

DEMOCRACY AND HUMAN RIGHTS

# ROAD OF BOSNIA AND HERZEGOVINA TO THE EUROPEAN UNION: STEPS BACKWARDS IN AN ONGOING ODYSSEY

PRIORITY 12 AND LIMITATION OF FREEDOM IN 2023

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Just before BiH received candidate status, the European Commission recommended that BiH should be granted this status, with the expectation that eight steps would be fulfilled, one of which is guaranteeing freedom of expression and the media and protecting journalists, especially by ensuring appropriate judicial proceedings in cases threats and violence against journalists and media workers.



After obtaining the status of a candidate for the EU, freedom of expression and media freedom experienced a significant decline, perhaps the biggest in the past decade. It is clear that BiH not only did not fulfill Priority 12, but also went backwards in its fulfillment.



Journalists, media and activists can best see, feel and live this, while Bosnia and Herzegovina is still moving towards the European Union without fulfilling its priorities.



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# INTRODUCTION

The path of Bosnia and Herzegovina (hereinafter: BiH) toward the European Union (hereinafter: EU; the Union) began more than two decades ago, when various events took place. At the beginning of this century, Bosnia and Herzegovina expressed its desire for membership in the European Union; it applied for membership in 2016 and undertook to implement reforms at all levels of government; and it received a candidate status in 2022 after the EU approved this status for Ukraine and Moldova, primarily due to geopolitical issues and challenges, the most significant of which was the war in Ukraine.<sup>1</sup>

In 2019, the European Commission adopted the *Opinion on BiH's application for EU membership*. The Opinion states that BiH should achieve the required level of compliance with the criteria for membership, and especially with the political criteria from Copenhagen, which require the stability of institutions that guarantee democracy and the rule of law. In this regard, BiH must thoroughly improve its legal and institutional framework in order to ensure the fulfilment of certain key priorities in the areas of democracy/functioning, rule of law, fundamental rights and public administration reform.<sup>2</sup>

While BiH has indeed fulfilled certain less demanding requirements on its way to membership, the main question is to what extent the EU's 14 priorities have really been fulfilled, especially those related to fundamental rights.

*Priority 12* stipulates, *inter alia*, that it is necessary to **guarantee freedom of expression and the media and the protection of journalists**, especially by ensuring appropriate judicial processing of cases of threats and use of violence against journalists and media workers.<sup>3</sup>

Just before BiH received candidate status, the European Commission recommended that BiH be granted this status, with the expectation that the *eight steps* would be fulfilled, one of which is guaranteeing freedom of expression and the media and protecting journalists, especially by ensuring appropriate judicial proceedings in cases of threats and violence against journalists and media workers.<sup>4</sup> This underlined the obligation to have the respect of fundamental freedoms such as free expression, as well as the free work of the media and the protection of journalists, as the *conditio sine qua non* for joining the European Union.

In this analysis, we will discuss exactly how much freedom of expression has progressed or regressed in BiH in the past several years, whether 2023 was a good or bad year for this freedom in BiH, to what extent are the media free and protected, and which are the main obstacles in this regard in the country. In the analysis, we will not deal with the issue of ensuring the financial sustainability of the system of public RTV services, which is also an important issue for joining the Union.

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<sup>1</sup> *Zahtjev za članstvo Bosne i Hercegovine u Evropskoj uniji*, [https://www.dei.gov.ba/uploads/documents/zahtjev-original-hrv-pdf\_1604308434.pdf]; *Odluka Parlamentarne skupštine Bosne i Hercegovine o potvrđivanju i usvajanju Izjave Predsjedništva Bosne i Hercegovine*, [Službeni glasnik Bosne i Hercegovine, broj 16/2015, https://www.dei.gov.ba/uploads/documents/odluka-psbih-o-potvrđivanju-i-usvajanju-izjave-predsjednistva-bih\_1604308356.pdf]; *Komunikacija Komisije Evropskom parlamentu, Vijeću, Europskom gospodarskom i socijalnom odboru i odboru regija – Komunikacija o politici proširenja EU za 2022*, [Bruxelles: 12. 10. 2022, https://www.dei.gov.ba/uploads/documents/komunikacija-o-politici-prosirenja-eu-a-za-2022-godinu\_1674559632.pdf]

<sup>2</sup> *Mišljenje Komisije o zahtjevu Bosne i Hercegovine za članstvo u Evropskoj uniji – Saopštenje Komisije Evropskom parlamentu i Vijeću* – MKOZBIH 2019, [Brisel: 29. 5. 2019, https://archive.europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahtjevu-Bosne-i-Hercegovina-za-%c4%8dlanstvo-u-Evropskoj-uniji.pdf]

<sup>3</sup> MKOZBIH 2019.

