



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszti**

29 March 2007

The State of Media Freedom in Bosnia and Herzegovina: The Public Service Broadcasting

Observations and Recommendations

The OSCE Representative on Freedom of the Media (RFoM), Miklós Haraszti, visited Bosnia and Herzegovina (BiH) on 5 – 7 February 2007, accompanied by Roland Bless, the Director of his Office, and Arnaud Amouroux, Project Coordinator. This was his first visit to BiH.

The Representative visited BiH at the invitation of Dr. Schwarz-Schilling, the High Representative and European Union Special Representative for BiH (OHR/EUSR), and of Ambassador Douglas Davidson, the Head of the OSCE Mission to BiH, on behalf of the Steering Board Ambassadors of the Peace Implementation Council in order to address concerns over the state of media freedom in Bosnia and Herzegovina.

This invitation was prompted by the decision of the Republika Srpska (RS) Government to cease cooperation with the state public television network, BHT1, and later to deny its journalists access to governmental press conference. The purpose of the trip was, however, also to assess the overall state of media freedom, with a particular emphasis on the current state of broadcasting and especially public broadcasting.

The Representative visited Sarajevo and Banja Luka. He met with officials from OHR, the OSCE Mission, and the governments of BiH and the RS as well as with journalists and representatives of non-governmental organizations.

Among those he met with from OHR/EUSR were:

- Dr. Christian Schwarz-Schilling, the High Representative and EU Special Representative in BiH;
- Ambassador Peter Bas-Backer, Senior Deputy High Representative;
- Chris Bennett, Director of Communications;
- Darja Lebar, Senior Media Development Officer.

Meetings with OSCE Mission members included:

- Ambassador Douglas Davidson, Head of the OSCE Mission to BiH;
- Ambassador Vadim Kuznetsov, Deputy Head of Mission;
- Giorgio Blais, Director, Regional Centre Banja Luka;
- Alexandra George, Spokesperson and Director of Press and Public Information Department;
- Mersiha Causevic-Podzic, Deputy Spokesperson;
- Aida Besic, Press Officer;
- Radmila Trifkovic, Press Officer.

Meetings with BiH and RS officials included:

- Nikola Spiric, Chairman of the BiH Council of Ministers;
- Milorad Dodik, RS Prime Minister;
- Igor Radojicic, President of RS National Assembly.

Meeting with other interlocutors included (in alphabetical order):

- Mehmed Agovic, BHRT Director General;
- Senada Cumurovic, Director, BH Radio 1;
- Zeljko Kopanja, Editor-in-chief of *Nezavisne Novine*;
- Mirolad Labus, Chairman, Association of Young Journalists in RS;
- Sejad Luckin, Editor-in-chief of *Dnevni Avaz* and President of the Press Council;
- Frane Maroevic, European Commission Spokesperson;
- Dunja Mijatovic, Director of Broadcasting, Communications Regulatory Agency of BiH;
- Mirolad Milojevic, Association of Young Journalists in RS;
- Adnan Osmanagic, Director, Association of Electronic Media;
- Borka Rudic, Journalists' Association of BiH;
- Tanja Topic, Friedrich Ebert Foundation;
- Ljiljana Zurovac, Press Council of BiH.

This report was prepared in close cooperation with the OSCE Mission to BiH. It offers practical recommendations on how to improve freedom of the media in general and public service broadcasting in particular.

General overview

The general media freedom situation in BiH is commendable. The legal framework for the protection of freedom of expression is largely in place. Since 2002 BiH has fully decriminalized libel and defamation. It has, however, yet to complete the reform and unification of its three public broadcasters.

BiH has an advanced legal regime governing freedom of the media. The essential pieces of legislation are in place. Laws decriminalizing libel and defamation have, for instance, been in force in RS since June 2001 and in the Federation since November 2002.

The BiH media landscape is determined by the country's complex constitutional structures, the still ongoing post-war reconciliation process, and the recovering economy. Ethnic divisions are also reflected in the public broadcasting structure.

Since the end of the war in 1995, the international community has attempted to develop an independent local media and the legal and institutional framework necessary to protect and preserve that independence. A number of governments have invested significant sums of money to support the establishment of both private and public print and broadcast media, and related bodies, in BiH over the past decade. These same governments, together with a number of international organizations, including the OSCE Mission to BiH and OHR – worked on creating institutions such as the Communications Regulatory Agency (CRA) and the Press Council, with the aim to bolster the media's independence from governmental and political influence.

