comm.: 209,000,000
Radio	PSB: 1 (national coverage)	Comm.: 3 (national coverage), 12 (regional coverage), 6 networks of local licences

¹⁰² This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the “whole picture”.

Income TV & Radio (€)	(TV:) 135,080,000 (total) 41,820,768 (state funding) 16,912,016 (self generated) 76,347,216 (licence fee total); 20 (licence fee per household per year); 90 (licence fee per company per year) (Radio:) 94.4 million (total) 46.9% state budget, 52.6% own revenues, 0.1% subsidies, 0.4% financial income	N/A
<i>Internet</i>	1,061 ISPs monthly tariffs between € 10 and € 20	
<i>Film</i>	10 state supported long fiction films in 2010 18 feature films were produced in 2009; 11 were state supported, 7 were co-productions, 32 short films, documentary and animation films in 2009; 24 were state supported € 7.5 million (total state funding in 2009) Ticket prices between € 3 and € 5	

ficatul de Bune Practici Jurnalistice – CBPJ) for those editorial products, publications and/or institutions which implement the *CDU*, in order to encourage the self-regulatory process. The *CBPJ* is going to have no implication other than in terms of a symbolical warranty with regard to the implementation of the Code in parallel with publicly-made positioning against those breaking the ethical and deontological standards.

2.2 Broadcasting

The Law on Audiovisual No. 504/2002 regulates public and commercial broadcasting activities. All audiovisual media service providers must ensure the objective information of the public by correctly presenting the facts and events. They must also nurture free formation of opinions. Apart from the obligation to provide balanced news and to reflect all sides as well as the obligation to protect minors that apply to all broadcasters, commercial broadcasting media in Romania do not have special public service obligations. Romania has a dual broadcasting system with the public broadcaster *Societatea Română de Televiziune (SRTV)*.

Apart from the existing Codes of Conduct, the broadcasting landscape has a specific

Code of Conduct with regard to advertising. Other branches of the communication industry interacting with the broadcasting system oriented themselves towards self-regulation. One example is the Code of Advertising Practice, adopted by the Romanian Advertising Council (*RAC*), a document which has been officially recognised by the National Council for Audiovisual (*Consiliul Național al Audiovizualului - CNA*) since October 2003.

The Ministry of Culture and National Heritage is the first policy maker with regard to broadcasting media. The *Audiovisual Council* has the mission of securing the implementation of the provisions applying to the broadcasting segment (especially those of the Audiovisual Law) and is the authority which grants licences (after a technical authorisation is issued). The body in charge with the spectrum administration, the National Authority for Management and Regulation in Communications (*ANCOM – Autoritatea Națională pentru Administrare și Reglementare în Comunicații*) is significantly important in the light of the 2015 digital switch-off. The *CNA* is the main watch-dog both in terms of fulfilling the legal provisions with regard to neutral, balanced reporting, as well as in terms of en-

sureing the transparency of ownership in the broadcasting market and of preventing the abuse of dominant positions.

2.3 Online services

Online services are not regulated through specific legal provisions, but a set of obligations derives from the existing laws; especially from Law 506/2004 on the processing of personal data and the protection of privacy in electronic communications, and Law 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, which closely follows Directive 95/46/EC.

2.4 Film

The Ministry of Culture and of National Heritage is the policy maker in the cultural field. The implementation of the regulations concerning the film industry is ensured by the National Center for Cinema (CNC) and the National Film Archive (*Arhiva Natională de Film* – ANF). The ANF is, amongst others, responsible for the collection, cataloguing, preservation and restoration of films, and operated with a budget of € 1.2 million in 2009. The CNC counts the publication of specific instruments for raising awareness of film heritage such as filmographies from the inter-war period and dictionaries of cinematography, and also the allocation of 3% of the national cinematography fund for film preservation and restoration. The CNC is the main public institution awarding public funding to Romanian producers. Apart from that, Romania is a party to the Fund for Movies of the Council of Europe, *Eurimages*, and the CNC informs film makers on *Eurimages* rules concerning the co-financing procedures. Government Ordinance 39/2005 established the contributions for movie production as follows: 2% of the ticket prices and of the sold/rent recordings,

4% of the advertising contracts of televisions, 3% contribution from monthly income from screening films in cinema halls or other public places, 1% of the monthly income from cable and satellite TV transmission, 20% of the revenues obtained from privatisation of the state-owned real estate in the film industry. The fee payers should also have the option to contribute with up to the half of the amount in the direct financing of the movie industry.

3 Main challenges in media practice

3.1 For the press

Print media products are not expensive to purchase, but the print media business is hardly profitable on its own and autonomous from other affairs (not necessarily commercially-linked). The legal framework does not ensure a market which favours real investment in quality media. There is no legal support for a fair competition within the media market, although apparently the provisions on competition are in line with European legislation. Mechanisms to prevent cross-concentrations not only in the print media market, but transversely in markets such as distribution and printing facilities should be revised. Especially print media publishers left the market not only because of the decline in advertising spending, but apparently because of the dominant positions of media owners with strong political ties, which turned the Romanian environment into an unfriendly one in the news provision sector.

3.2 For broadcasting

The main challenges for the broadcasting sector are the same as for the press: the legal framework does not ensure a broadcasting market which favours real investment in quality media and there is no legal support for fair competition within the broadcasting

sector. Another challenge is also cross-ownership and the lack of transparency. The adoption and the implementation of rules for the transparency of funding should be obligatory. Economic and financial vulnerabilities seem to have become more and more relevant for media autonomy towards pressures, and the transparency of funding might give an idea on the financial independence of the so-called independent media outlets.

In August 2010, the Romanian Government decided to postpone the digital switchover from analogue free-to-air transmission in the television field to digital terrestrial broadcasting. The Government justified its decision, based on the difficult socio-economic situation that Romania has faced.

Three big foreign investors (*Lauder's* group, *ProSieben Sat.1* and the French *Lagardère*), whose broadcasting outlets have a nationwide coverage, do not want to get into the news business and rather focus on infotainment, entertainment, sports and movies, mainly for advertising purposes.

CNA has been monitoring the audiovisual content, and it often issues warnings, which the TV networks have to air in their broadcasts, or even fines for breaking the audiovisual code or other CNA decisions.

3.3 For online services

Ordinance 181/2009 introduced on-demand audiovisual media services, defined as a non-linear audiovisual media service provided by a media service provider for the viewing of programmes chosen at the moment by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider. These services are not yet effective.

The liability for content of online services is not a big issue, although there are thousands of comments containing abusive language, with potentially libellous content, with regard

to contributions in internet forums and stories published by media houses. This led to a policy of vague moderation of comments by the big publishing houses, which prefer to warn users that their comments are their own responsibility.

3.4 For film

The media agencies should retain 4% of TV advertising in order to finance the national cinematographic fund, managed by the CNC. A supplementary fee of 15% of its advertising revenues is provided by *SRTV*, according to its mission of supporting the Romanian film industry. In 2009, no contest was held, due to the public appeals on behalf of the directors, including members of the jury. There is no restriction of cross-ownership with the film sector in the legislation concerning the media.

II Proposals for remedying the situation

1 Constitutional law aspects

Most of the media outlets are dependent on obscure sources of financing, despite Art. 30(5) of the Constitution, which holds for the possibility that the media financing sources be made transparent by law. Media groups should make their ownership and financing sources transparent. In the audiovisual industry, the broadcasting regulator CNA should make the transparency of the financing sources compulsory.

2 Cross-cutting issues

Media professionals have noticed an increasing lack of relevance in media reporting, both in print and in broadcasting. Media groups should enforce the existing deontological codes and participate in the process of being granted the certificate of good practices by professional associations, as part of the self-regulatory process. Media NGOs should con-

tinue the efforts of raising media accountability through self-regulatory mechanisms.

The practice of mixing information and opinion has continued to be largely used, especially by news channels, which have started to transform all pieces of information into endless, often partisan debates. NGOs should continue the efforts of putting pressure on the industry to clearly separate information from opinion, both in print and in broadcasting media.

Although transparency of media ownership has increased in the broadcasting sector, there are print outlets whose ownership is still obscure. Media outlets should publish their ownership on their websites in order to be accessible by the general public. In the broadcasting sector, the CNA should continue to monitor the broadcasters' ownership and publish the data on its website.

A few MPs have tried to initiate bills meant to regulate the Internet information. All attempts at regulating the press and/or the online media should be dropped and those fields should be subject to a more consistent regulatory process.

Investment in the training of journalists, editors and managers is rare in the majority of newsrooms. Media NGOs, working closely with the industry, should continue to encourage young journalists, editors and managers to adopt professional standards and to apply good practices, despite the lack of professionalism in the rating-oriented media.

3 Sector-specific regulation

3.1 For the press

Print media have significantly lost readership; in the past, most of the newspapers were launched to serve their owner's business and political interests and, during recent years, most of the newspapers have involved themselves in political campaigns, which has con-

tributed to an increasing lack of trust in local and national print media. The NGOs advocating self-regulatory mechanisms should continue their efforts to encourage and support good journalism. They should continue to work closely with the industry for the implementation of professional standards and of relevant qualitative journalism.

The distribution of the print outlets is concentrated by companies and/or groups of companies, whose ownership is not well-known. The Ministry of Culture and the National Heritage, together with the broadcasting regulator, should extend to the distribution sector the obligation of transparency of ownership. Through self-regulatory mechanisms, the media NGOs should extend the research and the need for good practices to the distribution industries, from the transparency of ownership perspective.

Newspapers sell discounted collections of books and DVDs together with newspapers. The sale of books and DVDs overpasses the limits of sampling and promoting materials and potentially interferes with other markets, disturbing the fair competition in those markets as well. The Competition Council should look into the practices of selling different goods together with newspapers and should take measures against such practices, whenever such practices are confirmed to be anti-competitive, following specific investigations.

3.2 For broadcasting

With a few exceptions, most of the broadcast news programmes have become highly populist-oriented, have lost neutrality and become involved in a series of highly populist social campaigns. In the broadcasting sector, the regulator should define the public interest and closely monitor how the news programmes serve the public interest. Moreover, the coverage of local news, a compulsory condition for

the granting of the licences, should be clearly enforced by the CNA.

a) Public service broadcasting

Key Art.s in Law 41/1994, with regard to *SRR* and *SRTV*, make the mechanism of subordination in the public service broadcaster dependent upon the political will. The cumulation of the positions of chairperson of the board and of the executive position, on the one hand, and the possibility that the Parliament dismisses the board of its own will, on the other hand, are among the most important. Parliament should amend Law 41/1994 with regard to public services broadcasters in order to separate the positions of the chairperson of the board and that of the managing director. The separation is necessary to ensure the independence of the executive position towards a board composed of people nominated by the political groups in the national Parliament. Moreover, Parliament should not have the right to dismiss the board based on a simple lack of approval of the yearly activity report. Instead, mechanisms of external editorial audit should be initiated and enforced, based on which Parliament should potentially make recommendations to the board.

b) Commercial broadcasting

The cable operators allegedly abuse dominant positions in different areas of the country. The cable operators have started to launch their own TV channels, which compete with the existing TV channels. The cross-concentration between media and advertising agencies is also frequent, although there is no research or analysis of this sector. The Competition Council, in cooperation with ANCOM, should launch a broad investigation with regard to the claimed economic concentration on the cable network operating market. Media NGOs should initiate independent research

on cross-concentration between media and sectors related to the media industry (i.e. distribution and advertising sectors).

c) Role of the regulatory authorities in practice
The Audiovisual Law is rudimentary with regard to the anti-concentration measures in the field of the distribution of the signals. The Ministry of Culture, together with the broadcasting and telecommunications regulator, should draft amendments to the Audiovisual Law to be applied in the field of signal distribution and to prevent any diagonal economic concentration.

