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“The shared benefits of media self-regulation”

Ognian Zlatev

Managing Director, Media Development Center, Sofia
Board Member, National Council for Journalism Ethics, Bulgaria

During the recent years, the boom in the media markets in all countries of South East Europe has produced a whole new generation of young journalists rushing to join the professional community. This has resulted in an overall lowering of the professional level and in non-observance of basic and universally acceptable professional and ethical standards, especially in local and regional media. Hence, huge segments of the working journalists feel not protected which makes them vulnerable to pressure from media owners and prejudices their independence. Therefore self-censorship or even worse, court proceedings for defamation have become a landmark of the media environment in the region.

On the other hand, the increasing competition among the mushrooming media outlets has strained relations between them due to the limited advertising markets. The lack of liberal traditions in the entire SEE has largely resulted in an absence of rules of partnership, unfair competition, mutual suspicions and accusations of wrongdoing. Moreover, the existing conditions make the media financially unstable, create a volatile market of journalistic labor and turn professional standards into a purely wishful concept.

The countries of Southeast Europe show significant disproportions in the overall system of media regulation. Broadcast media are mostly regulated by special laws and regulatory authorities, which albeit formally independent, are often elected or appointed and financed by the main state institutions. Hence, the provisions of the broadcasting laws as well as the performance of the regulatory authorities have turned into matter of constant criticism, disputes and public debates. This “over-regulation” is in marked contrast to the absence of any specialized regulation of the print media market. The public is strongly averse to the idea of adopting a law on the press to eliminate the present inconsistency in media regulation.

At the same time the main legal standards guaranteeing freedom of speech and access to information if formulated, are framed in separate laws and their observance is regulated through the courts. Legal proceedings are prolonged, costly and require a lot of effort on the part of litigants. This not only postpones solutions and minimizes their desired effect, but also discourages attempts to resolve a given problem in a court of law.

The general knowledge of working journalists and familiarization with international practices have prompted some media outlets – not only the largest and national media but also some smaller regional ones – to introduce in-house codes of practice. Those internal codes or guidelines are an in-house secret, they are not part of the contracts of employment (where there are such) and cannot become a basis for a general model to follow. At the same time media representatives who declare that there are such internal codes of practice or guidelines at their working place say they are happy that they exist.

Media self-regulation has become an issue during the last years as on the one hand it is obvious that traditional regulation is insufficient to cope with all aspects of press freedom. Not only that it focuses mainly on electronic media while the de-regulated print press remains subjected to on-growing “tabloidization” and further profanization of content due to the dominance of purely market mechanisms in its development. Various corporate, economic and political influences still interfere in the regulatory bodies and impede the proper functioning of the media as a real forth estate. On the other hand, though existing and accepted voluntarily as leading principles and standards to stick to, self-regulatory practices continue to be applied in different scale (professional codes do not cover all the media and self-regulation bodies do not exist in all the countries of the region). Moreover, continuing violation of self-regulation questions the ability of the media to maintain fully its civic role. Thus, accusations remain that journalism in Southeast Europe still lags behind the developed Western democracies, cases with prosecuted journalists for libel and slander continue and mistrust and poor cooperation among media outlets, institutions and society in general blurs the image of the press.

Working as a key partner in a BBC World Service Trust-led international consortium MDC together with its partners succeeded to offer the Bulgarian media industry a Code of Ethics (2004) and to create a working system of self-regulation (2005) based upon the establishment of Broadcasting and Print Press Ethics Commissions. Comprised and elected only by key stakeholders of the media and maintaining the proper balance among editors/media owners, journalists/journalists associations and civil society representatives those press councils-type designed commissions enjoy high reputation and have the support of both the media industry and the audience. According to the overall general opinion in Bulgaria the adopted media self-regulation is expected to dramatically diminish the court procedures for libel and defamation held in the recent years against media outlets and journalists due the numerous tools and conflict-resolution mechanisms this system contains.

The Code of Ethics of the Bulgarian media was signed on 25 November 2004, at an official ceremony, by over sixty representatives of about 200 printed and electronic media, amongst which being the basic national, and many regional newspapers, the private national, and many regional TVs, the BNT, the BNR, the BTA, the Association of Bulgarian Radio and TV Operators (“ABBRO”), The Union of Publishers in Bulgaria, the Bulgarian Association of Regional Media, the Union of Bulgarian Journalists, the Bulgarian Media Coalition.