Today the CRA is responsible for licensing and regulating broadcasting and telecommunications, while the Press Council, a voluntary and self-regulatory body, deals with complaints about the print press. Currently, the OHR focuses its media-related efforts on a single media reform issue – the unification of the country's dual entity public broadcasters with the state public broadcaster. This will bring BiH in line with established European practice and it is also a precondition for the signing of a Stabilization and Association Agreement (SAA) with the European Union.

Overall, a high degree of media pluralism exists in the country. BiH has an elevated number of media outlets, particularly broadcast. The experts consulted estimated the number of broadcasters in BiH to be between 180 and 190. Some analysts consider this excessive for a country with a market of just over four million consumers of no high average income. The domestic press consists of six daily newspapers and 40 weeklies and monthlies.

Many observers, however, identified a growing uniformity of views in the broadcast media in RS, and ascribed the disturbing trend towards self-censorship not to legal or financial, but to political motives.

Because RS aimed its boycott specifically at the state-level public broadcaster, and because of the destructive role played by state-controlled broadcasters in the early 1990s in fueling the rush to war in the region, the Representative decided to make the public broadcasting system in BiH the focus of his report, together with the responsibilities of the authorities with regard to public broadcasting.

Recommendations on how to further strengthen freedom of the media in BiH, in general and for public service broadcasting in particular, can be found at the end of each chapter and in the conclusions of this report.

The boycott and the role of the RS authorities

The boycott: description of the incident

On 17 January 2007 journalists of the state-level public television service, BHT1, found themselves barred from entering the building where RS President, Milan Jelic, was holding a press conference. This move escalated an already ongoing dispute between BHT1 and the RS Government that began several days earlier, when RS Deputy Premier Anton Kasipovic officially announced on 12 January 2007 that government officials would no longer give statements or interviews to BHT1. The ban was attributed to an allegedly disparaging news coverage of the RS Entity Day on 9 January 2007, and the allegedly “hostile” treatment on BHT1 of both RS Prime Minister Dodik on 9 January 2007, and BiH Council of Ministers Chairman Nikola Spiric on 11 January 2007.

The RS government publicly characterized BHT1’s editorial policy as “politicized, malicious and unprofessional.” In response to these allegations, the network’s news editor, Amir Zukic, immediately denounced the government’s decision as “political interference in the editorial policy of a public broadcaster.” On 16 January 2007, the Steering Board of the Public Broadcasting Service dismissed General Director Drago Maric on the very day his term in that post would have ended. Maric had previously signaled his preparedness to continue his functions. However, the Board then swiftly appointed Mehmed Agovic to replace him.

The OSCE Mission to BiH expressed its concern over this chain of events, noting in a press statement on 18 January 2007 that the RS Government’s ban on contacts with BHT1 was “preventing the state broadcaster from fulfilling its role of contributing to an informed citizenry – something that is essential to any successful democratic state.”

On 30 January 2007, RS Deputy Premier, Anton Kasipovic, and new General Director of BHT1, Mehmed Agovic met and decided that RS Government’s boycott should be lifted and relations re-established with BHT1.

Endangering the free flow of information

The boycott and the incidents surrounding it prompted the invitation to RFoM to visit BiH; the reason for the visit was clearly related to this incident and not because media freedom in general was in danger in BiH.

The incident showed RS Government’s apparent failure to fully comply with the OSCE commitment assumed by BiH as a participating State to ensure the free the flow of information to the citizens of the country.

Denying access to a public broadcaster even for a moment poses concerns - all the more when the call comes from public officials - for it harbors the potential to constitute the first step towards censorship. Interfering with the free flow of information as a retaliatory measure is thus an unacceptable reaction by government officials under the terms of these commitments, even when they feel the media is misinterpreting or distorting their policies and views.

Governments are “information providing machines,” in accordance with these OSCE commitments. They therefore have a duty to provide equal treatment to all media. Public broadcasters in turn have the obligation to fulfill the vital function in a democracy of informing citizens regardless of their social, political or other affiliations in a timely and impartial manner.

During his visit, the Representative received assurances that the incident would not cement itself into “normal” governmental behavior. All the high officials who met with Representative stressed that it was an “isolated incident.” Several interlocutors from the media world also seemed convinced that “the Government had learned its lesson.”