The government decided to postpone digitalisation by cancelling the on-going tender for the first multiplex. The Ministry of Culture, the broadcasting regulator and the media NGOs should advocate a firm schedule for the digital switch-over. The Ministry of Culture, the Ministry of Information Technology and Communication, the broadcasting regulator and ANCOM should initiate a wide public debate on the date of the digitalisation of terrestrial TV, the necessary steps that such a complex process requires, and on the effects of the process, on the amendments of the existing regulatory framework – in order to avoid abuse of economic concentration and to ensure a fair process of awarding the licences for multiplex operations and for the licences for content producers.

3.3 For online services

See above under I 3.3

3.4 For film

A few major film producers consider that the procedure of awarding the grants for the Romanian independent productions is subjective. The Ministry of Culture should initiate amendments to the existing procedure of granting national

subsidies for the Romanian film producers in order to ensure fairness of the process.

Only a few big companies are aware of the fiscal incentives applicable in the case of sponsorships for the Romanian film productions, while awareness among the majority of companies has remained significantly low. The NC, in cooperation with the specialised NGOs, should promote the fiscal incentives of which a company might benefit when it sponsors an independent movie producer.

Serbia

Slobodan Kremenjak

Milos Živkovic

I Most noticeable characteristics in the media-sector

In the following some of the most significant characteristics of the media landscape of Serbia, based on and taken from the country report by *Miloš Živković* and *Slobodan Kremenjak*, are (briefly) given.¹⁰³

1 General data

2 The regulatory status quo

2.1 Press

The press sector is mainly regulated by the Law on Public Information (others are the Law on Free Access to Information of Public Importance, the Criminal Code and the Law on Protection of Competition). The Law on Public Information sets out public information principles, defines media outlets as well as the distribution of media outlets, imprint, rights of the person the information refers to, omission to publish information, information on the outcome of criminal proceed-

Country profile	
Basic data	
Country population	7,300,000
Official language/s	Serbian
Main ethnic groups (% of population)	82.86 Serbs, 3.91 Hungarians, 1.82 Bosniaks (Muslims), 1.4 Romany, 1.08 Yugoslavs, 0.92 Montenegrins, 1.0 Albanians
Recognised minorities	Albanians, Ashkali and Egyptians, Bosniaks Bulgarians, Croatians, Czechs, Greeks, Hungarians, Jews, Macedonians, Roma, Romanians, Rusyns, Slovaks, Slovenians, Ukrainians, Vlachs
Religious groups (% of population)	84.1 Serbian Orthodox Church, 6.24 Catholic Church, 4.82 Islam
Average salary per month (€)	340 (net)
Media market data	
Total market volume advertising market in 2009 (€)	N/A
Net advertising budget in 2010 (€)	175 million (est.)
Press	
Newspapers	18 dailies, 58 weeklies, 36 bi-weeklies, 125 monthlies price for dailies around € 0.20 per issue.
Magazines	total: 312 36 bi-weeklies, 48 bi-monthlies, 2 bi-annuals, 56 weeklies, 125 monthlies, 19 quarterly editions, 18 annuals, 6 magazines without advertising space, 2 uncategorised editions
Broadcasting	
Television	PSB: 2 (national coverage) Comm.: 6 (national coverage), 26 (regional coverage), 67 (local coverage)
TV advertising revenues in 2009 (€)	95,000,000 (total)

¹⁰³ This evaluation is not intended to give an exhaustive overview but rather a brief insight. Please see the detailed country report for the "whole picture".

Radio	PSB: 4 (national coverage)	Comm.: 5 (national coverage), 30 (regional coverage), 158 (local coverage)
Income TV & Radio (€)	N/A (total) N/A (state funding) N/A (self generated) N/A (licence fee total); 60 (licence fee per household per year); Lz 60 (company licence fee per receiver per year)	
<i>Internet</i>	61 ISPs monthly tariffs between €10 and € 135	
<i>Film</i>	7 produced films in 2009 € 1,500,500 (annual state funding)	

ings, pecuniary compensation of damages, supervision, and punitive provisions. According to this law, newspaper media outlets shall not enjoy the status of a legal person, but its founders are those who are held responsible in criminal and civil proceedings for the breach of the law caused by newspaper media outlets. A special provision is Art. 41 of the Law on Public Information. It addresses the principle of protection of minors with respect to all media outlets. They have to take into special consideration that their content and manner of distribution do not impair the moral, intellectual, emotional and social development of minors.

There is also a Code of Conduct of Journalists, a Court of Honour of the major associations of journalists, Council for Print Media and a Press Council. The Council for Print Media is a self-regulatory body established by the Agreement of The Independent Association of Journalists of Serbia, Association of Journalists of Serbia, The Media Association of Newspaper Publishers and Electronic Media and Local Press. The Press Council is an independent entity whose main competence is to monitor adherence to accomplished standards set by the Journalists' Code.

2.2 Broadcasting

Serbia opted for a dual system of broadcasting. There are public service broadcasters and commercial broadcasters. The Broadcasting Law regulates the broadcasting sector. It defines broadcasting as a general term for radio and television mass media provision by analogue or digital transmission of text, speech, sound, or moving image in the form of programme content via radio waves or cable distribution systems to adequate reception devices and intended for the general public.

Broadcasters are especially obliged to ensure the production and broadcasting of quality programmes, both in terms of technology and of programming content, by applying international and national standards or to refrain from broadcasting programmes, the content of which may impair the physical, mental or moral development of children and youth, as well as to clearly mark such programmes and, if they are broadcasting them, to do so only between 24.00 and 06.00. The Code of Conduct for Broadcasters stipulates the obligation for the broadcasters that at least 50% of the broadcast material has to be in the Serbian language and that at least 50% of the ma-

terial has to be produced by the broadcasters themselves.

The *Republic Broadcasting Agency (RBA)*, an autonomous legal entity and functionally independent of any government body as well as any organisations and individuals involved in the production and broadcasting of radio and television programmes and/or related activities, is authorised to pass by-laws which should enable implementation of the Broadcasting Law in practice. It passed, for instance, the Regulation on Issuing Broadcasting Licences, which stipulates a detailed procedure in accordance with the Broadcasting Law, or the Regulation on Standards for Determining the Amount of Radio or Television Broadcasting Fee. Besides, the Law on Electronic Communications prescribes terms and conditions regarding the technical aspects of broadcasting and has established the *Republic Agency for Electronic Communication (RATEL)*, an independent regulatory body. Both *RBA* and *RATEL* grant the frequencies for broadcasting and withdraw rights of usage in cases where the requirements stipulated by the Law on Electronic Communications are not fulfilled.

It should also be mentioned that a law on media concentration as such has not been enacted. Instead, the general Law on Protection of Competition is applicable and contains rules pertaining to media concentration, irrespective of the sector where it occurs. The Broadcasting Law provides more specific rules for electronic media and cross-ownership of media when a broadcaster is involved. This law provides that a prohibited concentration of media ownership exists when a founder of a newspaper-publishing company or of a company performing the activities of a news agency violates the principles of pluralism of opinions in mass media by taking part in the founding capital of (i.e. has a stake in) a broadcaster.

2.3 Online services

Electronic mass media are encompassed under the term "broadcasting" in the sense of the Broadcasting Law. Provisions of this law are applied to online services accordingly. The Public Information Law proscribes that Internet and other electronic editions of newspapers, radio and television programmes are to be considered media outlets. Therefore, the provisions of this law are also applicable to online services.

The Law on Broadcasting with respect to content obligations is explicitly applicable to dissemination of content analogous to radio or television via Internet (webcasting).

There is no special regulatory body. The Council for Print Media may practise its advisory competencies in this field, especially for media publishing information online.

2.4 Film

The film sector is, firstly, addressed by the Law on Culture. The Act prescribes the list of cultural activities and, among these, cinematography as one of them. According to it, the funds for cultural activities will be provided in the state budget as well as in funds, foundations and endowments. The Government will provide the funds for special awards for enhancement of the culture, as well as for the lifetime reimbursement for a premium contribution in this domain. Secondly, the film sector is subject to the Law on Cinematography and the Law on the Ratification of the European Convention on Cinematographic Co-production.

The highest authority in this field is the Ministry of Culture. In the Ministry there is a special sector named Sector for Contemporary Art, Cultural Industry and Cultural Relations, which is also specialised for cinematography. Some of the most important competencies of

the Ministry are supervision of implementation of Law on Public Information, and control if the entities are acting in accordance with the provisions of the Act on Culture and the Act on Cinematography. Besides, there is the National Culture Council where the members of the film industry (writers, directors and actors) have their representative. It is founded to perform an advisory function, primarily by analysing and giving its opinion on cultural issues and by suggesting the course of the national cultural policy.

3 Main challenges in media practice

3.1 For the press

There is political pressure on press media outlets. This is mostly due to the weak economic standing of the media in Serbia as a result of an over-saturated market and the recent financial crisis, which resulted in an overall drop of the circulation of most print media, and is even more apparent in local media that are becoming increasingly dependent upon local administration subsidies for financing. A number of press organisations still operate as state-owned public enterprises, where government and local government officials typically hand-pick the managers and editors and do exercise influence on content in that way. Crimes against journalists remain insufficiently prosecuted, due to the inefficiency of the court system. Journalists still routinely face and suffer harassment and even serious threats when addressing issues of public importance. This leads to self-censorship and abstaining from the coverage of certain controversial issues, such as sports-related violence, organised crime, financing of political parties, or even topics related to the Kosovo status process. An inefficient court system contributes to the much slower changes of the court practices compared to the changes of legis-

lation. For example, the clear distinction between reporting facts and value judgements, even though it exists in the legislation, is still lacking from a number of court decisions. The same applies to obligations of public officials to show a higher level of tolerance towards criticism compared to ordinary citizens.

3.2 For broadcasting

There is a common notion that *RTS* is engaged in the race for ratings and competing with commercial broadcasters in areas not related to its public remit, through content offers such as reality programmes and cheap entertainment. There is a problem with the collection of broadcasting fees that is at the level of 44%, and the overall income from the collected fees is far from being sufficient to cover the public broadcaster's expenses.

The commercial broadcasting media is over-saturated. There is a lack of media diversity. Commercial broadcasters are forced to fight for ratings and produce programmes that are cheap and likely to gain high audience figures, instead of contributing to media pluralism. *RBA* has not developed mechanisms to impose any regulatory obligations towards commercial broadcasters besides Serbian language programme quotas and in-house production quotas provided in the law.

RBA lacks financial, human and technical resources to seriously engage in monitoring. It more or less only monitors the way the broadcasters report on elections and their compliance with the Advertising Law. *RBA* is also politically influenced, as three out of nine Council members are direct candidates of the political parties, proposed by the Parliamentary Board for Culture and Media. Additionally, four members of the Council are appointed upon the proposal of the Parliament of the Province of Vojvodina. Finally, the requirement provided for in the Broadcast-

ing Act that council members are to be appointed from the ranks of reputed experts in fields relevant to conducting the affairs within the Agency's competencies (media experts, advertising experts, lawyers, economists, telecommunication engineers, etc.) is not observed at all during the nomination processes, thus allowing for the council to be easily influenced. Regulatory measures are often not proportional. Some of the council members have stated that the sanctions available to the Agency (reprimands, warnings and either temporary or permanent revocation of broadcasting licences) are not flexible enough, thus they would not allow for respect of proportionality.

3.3 For online services

No licence is required to distribute audiovisual mass information via the Internet. The Internet market in Serbia is constantly growing and according to RATEL's 2009 report, it is expected that broadband penetration will be at the 2009 EU level as soon as in 2013. This means that Serbia is still lagging behind in this field.

3.4 For film

Content regulations for the film sector are hardly existent. The Act on Cinematography offers only a declarative obligation for production of films of public interest for the development of culture, modernisation of the cinema network, development of audio visual communications and aiding of young talents in the area of cinematography.

There are no specific rules on film funding in the current legislation which are applied. Therefore, the current situation regarding state subsidies is related to the practice of an *ad hoc* commission established by the Ministry of Culture, the members of which

are currently some of the renowned Serbian directors. This commission should decide on distribution of funds dedicated to movie production.

