



**Organization for Security and Co-operation in Europe
Secretariat**

PC.SHDM.NGO/38/06
18 July 2006

ENGLISH only

Conference Services

Please find attached the introductory statement by Ms. Ioana Avadani, Executive Director of the Centre for Independent Journalism, Bucharest, made at session 3 of the "*OSCE Supplementary Human Dimension Meeting - Freedom of the Media: Protection of Journalists and Access to Information*", Vienna, 13 and 14 July 2006.

MEDIA FREEDOM AND PROTECTION OF JOURNALISTS:

**Administrative
Measures**





There is the law and there is the implementation of the law.



While most of the countries in the region have adopted permissive legislation, its implementation to its full consequences is seldom the rule.

There is the law and there is the implementation of the law (2)

- **Access to information:**

- legislation adopted over the last years is not known:
- lack of internal mechanisms required under the law within the public institutions,
- discrimination among applicants;
- adverse secrecy legislation adopted post-FOIA.

There is the law and there is the implementation of the law (3)

- **Criminal prosecution of libel and insult**
 - modest steps in legislation (decriminalization of insult, but not of libel, eliminating prison terms);
 - still unconsolidated incorporation of the ECHR case law and practices;
 - arbitrary level of damages and compensations

There is the law and there is the implementation of the law (4)



Examples:

Turkey: Article 301 on "insulting the Turkish identity, the Republic, the State's organs and institutions" is in fact used by the judicial authorities to silence a certain kind of opinion.

Administrative measures and conduct that can influence the media functioning

- **Registration of the media companies:**

- the entry to the market is free, with no special provisions for the media companies;

Exceptions: Belarus, Moldova (as an option)

Administrative measures and conduct that can influence the media functioning (2)

- information on ownership is only apparently transparent: data are not checked for accuracy; data are “hidden” in the commercial registries and it takes time, resources and money to retrieve them;



Question:
Is a media registry really a good idea?

Administrative measures and conduct that can influence the media functioning (3)

- taxation is the same for all companies and industries. There are movements for reduced taxation in Bosnia & Herzegovina, Bulgaria, Croatia, Kosovo.



Example:

Serbia – print media charged 8% VAT (as compared to the general 18%)



Should “preferential taxation” be a way of recognizing the special status of media among other businesses?

Administrative measures and conduct that can influence the media functioning (4)

- **Licensing of broadcasters**

- a way to secure the proper administration of the airwaves seen as a public asset;
- a way to secure a free and competitive market, as precondition of the pluralistic media;

Administrative measures and conduct that can influence the media functioning (5)

- The liberal approach of the most governments has created overcrowded markets: Albania, Montenegro, Romania,



Should the states attempt to shape up and trim the market via the licensing process or should the market be left to itself?

Administrative measures and conduct that can influence the media functioning (6)

- The delayed action kept the market underdeveloped



Bulgaria: “The total absence of licensing over the past few years has placed the legitimate licensees at a disadvantage against the broadcasters who went on air without undergoing the official procedures”. (Media Sustainability Index, 2005)

Serbia: No regulation whatsoever for the prospective licensees to follow

Administrative measures and conduct that can influence the media functioning (7)

- The delayed action did not kept up with the growth of the media market. Many outlets are functioning illegally, making the post-factum regulation painful.



Albania: Penetration of digital TV is 20%, while there is no legislation in this respect

- Licensing is perceived as a highly politically influenced process and/or corrupt and non-transparent.



Albania: the licensing does not tie the growth of the media sector to the adherence to professional and legal standards.

Administrative measures and conduct that can influence the media functioning (8)

- **Accreditation of journalists**
 - as a precondition to entry and practice the profession;
 - as a “clearance” to access the HQ of institutions or special events;
 - abuses by states include: delay/refusal of accreditation for “non-aligned” media outlets, withdrawal of accreditation in case of negative coverage, excessive limitations imposed to the access in the public institutions;

Administrative measures and conduct that can influence the media functioning (9)

- **Discretionary allocation of state advertising:**
 - functions like hidden subsidies, to keep afloat or favor “friendly” media;
 - consumes unnecessarily the public funds;
 - keeps the state as a discretionary player on the market and affects fair competition;
- Countries affected: Albania, Kosovo, Macedonia, Moldova, Romania

Administrative measures and conduct that can influence the media functioning (10)



Example:

In 2005, Romania introduced special provisions securing the transparency and fair allocation of the state advertising. One year later, the transparency provisions became the rule for all public procurement. State advertising budgets decreased from EUR 14,7 million in 2004 to EUR 3,8 million in 2005.

Other forms of administrative measures

- Excessive controls (fiscal authorities, labor authorities, fire department, etc);
- Repeated sanctions and/or lawsuits directed against the independent media; “guided” court decisions;
- Harassment of journalists and media outlets on issues other than libel (ex: influencing the justice, threats to national security);
- Discriminatory treatment in dues and debts collection;
- Forced subscriptions to “friendly” newspapers;
- Discretionary release of permits for premises, kiosk, distribution network;
- Discriminatory distribution contracts/practices with state-controlled agencies (distribution networks, postal services).

The role of the international community

- Major changes in the legislation have been done under the IC pressures (EU, OSCE, CoE): Albania, Serbia, Montenegro, Macedonia, Romania;
- Strong influence on the market: Bosnia, Kosovo, Moldova, Montenegro



Kosovo: “An OSCE report recommended a reduction in the number of station but did not provide guidelines on determining who should survive”.
(Media Sustainability Index, 2005)

New kind of challenges:

- functional and balanced markets, with proper monitoring systems in place (circulation audits, audience measurements, anti-monopolistic legislation passed and enforced, viable independent watch-dogs);
- a knowledgeable political class and functional institutions, with adept public servants;
- a responsible ownership – media as a public service;
- The “digital revolution” – new media and new technologies that will reshape the very definition of the concept of mass-media.

Word of wisdom



“Several lies do not amount to a truth.”

Plurality and freedom have to be doubled by quality journalism and responsible professionals.

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