Complaints mechanism

Media reporting is never perfect. This explains the need for mechanisms that redress mistakes and imperfections. BiH is fortunate enough to have one of the most advanced self-regulatory mechanisms in Europe. Complaints about broadcasting are sent to the Communications Regulatory Authority (CRA), which has the right to consider a complaint in any case where a given programme, advertisement or broadcast appears to have been biased, incorrect, offensive or harmful; to have endangered privacy, harmed the physical, mental or moral development of children; or to have incited racial, religious or national hatred.

All citizens, including officials, have the right to lodge a complaint. Public figures, however, also have the obligation to maintain a higher degree of tolerance for criticism than private citizens precisely because of their public role.

This complaints mechanism has been established long ago. It is widely used by citizens, institutions, organizations, public officials, political parties, i.e. by all interested parties. Ever since the Agency was established the public was informed of the complaint mechanism and the possibility of its usage. Over the years, awareness of using this mechanism has largely increased. By now, it is a well recognized system used by all communities as well as by government officials.

However, the recently elected RS Government has, to date, never lodged a complaint with the CRA, and not on this particular case. In the past, the CRA did receive complaints lodged by the previous RS government.

Using the legally-prescribed complaints mechanism would bestow many benefits: it would give moral redress to the complainant if his or her complaint were found to be justified; it would educate other media; and, thanks to the public nature of the proceedings, it would promote higher standards in broadcast journalism in general.

In a country like BiH, with a legacy of recent warfare, these redress mechanisms carry an even greater importance, for in such a precarious and still-sensitive environment, the legal redress of grievances becomes imperative as the only acceptable alternative to the less savory means employed in the past.

Endangering the free flow of information is a breach of BiH's OSCE commitments;

Under no circumstances should a public broadcaster whose mission is to inform all citizens regardless of their social, political or other affiliations be the object of a boycott by a government or governmental body;

If public officials feel offended or dissatisfied with media treatment, they should lodge a complaint with the relevant regulatory body, which in the case of broadcasting in BiH is the CRA;

Despite successful awareness campaigns in the past on how to lodge a complaint, the boycott incident shows that such efforts must be repeated as newly appointed officials come to power;

RFoM calls upon all public officials in BiH to exercise recourse to the law-prescribed complaint mechanisms to settle their grievances with the media. For a complaints mechanism to be credible, it is imperative that public officials make use of it;

Media professionals also have a duty to be accurate, objective, and accountable. The existing and independent regulatory mechanisms help preserve such important journalistic standards by disciplining those who violate them;

In order to function as a credible and remedial instrument, the political and financial independence of CRA must continue to be guaranteed.

Public Broadcasting: the situation at present

Currently BiH has three public broadcasters - BHRT, RTF BiH, RTRS – and three main commercial broadcasters – OBN, TV Pink BiH, and Mreza Plus. After years of domination, the public broadcasters have begun to lose their leading positions in the market. The market share of the three public channels fell to 32 per cent in 2005 and has continued to decline since then. The market share of the commercial networks, on the other hand, has steadily increased; they now have around 48 per cent of the market. The rest of the audience is watching foreign television stations and satellite television channels.

Although BiH's three major commercial networks are thriving, smaller commercial broadcasters face very difficult conditions. It is a puzzle how such a large number of broadcasters (around 20) are able to survive in such a limited market. All over BiH, many broadcasters exist without any apparent commercial viability and even without any apparent demand for their programming on the part of audiences. In addition there are several small size municipal radio and TV stations which are heterogeneous in size, programming, audience and financial back up. Governmental financial support for local media outlets throughout the country, especially at the cantonal and municipal levels in the Federation and Republika Srpska (RS) respectively, distorts both the market and potentially the editorial independence of these broadcast outlets.

The public broadcasting system

The media – and particularly the broadcast media – played an important, if destructive, part in the break-up of the former Yugoslavia and the war that followed. Political leaders who controlled the local outlets of the state broadcasting network of the former Yugoslavia used their broadcasts to promote ethnic nationalism and hatred and to arouse fear of the others. The international community thus finds it essential, in the interests of conflict prevention, to prevent the mass media from once again falling under the thumb of government officials or political party leaders.

In 2003 the European Commission issued a *Feasibility Study* outlining the conditions BiH would have to meet in order to enter into negotiations with the European Union on a Stabilisation and Association Agreement (SAA). This Study required BiH to make significant progress in sixteen areas. One of them was the establishment of a unified public service broadcasting system with state-level management.

Unfinished reform

The creation of a single, state-wide public broadcasting system required BiH, among other tasks, to adopt four laws. It has managed to enact only three of them to date. The absence of the fourth continues to block the completion of this new public broadcasting system.