II Proposals for remedying the situation

1 Constitutional law aspects

The Serbian Constitution proclaims the freedom of thought and expression, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in any other manner. Such freedom may only be restricted by law, if necessary to protect the rights and the reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society, and the national security of the Republic of Serbia.

The Constitution further proclaims that human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties shall be directly implemented in Serbia, and interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards on human rights, as well as the practice of international institutions which supervise their implementation.¹⁰⁴

Such guarantees are showing their effect in practice and have resulted in the 22 July 2010 decision of the Constitutional Court of Serbia, declaring a number of the Art.s of the 2009 Law on Amendments and Additions to the Law on Public Information as being a violation of media freedom and freedom of expression, and their non-compliance with Art. 10 ECHR.

The constitutional proclamation that human rights guaranteed by the ratified international treaties shall be directly implemented and interpreted pursuant to the practice

¹⁰⁴ Art. 18(3) of the Constitution.

of international institutions which supervise their implementation remains insufficient. Especially judges dealing with the right of freedom of expression and information through the media are not familiar with the practice of international institutions, and in particular with the practice of the ECtHR with regard to Art. 10 ECHR.

2 Cross-cutting issues

Serbia is currently in the process of adopting its general media strategy, which would try to provide answers to the challenges its media sector is facing. Those challenges are technological, but also to some extent related to inherited inconsistencies of the applicable legal framework. It was expected that the Ministry of Culture would publish the first draft of the Strategy by the end of February 2011. The Draft is to be based on the Media Study prepared by European experts under the auspices of the European Commission. During the consultation process and in particular with regard to the round tables organised with stakeholders in September 2010, the issues of State aid to the media sector, the future of the non-privatised media outlets and their possible transformation into regional public services were among the most discussed.

In accordance with Council of Europe resolution 1636 (2008) "Indicators for Media in a Democracy", a high number of court cases involving the right to freedom of expression and information through the media is an indication of problems in the implementation of national media legislation and does require revised practice. The practice of the courts in Serbia still does – to some extent – protect state officials against criticism and insult in comparison to ordinary people.

An additional problem exists with regard to the inherited inconsistencies of the applicable legal framework. Namely, the Serbian

legal framework provides for the mandatory privatisation of the broadcasting media in Serbia (the Broadcasting Act) and for the prohibition of funding of the media outlets (besides the public service broadcasters) either directly or indirectly by the state, a territorial autonomy or by an institution or company, which is prevalently state-owned or which is fully or predominantly funded from public revenues. However, the Law on Local Self-Government and the Law on the Capital City do allow funding of the media outlets by local self-governments and the City of Belgrade. This has blocked the privatisation of the media in Serbia and has been recognised as a problem in the European Commission progress report.

Media ownership in Serbia is far from being transparent. An attempt by the Government to solve this issue through a "Public Media Register", introduced in accordance with the 2009 Law on Amendments and Additions to the Law on Public Information, has been insufficient. Non-transparent media ownership disables members of the public from forming an opinion on the value which they should give to the information, ideas and opinions disseminated by the media. Non-transparent media ownership also disables effective measures against media concentration, media monopolies and dominant market positions among the media.

Finally, as recognised during the consultation process related to the drafting of the new media strategy, State aid for the media sector and in particular direct or indirect subsidies, in a way that distorts competition among the commercial and state-owned media, remains a serious issue in Serbia. The Commission for State Aid Control has not yet dealt with subsidies for the media.

In order to improve the current status, Serbia would need to:

- increase the capacity of its judiciary for the implementation of the media-related

legislation pursuant to the practice of the ECtHR with regard to Art. 10 ECHR;

- increase the capacity of prosecutors and courts to deal adequately and in a timely manner with cases where journalists have received threats or have been attacked;
- solve the issue of the conflicting legislation that has blocked the privatisation of the media in Serbia in a way that would allow the transfer of media from state ownership;
- revise its legislation in order to provide for the transparency of media ownership and economic influence over media in all sectors;
- revise its legislation in order to provide for effective measures against media concentration, media monopolies and dominant market positions among the media in all sectors;
- take concrete positive action to promote media pluralism both in traditional and new media, including support measures granted on the basis of objective and non-partisan criteria within the framework of transparent procedures and subject to independent control;
- increase the capacity of the Commission for State Aid Control for more effective dealing with the subsidies provided for the media.

3 Sector-specific regulation

3.1 For the press

In addition to the already mentioned suggestions that are also of relevance to the press (e.g. transparency of media ownership, media concentration, promotion of media pluralism, etc.), Serbia would need to improve the current status in the press sector by

- encouraging the self-regulatory regime, in particular through the Press Council that has been established re-

cently, in a way that would allow for the high number of court cases involving the right to freedom of expression and information through the media to decrease through the involvement of the Press Council in mediation and through the work of Press Council's Complaints Commission;

- providing applicable aid schemes for small circulation, minority language and local newspapers in order to promote media pluralism.

3.2 For broadcasting

In addition to the already mentioned suggestions that are also of relevance to broadcasting, Serbia would need to

- oblige the Republic Broadcasting Agency to develop and publish detailed, unambiguous and measurable criteria for issuing broadcasting licences, assessment of broadcasters and for other decisions within its jurisdiction, with thorough statements of reasons for all its decisions;
- revise its broadcasting legislation in order to increase the regulatory capacity of the Republic Broadcasting Agency. The Agency should be legally allowed and obliged, through regulation, to have an influence on raising the degree to which the needs of different programme content are met, at least through the policy of broadcasting fees, by establishing production or programme quotas and by establishing rules related to advertising, through a code of conduct of broadcasters, binding instructions and recommendations;
- precisely define obligations of the public service broadcasters, which must be verifiable and measurable, and establish clear indicators that would serve as a basis for the assessment of the fulfilment of their public service remit;

- ensure a higher collection rate for the broadcasting licence fee in order to ensure sustainable funding for the public service broadcasters and, at the same time, ensure regular and effective control of the use of public funding to prevent over-compensation and cross-subsidisation;
- protect both public service broadcasters and state-owned media – until they have been transferred from state ownership – against political interference in their daily management and their editorial work.

3.3 For online services

In order to improve the current status in online services sector, Serbia would need to

- fully implement its existing Information Society Development Strategy;
- harmonise its legislation with the recommendations of the Council of Europe related to Internet content as well as with the Audiovisual Media Services Directive (AVMSD);
- strengthen the independence of the regulatory bodies in the area of broadcasting and electronic communications;
- consider the issue of merging the two regulatory bodies, given the convergence of networks and services, and make a decision on it after previously conducted analysis and consultation with all interested parties, bearing in mind the paramount interest of strengthening regulatory capacity, as well as independence of regulators;
- increase citizens' awareness of possibilities offered to them by the online services as well as their awareness of the existing dangers (e.g. the protection of privacy, protection of minors, etc.).

3.4 For film

In order to foster improve the current status in the film sector, Serbia would need to

- revise its outdated legislation in the field of cinematography in order to allow the transition to "digital cinematography" that would not be detrimental to cultural diversity and national and European cinematography;
- establish aid schemes that would be fair, transparent and compliant with State Aid Control legislation;
- establish a clear legal framework for the functioning of the Film Centre of Serbia as a body steering the process of strategic development and reconstruction of the Serbian film industry as well as establishing indicators that would serve as a basis for the assessment of its work.

C Comparative Analysis

Alexander Scheuer

The countries, into whose media systems research has been conducted for the purposes of the present study, clearly vary in size and number of inhabitants, distribution of ethnic groups and (recognised) minorities, affiliation of religious beliefs (of the majority and other parts of the respective society), and economic strength.

Likewise, media markets vary significantly in terms of both offering and revenue¹⁰⁵:

- in the print sector, the range of newspaper offer is from three dailies in Montenegro, to about five in Croatia (including regional ones) and Moldova, to 18 in Serbia and 26 in Albania;
- as far as broadcasting is concerned, as regards radio the number of programmes with national coverage edited by public service broadcasters (PSB) ranges from one in almost all countries to four in Serbia and six in Macedonia, while in the commercial radio sector with the same coverage area the number of stations mainly is two to three, when it comes to programmes with a regional or local coverage the offer by private broadcasters is much higher; a similar overall picture can be seen when television broadcasting is at hand;
- the number of main Internet Service Providers is relatively low (one to three), but the numbers go up to between 40 and almost 80 if smaller (local) providers are included, the offer of Internet news content is mainly driven by traditional media, i.e. newspapers and other periodical print products as well as broadcasting organisations;
- in the film sector, the number of productions over all genres varies from within a one-digit range to 30-50 per year on average;
- the prices of "media products" (dailies, weeklies, journals, Internet access, cinema tickets) are largely comparable, except for the amount of the broadcasting licence fee, where applicable;
- the gross advertising budget in Bulgaria and Macedonia is about € 550 million, in Croatia and Romania € 250-300 million, while in Moldova it is "only" € 35 million and in Kosovo and Montenegro about € 10 million, respectively;
- PSB have at their disposal revenues, either in the form of direct State subsidies from the budget or as income from licence fees - in both cases combined with advertising sales - between € 5, 7 and 9.5 million in Moldova, Kosovo and Albania or Montenegro, respectively, € 40 million in Macedonia, € 55 million in Bulgaria, and € 140 million and € 200 million in Romania and Croatia, respectively.

I Legal framework for the media and observations on practice

1 General

Bulgaria and Romania, already being Member States of the European Union, Albania, Bosnia-Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia being candidate and potential candidate countries, respectively, and Moldova, which cooperates with the EU in the context of ENP, the state of implementation of the *acquis unionnaire* differs among the countries concerned. All the countries are member states of the Council of Europe, thus they have ratified the European Convention of Human Rights and Fundamental Freedoms (ECHR), among the guarantees of which Art. 10 on the free-

¹⁰⁵ It should be noted that data is not, or has not been made, available for all countries/all individual sectors.

dom of expression and the media bears utmost importance for the relevant commitments undertaken.

Accordingly, the constitutions of all South-East European countries analysed in this study contain the guarantee of freedom of expression/speech and, in the vast majority of cases also the freedom of the press and other media, the freedom of (access to) information as well as the prohibition of censorship are expressly mentioned. In some countries, the relevant constitutional provisions already entail stipulations as regards the permissibility of establishing an authorisation regime for broadcasting activities, the responsibility of the media, particularly the prohibition of hate speech or of discriminatory statements, and the right of persons being the object of media coverage to reply to (in-)correct information provided by the media, when the former's legitimate/legally protected interests are negatively affected.

The general ordinary-law legal framework relevant for the media can be subdivided into mainly two groups of legislation, i.e. (1) "public law" instruments, including provisions of the Penal or Criminal Code, such as cartel and State aid law, acts on access to public information law and on classified information/State secrets, provisions on defamation or slander (where such have not yet been fully transferred to the Civil Code or similar acts), protection of minors and of minorities, and prohibition of incitement to violence or hate speech as well as discriminatory statements, etc.; and (2) "private law" instruments, such as copyrights and neighbouring rights legislation, provisions on libel and defamation, rules on unfair business practices and on consumer protection (general and/or product-/service-specific advertising acts), labour codes, etc. However, in the

following, the applicable legal and regulatory framework is looked at according to the sectors of the media.

2 Sector-specific legislation/regulation and challenges in practice

2.1 For the press

In many countries of South-East Europe, rules on the activity of press organs are based solely (Bosnia-Herzegovina, Bulgaria, Kosovo, Macedonia and Romania), or in addition to existing legislation, on codes of ethics or conduct on which some or all of the relevant stakeholders have agreed among themselves, sometimes going beyond the print media sector and encompassing other media, such as broadcasting and Internet publications. Nevertheless, in half of the countries (Albania, Croatia, Moldova, Montenegro and Serbia), indeed there is legislation on the press, though with divergent levels of detail in what is being regulated.

