

OSCE for Federal News Agency (FENA): Increased threats to media freedom, law reform and decriminalization of defamation are crucial

FENA

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1. What is the general assessment of the OSCE Mission to BiH regarding the state of the media and media freedoms in BiH in 2023, what are the current biggest challenges in BiH in this regard?

The OSCE Mission to Bosnia and Herzegovina (Mission) is very concerned about growing threats to media freedom in Bosnia and Herzegovina (BiH), noting the worsening of this trend in recent years.

Journalists in BiH regularly face violence and intimidation, and they are often subject to attacks, threats and lawsuits, which adversely impact their ability to report objectively and consistently and limit the right to freedom of media and expression.

Since the Mission began systematically monitoring the safety of journalists in BiH in 2019, we have recorded, on average, 30-40 incidents or attacks on journalists per year. In 2023, however, the Mission recorded over 50 incidents that included verbal and online threats, harassment and intimidation as well as cases of physical violence, confiscation and/or the damaging of equipment or property belonging to journalists, targeting and insults by public officials and politicians, and defamation lawsuits that may serve as form of strategic action against public participation (SLAPP). In addition to the above, the Mission is increasingly concerned with cyber-attacks on independent media outlets' websites and social media profiles.

2. Can you name some of the most drastic examples of media freedom violations in BiH in the current year?

As noted above, the current environment in BiH is hostile to media freedom. When public officials and leaders publicly threaten or insult journalists and the media in general, it sends a message that such behavior is not only acceptable but actually endorsed. As those media outlets

affiliated with certain political constituencies reinforce fear and mistrust and create divisions, the space in which independent journalists can operate continues to shrink, hindering their ability to fulfil a vital role in a free society. Compounding this, the weakness of the institutional response to media freedom violations and the crumbling of the rule of law means journalists have little meaningful recourse or protections.

The re-criminalization of defamation in the Republika Srpska (RS) provides a clear and stark example of regression when it comes to freedom of media and freedom of expression in general. This marks a deliberate step backwards, in particular in the context of the already poor state of media freedom in RS, with only a handful of free and independent outlets working in an inhospitable environment. The Mission has repeatedly stated that the re-criminalization of defamation runs contrary to BiH's international commitments and will have a chilling effect. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), with the support of the OSCE Office of the Representative on Freedom of Media (RFoM), provided formal [comments](#) to the amendments to RS Criminal Code re-criminalising defamation and called on the RS authorities to abandon this repressive effort. Unfortunately, the RS authorities disregarded this advocacy along with that of civil society, media organizations and other members of the international community. The Mission will closely monitor and assess the impact of these amendments and other restrictive measures, both in the RS and across the country.

Even as much justified focus has been placed on the re-criminalization of defamation in the RS, we cannot lose sight of the other growing threats and pressure on the media across BiH. Indeed, in both the Federation of BiH and Brčko District, journalists have faced threats of physical violence and destruction of their property as well as sustained pressures from politicians and institutions.

3. What are the legal regulations that need to be adopted as a priority or their changes made in the direction of improving the situation, taking into account that the strengthening of media freedom in BiH is among the 14 reform priorities?

While constitutional protections of freedom of expression and media freedom provide for certain safeguards, several additional laws that are needed to align BiH framework with European standards and bring the media landscape in line with current technology have been pending adoption for years. This includes legislation regulating electronic

communications and media in general, the work of the public broadcasting system, transparency of media ownership and advertising.

Legislation on free access to information and hate speech remains fragmented and unaligned with international and European standards. Provisions on data protection and access to information seem to be interpreted to give primacy to the protection of individual rather than public interest. The Mission has also noted a worrying trend of overregulating speech on the internet, including on social media, that threatens to disproportionately restrict media freedom in some parts of the country.

All media regulation must respect the principles of transparency, inclusivity and freedom of media.

If legislative reform is examined through the lens of the EU, the Mission and the OSCE RFoM, in close co-ordination with relevant authorities, are closely following legislative developments affecting media freedom and freedom of expression at the EU level in BiH. The European Law on Freedom of the Media (EFMA), currently in legislative procedure in the EU, would introduce new protective measures to combat political influence on editorial decisions, conflicts of interest and the surveillance of journalists. The EMFA further emphasizes the independent and stable financing of public broadcasting services, the transparency of media ownership, the allocation of public funds for information and awareness-raising campaigns, and media concentration.