The first law, on the **Public Broadcasting System of BiH (or System Law)**, outlines the structure, governance, financing, management of common resource base, and other responsibilities of the overall Public Broadcasting System. It was adopted on 5 October 2005.

The second law, on the **state-wide Public Service Broadcaster of BiH (or BHRT)**, was adopted on the 28th December 2005.

The third law, on the **entity Public Service Broadcaster of the Republika Srpska (RTRS)**, was adopted in May 2006.

The fourth and final is the law on the **entity Public Service Broadcaster of the Federation of Bosnia and Herzegovina (RTFBiH)**, passed in the Federation Parliament in June 2006. The Croat members of this Parliament, however, voted against it. After it was adopted in the upper chamber of that parliament, the House of Peoples, the Croat members exercised their right to block its entry into force on the grounds that it violated the Vital National Interest of the Croat constituent people. On July 16th 2006, the Constitutional Court of the Federation held that some elements of the law “do not guarantee that the Croat people will not be discriminated against in implementation of the rights guaranteed by the Constitution of the Federation of BiH.”

In October 2006, the Bosniak caucus in the Federation House of Peoples submitted an appeal to the State Constitutional Court, asking it to annul the Federation Constitutional Court’s ruling. They argued that this ruling contradicted a ruling handed down in July 2005 by the same State Constitutional Court, to the effect that the Public Broadcasting System Law did not endanger the Croats’ vital national interest. Also pending before the State Constitutional Court is an appeal submitted in February 2006 by the Croat member at that time of the three-person presidency of Bosnia and Herzegovina, Ivo Miro Jovic, in which he requested a review of the constitutionality of twenty articles of the Public Broadcasting System Law.

At issue, ultimately, is the long-standing Croat demand for an exclusively Croat-language public broadcaster. Many Croats argue that the Federation Television is for all intents and purposes Bosniak in nature and Bosnian in language, which leaves Croat views under-represented.

Stronger coordination and cooperation

Until now, the public broadcasting system of BiH has consisted of BHRT, the state-wide public broadcaster, and the separate entity broadcasters RTFBiH and RTRS.

The Law on the Public Broadcasting Service, however, stipulates the creation of the Corporation of Public Broadcasting Services (or Joint Corporation). This is to be an umbrella organization over all three public broadcasters. It is supposed to set development strategy, coordinate the technical and human potential of the three broadcasters, and harmonise the differing systems, policies, and procedures of the current three broadcasters. The law also establishes a board for the public broadcasting system that will run the Public Broadcasting Corporation, consisting of members selected by the steering boards of the three broadcasters.

The new law thus attempts to provide a framework for a unified system of public broadcasting. Some functions currently performed separately by the three public broadcasters would be centralised under this law. Among the most important of these are

the collection of licence fees and the sale of advertising space. The new law would also make the three public broadcasters a single legal subject, while still providing each with a certain degree of autonomy. This political compromise should enable cooperation among broadcasters that were, until recently, competitors.

Considering the large number of outlets surviving in such a limited and underdeveloped market, broadcasting is likely to undergo significant consolidation in the future;

RFoM calls upon the authorities of the Federation of BiH to complete the public broadcasting system reform by adopting the Law on the Public Service Broadcaster of the Federation of BiH (RTFBiH);

All constituent peoples and their political leadership should fully support this framework for a unified system of public broadcasting, thus creating conditions for closer cooperation among the three public broadcasters, as well as for the achievement of BiH's commonly-shared aspirations for closer integration with the European Union;

In order to complete the establishment of the BiH public service broadcasting system, the remaining public municipal radio and TV stations should be privatized.

Other PSB related issues

Overall sensitivity to be acknowledged

A reformed and unified public service broadcasting system can also contribute to reconciliation among peoples in BiH. In order to reach this result, however, the new public broadcasting system must do its utmost to offer programmes that take into consideration the prevailing sensibilities and sensitivities in the country and that foster ties among its peoples, including national minorities. It should, as far as possible, therefore become a country-wide and well accepted broadcaster, with joint newsrooms and an editorial staff of varied ethnic and national backgrounds.

The present paucity of viewers of BHT1 is thus worrying. It is evident that BHT1 is not widely regarded as the public broadcaster of choice. It would be preferable if it emerged as such when the unification of the public broadcasting system is completed. Even if this happens, however, BHRT should not seek to compete for viewers with commercial broadcasters. Instead, as the lone state-wide public broadcaster, it will have a fundamental obligation to broadcast programmes whose aim is to improve mutual understanding and not to reinforce one or the other of the competing identities and political visions in the country.

