

23 September 2010

FOLLOW-UP REPORT ON BiH MEDIA AND MEDIA REGULATORS UNDER PRESSURE

State of play

Freedom of the media remains a key concern of the OSCE Mission to Bosnia and Herzegovina (BiH). Media play an essential role in ensuring that citizens are accurately and objectively informed about political life and developments. A couple of weeks from the general elections on 3 October, this role becomes all the more important in its contribution to a fair electoral contest. In February 2010, the OSCE published a report highlighting the pressures faced by media as well as media regulators in BiH that undermine this function. We expressed concern that a series of high-profile dismissals gave the impression that media management is vulnerable to political interference; that disagreements on the workings of the Communications Regulatory Agency (CRA) is undermining its independence; that laws regulating the media lack implementation; and that people seem indifferent to a rising number of cases of violence against journalists. Little improvement has been reported in any of these areas. We were, however, encouraged by news from the BiH Press Council this September that citizens are increasingly reminding the press of its obligation of truthful reporting by filing complaints and registering Press Code violations. In the first eight months of 2010, 88 have already been registered, compared to 113 for 2009 a whole. Citizens need to be aware of their right to react and complain. Freedom of the media, as we stressed in our previous report, goes hand in hand with responsible journalism.

The environment in which the media operate in BiH nevertheless continues to be the subject of much controversy. We wish to highlight three issues, in addition to those our earlier report cited, that we feel leave much room for improvement. **First**, BiH remains in a situation where regulatory and legislative improvements to the framework governing the media continue to be the victim of politicised stalemates. We look at two areas in particular, relating to the CRA and public broadcasting, that urgently need the attention of the next government. **Second**, we call on government institutions to improve their transparency when engaging with the media sector. More openness would dispel a growing impression among citizens that their media are not as independent as they ought to be. **Third**, we identify a need for more professionalism in the media sector. Journalists have a collective responsibility, as self-regulators, to maintain and promote the highest professional standards with respect to providing information, and to refrain from inflammatory reporting.

Regulatory deadlock

In our earlier report, we outlined the difficulties faced by the CRA. Our reminder that candidates to the CRA Council, and its Director General, should be appointed on merit rather than 'ethnic' considerations remains valid. So does our call to the Council of Ministers (CoM) to allow the CRA Council to elect and confirm a Director General for the Agency. We noted that "*having an independent and capable regulatory body for the broadcast media is essential in every functioning democracy*". As such, the request this spring from the Budget-Finance and Constitutional-Legal Committees of the House of Representatives and the House of Peoples to exempt the CRA from the Law on Ministries was encouraging. The BiH Justice Ministry agreed and proposed draft amendments to this effect. The CoM, however, failed to act on these initiatives. It is worth repeating that there is no convincing argument why the CRA, or other independent regulators, should effectively operate as a part of the executive. As long as this is the case, the law does not ensure the freedom from political control such institutions ought to have.

Similarly, repeated calls since March 2010 to broadcasters and all levels of government to take seriously the country's Public Broadcasting System (PBS) have gone unheeded. Two members of the PBS Steering Board are still waiting to be replaced because the House of Peoples has so far been unable to reach agreement on their election. This has a direct impact on the functioning of the Steering Board. Despite the great strides ahead in establishing a progressive legal framework for the media, it is unfortunate that public broadcasting in BiH remains fragmented to this extent at a time when the country increasingly needs to meet European standards - a process which will instead require ever more cooperation. Without PBS reform, not only does BiH backtrack on its Stabilisation and Association Agreement with the EU. Lack of progress also undermines the long-term viability of public broadcasting. The PBS is envisaged to be one of the leaders in introducing digital terrestrial television in BiH. This process should commence in the near future, and private interests will fill the gap if public broadcasters cannot. Yet, in a multinational society such as BiH, it is a functioning public broadcasting system that remains the best guarantee for inclusion so that all groups can get their voices heard. At the heart of PBS reform is the establishment of an overarching Corporation to enable for example the efficient pooling of resources. The way forward is well-known: members of the PBS Steering Board should no longer allow short-term interests to trump the adoption of a Statute for this Corporation.