Press Councils or other bodies that are entrusted with monitoring compliance with the relevant code of ethics exist in the vast majority of countries (except for Albania, Croatia (talks on its establishment pending) and Romania), but nevertheless coherence in this aspect is not very high: for instance, not all such bodies may be vested with the competence to "sanction" infringements upon norms laying down responsibilities of journalists and owners of (print) media outlets.

The appraisal of the effectiveness of press councils shows some differences among the SEE countries but, overall, it is not overwhelmingly positive, and there seems to be an inherent tension in two ways: firstly, it may be said that a general perception exists according to which the work of journalists should be (absolutely) free, which means that not only political and economic influence should be fought

against, but also that there should be no interference with the journalists' work, neither by owners of media outlets nor by outside forums (except for the civil law courts); secondly, often the lack of sanctioning powers is felt to be detrimental to a greater acceptance of the press councils' work by both the general public as well as the professionals involved; one outcome of this situation seems to be that there are more incentives for claimants to go to the courts instead of entrusting the respective council with handling a complaint on an alleged disrespect of the rights of those concerned by media coverage. In the same direction, it is criticised that press councils who issue public reprimands barely receive attention for those, not to mention a lack of willingness on the part of media outlets to publish such findings in their publications, and, contributing to this, a lack of willingness at the stage of drafting the relevant rules of the codes of ethics or the statutes of the councils, to commit to any such powers entrusted to the latter.

Further matters of high concern relate to the precarious working conditions for journalists (the non-existence of powerful trade unions may add to this, and *vice versa*), to a lack of independence from owners (and their political and/or economic interests) when decisions are at hand on whether or not and, if so, how reporting should take place, and to interference by political, economic or other forces (including threatening by criminals) – and, accordingly, to a tendency of self-censorship.

Frequently, concerns were voiced that print media are not economically viable, hence a negative impact on actual independence is suspected; this obviously represents a situation in which the practice of distribution of State advertising markets cannot go unobserved (and remain unregulated and supervised). In addition, in many countries the

press appears to be over-politicised and/or predominantly occupied with the viewpoints of only one ethnic or other group, thus not contributing to a climate of tolerance but possibly fostering to a considerable extent the existing tensions among different groups of society – instead of promoting better mutual understanding through the provision of unbiased information. Furthermore, a clearer separation of information/reporting and commenting/value judgements is advocated, so that the public would be in a better position to individually and collectively form their opinions.

In many cases, a lack of transparency of actual media ownership (also beyond the print media sector), and too high a level of cross-ownership is being complained about.

2.2 For broadcasting

In all countries analysed in the present study, legislation exists in order to provide for a legal framework for broadcasting activities (radio and television), partly entailing regulation of other electronic media or being general in nature so as to cover all kinds of publications. In half of the countries (Bosnia-Herzegovina – also at entity level, Croatia, Kosovo, Montenegro and Romania), separate legal frameworks are in place for public service media. Quite occasionally, separate specific legislation has been enacted to establish and describe the competences of media regulatory authorities in this sector.

Besides, legislation adopted in order to regulate electronic communication networks and services has a bearing on the entry into the market by broadcasters, because in most instances it defines the rules for obtaining a frequency-usage right, which is most important in the context of terrestrial conveyance of broadcasting signals. It should be mentioned finally that almost all of the SEE countries have

either devised strategies in the form of policy options or already enacted corresponding legislation in order to prepare for the switch-over to digital (terrestrial) broadcasting (mainly as regards frequency allocations for broadcasting TV programmes) and, subsequently, for the definition of a switch-off date for analogue (television) broadcasting.

Some negative trends or clear problems that are of a more general nature have already been mentioned above in relation to the press. Suffice it here to refer to these, since they are certainly of relevance also when public service and commercial broadcasting is at hand.

a) Public service broadcasting

Where there exists a catalogue of specific positive content obligations (Albania, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Montenegro and Serbia), including requirements as regards minority programming, these mainly relate to the public service broadcasters' mission, although – not least in the field of promotion of audiovisual production through the prescription of programming quota – in several instances commercial broadcasters also have to fulfil the same or at least similar obligations.

The definition of the remit, the safeguard of (programming) independence, the means of control over the fulfilment of content requirements as well as over the financial operational behaviour, and the preservation of a function-adequate level of funding of the public service broadcasters remain a matter of lively debate and, moreover, of high concern in many of the countries analysed for the purposes of the present study.

More specifically, as far as financing aspects are concerned, in addition to the possibility to raise income from the sale of advertising space, the majority of countries (Albania, Bosnia-Herzegovina, Bulgaria, Cro-

atia, Kosovo, Macedonia, Romania and Serbia) have opted for funding of PSB through licence fees, though sometimes in combination with direct contributions from the State budget. In these cases among other reasons, still, the unsatisfactory level of willingness to adhere to the payment obligations and/or difficulties in collecting the money from those obliged to pay contribute to findings that the funding provided is insufficient. This perception also holds true in some cases in which the legislator opted for funding directly from the budget. Some restrictions imposed on the possibility of PSB to have recourse to funding from the advertising markets – this relates mainly to the permissibility of a lower amount of advertising space when compared with commercial broadcasters – contribute to the enduring economic difficulties of PSB and make them more vulnerable towards undue interferences with their programming freedom.

On occasion, criticism is raised in connection with the programming achievements of PSB, and this in two directions: firstly, the PSB partly are considered actually not to live up to their programming obligations, in particular objectivity of and pluralism in information, and a positive contribution to democracy, secondly, because of the programming policy pursued, which would give rise to the impression of entering into a "race for audience shares" by airing more or less the same content as contained in the offer of commercial broadcasters. However, the vicious circle underlying these problems is often well seen: In order to achieve a highest possible level of acceptance by the general public both for their mere existence, including funding through "public" money, and for their high-quality programming, PSB have to continue to offer content which is largely attractive among all audiences. If, however, as has been the case in many of

the countries, not only initially (when the “new character” of a public service broadcaster instead of a state broadcaster was not fully believed in by all) but also recently, audience share figures of PSB programmes are going down, the conditions for funding and maintaining in their programming schedules some more-demanding content – which should allow them to distinguish themselves from the competitors – are far from optimal. Another relevant aspect in this cycle is the dependence on funding decisions, which are in most cases taken by the legislator: in order not to overthrow current political majorities in the parliament, PSBs may endeavour to ensure a generally positive relationship *vis-à-vis* the politicians of the ruling party/ies – an approach which may also find its expression in the programmes. Thus, audiences may perceive a lack of critical reporting, which could add to a decrease in the supportive basis for PSB.

b) Commercial broadcasting

Privately-owned broadcasting stations are subject to specific legislation, which in some countries (Albania, Bulgaria, Macedonia, Moldova and Serbia) forms part of the general legal framework for radio and television also applicable to PSB.

The provisions applicable to commercial broadcasting are foremost of interest in view of licensing procedures, transparency of and (prohibited) concentrations in (cross-)ownership, safeguards for diversity, content obligations and, when it comes to funding, commercial communications.

The main lines of criticism relating to commercial broadcasting are surrounding a recurring topic that also has a bearing for the press sector: although in many countries there is a multiple offer of radio and television stations, diversity remains an issue of concern, as does independence – all of this resulting in a rath-

er negative appraisal of the actual practice. Commercial broadcasting stations appear to be quite closely linked to a specific viewpoint (political, economic, ethnic, or religious) and seem to lack more balanced reporting, thus failing in many instances to contribute to the values whose achievement is deemed of considerable importance for the inclusion of all different groups in society and for democracy in general. In some of the countries analysed, it is ascribed to the economically difficult situation of commercial media, which is perceived as a problematic factor in terms of independence.

Moreover, a frequently encountered theme of concern is the lack of transparency of ownership, depriving audiences from informing themselves about the circumstances on the basis of which affiliation a specific kind of programming policy might have been formulated. In addition, the same lack of ownership transparency seems to nourish an appraisal according to which there exist too high levels of cross-ownership – among broadcasting markets in radio and television and on different levels (nationwide, regional and local) as well as when upstream or downstream markets (e.g. distribution) are concerned and, finally, in view of simultaneous shareholding in print media companies. A reason for this may be seen in the fact that either provisions on media concentration and/or cross-ownership are entirely missing or that there is a lack of parallel stipulations as regards the press so that regulatory authorities do not dispose of the necessary means to really implement an existing legislation.

c) Media regulatory authorities

The legal framework for regulatory authorities in the broadcasting sector, which is only in a couple of the countries concerned (Kosovo and Moldova) laid down in specific legislation and otherwise contained in the broadcasting laws, is important subject-mat-

ter for a number of reasons. For example, the relevant provisions on the competencies (with regard to both sides of the dual broadcasting system or to the commercial side only), the powers (including licensing and withdrawal of licences, monitoring and sanctioning), the setting-up and the rules on the appointment of the main decision-making body within the authority, and the co-operation with other authorities, such as the one competent in the field of electronic communications (where there does not exist a “convergent” regulator) and the ones in charge of implementing competition law or consumer protection law, respectively, have a decisive impact on the question of whether the legal framework generally can be considered contributory to promoting freedom of this sector of the media.

It should be noted that, when it comes to public service broadcasting, some competencies are vested with internal bodies of the respective organisations, such as the Steering Council (KDRTSH) in Albania, the Council of Croatian Radio Television, the Supervisory Board of Teleradio Moldova, or the RTCG Council in Montenegro.

In the majority of cases, the media regulatory authorities are either criticised for not being sufficiently politically independent (this, too, is a relevant issue with regard to the governing bodies of PSB), an aspect which may find its roots foremost in the provisions regarding standards for qualification of members as well as in the provisions dealing with the nomination/appointment process, or are facing criticism because they apparently lack the necessary financial resources in order to ensure proper functioning, an aspect which will be linked in some countries to a funding mechanism based on the licence fee income. Thus, the difficulties encountered in the collection of such money which is primarily destined for the

funding of PSM have a direct impact on the income of the regulators.

2.3 For online services

With very few exceptions (Croatia, Montenegro and Serbia), the countries of South-East Europe covered by this study do not have specific legislation in place that would hold stipulations for media content provided over “the Internet”. Instead, the general legal framework may apply, comprising provisions on the protection of minors, on defamation, on consumer protection, on copyright etc. In some instances (such as Albania and Serbia), the rules laid down in a press or media code of ethics will become applicable, and in a clear minority of countries (e.g. Bosnia-Herzegovina and Moldova), the content which is offered online by those, who are already subject to monitoring by a press council or similar institution, may also be supervised by those bodies. Of course, an important *caveat* must be made in respect to so-called ‘non-linear’ or ‘on demand audiovisual media services’ which are covered in some aspects by the AVMSD, where the transposition of this into national law has already taken place or is underway (like in Bulgaria and Romania).

Where with regard to online (news) media criticism is being raised, it relates in many instances to a lack of tolerance in the postings made in blogs (hostile, discriminatory speech) which would too often go “unsanctioned” because no action is taken by moderators or the like. Another point of concern is the protection of minors from unsuitable content, particularly extremist speech or bad language. Overall, the perception of online media (not necessarily of a professional provenance) is rather positive because they are felt to add to the available outlets for information and discussion. In some instances, it is claimed that traditional media outlets do not yet fully embrace the potentials

of the new technology, restricting their offer to making available more or less the same content which has already been distributed in print or broadcasting media. Some comments see a problem in the fact that overall the regulatory frameworks for the press and for broadcasting are considered much stricter than in the case of online media – a level-playing field would be missing, particularly in view of monitoring and probably sanctioning. By this, the possibility would be provided for to disregard the elementary rules for information made available to the general public. Very frequently, self-regulation of the online media sector is advocated. Generally, the main trend of higher availability rates of Internet access and, subsequently, higher percentages of actual Internet usage is welcomed.

2.4 For film

In all of the South-East European countries that were covered by the present study, specific legislation on cinematography has been enacted (for Bosnia-Herzegovina more precision is advisable: the relevant rules were enacted by the Canton of Sarajevo in the Federation BiH, on the one hand, and by the Republika Srpska, on the other). For the purposes of this analysis, the relevant rules are mainly of interest in the context of film funding systems.