<sup>4</sup> *Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 – Communication on EU Enlargement Policy* – CFCEP, [Brussels: 12. 10. 2022, https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/2022%20Communication%20on%20EU%20Enlargement%20Policy-v3.pdf].

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5 *Zahtjev za članstvo Bosne i Hercegovine u Evropskoj uniji*, [https://www.dei.gov.ba/uploads/documents/zahtjev-original-hrv-pdf\_1604308434.pdf]; *Odluka Parlamentarne skupštine Bosne i Hercegovine o potvrđivanju i usvajanju Izjave Predsjedništva Bosne i Hercegovine*, [Službeni glasnik Bosne i Hercegovine, broj 16/2015, https://www.dei.gov.ba/uploads/documents/odluka-psbih-o-potvrđivanju-i-usvajanju-izjave-predsjednistva-bih\_1604308356.pdf]; *Komunikacija Komisije Evropskom parlamentu, Vijeću, Evropskom gospodarskom i socijalnom odboru i odboru regija – Komunikacija o politici proširenja EU za 2022*, [Bruxelles: 12. 10. 2022, https://www.dei.gov.ba/uploads/documents/komunikacija-o-politici-prosirenja-eu-a-za-2022-godinu\_1674559632.pdf]

6 *Mišljenje Komisije o zahtjevu Bosne i Hercegovine za članstvo u Evropskoj uniji – Saopštenje Komisije Evropskom parlamentu i Vijeću – MKOZBIH 2019*, [Brisel: 29. 5. 2019, https://archive.europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahtjevu-Bosne-i-Hercegovina-za-%c4%8dlanstvo-u-Evropskoj-uniji.pdf]

7 MKOZBIH 2019.

8 *Communication From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 – Communication on EU Enlargement Policy* – CFCEP, [Brussels: 12. 10. 2022, https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/2022%20Communication%20on%20EU%20Enlargement%20Policy-v3.pdf].

# ROAD OF BOSNIA AND HERZEGOVINA TO THE EUROPEAN UNION: STEPS BACKWARDS IN AN ONGOING ODYSSEY

## 1. WHAT IS THE POSITION OF THE EUROPEAN UNION?

In its report from last year, the European Union emphasized that BiH has not made progress in solving the key priority of guaranteeing freedom of expression and the media and the protection of journalists, i.e. that the legal framework is not harmonized with European and international standards and that these standards are not being completely implemented. Thus, the report noted that political pressure, intimidation and harassment of journalists continued during the past year, including physical and verbal attacks, and that there was no corresponding institutional monitoring. That is why the state is given the task to ensure, among other things, the protection of journalists and systematic institutional monitoring of threats and violence against them.<sup>9</sup>

However, this year's report emphasized that not only was there no progress in this segment, but there was even a **setback** in guaranteeing freedom of expression and freedom of the media through the protection of journalists from threats and violence. Namely, this happened due to new laws, the most significant of which are the amendments to the *Criminal Code of Republika Srpska*, i.e. the re-introduction of defamation as a criminal offense in Republika Srpska (hereinafter: RS).<sup>10</sup>

When it comes to defamation under criminal law, in order to prevent a deterrent effect on public debate, EU member states should ensure that sanctions against defamation are not excessive and disproportionate, as stated in one of the *Recommendations of the European Commission*. In this sense, special attention should be paid to the Council of Europe's guidelines and recommendations, which refer to the legal framework for defamation. They encourage member states to remove prison sentences for defamation from their legal frameworks and to *prioritize the use of administrative and civil law* to deal with defamation cases, provided that these provisions have a less repressive effect than criminal law provisions.<sup>11</sup>

Member states should ensure that their rules applicable to defamation *do not have an undue impact* on freedom of expression, the existence of an open and free media environment and media pluralism. Also, member states should specifically review their legal frameworks applicable to defamation to ensure that prosecutors do not use existing terms and definitions against journalists or human rights activists in the context of evidently baseless or malicious lawsuits against participation of the public (SLAPP).<sup>12</sup> These rules should also be respected by BiH within the framework of harmonizing its law with the European *acquis communautaire*.

If we take a look at the situation in Bosnia and Herzegovina in 2023, the EU noted in its report that the amendments to the law, the way it was carried out in Republika Srpska when defamation was recriminalized<sup>13</sup>, seriously affect not

<sup>9</sup> Commission Staff Working Document – Bosnia and Herzegovina 2022 Report – Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 – Communication on EU Enlargement policy, [Brussels: 12. 10. 2022, <https://archive.europa.ba/wp-content/uploads/2022/10/Bosnia-and-Herzegovina-Report-2022.pdf>].