“National Council for Journalism Ethics” was established as a foundation in 2005 with its basic goal being the creation of a system for self-regulation of the media, through the implementation of a Code of Ethics and through providing solutions to disputes arisen between the media and the audience. The Foundation co-founders are the Union of Publishers in Bulgaria, the Association of Bulgarian Radio and TV operators (“ABBRO”), the Union of Bulgarian Journalists, the Media Development Center and the Bulgarian Media Coalition. The Foundation has two Standing Committees: Commission for ethics in the print media and Commission for ethics in the electronic media; the two Commissions consider the complaints against the infringements of the Code of Ethics.

The Code of Ethics covers both the print and electronic media, and contains the basic principles of journalist activity, which can be met in the ethical codes of European countries. The Code contains a Preamble and five main sections:

- I. Provision of authentic information to the public
- II. Collection and provision of information
- III. Editorial independence
- IV. Relations within the media and between the media
- V. Public interest

Provision of authentic information to the public. The media, which have signed the Code of Ethics shall undertake to provide the public with exact, verified, and non-misleading information, and to make difference between facts, comments and assumptions.

Right of Reply. Every person considering that a given media has published incorrect or misleading information, may request the publishing of a correction or of an excuse. The persons and organisations, which have been affected by incorrect or misleading publications, shall be entitled to a Right of Reply.

Pluralism of opinions. When making their comments and analyses, journalists shall do their best to present diverse points of view; when reporting disputes, they shall try to provide an opportunity to the parties affected to express their position.

Confidentiality of the sources of information. One of the basic principles of journalist activity, which is practically fixed in all codes – the right of journalists to keep their sources of information confidential - is also included in the document.

Collection and provision of information. The Code stipulates the main principle for the collection of information by honest and legal means, and without availing of threats and compulsion. In cases, where information of exclusive importance for the public cannot become collected by any other means, journalists may also avail of hidden cameras, microphones and other special technique, and they may cover their occupation; however, in such cases they shall mandatory state that the information has been derived by using such means.

Protection of private life. Respect of private rights u dignity. Journalists shall respect the protection of personal and family life of every person, and shall adhere to the good manners. The Code refers to the practice of the European Court of Human Rights in Strasbourg, pursuant to which public persons avail of lower level of protection of their private lives. Any publication of information concerning private lives, however, shall be permissible only if so imposed by the public interest.

Special attention has been given to the victims of crime. Information about them shall be announced reservedly, and with sympathy. Journalists shall undertake to respect the will of the people to remain undisturbed in their sorrow.

Presumption for innocence. The media shall not be entitled to qualify any person whatsoever as a „criminal”, before such person has been convicted by the competent court, and whenever the media have published information concerning any incriminations, the media shall undertake to also inform the public about the outcome of the court litigation.

Protection of minors. In their work, journalists shall take special responsibility to protect the rights of children. Publication of information about their private life shall only be permissible, provided that it is of considerable public interest. The „identity of children, which are in distress or have been affected by a crime, shall not be revealed, if such act could further harm them”.

Prohibition of discrimination. Art.2.5 contains a prohibition for the propagation of hatred, violence and any other form of discrimination whatsoever. Racial, religious, ethical and social affiliations shall not be designated, unless they are of material importance for the very meaning of the information.

Reporting Crime. Reporting Crime cannot be praising or sensational. The information about the actions of persons, who induce or use violence, shall be given in a reserved manner, and only if this is of obvious public interest.

Editorial Independence. Art.3.1 to Art.3.8 contain guarantees for the editorial and creative independence of journalists. Their activity shall be based on their internal convictions, and shall not be influenced from any political or economic pressures. Journalists shall not accept any personal, political or financial stimuli (Art.3.4) and shall be entitled to refuse to work in a particular journalistic material, which contradicts the letter and spirit of the Code.

With view to guaranteeing the provision for objective information, journalists shall not reflect any events whatsoever, in which they have their direct private interest, unless such private interest is expressly indicated in the publication.

Art.3.3 stipulates one of the basic principles of journalist work: clear distinction of the editorial content from any advertising or paid announcements.

Relations within the media and between the media. The Code of Ethics of the Bulgarian media is the first document to regulate also principles, based on which are the relations between the media: mutual respect and fair competition, compliance with copyrights, obligatory designation of the source media when using other media's materials, and professional solidarity.

Public interest. Art.5.1 stipulates that the rules and principles of journalist activity fixed in the Code may only be broken „provided that it unequivocally proves this is in the public interest”. In the meaning of the Code, „a publication shall be in „the public interest”, only if:

- It is in protection of the health, safety and security of the public;
- It allows for the prevention and uncovering of grave crimes and abuse with powers;
- It prevents the public from the danger of becoming seriously misled.

