



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

09 December 2005

**The State of Media Freedom in the former Yugoslav Republic of
Macedonia**

Observations and Recommendations

The OSCE Representative on Freedom of the Media, Miklós Haraszti, visited Skopje, former Yugoslav Republic of Macedonia, on 26-27 October 2005. This was the Representative's first visit to the country. The trip was made in consultation with the Government and was organized by the OSCE Spillover Mission to Skopje in close cooperation with the Ministry of Foreign Affairs. The purpose of the trip was to assess the current state of media freedom in the country, especially in the context of a new broadcast law that was being discussed in Parliament at the time of the visit. A series of workshops on Internet and e-society organized by the local NGO *Metamorphosis* and the OSCE Mission was attended by the Representative as well as by his Senior Adviser Roland Bless. Additional research for the report was provided by Project Officers Christian Moeller and Arnaud Amouroux. The report was prepared with the assistance of the OSCE Spillover Mission to Skopje.

Miklós Haraszti met with government officials, parliamentarians, journalists, and representatives of non-governmental organizations. Among those he had talks with were:

- Xhemali Mehazi, Minister of Transport and Communications;
- Member of Parliament Tome Trombev, President of the Commission of Transport, Communications and Ecology;
- Zagorka Tnokovska, Ministry of Justice, Head of the Sector for State Administrative Electoral Systems and Administrative Jurisdiction;
- Malinka Jordanova, Chief of Cabinet to the Deputy-Prime Minister.

Other interlocutors for compiling this report included (in alphabetical order):

- Gazmend Ajdini, Representative of the International Research and Exchange Board (IREX), Skopje;
- Klime Babunski, Vesna Gogova, Pro/Media, Skopje;
- Roberto Belicanec, Executive Director Media Development Center, Representative of the Media Task Force of the Stability Pact for South Eastern Europe;
- Violeta Gligoroska, Program Coordinator, Foundation Open Society Institute;
- Viktor Grozdanov, Association of Private Electronic Media (APEMM);
- Konstantin Jovanovski, Press and Information Officer, EU – Delegation of the European Commission;

- Robert Popovski, Secretary General of the Association of Journalists;
- Gordana Stosik, General Director of MRTV (state broadcaster to be transformed into public service broadcaster);
- Zaneta Trajkoska (Managing Director), Bilijana Petovska (Program Coordinator), Institute for Media (MIM), Skopje.

General Overview

The general media situation is commendable notwithstanding several shortcomings that the Government hopefully is in the process of dealing with.

Overall, there is a high degree of media pluralism in the country, both in terms of quantity of media outlets and of different views that are represented. The experts consulted put the amount of media outlets at between 150 and 180 (the exact number is not available), believed by some analysts to be excessive for a country with a market of just over two million consumers.

The high amount of media outlets is also one of the reasons for the fragility inherent in the media system as a whole. As their economic sustainability is shaky, many of the media outlets are vulnerable and exposed to commercial and political pressure. A market consolidation would also assist the independence of the media.

Politicians of all ranks are regularly criticized in the media; independent TV and radio stations are outspoken in their comments concerning the authorities. The sometimes heated rhetoric of the crisis of 2001 has by now been toned down. This development was linked to the code of ethics that the media established as a part of self-regulation.

The legal framework for a free media is generally in line with OSCE commitments, the still missing pieces are in the works. The Government is given credit for respecting the laws. This, however, does not exclude occasional pressure applied on individual journalists, or commercial constraints hindering journalists from freely exercising their profession.

The fact that the Ministry of Communications and Transport introduced and the Parliament approved a new broadcast law is a welcome development and is bringing the country further in line with European standards.

Shortcomings related to the media situation include an un-clarified conflict of interests, as prominent political leaders are alleged to own major stakes in nation-wide broadcast media.

The lack of a law on access to information deprives journalism of the legal security needed to perform its public function.

Regarding criminal laws affecting freedom of expression, only recently two journalists were sentenced to prison terms for libel. Such sentences contradict the case law of the European Court of Human Rights.

Recommendations on how to strengthen freedom of the media in the country can be found at the end of this report.

Public Broadcasting

The new broadcast law introduces public service broadcasting – implementation of the law is crucial.

The new broadcast law covers public service broadcasting (both radio and television), the standards and the licensing procedure for commercial broadcasters, and will also establish the institution of a Broadcast Council as the independent regulator for the entire broadcast sector.

This type of overall legislation is commendable as it encompasses the democratization of the whole broadcasting system.

The draft law was reviewed by the Council of Europe. Many of its recommendations have been taken on board by the Government. Therefore, for the first time since independence, the legal basis for a genuine public service broadcaster along the lines of other European nations is in place. The law was enacted by Parliament on 9 November 2005.