<sup>10</sup> Commission Staff Working Document – Bosnia and Herzegovina 2023 Report – Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 – Communication on EU Enlargement policy – CSWD 2023, [Brussels: 8. 11. 2023, [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_691%20Bosnia%20and%20Herzegovina%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf)].

<sup>11</sup> Preporuka Komisije (EU) 2022/758 od 27. aprila 2022. o zaštiti novinara i boraca za ljudska prava uključenih u javno sudjelovanje od očito neosnovanih ili zlonamjernih sudskih postupaka („strateške tužbe protiv javnog sudjelovanja”) – PK 2022/758, [Službeni list Europske unije, broj L 138/30, <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32022H0758&from=EN>], § 23.

<sup>12</sup> PK 2022/758, § 5 i 22.

<sup>13</sup> We are talking about the **recriminalization of defamation**, as the *Criminal Code of Republika Srpska* from 2000 defined defamation as a criminal offense in the part of the code defining criminal offenses against honor and reputation; *Krivični zakonik Republike Srpske*, [Službeni glasnik Republike Srpske, br. 22/2000].

only freedom of expression but also the environment for civil society. This restriction of freedom of expression and the media is not an isolated exception through amendments to the *Criminal Code*, as shortly after the criminalization of defamation, in September 2023, the *Draft Law on the Special Register and Publicity of the Work of Non-Profit Organizations* (hereinafter: the Draft; Draft Law) was adopted, targeting civil society organizations as “agents of foreign influence” if they receive funds from abroad. If it were to be adopted in its proposed form, it would mark another undeniably significant step backwards in EU accession and in observance of basic rights and freedoms.<sup>14</sup>

Further, the European Union in Bosnia and Herzegovina directly emphasized in the *Joint Statement* with the United Nations, the Organization for European Security and Cooperation (hereinafter: OSCE) and the Council of Europe that the criminalization of defamation is a step that goes against the international obligations of Bosnia and Herzegovina in the field of human rights, it is not in accordance with the European path of Bosnia and Herzegovina, nor with the 14 key priorities from the *Opinion of the European Commission*. In addition, in a separate *Announcement*, the Office of the Union in Bosnia and Herzegovina emphasized that the adoption of the *Draft Law on a Special Register and Publicity of the Work of Non-Profit Organizations* would bring Republika Srpska closer to authoritarian regimes, instead of the European family, as this *Draft* is in direct contradiction to the stated commitment of the leadership of Republika Srpska for advancement of European integration.<sup>15</sup>

This law-making practice not only affects the priority concerning freedom of expression and the media (12), but also the priority (11) which refers to the fact that BiH should ensure a favourable environment for civil society, especially by respecting European standards on freedom of association and freedom of assembly. Namely, although the overall legal and regulatory framework with regard to this criterion is largely in line with the European *acquis communautaire*, the adoption of a law that would target organizations and designate them as “agents of foreign influence” would represent another disappointing “and indisputable big step backwards”.<sup>16</sup>

<sup>14</sup> CSWD 2023.

<sup>15</sup> *Zajednička izjava UN-a, OSCE-a, Vijeća Evrope i EU u BiH o izmjenama Krivičnog zakona RS-a kojima se ponovo kriminalizuje kleveta*, [Sarajevo: 20. 7. 2023, <https://www.osce.org/bs/mission-to-bosnia-and-herzegovina/548941>]; *Kancelarija EU-a u BiH povodom Nacrta zakona o posebnom registru i javnosti rada neprofitnih organizacija u RS-u*, [21. 9. 2023, [https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/kancelarija-eu-u-bih-povodom-nacrta-zakona-o-posebno-registru-i-javnosti-rada-neprofitnih\\_bs?s=219](https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/kancelarija-eu-u-bih-povodom-nacrta-zakona-o-posebno-registru-i-javnosti-rada-neprofitnih_bs?s=219)].

<sup>16</sup> CSWD 2023.