There is largely the perception that public funds made available for the support of film production (at different stages and in view of different genres) are insufficient to really have a positive impact on the development of this sector of the media, which is considered economically weak and hardly sustainable without making recourse to co-financing and co-production on large scales. Given the long-standing tradition of film making in the countries of the region and, more specifically, the impetus for culture and public debate which may come from audiovisual works such as

feature films, documentaries, etc. and which should not be underestimated, this trend is considered unsatisfactory.

In collecting the necessary contributions to the funds, in some countries the problems which appear to occur can be attributed to one or more of the following reasons: in few instances, the actual amount transferred does not coincide with what has been stipulated in the relevant law or in the parliamentary decision on the State budget; in some other cases, it is difficult to enforce existing obligations on those who should additionally contribute to the financing of the film institution. When it comes to the actual practice of allocation of subsidies, criticism is raised with regard to a lack of transparency in several fields: precision of criteria to be fulfilled in order to qualify for funding, clarity of rules for the decision-making process, level of integration of representatives from the profession into different stages of taking decisions, justification and publication of tender results.

II Proposals for (regulatory or other) actions to remedy the situation

The national experts who had initially prepared the individual country reports were subsequently asked to provide suggestions for initiatives of a legal/regulatory and/or other nature, that would help remedy the shortcomings that had been identified in the course of assessing the actual practice of the media. In many instances, the proposals have been opened to discussion with representatives of relevant stakeholders and other media experts in order to seek their views on the suggestions already formulated or to provide for the opportunity to have further proposals for remedies included. On behalf of the Friedrich Ebert Foundation, the resident representatives were also invited to share their views on these suggestions.

Within the present section, not only the proposals shall be portrayed, but there is also some room to present a couple of solutions found in the existing media law and policy of South-East European countries which may be considered *best practice* approaches.

1 Constitutional law aspects

It is noticeable that only for a minority of countries (Moldova and Montenegro) proposals have been made in view of a possible modification of the constitutional law aspects relating to the media. Possible explanations for this can be found firstly in the fact that in most of the countries the guarantees of free speech and freedom of the media are generally in line with the European standards, mainly Art. 10 ECHR – while it should be noticed that in some South-East European states there is even a primacy of international norms over national legislation, making such guarantees directly applicable –, and secondly in the observation that the level of detail of the constitutional law stipulations is not very high, leaving it up to ordinary legislation to establish the legal framework in greater detail.

The few proposals made mainly surround issues for which a lack of coherence may be established with the jurisprudence of the ECtHR in cases relating to the freedom of the press and freedom of expression (Art. 10 ECHR) and clarifying the extent to which the media can be held responsible for the provision of information and statements on grounds enumerated in paragraph 2 of this Art..

- More concretely, where the existing constitutional provisions establish reasons for which a publication can either be held illegitimate (slandering of the state, attacks on certain groups, etc.) or where it could lead to a claim by a third party (liability and ensuing obligation for compensation of (moral) damages, right of reply or cor-

rection), the suggestion is often made to provide greater clarity of the exceptions foreseen from the freedom of speech/the press and, in the end, to narrow down the possibility of unjustified recourse to such reasons, on the one hand, and to foreclose the option of not entering into a balancing of the rights affected with the interest in a society to have certain information published.

Best practice approaches that could be identified relate to

- the constitutional protection of the media in the case of alleged violation of responsibilities, e.g. in Bulgaria: an injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. A similar level of protection is offered according to the Montenegrin and the Serbian constitution;
- the constitutional protection of the right to receive information also relating to obtaining information from public authorities (right to access information) in several countries;
- the constitutional protection of minorities: e.g. in Croatia, the (constitutional) Law on minorities prescribes that on the basis of the laws and secondary legislation which regulate public information services, production and broadcasting of radio and television programmes, education, museum, archive and library services as well as the preservation and protection of cultural heritage, conditions must be created for improved awareness of all citizens of the state, and particularly of children and minors through educational programmes

- and mandatory and optional school curriculum subjects, of the history, culture and religion of national minorities;
- the constitutional protection of the independence of the media authority, e.g. in Kosovo, and of the public service media, such as in Romania;
- the stipulation that there should be transparency in media ownership and funding – though subject to further elaboration by specific legislation on this matter.

2 Cross-cutting issues

Under this heading, different aspects will be addressed that range from legislation on libel and defamation, over access to public information and protection of journalistic sources, to working conditions and transparency and limitations on media ownership.

First, the (de-)criminalisation of libel and defamation remains an important subject. Though in some countries the incorporation of the legal instruments, aimed at protecting the right of others which could be affected by media coverage, into civil law and the abolition of criminal law provisions in this respect has already taken place or is underway, there remain a certain number of problems. The remedies suggested in order to address these are mainly concerned with two sets of shortcomings:

- compared with the standards developed in the jurisprudence of the ECtHR, there is over-protection of public figures, including officials, leading to a threshold of what kind of criticism through media coverage should be considered acceptable in a democratic society which is too low and therefore to be considered untenable;
- furthermore, the terms employed in relevant legislation are often phrased too broadly, giving too much room to find a prevalence of the protection of a person's dignity over the freedom of speech.

- Besides, it is specifically suggested that better training of prosecutors and judges is needed in order to foster the correct application of distinguishing between statements and value judgements, and of exceptions to generally forbidden media coverage where the public interest in a free political debate so requires.

An approach that theoretically could be considered *best practice* stems from Bosnia-Herzegovina:

- the law from 2002 abolished criminal liability for defamation (decriminalisation) and moved libel regulation to civil law and proceedings. A journalist cannot be held accountable for expressing an opinion and can only be required to answer for defamation, if he or she did not apply professional methods of work in investigating facts and in writing. If a court finds a journalist guilty, no prison sentence can be pronounced and the journalist may only be penalised financially.

It appears that a further *best practice* scenario can be found in Croatia:

- as a rule, non-material damage is compensated by correcting the inaccurate information, publishing a correction and an apology of the publisher. The right to take legal action for compensation of non-material damage is obtained by a person who has previously unsuccessfully submitted to the relevant publisher a valid request for the publication of a correction of the information at issue.

A word of caution is needed, however, when it comes to putting the protection of the rights of others under civil law instruments: the "chilling effect" which may be inherent in criminalisation of published information will also be encountered where law suits aimed at recovery of (moral) damages under civil law are at hand, because of the amounts claimed for compensation that could lead to ruining

journalists and/or media outlets financially or, at least, either may make them seize from reporting or conceding too easily to (out-of-court) claims with the aim to prevent similar coverage in future.

- Therefore, it should be envisaged to implement the necessary safeguards, both procedurally and in substantive law, against the making use of such instruments in order to silence the media through “threatening” them with severe economic consequences.

Secondly, the legislation on access to information which is held by public authorities or undertakings in which public bodies hold shares is an important pillar of the rights of the media and, either in parallel or subsequently through the intermediary service of the media, of the general public to exercise control over the administration etc. While the general framework for seeking such access also by the media may generally be in place, it is sometimes contradicted by legislation on classified documents or State secrets. In addition, the implementation of the legal framework for accessing publicly held information appears to be rather poor in some countries, leading for instance to a tendency to exhaust the fixed maximum delay within which answers on such requests must be handed down even if the information were available at an earlier stage, thus preventing the media from investigating and reporting on the outcome of their research as early as possible.

- It is advocated that inconsistencies of different legal provisions should be removed and awareness should be raised, among the general public but also specifically among public officials, of the rights and duties that derive from the access to information legislation.

Seen from a specific angle, it transpires that a provision in Macedonia that reflects on the possible means of defence in libel and

defamation cases has an interesting connection to freedom of information law:

- According to the provisions of the Criminal Code a journalist will not be held responsible for libel or defamation, if he/she published untruthful information due to violation of his/her right to free access to the relevant information.

Thirdly, the protection of the sources of journalists is also a recurring topic.

- In some instances, greater clarity of the provisions giving the reasons for which – (only) when ordered by a court – the disclosure of sources can be requested is suggested.
- In addition, proposals have been made to the effect that, within the legislation, a duty is established to balance the interests of state authorities to have access to the sources with the interest of the media to keep those protected – even if not required by those who provided the information.

What the Croatian Media Law offers in this respect may be considered a *best practice* example:

- A journalist, an editor-in-chief, an editor or an author who is not a journalist is not obliged to provide data about the source of published information or the information he/she intends to publish. Prior to publication, the journalist is obliged to inform the editor-in-chief, in the manner stipulated in the relevant media organisations’ statute, of the fact that the information at issue is from an unidentified source. In that case all the provisions on the protection of the source of information also apply to the editor-in-chief. The State Attorney Office may, where such limitation is imperative in the interest of national security, territorial integrity and other previously prescribed exceptional circumstances, lodge a request with the

competent court to order the relevant journalist to disclose data on the source of the published information or the information he/she intends to publish. The court may order the journalist to disclose data on the source of the published information or the information he/she intends to publish, when deemed necessary for the protection of public interest, where it concerns particularly important and serious circumstances and where it has been indisputably established that a reasonable alternative measure for disclosing data on the source of information does not exist, or that the State Attorney Office seeking the disclosure of the source of information has already used that measure as well as that the legally-based public interest for disclosing data on the source of information clearly prevails over the interest of protecting the source of information.

Fourthly, as regards the working conditions for journalists, great difficulties are attached to insufficient protection offered by law and/or poor implementation of labour code stipulations, *inter alia* due to a lack of monitoring/control by supervisory bodies. Besides, the relatively weak position of staff councils, journalists' associations and trade unions is seen as a hampering factor for a more independent position of journalists, foreclosing the negotiation and signing of collective agreements, for example. In turn, economic vulnerability of journalists may make it more difficult for them to become collectively organised.

- Therefore, journalists' associations should be strengthened and higher rates of inclusion in trade unions should be striven for, while support should be offered for the organisation and training of representatives.

Fifthly, very frequently reiterated proposals relate to issues surrounding media ownership, particularly in the press and broadcasting sectors. As regards greater transparency,

- apparently, respective legislation is hardly implemented to the necessary extent, or for some important aspects, legislation is missing. Both issues therefore should be remedied.

Furthermore, concentration of media ownership is perceived as a problematic situation to which both a lack of applicable legislation and poor implementation may contribute.

- Thus, where the relevant norms are not yet in place, it is suggested that these should be enacted and, where the implementation shows deficits, these should be properly addressed.
- Finally, in order to assess and, possibly, remedy unacceptable levels of cross-ownership, the legal framework to tackle this issue should be comprehensively put in place and enforced.

While, theoretically-speaking, i.e. judging from the texts of existing legislation, it is strictly forbidden that State or regional/local entities directly own media outlets (and not only found them as, for instance, in the case of public service broadcasters enjoying formal independence as legal persons kept separate from the regular State organisation), nevertheless in some countries this is still the case.

- Therefore, ownership of public authorities in media should be terminated.

While the above-mentioned topics will mainly require the adoption of additional/better legislation or more adequate enforcement, it should be noted that a couple of suggestions also address other stakeholders, including particularly media professionals themselves. One issue is about the quality of reporting, which can be subdivided into different elements:

- it is suggested, firstly, that information provided through the different media should be relevant, for instance, not be a mere copy of official State or party political statements;

- secondly, that the media should not enhance one-sided coverage or even (continue to) enter into discriminatory treatment of persons, groups or events;
- thirdly, that greater respect should be shown towards the rights of minors or those suspected of having committed a crime, and that they should abstain from sensationalist reporting; and,
- fourthly, that due attention should be paid not to mix up information provision and value judgements.

A further issue relates to the engagement for the profession itself, including the following elements:

- firstly and most importantly, it is submitted that more emphasis should be laid on the necessary support of self-regulatory means, such as codes of ethics and their implementation through press councils and the like;
- secondly, training of journalists, editors and managers should be improved.