The EMFA sets useful standards and benchmarks regarding an independent and transparent media. Furthermore, the financial sustainability of public broadcasters, their independence and quality must be strengthened.

Finally, any legislative reforms must be accompanied by effective institutional engagement and responses. Laws alone are insufficient without meaningful action. This includes, amongst others, effective judicial responses to attacks on the media.

4. To what extent and whether, in your opinion, is there any institutional processing of threats or attacks against journalists in Bosnia and Herzegovina?

As noted above, the Mission has worryingly observed consistent failures in the institutional responses to threats or attacks against journalists. Even those cases that are reported and prosecuted very rarely result in

convictions. Similarly, journalists' associations have observed limited progress in terms of institutional protections for journalists.

To ensure a full understanding of the nature and scope of these issues, the relevant governmental bodies should institute consistent and systemic monitoring systems, as provided for by an OSCE Ministerial Council Decision calling on participating States to establish national data collection, analysis and reporting mechanisms to cover attacks and violence against journalists. Having clear and consistent information is the first crucial step in ending impunity for crimes against journalists.

In addition, law enforcement agencies must conduct swift, effective and impartial investigations into acts of violence and threats against journalists. To support BiH in fulfilling these obligations, the Mission has partnered with the EU Delegation to BiH, High Judicial and Prosecutorial Council of BiH (HJPC BiH), the respective ministries of interior and journalists' associations to provide journalists facing safety risks additional access to institutional remedies and assistance. This includes the designation of contact points in prosecutor's offices and law enforcement agencies across BiH that serves as a network to support journalists and helps ensure proper institutional engagement when safety is threatened. Complementing the point above, this will also enable more consistent data collection and regular co-ordination between institutions.

The Mission will continue supporting the network through further facilitation of its work and capacity building activities, and the OSCE RoFM will enable a wider regional perspective and co-ordination on strengthening media freedom.

5. In what way can the OSCE Mission contribute to the strengthening of media freedom in BiH and what is the cooperation with journalist associations and other relevant actors of the journalistic profession?

Per its mandate, the Mission monitors and reports on human rights developments in BiH, including comprehensive monitoring of media freedoms, particularly in relation to safety of journalists, and fundamental freedoms more broadly. In doing so, the Mission works closely with the local associations of journalists, the BiH Press and Online Media Council, and the Communication Regulatory Agency of BiH. The Mission regularly shares its findings with relevant stakeholders, including the OSCE RFoM.

The Mission further supports the crucial work of BiH civil society organizations and citizens in ensuring that domestic institutions and legislation respect and reflect the country's human rights commitments.

The Mission also partners with the High Judicial and Prosecutorial Council of BiH (HJPC BiH) and the judiciary in supporting the implementation of the HJPC BiH Communication Strategy that aims to improve the transparency, communication and accountability of the judiciary. In 2023, this included a series of workshops bringing together the media and the judiciary to promote this strategy and facilitate discussion between these professional communities. These efforts will continue in 2024.

As noted above, the Mission calls for the review and, as necessary, reform of restrictive media laws, including to de-criminalization of defamation. In order to translate relevant laws and strategies into effective practice, the Mission advocates for and provides continuous professional development and training for journalists, police agencies and members of judiciary, including in co-operation with the entity centers for training of judges and prosecutors and the respective police academies.

In looking to the future, the Mission engages with students at law faculties throughout BiH to promote media law. In 2023, we supported the Third Annual Media Law School, organized and accredited as a program by the University of Sarajevo Law Faculty, for law students from all public faculties in BiH.

Together with the OSCE RFoM, the Mission will continue to support our partners across the spectrum in ensuring that independent and investigative media outlets can report on and address issues of public concern, such as corruption, transitional justice, and human rights. To that end, the Mission strongly remains committed to safeguarding the fundamental human right of freedom of expression and the critical role that journalists play in democratic societies.