## 2. WHAT IS THE GENERAL SITUATION ACCORDING TO RELEVANT RESEARCH?

When it comes to freedom of media and media work, they are not at the highest possible level in the whole of Bosnia and Herzegovina. According to Reporters Without Borders’ *World Media Freedom Index*, BiH had 65.43 index points in 2023 when it comes to media freedom, which places it in 64<sup>th</sup> place in the world. Last year, BiH had 65.64 index points, and 71.66 in 2021. This clearly indicates a step back in this respect, and it is most likely that a backward trend will continue in the following period, especially due to new laws aimed at limiting freedom of expression and freedom of media. In this way, Bosnia and Herzegovina is amongst the countries with problematic freedom of media.<sup>17</sup>

According to this research, the media operate in a *relatively favourable* legal environment, but in an *extremely unfavourable* political and economic milieu, so that journalists do not feel protected at all while doing their work. Politicians in the country regularly attack journalists and exert influence over public media and regulatory bodies, and there are large differences in media freedom across the country. Journalists themselves are most often exposed to verbal threats and attacks, as well as occasional physical attacks.<sup>18</sup>

In terms of freedom of expression, according to the *Report of the Article 19* organization, BiH was ranked 66<sup>th</sup> in the world in 2022. With 67 points, it is among the countries that are not completely open in terms of freedom of expression, but have certain restrictions. However, it is worrying that BiH is closer to countries where this freedom is limited, than to those where there is openness towards it, and that in one decade it has regressed from a score of 74 in 2012 to the current 67 points, with a possible tendency for further decline.<sup>19</sup>

According to the *2023 Report on Nations in Transition – Evaluation of the State of Democracy* by Freedom House, Bosnia and Herzegovina belongs to the transitional or hybrid regime with a total score of 37 out of a possible 100, which is one less than the score from last year and two from the 2021 score. Also, in the *2023 Report on Freedom in the World*, BiH has a score of 52 out of a

<sup>17</sup> *Global Score 2023*, [<https://rsf.org/en/index>]; *Global Score 2022*, [<https://rsf.org/en/index?year=2022>]; *Global Score 2021*, [<https://rsf.org/en/index?year=2021>]; *2023 World Press Freedom Index – Journalism Threatened by Fake Content Industry*, [[https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry?year=2023&data\\_type=general](https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry?year=2023&data_type=general)].

<sup>18</sup> *Bosnia-Herzegovina*, [<https://rsf.org/en/country/bosnia-herzegovina>].

<sup>19</sup> *The Global Expression Report 2023*, [<https://www.globalexpressionreport.org/#>].



possible 100, which is one less than in 2022 and 2021, and characterizes the country as partially free.<sup>20</sup>

According to the *2022 Democracy Index* published by *The Economist*, Bosnia and Herzegovina ranks 97<sup>th</sup> in the world, with a score of 5.00 (out of a possible 10), which places it in the lower section of the table of so-called “hybrid regimes”, and represents a worse result than the previous year (5.04), bringing it closer to the title of “authoritarian regime” (the closest authoritarian regime is in Angola with a score of 3.96). Countries with hybrid regimes are recognized by the fact that they only have *some elements of democracy*, and at the same time they are characterized by frequent electoral irregularities and the pressure of the ruling structures on the opposition. Regular attempts to subjugate the judiciary to the executive authority can be recognized in this type of governance, while also serious shortcomings in the political culture, functioning of the government as well as in the political participation of citizens are evident. The rule of law is very weak, but corruption, on the other hand, is widespread. The judiciary is not independent; journalists are being pressured on a daily basis, with civil society existing in a haze.<sup>21</sup>

According to the *2022 Rule of Law Index* published by the *World Justice Project*, BiH is in 75<sup>th</sup> place with a score of 0.51 (of possible 1), which is worse compared to the previous two years (0.52; 70<sup>th</sup> and 72<sup>nd</sup> place).<sup>22</sup>

20 *Countries and Territories*, [https://freedomhouse.org/countries/nations-transit/scores]; *Nations in Transit – Bosnia and Herzegovina 2023*, [https://freedomhouse.org/country/bosnia-and-herzegovina/nations-transit/2023]; *Nations in Transit – Bosnia and Herzegovina 2022*, [https://freedomhouse.org/country/bosnia-and-herzegovina/nations-transit/2022]; *Nations in Transit – Bosnia and Herzegovina 2021*, [https://freedomhouse.org/country/bosnia-and-herzegovina/nations-transit/2021]; *Global Freedom Scores 2023*, [https://freedomhouse.org/countries/freedom-world/scores]; *Bosnia and Herzegovina - Freedom in the World 2023*, [https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2023]; *Bosnia and Herzegovina - Freedom in the World 2022*, [https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2022]; *Herzegovina - Freedom in the World 2021*, [https://freedomhouse.org/country/bosnia-and-herzegovina/freedom-world/2021].