Not least in relation to the latter aspect, many suggestions see room for (political or specialised) NGOs to support the future development of professionalism in the media sector.

3 Sector-specific regulation

3.1 For the press

It should be noted, first, that all of the suggested remedies under the above heading “Cross-cutting issues aspects” are important for the press sector as such. Therefore, in the following only those additional proposals shall be dealt with, that are seen as (predominantly) sector specific for improving the situation of printed media.

A major issue of concern is the distribution of advertising space purchased by State or public authorities/bodies. As already outlined,

the current practice is seen as a means to reward friendly media coverage and to give incentives to the press outlets to whom advertising is awarded for maintaining a generally benevolent line of reporting on government and/or ruling political party action, and vice versa.

- Therefore the establishment of clear criteria is advocated, on which the media can qualify for receiving advertising orders and for the safeguard of transparency of public procurement procedures and their outcome.

Interestingly, there is a divergence among experts from different countries about the advantages or disadvantages of having specific legislation on the press in place. Apparently, in the case of countries which do have adopted press laws, the dissatisfaction with this kind of approach is not fundamental, but rather related to sometimes too broadly phrased rights and obligations, redundancy when compared with other laws that will apply to the press sector, and a lack of comprehensiveness of norms or a lack of proper implementation of what has been stipulated in the relevant laws. On the other hand, where there is no dedicated legislation on the print media as yet, partly its enactment is advocated, partly it is considered more appropriate to foster existing codes of ethics and in particular their enforcement.

A further concern is related to the means, specifically the ownership in these, of distribution networks for press products. Here, too, greater transparency is called for as well as a proper observation through the competent (competition) authorities.

Another point which has been addressed, though in a limited number of suggestions only, relates to public support schemes for the press. Here, the economically difficult situation particularly of smaller print outlets is the relevant background.

- In this vein, it is submitted that support schemes through open, non-discrimina-

tory and transparent State aid funding mechanisms be implemented, foremost in order to ensure the diversity of print publications stemming from or being directed to niche markets such as minority groups, or to outlets active in regionally and/or locally smaller markets.

Again, there are also numerous proposals that relate to the practice of the press itself.

- Rather frequently, it is suggested that the reporting should be more balanced, that the choice of topics should show higher relevance, and that, in general terms, the interests and needs of the readers as a significant part of the general public be better served.
- In many instances, support for self-regulatory means is felt to show the need for increase, which includes better balanced representation of stakeholders, greater efforts to define well-suited and convincing professional rules, more assistance in educating those concerned about their rights and obligations, and abstinence from unfounded, “mechanical” criticism of findings of press councils which is capable of unreasonably putting their decisions and the institution as such to a state of mistrust.

3.2 For broadcasting

Besides the issues that are relevant also for public service as well as commercial broadcasting and which have already been dealt with under the heading “Cross-cutting issues aspects” (see above), the focus in this section will relate to public service media and the media authorities.

a) Public service broadcasting

In the context of PSB, firstly, it should be noted that insufficient funding is a concern in almost all countries and that therefore several suggestions relate to this issue.

Where a licence fee-based system is in place, which is accompanied by income from the sale of advertising space and, in some cases, by additional direct State subsidies, the means for collecting and the level of payment are addressed.

- It is recommended that enforcement of the obligation to pay the broadcasting licence fee become a matter of priority and that, where existing legislation forms an obstacle to swift collection, this should also be addressed.

In more general terms, the need to find the right approach to ensure both, clarity of the financial needs of PSB as well as transparency in procedures leading to their fixation is often highlighted.

- Accordingly, the relevant proposals aim at establishing a system of independent experts that assess the amount of funding necessary for the PSBs to fulfil their mission.

Secondly, the governance of PSB is a matter of concern in many countries of South-East Europe. This point may be subdivided into a couple of relevant aspects, starting from the procedures for appointing general directors or recruiting other high-level senior management, reaching out to the oversight over the financial conduct of broadcasters and, in relation to the latter point, to the definition and subsequent control of fulfilment of the public service remit in terms of what kind of content is delivered. In all these aspects, great concern is attached to securing independence of the PSB from State/political influence. Therefore, the following suggestions have been made:

- Define, after public consultation and debate, as clearly as possible (according to verifiable and measurable parameters) the remit of public service media, including their mission as regards new media services/platforms;
- Set-up an independent expert commission

- in order to fix the necessary funding for fulfilling its mission;
- Entrust separate commissions with monitoring the financial/business conduct on one hand and the fulfilment of the PSBs remit in content terms on the other;
 - Ensure (editorial) independence of broadcasters, particularly through adequate safeguards for pluralistic decision-making processes in appointing and possibly dismissing lead staff, which is kept entirely free from undue State/political party influence;
 - Introduce a system of shared, clear-cut competencies between the management and steering/governing boards within broadcasting organisations.

In terms of programming, diverse and unbiased offers catering for the needs of all citizens is called for. More specifically, programmes for minority groups should become a mandatory part of the public service broadcasters' offer.

b) Commercial broadcasting

As has already been said, (introduction and) due enforcement of legislation on transparency of ownership, on illegitimate levels of concentration in the broadcasting sectors and on illicit cross-ownership in media markets, including *inter alia* between broadcasting operators and the press and/or distribution sectors, are high on the list of suggestions when the remedies for shortcomings in commercial broadcasting regulations are concerned.

Besides, the public service character or public value of commercial broadcasting is an issue which has been raised by some experts.

- They recommend that a limited set of clearly defined public service obligations be introduced for providers of commercial broadcasting services, and that the existing content obligations, either positive or negative, be better monitored and, where applicable, also enforced.

c) Regulatory authorities in the broadcasting sector

With respect to media regulators, it should be noted that there are some common threads with the funding and governance of public service broadcasters:

- firstly, media regulatory authorities must be sufficiently funded in order to provide for the necessary organisational and technical basis for proper handling of the tasks attributed to them;
- secondly, their independence from political interference must be secured and, in addition, the independence from the sector which is regulated should also be safeguarded;
- thirdly, and in the same direction as the second proposal, it is suggested that the qualifications that members of the governing bodies of regulatory authorities must fulfil should be legally defined, to make the process of appointment fully transparent and, ideally, to base it also on nomination by groups that are representative for the society's forces, and to ensure a balanced, pluralistic representation of the relevant groups in society among members/experts on the boards;
- finally, the reasons for dismissal of the board or individual members should be stipulated by law and be restricted to cases of incompatibility or severe malfunction in office.

The independence of the regulatory authority finds its manifestation mainly in two aspects:

- The issuance of licences for broadcasting as well as decisions on their revocation must be based on clearly-defined criteria laid down preferably in legislation, decision-making processes must be held in a transparent manner and decisions must be duly justified; an ensuing right of appeal and/or subsequent assessment by a

competent court should be construed in such a way as not to make them meaningless, i. e. particularly the challenged decisions should not be effectuated in order to avoid *fait accompli* situations.

- The application and enforcement of decisions on transparency of ownership and on undue concentration of ownership – the latter may also become an issue already in the context of licensing – must be based on (existing and/or newly to be adopted) legislation and should be a matter of efficient and effective co-operation between the media regulator and the competition authority, where appropriate.

Lastly, it should also be mentioned that accountability of the media regulatory authority is recommended, *vis-à-vis* the general public, stakeholders and Parliament, e.g. through publication of decisions and of annual reports etc.

3.3 For online services

As regards online services, it is first relevant to bear in mind the necessary distinction between infrastructure- and content-related matters.

- In view of the former, experts have called for devising Internet/Information Society strategies, where such do not yet exist, or for fully implementing such programmes.
- In particular, enhancing the availability of high speed (fast) Internet connections in all parts of the countries is suggested.
- Furthermore, it was considered advisable that the competent authorities, together with societal groups, should increase their efforts to lower the barriers for actual Internet access subscription, including media education initiatives for those who are not fully able to use digital technologies and thus are prevented from benefiting from the opportunities that the Internet may offer in many aspects.

Where the content offered online is at hand, there are several proposals related to the dangers of using this medium, mainly in the areas of protection of minors and prevention of hate speech or discrimination.

- While generally agreeing that there is need for action in these fields, experts are not unequivocal about whether or not this should be an issue for adopting specific legislation (where the existing sector-specific legislation does not expressly cover this or where the general legislation is not sufficiently clear), or whether this is mainly a matter of self-regulation.
- Sometimes the introduction of a registration scheme for professional online media outlets is advocated in order to both ensure transparency as well as increase accountability of the editors of information/news and/or entertainment portals.
- In view of the engagement of traditional media also in the Internet environment, suggestions have been made that programmes apt to increase the skills of journalists and other professionals with regard to the (partly) changed patterns of communication and employed technologies should be stipulated in order to make full use of the opportunities offered and to enhance user satisfaction.
- Government support schemes have also been called for that enable the establishing of secure surfing areas for children, which should provide well-targeted content and assist in educating safe usage of the Internet.
- Finally, showing greater efforts to make the Internet media also a more genuine experience for users is recommended, i.e. not to merely providing copies of either existing and already broadcast programmes or of Arts that have already been published in the print media.

With regard to the liability of intermediaries, such as Internet access providers and

host providers, the need to stipulate “safe harbour” principles for some activities under specific conditions were partly referred to, for instance linking, hosting of blogs which provide the possibility of commenting etc., in accordance with the eCommerce Directive.

Some experts have pointed to the fact that the transposition of the AVMSD would bring about legislation/regulation on part of the content services offered online, i.e. non-linear audiovisual media services, covering issues such as imprint obligations, protection of minors, prohibition of hate speech, and protection of consumers in respect of audiovisual commercial communications.

3.4 For film

In the opinion of several experts, State support for film production funding is insufficient in order to create an economically viable sector. In this respect, it is proposed to

- increase and make the funding provided to film production as well as to technological adaptation of the cinemas independent from actual budget restraints;
- explore possibilities to broaden the basis of financial contributions to film funds, e.g. by including more of the players that benefit from the development of films into the respective schemes.

With regard to the subsequent distribution of aid, a number of experts have reported on dissatisfaction in the domain of film professionals with a lack of transparency. Therefore, different proposals were made, in particular:

- to clarify in the relevant legislation which criteria are to be applied when the opening of tender procedures for subsidies as well as the decision-making on projects are at hand;
- to ensure transparency on the outcome of funding decisions both in respect of ben-

eficiaries as well as awarded amounts of support.

Furthermore, greater engagement of the State in the area of preservation of cultural heritage is advocated.

D Conclusion

Alexander Scheuer

When summing up the results of the present study, one might feel tempted to consider that the situation of the media in South-East Europe may mainly be characterised by having recourse to the existing economic problems: similar to the picture of the “poor man” under the conditions of the industrial revolution of the late 18th and the early 19th centuries, sketched-out in order to demonstrate that the growing welfare was not available to each and every citizen initially, despite the continuing democratisation of the countries concerned and some upward trends in the economy, and that there is still no “wealthy state” for the media. In other words, it may be said that “one has to be able to afford good journalism and diverse media offerings”. – But, of course, this is not the whole picture which in fact does present itself in a much more graduated and diversified manner, showing divergences that are neither restricted to borders, nor to media sectors.

The study’s subject matter and its primary focus has been media law and policy. In this respect, the results show two important facets of this theme: firstly, it is not the structure and wording of the relevant legislation and regulation *per se* which would suffice to obtain the necessary information for concluding on the situation of the media and its different sectors in a given country or region – but, additionally, specific attention must be paid to the actual implementation in practice; secondly, the legal and regulatory framework cannot *as such* provide for all important remedies – nevertheless, if the legislation in place is not contributory for a healthy development of the media systems, it will become increasingly difficult to ensure economically viable,

high-quality, professional journalism and diverse and culturally-rich media offers.