A review of the European, as well as of Bulgarian past experience in the establishment of self-regulation bodies shows that, what is of material importance for their success and efficiency, is their chosen structure and the issue of the legitimacy of the respective body. The failed attempts for formation of press councils, as well as the crises in bodies already in office, are mostly due the absence of balanced representation, respectively to the refusal – either by the owners or by the journalists – to take part in the work of such Councils.

Based on data about over 60 press councils as published in the website www.presscouncils.org two types of press councils may be distinguished with view to their members: mixed councils, which include journalists, representatives of the media owners, and representatives of the public; and councils, which consist of media professionals only – journalists and media owners (or only journalists). The tri-partite model, under which representatives of the three main parties in the process of communication – journalists, media owners, and the audience – are included as members of the press council, is considered most-balanced and efficient. The prevailing part of ethics commissions have been built on this principle.

The Bylaws of the Foundation “National Council for Journalism Ethics” envision the establishment of an Ethics Commission for the print media, and of another Ethics Commission for the electronic media – based on the tri-partite principle. Each Commission shall consist of twelve members allocated in three quotas of four members each: the quota of journalists, the quota of publishers/operators, and the so-called independent quota, consisting of representatives of the public.

Quota of journalists (4). Persons may be elected for members of the journalist quota, whose main activity is journalism. They are the representatives of the journalist practitioners, and shall be nominated and set up by the journalist guild itself. Their election is made at the General Meeting of the Bulgarian Journalist College for the printed media, respectively, of the General Meeting of the Bulgarian Journalist College for the electronic media. The General Meetings are formed by journalists on the payroll at the media, which have signed the Ethical Code, and by the representatives of the Union of Bulgarian Journalists. Each media is entitled to assign for the General Meeting one delegate for every 20 (for the printed media), respectively for every 10 (for the electronic media) from its journalists on the payroll. The delegates of the General Meetings shall be elected at the Meeting of the journalists on the payroll in each media, without any interference on part of the owners and managers of the particular media.

Quota of the publishers/operators (4). The quota of publishers in the Commission for ethics in the printed media is formed of three people, set up by the Union of Publishers in Bulgaria and one member by the Bulgarian Association of Regional Media. The quota of operators in the Commission for ethics in the electronic media consists of three members elected by the Association of Bulgarian Radio and TV operators and one member, set up jointly by the Bulgarian Telegraph Agency, the Bulgarian National Radio, and the Bulgarian National Television.

Independent quota (4). The strive for achieving political neutrality, balance of interests, and public representation in the members of the Commissions has also been applied in the mechanism for setting up of the so-called independent, or public quota. It consists of four representatives of the audience - persons with high public authority, who have their merits for the assertion of the freedom of speech in Bulgaria. Two of the members of the independent quota shall be elected by the General Meeting of the Journalist College of the printed, respectively of the electronic media, two members are assigned by the publishers, respectively the operators, while each of the two parties is entitled to put a veto on the nominations of the other party. In case the right to a veto has been exercised, a new nomination is initiated until reaching of a satisfactory nomination.

Both ethics commissions shall review, and resolve complaints related to publications in printed periodicals, respectively in the broadcasts of radio- and TV operators, by interpreting and applying the norms of the Code of Ethics of the Bulgarian media. Based on the cases reviewed, the Commissions shall establish the trends in the area of freedom of speech, and shall make recommendations for improvement of the standards of journalist activity.

Term of Office. Independence. The members of the Ethics commissions shall have a Term of Office of two years and may be elected for no more than two successive Terms of Office. They are independent in their actions and may not receive any instructions from the organisations, which set them up (Art.32 of the Bylaws of the National Council for Journalist Ethics). The members of the Commissions cannot be also members of the Board of the Founders of the Foundation.

Three hypotheses exist for the early termination of the term of office of the Commission members. Termination shall occur: on request of the member of the Commission; on request of the organisation, which set up the member – *ipso facto*; and by resolution of the Commission, in case of the occurrence of any type of incompatibility of the member.

Chairperson. The ethics commissions elect a chairperson and two Deputy-chairs, at their first sessions. Their election is made with a majority of 2/3 of the attending members, and the nominations must have received no less than one positive vote from each of the three quotas. The Term of Office of the Chairperson is one year; the position shall be occupied on the principle of rotation between the three quotas. The Deputy-chairs shall be elected, respectively, by the other two quotas.

The Chairpersons of the Commissions shall call and preside their sessions, and shall represent the Commissions before the public. Being the spokesmen of the respective commissions, they may explain their resolutions, may comment the issues related to the Code of Ethics and to the activity of the Commission; in addition, their releases shall be in compliance with the resolutions of the Commission and may not express their personal opinions.