Some of the features outlined in the law are: a mechanism for the collection of the license fees, the possibility to sanction copyright violations, and the possibility for the Broadcast Council to fine media outlets found in violation. These powers, according to most interlocutors, give the system the necessary strength.

However, some NGO representatives remained skeptical regarding the new law, mainly on two grounds.

First, the taxpayers' share of the public broadcaster's revenue, the fee, will be collected, after a transitory period, by the public broadcaster itself. As this fee by all means amounts to an additional tax, payable also by those who do not watch the public service broadcaster, difficulties in obtaining it are predictable, as is the case in most transitional economies. Until recently, revenue collection was linked to the electricity bills and the collection ratio used to be below 50%. It is unrealistic to assume that MRT will be more successful.

The second outlined problem, as some experts argued, is the track record of the Government in implementing other media-related legislation, such as the copyright law, the telecommunications law, or the stipulations regarding licensing and frequency allocation in the previous broadcast law.

Therefore, it is crucial for the government not to miss this window of opportunity for making the new broadcast law work, by ensuring its vigorous implementation from the very beginning. This would also include an extra effort in the collection of the fees needed for the functioning of the public service broadcaster, or considering an amendment to the new law in order to automate the financing.

Commercial Broadcasting

While MRTV has by now the legal basis to live up to its commitments as a public service broadcaster, the commercial broadcasting sector, however, needs a major overhaul.

There are approximately 125 electronic broadcasters, including 69 private radio stations, 3 of them nationwide, and 50 TV channels, 5 of them nationwide.

The new law will have dire consequences for some of the 29 local public broadcasters, as their survival will not be guaranteed by the law and alternate solutions will have to be found. The excess number of broadcast outlets in the country might justify this development. It might even offer an opportunity for some stations to continue as privately run local radios.

Licenses and frequencies for commercial outlets were not always obtained in a systematic manner based on the rule of law. Some of the older frequencies were reused, ad-hoc allocated, or simply occupied.

It is imperative for the Broadcast Council, as established by the new broadcast law, to clear up the legal situation concerning frequency allocation. This can be done by (re)-issuing the licenses in a transparent manner through public tenders based on a proper frequency allocation plan.

TV Sitel and TV Kanal 5

A conflict of interests in the broadcast media has to be resolved.

Although the ownerships of these two Skopje-based TV stations have never been revealed, it is widely believed that the two TV stations are owned by leaders of two political parties.

Neither hiding the ownership nor owning a TV station as leader of a political party is compatible with democratic media standards.

The ownership structure should be made transparent. If political leaders are the owners, it is imperative that they declare it. By internationally accepted standards of transparency, public officials are under obligation to state such assets.

The new broadcast law clearly addresses the issue of conflict of interest and transparency of ownership. However, the authorities will need the political will to enforce these regulations.

The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time in public office.

Copyright Violations Fuel Proliferation of Broadcast Sector
On its way to further European integration the Government should enforce copyright regulations.

The systematic violation of copyright rules and the non-payment of respective fees seem to be among the main reasons for the proliferation of commercial broadcasters.

Media outlets must be trained as to what constitutes a breach of copyright, and the difference between materials in the public and the commercial domain. For example, there is a common perception that anything accessed from the Internet can be freely used without concern for proprietary rights.

The Government should establish the needed capacities to enforce the copyright laws and to support the newly established Broadcast Council in implementing its own part in that respect.

The Print Press

The print press sector is not monopolized at the present time. However, for the sake of preserving media freedom there is a need for specific print media-related anti-trust legislation.

There are over one hundred publications regularly printed. On the positive side, there is no registration process for print media; however, for statistical and anti-monopolistic purposes there is a need for a consolidated and updated overview of existing print media outlets.

In a welcome development the Government stopped financing print outlets by 2004. However, the limited advertising market puts into question the financial background of much of the print press. In some cases it is not clear who or what are the financiers of print press outlets. There is a need for an ownership transparency regime as is the case with the broadcasting sector.

The most prominent foreign investment in the media sector was the takeover of three independent daily newspapers by the German publishing house WAZ in 2003. WAZ thereby obtained a sizable share of the market of nation-wide distributed quality papers, which has fuelled concerns of endangering pluralism in the media.

The presence of a major international company in a comparatively small market has, nevertheless, not led to a noticeable change in the editorially diverse orientation of these newspapers. It has resulted, as it should, in a significant influx of new marketing, technological, and distribution approaches.

The ongoing market consolidation process will inevitably lead to a danger of monopolistic ownership patterns which might restrict media pluralism.

The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of media-related anti-trust law, including provisions to limit cross-ownerships. The European Union's guidelines on

protective measures for 'external pluralism' in the media should be taken into account.