As has also become apparent from the documents issued by the European Commission in the context of the enlargement of the European Union and neighbourhood policies, there are some positive trends in the media situation of the South-East European countries. It should be noted, however, that there remain a certain number of elements where the national legal and regulatory frameworks are not yet fully in line with European standards, thus, additional efforts are needed to improve the legislative framework governing the press, broadcasting, online services and film. Furthermore, even in respect to certain elements of the media legal fundamentals, for which the European standards leave room for different solutions to be found at national level, i.e. where these are not formulated in such a manner as to offer “only one” solution, the margin of appreciation theoretically enjoyed by the legislator or other regulators in the countries concerned is either not used at all or has been effectuated through means which cannot be regarded to be sufficiently supportive.

It has become rather clear that every national situation must be seen in its own right – in some cases, the existing general political circumstances will give rise to issues which (fortunately) are of no paramount concern for others. Overall, although the situation of the media in other (Western or Central) European countries has not formed part of the present analysis, a point should be made here on the fact that most certainly due observation of their media law and practice conditions would bring to the fore similar or other problematic issues as well.

When comparing the findings, it seems that many countries, in one way or another, are striving to identify and formulate the appropriate mechanisms to deal with culturally

and ethnically rich citizenships and, particularly when translating the ensuing challenges into provisions for the media, to find the just balance between the protection of minorities and the safeguard of their representation in and/or access to the media, on the one hand, and the preservation of a political climate that is neither exclusively nor predominantly characterised by discussions along the lines of ethnic groups and affiliation to a specific religion or belief, on the other. While in the practice of some media the latter approach is apparently taken as a non-negligible pillar of the editorial policy, it should nevertheless be stressed that the freedom of the media is not an absolute one, but that it carries with it certain responsibilities too. In this same vein, while it is important that the states do not interfere with decisions on the editorial line of a given publication and although it is difficult for the legislator to formulate general content obligations and, moreover, for the courts/authorities to enforce them, orienting oneself at the generally-accepted standard of unbiased or objective, diverse and truthful information provision seems to be a goal for which to attain greater efforts must be made. As has been highlighted by several experts, the term “independent media” may be attributed multi-faceted meanings, among which the possible standpoint that what is being published, broadcast, put online or dealt with in film must by all means be “in opposition”, mainly in contrast to the viewpoint of a (currently) ruling force. Still, while it is without doubt that presumably the most important role of the media is the “public watchdog”, a function that entails to a large extent following critically the conduct of the government etc., the mission of the media for society and democracy does not restrict itself to this: guarantees and indemnities which are stipulated for the media have the broader background of acknowl-

edging their importance for individual and collective formation of opinion.

In all these aspects, the legal framework is of great importance, which can be demonstrated when referring to subject-matters such as freedom of access to publicly-held information and the protection of journalists’ sources on one hand, and to the safeguard of pluralism in society and of the rights of others on the other.

Besides necessary action being taken by the legislators/regulators and apart from efforts that the media need to take themselves, it could be said that there remains a need to foster the media in South-East Europe through increased support for self-regulation – in-house, within a sector, embracing several sectors – and through continuous engagement of initiatives from the relevant societal groups such as media and political NGOs, consumers and citizenship in general.

Reflecting on the numerous suggestions that have been made by the national experts responsible for the country reports, it appears safe to conclude with the expectation that the ground which has been laid also by the present study should be used in a constructive and positive manner to enhance the public debate on the future of the media in South-East Europe and to deliver sustainable improvement for a sector which is of such vital importance for the “new democracies”.

Annex

Questionnaire

I The political and market situation

The introduction is intended to include in a short form basic data, sociological characteristics, historical development, the situation of the officially acknowledged language and ethnic groups; etc., as far as being important for the comprehension of the media regulatory system. Please describe also briefly your national press/broadcasting/online services/film system.

1 General remarks

2 Brief overview of the political situation

3 Overview of the market/media sector

The overview of the “media sector” shall cover at least the following subsectors: Press, including newspapers, magazines, etc.; Broadcasting, i.e. radio and television, including technical services; Online services, offering content for the public; and Film. With regard to the subsectors, please outline briefly your national broadcasting market (such as production market, advertising market, broadcasters, audience quota, foreign influences and potential (cross-) ownership of the (major) press, broadcasting and film enterprises) and some facts about the audience share/usage figures. The same level of detail and a similar structure should be applied with regard to the printed press (sold newspapers and magazines, etc.) and the film market in both latter cases; also the quota of the advertising market.

II The relevant regulatory framework for the media sector

The present questionnaire requires information about the “regulatory framework” in the media sector. This primarily comprises the legal framework. In addition to, or instead of this (if there is no legal framework), there should also be given some information about administrative regulation and/or other provisions, for example codes of conduct, dealing with media.

To facilitate the understanding of the general regulatory approach, the underlying media policy options should be described in order to foster the understanding “why” or “for what purpose” a certain provision is drawn.

1 Introduction

2 Constitutional law

Description of constitutional law provisions relevant for the media sector (i.a. freedom of expression, youth protection, provisions relating to public service broadcasting and media regulatory authorities).

Brief outline of actors and procedures of legislation (where applicable, specifications for media legislation/regulation should be mentioned)

3 Sector-specific regulation

3.1 *The legal framework for the press*

Regulatory framework (Legal provisions, Administrative regulation/rules, other provisions, especially co-regulatory or self-regulatory measures (codes of conduct), protection of minors and human dignity; advertising; quality, ethics, diversity of media; access, standard setting)

3.2 *The legal framework for broadcasting (radio and television)*

Regulatory framework (Legal provisions, Administrative regulation/rules, other provisions, especially co-regulatory or self-regulatory measures (codes of conduct), protection of minors and human dignity; advertising; quality, ethics, diversity of media; access, standard setting)

3.3 *The legal framework for online services*

Regulatory framework (Legal provisions, Administrative regulation/rules, other provisions, especially co-regulatory or self-regulatory measures (codes of conduct), etc.)

3.4 *The legal framework for film*

Regulatory framework (Legal provisions, Administrative regulation/rules, other provisions, especially co-regulatory or self-regulatory measures (codes of conduct), etc.)

4 (Positive) Content obligations

Description of existing (legal) content obligations in the media sector. E.g. is there a press code or a code of conduct for journalists? Are there legal provisions to safeguard balanced/proportional public broadcasters' programming? Are there legal provisions to safeguard national culture, European productions/works in the broadcasters' programmes and/or for the film industry?

4.1 *General remarks/facts*

4.2 *For broadcasting (radio and television)*

4.3 *For the press/online services*

4.4 *For film*

5 Regulatory authorities/bodies with an impact on the media sector

Authority/ies, Legal basis, Functions/competencies, Organisation, Self- and/or Co-regulatory body/ies

5.1 *For the press*

5.2 *For broadcasting (radio and television)*

5.3 *For online services*

5.4 *For film*

6 Appraisal/Evaluation

Is the legal framework contributory to the fulfilment of the media's role and remit? Please elaborate on why you think so/not.

III The accomplishment of the media's tasks in practice

On the basis of the presented relevant legal framework for the media in part II, it is now necessary to see how these provisions are filled in practice. This section therefore intends to show how close the different players in the media (are able to) stick to the possibilities and obligations which the framework holds up for them, or if there is a gap between the "law of the books" and the empirical status quo when it comes to "real life". This gap can have several reasons, e.g. a lack of financial means, insufficiently qualified staff, or maybe because of politically intended measures/restrictions. According to this, please describe your view of the "practical side". If it is possible, please also allocate all of your findings/results with practical examples that can be verified and (should) be documented with traceable references (in a footnote).

In the following, different points or ques-

tions according to which, in our view, the accomplishment of the media's task in practice can be assessed are presented. This should not prevent you from adding further, or concentrating on different, facts that in your view seem to make the actual accomplishment in practice clearer.

1 For the press

Is there independent journalism? How far are journalists bound to guidelines of their employers when it comes to "critical journalism"? What is the economic situation of journalists, particularly their average monthly/annual income (what is the ratio of this in relation to average salaries)? How strict are the rules/code of conduct/ethic guidelines that journalists have to face? Is there in practice (partial) censorship by the state/other organisations/employers? Is there journalistic "privileged information", making media outlets immune from liability in relation to their content (e.g. editorial requests for information of public officials, leaders of political parties, etc.)? Are there possibilities for disseminating information about the private life of a person and his/her pictures in cases where "it is necessary to protect public interests"? Is there a distinction between reporting facts - even controversial ones - capable of contributing to debate in a democratic society and reporting details of the private life of an individual who does not exercise official functions? What about the protection of the confidentiality of sources by the editorial office? Are there cases of suspension of a press enterprise or a ban on the coverage of certain events or journalists/other persons in the press context (e.g. court case coverage)?

What are the (average) prices for (daily/monthly) newspapers, magazines? Or in which "price-range" are (daily/monthly) newspapers and magazines available? According to the

prices, what is the relation to the per capita income of the population? Please provide us with some figures in order to get an idea of the actual relationships.

What is the economical/financial situation of the (major) press enterprises? Are they mostly broke/bankrupt or prospering? Are there also other business areas the (major) press enterprises are involved in?

2 For broadcasting

2.1 Public service broadcasting

Is/are the public service broadcaster/s able to fulfil its/their public remit in practice? Is/are the public broadcaster/s able to keep its/their independence or are there (state/political/other) influences on the decision-making process (e.g. content of the programme, budget, employees, etc.)? Are the revenues of the public broadcaster/s sufficient to fulfil its/their remit? And, according to this, is/are the broadcaster/s able to live its/their independence in fulfilling the public remit because of being financially independent?

How is public service broadcasting financed? Are there broadcasting licence fees? If so, what is the monthly/annual amount of the fees and what is the relation to the per capita income of the population? Is there, and if so, what is the amount of the monthly/annual commercial/advertising contingent of the public broadcasters? What other forms of financial means exist (rent of buildings, interest on investments, etc.)?

2.2 Commercial broadcasting

Is media diversity an issue in your country? If not, are there reasons for this? Is there, and if so, what is and how far does the actual contribution of the commercial broadcasters go to media pluralism?

What is the economical/financial situation of the (major) commercial broadcasting enterprises? Are they mostly broke/bankrupt or prospering? Are there also other business areas the (major) commercial broadcasters are involved in? Are there cases of suspension of a commercial broadcasting enterprise or a ban on the coverage of certain events?

2.3 Role of the regulatory authority/ies in practice

Is there a certain kind of state influence on the regulatory authority/ies or are they fully independent when it comes to practice?

What are the regulatory measures (sanctions, others) that the regulatory authority/ies usually has/have recourse to? Do such measures provide for a real remedy to the perceived shortcomings?

3 For online services

Are there offers of online-services by the public service broadcasters and/or (other) journalistic-editorial offers outside of broadcasting and outside of traditional newspaper and magazine publishing houses? What kind(s) of them? (please give some examples) Do you need any kind of a licence (like a broadcaster's licence) to distribute audiovisual mass information (e.g. news, etc.) via the Internet/in a non-linear/on-demand manner?

How far does the (total) distribution of Internet access go in society? Are there different groups or classes of users in society that do not have the possibility to access that can be identified? How good/bad is the quality of Internet access? Is Internet access warranted all over the country or are there particular regions where there is no access? Are there strategies for the improvement of Internet access (e.g. availability of broadband Internet access, other forms of improvements)? What

are the (average) tariffs/models for Internet access? (please also set the prices in relation to the per capita income of the population)

How is the liability of content of online-services shaped/developed? Is there, and if so, under what conditions, a liability of the owners of Online-Services for statements of the readers/viewers made on the forums and chat pages of an Internet site, for instance?

4 For film

Existence of film funding programmes/institutions? Is there a public/private broadcasters' contribution to film funding? Prerequisites/Conditions of film funding (meaning: who gets the support?, what types of works are supported?, do they have to promote intercultural dialogue with their works or present national cultural works?, repayment of support?, support of co-productions?)?, What is the (average) budget of film funding in relation to the particular genre of the funded production (e.g. feature film, documentary, etc.)?

Are there (major) independent film producers? Do they have access to the (public) film funding institutions?