Joint Media Centre

The Public Broadcasting System Law foresees a joint newsroom and editorial operation. Three editors will jointly make decisions about programming and content. The goal is to send one camera to an event and not three, as now happens. This joint newsroom – or “Media Centre” – should help diminish reporting along ethnic lines.

This is probably one of the most promising features of the new Public Broadcasting System Law, as it remarkably embodies the notion of pluralism. For that reason it should be supported by all, without any reservation.

Submission of yearly activity report

Although required by law (Article 26.9 of the PBS law), the state-level public service broadcaster has to date not submitted an activity report to the BiH Parliamentary Assembly, the FBiH Parliament, and the RS National Assembly. Such annual reports are supposed to include financial information together with the results of the audit on its financial operations. The BHRT management board must become aware of all their obligations under the public broadcasting system law and accordingly comply with them. During his meeting with the Representative, the new BHRT Director did acknowledge the need for that.

Collection and distribution of license fees

The most important source of revenue for all three public broadcasters is the broadcast license fee, which costs currently six Marks (three Euros) per month. The second important source of revenue is advertising. As it stands now, the public broadcasting service’s budget derives 85% of its funds from licence fees and 15% from advertisement revenues.

RTFBiH receives almost twice as much revenue from advertising as do the other two broadcasters. According to the Law on the Broadcasting System of BiH, revenue from both advertising and license fees is now supposed to be collected centrally and then shared, so that BHRT as the state-wide broadcaster should get 50 percent, and RTRS and RTFBiH 25 percent each.

License fees are currently part of the bill for fixed telephone lines. The current rate of collection is only 65% of the outstanding sum; according to BHRT General Director, the year 2006 saw one of the lowest collection of fees in 11 years. Some estimate that a collection rate of 85% would be enough to cover needs. Others dispute this.

The future of the dual system

As the 25/25/50% income sharing agreement was the result of a hard political debate, RFoM is of the opinion that the new system based on centralized collection of fees should be first implemented in good faith so that the financial foundation for the completion of the public service broadcasting system can be laid.

But in the longer term, BiH's so-called “dual” media system, in which public and private broadcasters coexist, may not be financially sustainable in its current configuration, as it has been proven in other new democracies in Europe. This is because the fee collection for the public service broadcasting throughout the less wealthy OSCE area is in danger, as public broadcasters competing for a slice of the advertising market erode their own public-service programming. Should this trend reach worrying proportions in the future, RFoM would be ready to assist with further reform, including legal advice and best practices.

Digitalization

By 2012 broadcast media should be fully digitalized in Europe. BiH, however, lags significantly behind other states in Europe in introducing Digital Terrestrial Television (DTT). DTT penetration is still close to zero.

There is no evidence of a serious plan on the part of the authorities for making the shift from an analogue to a digital signal and there has been no public debate whatsoever on the digitalization of broadcasting, much less on the overall introduction of new media technologies. Here the CRA has a crucial role to play. Considering the challenging topography of BiH, which prevents any terrestrial broadcaster from economically covering one hundred percent of the country, the switchover from an analogue to a digital signal is imperative. Both public and commercial broadcasters should be allowed to use such signals without discrimination.

The EU is currently discussing a new directive on audiovisual services, which would include both classic television channels and other non-linear services. In order to further BiH's aspirations to become a member of the EU, the State Parliament should enact legislation sooner rather than later, in order to comply with these new rules.

Public broadcasters should consider programs that aim at improving mutual understanding and are respectful of cultural sensitivities;

RFoM recommends the earliest possible creation of a joint newsroom or Media Center, for this would help diminish polarized reporting along ethnic lines;

The public broadcasting service has a legal obligation to submit activity reports to the various parliamentary assemblies of BiH once a year and should, therefore, do so;

The system of collection and distribution of revenues raised by both advertising and license fee collection as prescribed in the new Public Broadcasting System Law is a step in the right direction and should be swiftly implemented;

At some future stage, a public broadcasting service that does not rely on advertisements for revenue at all is ultimately a better option for BiH;

A comprehensive plan for the digitalization of broadcasting, preparing the ground for the shift from analogue to digital terrestrial services, and for the introduction of other new media technologies should be initiated and actively debated in the very near future.

Recommendations

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