Need for transparency

On 2 July 2010, the Republika Srpska (RS) government issued a Call for Applications for financial assistance to RS media. A couple of days earlier, the government had decided to allocate several million KM to media outlets. The 2010 budget contained provisions to this effect, and an earlier allotment was made in February 2010. The July Call for Applications could have been understood to indicate a 90-day deadline for interested outlets to come forward. However, the government decided to allocate funds to fourteen television, radio, and print media well before this supposed deadline. The episode sparked much debate and led to speculations by opposition politicians as to the motives behind such a media subsidy in the sensitive period in the run-up to the elections. This was exacerbated by a high-profile interview on RS public broadcaster RTRS this August, which featured only top government officials without similar representation from the opposition. In its report ahead of the municipal elections in October 2008, the OSCE's Office for Democratic Institutions and

Human Rights warned that some of its local interlocutors had “*identified a growing uniformity of views in the broadcast media in the RS*”. Bearing this in mind, these funds should have included criteria with an eye to promoting diversity of opinion and more representative media.

In her address to the OSCE Permanent Council in Vienna on 29 July 2010, Representative on Freedom of the Media (RFoM) Dunja Mijatović commented that government support to media is not uncommon. However, the procedures to allocate such funds should be transparent to ensure that media remain independent from government influence. We also draw attention to the call in our earlier report to look more closely into the financial independence of media outlets, so as to safeguard their editorial policy from undue influence. The fact that it is at the discretion of the government whether or not to adhere to the criteria in its own Calls for Applications not only shows that the regulatory framework ought to be strengthened. It also demonstrates a clear lack of transparency with regard to the wording used and the principles based on which a decision was made as to which media could get access to funds and which could not. This could indicate a less than level playing field. Moreover, the appropriateness of allocating such public money in the pre-election season, and why, can be questioned.

This trend of non-transparent behaviour is not unique to the RS. Federation of BiH (FBiH) media are not fully open either about the specifics of their relationship with political and other vested interests. In particular, though a media business must be run as a business, it nevertheless remains best practice to keep separate their financial and editorial sides. This holds particularly true in the run-up to the elections. Voters should not have the *impression* that their reporters are subject to improper influence, regardless of whether this is the case or not. The alternative makes for a dangerous situation in a period when voters need access to free and quality media in order to make informed decisions at the ballot box. Journalists should thus remain impartial and also adhere strictly to the Media Representation Rulebook and the Election Law. They are first and foremost accountable to their readers and viewers.

Need for professionalism

In July 2010, a major publication carried a news report that over 40kg of explosives had been found in an FBiH municipality. Allegations were made that the explosives were somehow connected to extreme Islamist groups. A senior FBiH official was also reported to have been arrested. No other media wrote on this story, and some government sources reported that they had no information that such an operation had been carried out. Yet, the publication did not issue a rectification or apology. At best, this story was written with incomplete information at hand and poor checking of sources. At worst, it was deliberately fabricated. This was by no means a unique case, and either of the above explanations is cause for serious concern. If journalism is to remain independent from outside supervision, journalists must take their self-regulatory role seriously. This also pertains to speaking out when journalists are physically and verbally threatened or abused.

BiH journalists have a collective responsibility to ensure that their profession upholds the highest standards. This is also their best protection against enemies of free media, who would like nothing more than the opportunity to charge ‘irresponsible journalism’ to curtail journalists' activities. Too often, the profession remains silent when fabricated stories work their way into the press, or when colleagues become complicit in serving political objectives. This is all the more worrying in the run-up to the general elections, when voters look to the media to provide unbiased reporting and facts that have been properly checked. The initiative by the BiH Journalists Association to monitor the professional standards of major outlets, in respect to presenting political candidates and parties, is thus a welcome development. The Association should be encouraged to undertake similar efforts with a wider focus throughout the year.

Recommendation

In our earlier release, we put forward the possibility of introducing reports, either by international community actors or media regulators, to measure BiH's alignment with EU and OSCE standards. We observe that there is still too little progress in the areas we have identified, and that the need to build momentum for media reform remains unmet. In her address to the Permanent Council, RFoM Mijatović proposed a high-level meeting under the auspices of the EU, OSCE, and OHR to endorse media-freedom recommendations for the EU to use as “*specific benchmarks for progress on media legislation and ensure the independence of media institutions*”. We wholeheartedly support this call and suggest reconvening the working group on ‘improving the media legislative framework and its implementation’. This working group could provide a platform for domestic institutions to take the lead on developing political initiatives to advance media reform, assisted by the OSCE and its international community partners when or if needed.