Sessions. Resolutions. The ethics commissions shall be called for their sessions once a month, as a minimum. Their sessions shall proceed legally, if attended by seven members of the Commission, as a minimum. The Commissions shall take their resolutions by common majority of the attending members, except for the cases expressly designated in the Bylaws, where qualified majority is required. The resolutions of the Commissions, by which they announce their opinion on the complaints filed with them, shall be mandatory motivated.

Minutes shall be kept for each session, which Minutes shall contain information about the complaints reviewed and about the resolutions taken, the motives thereto, and the votes cast thereon. The members of the Commission, which have their special opinion on the cases reviewed and the resolutions taken, may ask for their special opinion to be attached to the Minutes.

The Sessions, on which individual complaints are reviewed, shall be closed sessions, as a rule. The Commissions may organise public discussions on issues related to journalist ethics and the improvement of the standards of journalism.

The reviewing of complaints filed with the Commissions, as well as the reviewing of any procedural issue not settled in the Bylaws of the Foundation is regulated in the Rules for proceedings of the Commissions, approved by the Board of the Founders.

Accessibility. Every person shall be entitled to file a complaint with the respective commission, if he/she considers that a publication, respectively a broadcast made has infringed the Code of Ethics; the Complainant does not have to be affected personally. The Commissions shall review all complaints free of charge.

Complaints shall be filed in written and must contain the name of the Complainant, must have a date and designation of the journalist material, which has infringed the Ethical Code, plus the media, where it was published. Where subject to the complaint is a material published in the printed media, a copy of the disputed publication must be filed with the Complaint. The Commissions shall not review anonymous complaints, neither any complaint against materials, published or broadcast over a year before the date of filing such complaint. No opportunity exists for the Commissions to approach particular case in their own initiative. They, however, may analyse the cases reviewed, and based on their analysis, may make recommendations for improvement of the journalist work.

Impartiality. Motivation of the resolutions. When reviewing the complaints, the members of the Commissions shall only be driven by the norms of the Code of Ethics, and by their own inner conviction. In cases, where a member's opinion on the case under review is different from the resolution of the Commission so taken, they shall be entitled to declare such difference and that it is entered in the Minutes. The members of the Commission shall not be entitled to make public statements and comments, the manner of which predetermines a future resolution.

Each of the participants in the procedure of reviewing the complaint may challenge a member of the Commission if doubting his/her partiality. The members of the Commission shall be entitled to challenge themselves alone.

Manner of establishing dialog. Before taking their resolution in essence, and in cases, where the Commissions have estimated a Complaint as being grounded, the Commissions shall do their best to establish a dialogue between the media and the Complainant, as well as to achieve amicable settling of the conflict and amicable elimination of the infringement of the Code allowed. In all cases, the affected media shall be provided with an opportunity to present its written opinion on the Complaint filed. Publishers and operators shall provide the respective Commission with copies of the publications or broadcasts, which are subject to reviewing by the respective Commission.

It is in the discretion of the Commissions to decide whether the complaints may be reviewed in the attendance of the parties interested, and further (on request of the parties) with the participation of experts or third interested persons.

Transparency. Each complaint filed with the Commissions is subject to entry into a register. The resolutions taken by the Commission and the motives attached thereto shall also be subject to

entry in the register and shall be made public by releases in the media, on the website, and in the newsletter of the Foundation.

Resolutions. 3 types of resolutions are possible under the complaints filed: resolution for rejection of the complaint – because of its being inadmissible or ungrounded; resolution, by which the Commission adjudges the complaint as grounded and admonishes or reproaches the media, or resolution taken through mediation (agreement between the parties affected).

The Commissions shall reject the complaints as non-permissible, where these do not comply with the requirements of the Rules (if anonymous, if not concerning issues of the journalist ethics, if not related to an editorial material and the like). The complaint shall be rejected as ungrounded, where the Commission, after reviewing it, decrees that no infringement of the Code of Ethics exists.

In case the Commission finds the complaint grounded, it may express to the respective media its disapproval (admonishment) or reproach. When selecting its sanction, the Commission shall undertake to consider the gravity of the infringement, whether any consequences exist for the Complainant resulting from the publication, as well as whether the media has undertaken measures for correcting the infringement, and for reducing its cases of infringing the Code. The resolutions of the Commission shall not be subject to appeal.

The publishers and operators, which have signed the Code of Ethics, shall undertake to publish in their issues, respectively to broadcast in their programmes the resolutions of the respective Ethics Commission, which has imposed the reproach. Reproaches shall be published, respectively broadcast in the next issue/broadcast of the affected media. Where the Ethics Commission considers that the dissemination of the information about the resolution so taken is not in the interest of the Complainant, it may release the media from the obligation for publishing it.

www.mediaethics-bg.org