Access to Information

The public's right to know is not yet fully guaranteed. Legislation on access to information fell dormant several times. It should be revived.

Another missing element to complete media related legislation is access to information. It is vital to create an environment within the Government and the Civil Service that allows the media to perform their function, that is, to obtain information.

The time is ripe for the country to pass such a law, especially as the 1991 Constitution contains a clause guaranteeing the right to access to information. After a civil society initiative in 2003, the Government in early 2005 introduced a draft Access to Information Law. The latter was drafted with the assistance of the Council of Europe and the London-based NGO *Article 19*. After being reviewed in Parliamentary Committee it was returned to the Government and has been stalled since.

One of the cited reasons for not proceeding with the draft law in Parliament was the lack of funds for the classification review boards dealing with citizens' appeals in disputed cases of material declared confidential. As one local expert put it, "the lack of access to information has been reduced to a fiscal problem".

Without having passed the access to information law, the Government in 2004 passed a law on rules for classification, reversing the natural order. In the latter access to information is dealt with in a sub-chapter. Ideally, the future law on access to information should prevail over the law on classified information. The overriding principle should be that access to information for the public is constitutionally and legally guaranteed, except in some cases clearly defined in the rules of classification.

The overdue law on access to information should be passed as soon as possible. The Representative and the OSCE Mission in Skopje are ready to assist the Government in this endeavor.

Defamation and Libel

Defamation remains a criminal offence, as was demonstrated in November 2005 by two court rulings sentencing two journalists to prison terms.

One journalist, Zoran Bozinovski, was found guilty of criminal libel and was sentenced to one three month prison term and two six month suspended prison terms for pieces he published in the magazine *Bulevar*. Ira Protuger from *Channel 5 TV* was sentenced to three months suspended imprisonment on libel charges. The current provisions in force stipulate that libel and defamation can carry a sentence of up to three years in prison.

The two cases referred to were the first prison sentences handed down in several years. These rulings show once again that courts will apply such laws as long as these

offences remain criminalized, even in countries that have not applied such legal provisions for years or decades.

The Government should introduce the necessary legislative changes to decriminalize defamation and libel and transfer them into the civil domain of the law. The relevant case law of the European Court of Human Rights should be taken into account. The Representative and the OSCE Mission in Skopje stand ready to assist the Government in this endeavor.

Internet and e-Society, e-Education and e-Government

Prices for Internet usage remain too high for media consumers. Competition in the telecom sector is the best prerequisite for lower prices.

The country is engaged in various ways in the initiatives of the EU to better exploit the potential of information and communications technologies (*Lisbon Agenda, Electronic South East Europe* within the Stability Pact framework, etc). The Internet is unregulated, which is welcome from a freedom of expression point of view.

However, the findings of this Office during a series of Internet-workshops demonstrated that the number of Internet users – estimated at between 10 to 15% of the population – has not yet reached a level that allows to fully exploit the potential of the Internet for media purposes, as well as e-education, e-learning, or e-government. The reason is the comparatively high prices for subscribing to the Internet, which currently are at 30-35 Euros/month, a substantial amount for the local level of income.

Although the telecom sector has been liberalized, the benefits have not yet materialized.

The Government should complement its laudable efforts regarding e-education or e-society by increasing competition in the telecom sector through the full implementation of the Law on Electronic Communications passed earlier this year.

Recommendations

The media show a high degree of pluralism, both in terms of quantity of media outlets and of different views represented. The legal framework for a free media is in place, missing pieces are in the works. The Government is given credit for respecting the framework, which does not exclude occasional pressure being applied on individual journalists or commercial constraints hindering journalists from freely exercising their profession.

- ***It is crucial for the government not to miss this window of opportunity for making the new broadcast law work, by ensuring its vigorous implementation from the very beginning. This would also include an extra effort in the collection of the fees needed for the functioning of the public service broadcaster, or considering an amendment to the new law in order to automate the financing.***

- *It is imperative for the Broadcast Council, as established by the new broadcast law, to clear up the legal situation concerning frequency allocation. This can be done by (re)-issuing the licenses in a transparent manner through public tenders based on a proper frequency allocation plan.*
- *The most promising way to resolve a conflict of interest in the domain of media ownership is that of a blind trust, that is, leaving control over the assets to an independent administrator during the time in office.*
- *The Government should establish the needed capacities to enforce the copyright laws and to support the newly established Broadcast Council in implementing its own part in that respect.*
- *The Government should, under its obligation to proactively safeguard freedom of the media, start legislating in the domain of print media-related anti-trust law, including cross-ownership limitations. The European Union's guidelines on protective measures for 'external pluralism' in the media should be taken into account.*
- *The overdue law on access to information should be passed as soon as possible. The Representative and the OSCE Mission in Skopje are ready to assist the Government in this endeavor.*
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