What are the (average) box office ticket prices for a feature film (also in relation to the per capita income of the population)?

List of Abbreviations

AVMSD	– EU Directive on Audiovisual Media Services
CDMC	– Steering Committee on the Media and New Communication Services
CM	– Committee of Ministers (Council of Europe)
CoE	– Council of Europe
Comm.	– Commercial (broadcaster)
DVB (-T/-C/-S/-H)	– Digital Video Broadcasting (terrestrial/by cable/by satellite/handheld)
EBU	– European Broadcasting Union
EC	– European Community
eCD	– eCommerce Directive
ECHR	– European Convention on Human Rights and Fundamental Freedoms
ECtHR	– European Court of Human Rights
ECJ	– Court of Justice of the European Union
ENP	– European Neighbourhood Policy
EU	– European Union
ISP	– Internet Service Provider
NGO	– Non-Governmental Organisation
OSCE	– Organisation for Security and Cooperation in Europe
PACE	– Parliamentary Assembly of the Council of Europe
PBS	– Public Broadcasting Service(s)
PSB	– Public Service Broadcasting/Broadcaster(s)
PSM	– Public Service Media

About the Authors

EMR

Alexander Scheuer, Attorney at law, General Manager, Member of the Executive Board of the Institute of European Media Law (EMR), Saarbrücken/Brussels (2000 to date). Mr Scheuer is a member of the Advisory Committee and of the IRIS Editorial Board, both at the European Audiovisual Observatory, Strasbourg. Since 2003 he has been a member of the Scientific Advisory Board (*Kuratorium*) of the Voluntary Self-Regulation of Private Televisions in Germany (*Freiwillige Selbstkontrolle Fernsehen*, FSF), Berlin. Editor and author of the Commentary "European Media Law", Castendyk/Dommering/ Scheuer, Alphen a/d Rijn 2008; co-author of the Commentary on the TEU- and TFEU- Treaties, Lenz/Borchardt (eds.), Köln, Basel, Genf, München, Wien (1999, 2003, 2006, 2010; chapters on free movement of workers, freedom of establishment). Scheuer has been responsible for several major studies in the area of media and telecommunications law, commissioned – at European level – e.g. by the European Commission (co-regulation; media market definitions), the Committee of the Regions, and the Council of Europe, as well as, at the national level, by different media authorities in Germany, Austria and Switzerland. He has published widely on European media, telecommunications, protection of minors and copyright law. Scheuer has given numerous speeches at international and national conferences and acted as a speaker and panel chairperson/moderator among others in several media expert seminars organised by the respective EU Council presidencies. (for more information on EMR see www.emr-sb.de)

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Bosnia-Herzegovina

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Bulgaria

Evgeniya Nikolova was born in 1977 and has been a qualified lawyer for more than 8 years, who has received her diploma for Master in Law at the Sofia University "St. Kliment Ohridski" and at the University of Hamburg. She obtained her doctor's degree in 2009 from the University of Hamburg. Her dissertation concerns the digitalisation of television in Europe and especially in Germany and Bulgaria. In 2004 Dr. Nikolova was a lecturer in telecommunications and media law at the Institute for European and German Law with the Faculty of Law at Sofia University. As a senior consultant at Kambourov & Partners

law office (2004 - 2006) she was involved in a number of high profile project finance cases such as the privatisation of the national film-making monopolist Boyana Films EAD acting for the Nu Image and Universal Studios, California, USA. Today she is acting as an independent consultant in the media field. She has participated at several European and Bulgarian projects concerning the media legislation and environment. Dr. Nikolova has many related publications. She is a founding member of the Parent Union of the German-Bulgarian School for Culture Exchange Sofia (German School Sofia) established at the German Embassy in Sofia and was Board Member until March 2010. She speaks Bulgarian (native), German, English and Russian.

Croatia

Nives Zvonarić, was born and lives in Zagreb, Croatia. In 1997 she graduated from the University of Zagreb, Faculty of Law; the theme of her thesis was "Networking of public administration and legal institutions". From 1999 to 2002 she worked at the Ministry of Culture, as adviser in the Legal Department, *inter alia* on the draft of the first Media Law in Croatia. Between 2002 and 2005 she acted as the Head Secretary of the Croatian Television and the Secretary of the Council of HRT – the Croatian Radio and Television. Since 2005 she has been working at the Agency for Electronic Media as Secretary of the Council for Electronic Media. In 2007 she completed training for Public Relations Managers at the Experta Business Academy, Zagreb. She has written for IRIS – Legal Observations of the European Audiovisual Observatory since 2004, where she has been the Croatian representative since 2005. She has participated in various seminars in the field of media as well as in meetings of the European Platform of Regulatory Bodies (EPRA).

Kosovo

Vjollca Krasniqi is a sociologist. She is a Ph.D. candidate at the Department of Social Work, University of Ljubljana. She has an M.Sc. degree in Gender, Development, and Globalisation from the London School of Economics and Political Science (LSE). She is a lecturer in Sociology at the Faculty of Philosophy, University of Prishtina. She has written on political, social, and gender developments in the Balkans. Her recent publications include: "The Gender Politics of Post-War Reconstruction in Kosova", in Christine Eifler and Ruth Seifert (eds.), *Gender Dynamics and Post-Conflict Reconstruction* (Bern, New York, Oxford: Lang Publishers, 2009); "Imagery, Gender and Power: The Politics of Representation in Post-War Kosova" *Feminist Review*, 86 (July 2007):1-23; *The Politics of Remembrance and Belonging: Life Histories of Albanian Women in Kosova* [co-author with Nita Luci] (Prishtina: CRGP, 2006); "Gender and the Politics of Peacekeeping," in Jelisaveta Blagojevic, Katerina Kolozova, and Svetlana Slapšak (eds.), *Gender and Identity: Theories from the and/or on Southeastern Europe* (Athena, 2006), pp. 363-384. She has also been active in the women's movement in the Balkans and has organised and participated in a number of international conferences on political and gender issues.

Macedonia

Borce Manevski was born in 1978 in Skopje, Macedonia. He has a BA in Germanic Studies, graduated in 2003 at the University St. Cyril and Methodius – Skopje, Faculty for Philology Blazhe Koneski, Macedonia; a BA in Online Journalism, he graduated in 2004 from the University Studiengemeinschaft Darmstadt, Germany, an MA in Media and Communications, graduation expected in spring 2011 at

the University St. Cyril and St. Methodius – Skopje, Law Faculty Iustinianus Primus, Macedonia. His professional experience includes Head of the Sector for European and International Affairs and Public Relations at the Broadcasting Council of Macedonia, Skopje, Macedonia (April 2009 to present); Senior Media and PPI Assistant at OSCE Mission to Skopje, Skopje, Macedonia (February 2004 – April 2009); and Editor at the Deutsche Welle, Bonn, Germany (September 2000 – December 2003).

Andriana Skerlev-Cakar was born on 16 March 1966 in Skopje, Republic of Macedonia. She graduated from the Faculty of Law, St. Cyril and St. Methodius University, Skopje, in 1990 with B.A in law sciences. In 2009 she post graduated and got her MSc in Human Resource Management. Since July, 2007, she is a Mediator. She is a member of the Media Law Group, Media Law Advocates Programme – Oxford. From 1990 to 1992, she was a trainee lawyer at the "Trpkovski" law firm. From 1992-1993 she worked as a lawyer at the Legal Division in "RZ- KPOR" a.d. Skopje. From 1993-1998 she was the General legal representative for "Uni Prokom Vemax". Between 1998 and 2005 she was Legal expert at the Broadcasting Council of the Republic of Macedonia, firstly in charge of international cooperation, then in charge of the legal rebroadcasting affairs and, from 2004 to 2008, Head coordinator of the Legal, Economic-Financial and Administrative Department at the Broadcasting Council of the Republic of Macedonia. Since 2008 she has been Executive Head of Departments in the Broadcasting Council. She was working on the composition of the Election legislative, Media legislative, Freedom of information legislative within the representative institution in Republic of Macedonia. She is dealing with research and writing articles on

the development of media law and other law related policy development in Macedonia in domestic and foreign publications.

Moldova

Nadine Gogu is the Executive Director of the Independent Journalism Center, a media NGO that supports the independent press, monitors media behaviour as well as abuse against Moldovan journalists. Nadine is also a trainer with the Chisinau School of Advanced Journalism, where she teaches Media Ethics and Diversity classes. She was involved in several media monitoring projects that assessed media behaviour during election campaigns and coverage of the protests of 6-7 April 2009, as well as media self-regulatory practices in Moldova. Mrs Gogu has been a correspondent for Reporters without Borders for the last 8 years. Before her experience at the Independent Journalism Center, Gogu worked for Timpul weekly newspaper and FLUX News Agency. Nadine Gogu earned her Master of Science in Mass Communications from Oklahoma State University School of Journalism and Broadcasting. She speaks Romanian, Russian, English and French.

Montenegro

Daniela Seferovic, media consultant, journalist and editor. Working as independent consultant within KRUG Communications & Media since 2008. She was previously engaged as training and international relations coordinator and later as a programme director at the Montenegro Media Institute, where she managed numerous educational and research projects aimed at professionalisation of media and public relations, as well as public advocacy campaigns. Since 2002, she has also worked as a journalist in MINA News Agency, and is currently engaged as author at

RTV Atlas. She is also the author of a number of Arts in media analysis publications, such as the Montenegro section of Kosovo and the Media, published by the Macedonian Institute for Media, Skopje, 2008, *Mediji o svakodnevnici* ("The Media on Everyday Events"), published by Novi Sad School of Journalism, Novi Sad, 2007, and "Footprint of Financial Crises In Montenegrin Media", FOSI ROM, London, 2009. She graduated from the Faculty of Philosophy of the University of Montenegro.

Romania

Manuela Preoteasa is an assistant professor with the Faculty of Journalism and Communication Sciences at the University of Bucharest. As a journalist, Manuela Preoteasa is currently working with the Brussels-based website EurActiv.ro, which covers EU policies, and the HotNews.ro news portal, a leading website on Romanian affairs. Mrs. Preoteasa has also worked as a media researcher with the Center for Independent Journalism (CJI) in Bucharest, she has authored several studies on media. Mrs. Preoteasa also worked as a journalist with the business weekly *Capital*. In 2006, she participated in the Marshal Memorial Fellows Programme, a joint German-USA programme for Young Leaders, aiming to strengthen trans-Atlantic relations.

Serbia

Slobodan Kremenjak graduated from the Law Faculty of the University in Belgrade in 1996. He is associate partner with Zivkovic & Samardzic Law Office in Belgrade, with a consulting focus in the areas of electronic communications, media, intellectual property and competition. Slobodan has been a media law adviser for a major association of Serbian broadcasters (ANEM) since 1998 and for Serbian local print media association (Lo-

cal Press) since 2004. He was a member of the expert group founded by Serbian Ministry of Telecommunications and Information Society for drafting of the Electronic Communications Act and member of the expert group founded by the Serbian Ministry of Culture for drafting of the Media Concentration Act and Broadcasting Act. He is 2005 ANEM Lighthouse Award laureate for personal contribution in development of the media sector in Serbia.

Miloš Živković, born 1972, graduated and got his MSc and PhD in law from the Belgrade University School of Law, where he teaches Civil Law (General Part and Property Law). Since the mid-nineties he has been involved in legal representation of independent media in Serbia, which made him a pioneer in the areas of media law, advertising law and broadcasting law in the country. After the political changes of 2000 Miloš was involved in drafting the new legal framework for the media in Serbia – he was one of the main drafters of the 2002 Law on Broadcasting and the 2005 Law on Advertising, and also participated in drafting the Law on Public Information (general Media Act), the 2003 Law on Telecommunications and the 2003 Rulebook on Assigning Domain Names within Serbian CCTLD. Even though his professional activities have shifted to other areas of law lately, he is still active in legal representation of broadcasting media and telecommunication companies, and is still deemed to be one of the leading legal experts in the field in Serbia.