21 *EIU Report – Democracy Index 2022*, [https://www.eiu.com/n/campaigns/democracy-index-2022], page 67; *A Report by EIU – Democracy Index 2021: the China Challenge*, [https://www.eiu.com/n/campaigns/democracy-index-2021]; Joakim Ekman, “Political Participation and Regime Stability: A Framework for Analyzing Hybrid Regimes”, *International Political Science Review/Revue internationale de science politique*, [Sage Publications: 2009], page 9;

22 *WJP Rule of Law Index 2023*, [https://worldjusticeproject.org/rule-of-law-index/global/2023/Bosnia%20and%20Herzegovina/ranking], *WJP Rule of Law Index 2022*, [https://worldjusticeproject.org/rule-of-law-index/global/2022/Bosnia%20and%20Herzegovina/ranking]; *WJP Rule of Law Index 2021*, [https://worldjusticeproject.org/rule-of-law-index/global/2021/Bosnia%20and%20Herzegovina/ranking].

Therefore, the relevant reports of international organizations and institutions related to human rights, freedom of expression, media and other freedoms speak of how **BiH is regressing or stagnating** in many aspects: in some areas to a greater extent, in others to a lesser extent, while improvements are sporadic. If we look at the situation with freedom of expression and media freedom alongside other factors, such as the state of democracy or the rule of law, the situation in Bosnia and Herzegovina does not seem encouraging at all, both for the citizens and journalists who live and work there, and for the fulfilment of *Priority 12* by the state.

### 3. HOW DO FREE MEDIA FUNCTION IN AN (UN)FREE SOCIETY?

When we observe the functioning of the media and the freedom of media in Bosnia and Herzegovina, it could be summed that Bosnia and Herzegovina is going through a **worrying period of regression** due to a series of restrictive laws, hostile rhetoric and belittling of journalists by public officials, as well as other systemic challenges.<sup>23</sup>

Bad statistical indicators from various reports and indices are also confirmed by relevant domestic research conducted by media associations in Bosnia and Herzegovina. Thus, the *Western Balkan Journalist’ Safety Index* states that institutions in BiH continuously demonstrate *insufficient efficiency* in the investigation of attacks on journalists and media professionals: identification of the perpetrators is often missing, and prosecutors often close cases. Journalists who report attacks usually have limited access to investigative procedures, except when they actively put pressure on institutions or when journalists’ associations send specific requests, while information on the progress of cases at prosecutor’s offices and courts is often not available in a timely manner.<sup>24</sup>

In 2022, the helpline for journalists recorded 79 cases of violations of journalistic rights and media freedoms, including labour disputes, mobbing and defamation lawsuits. In addition, 31 cases of attacks, threats and pressures on journalists and media houses in Bosnia and Herzegovina were registered in the *Safejournalists.net* database in 2022. During 2022, 22 cases of death threats to journalists, verbal and other forms of threats, and political pressure on journalists and the media were

23 Jamie Wiseman, *Analysis: Backsliding in Bosnia and Herzegovina as Media Freedom Faces Myriad Challenges*, [Media Freedom Rapid Response, https://www.mfrr.eu/analysis-backsliding-in-bosnia-and-herzegovina-as-media-freedom-faces-myriad-challenges/].

24 Maja Radević, *Indeks sigurnosti novinara Zapadnog Balkana – Bosna i Hercegovina 2022 – Narativni izveštaj – ISNZB*, [Udruženje/Udruga BH novinari: 2023, https://bhnovinari.ba/wp-content/uploads/2023/07/Index-2022-BiH-BiH.pdf], stranice 6-7, 12 i 32.



recorded, and 7 attacks and threats addressed to media houses were also registered. A significant increase in political pressure and verbal threats, as well as hate speech in the online sphere, has been recorded. Also, there was an increase in hate speech against media workers by as much as 137%, and at the same time, the number of political pressures and verbal threats increased by 40% compared to the previous year. A considerable problem is that in most cases the attackers are not punished.<sup>25</sup>

In the wake of the formal beginning of restrictions on freedom of expression in 2023, there was also an attack on the cars of journalist Nikola Morača and the editor of Buka magazine Aleksandar Trifunović. In the overall atmosphere of fear that was created for the journalists, the President of Republika Srpska Milorad Dodik publicly accused the journalists of having staged the destruction of the cars themselves, even though a later investigation showed this was not the case even remotely. Accusing journalists and putting the blame on them has become a daily occurrence in the country. Unprocessed verbal attacks on the media, both from the highest authorities and by citizens, such as attacks on BN television, Buka, Capital, N1, O channel, eTrafika, Prometej... their editors, journalists, but also freelance journalists are a regular occurrence, which is particularly indicative of the situation. There was also a (still) unsolved case of physical attacks on activists from the Organizing Committee of the "Pride Parade", which also included journalists. In the reality of Bosnia and Herzegovina, this is not specific only for this year, as in the previous period there were verbal and physical attacks, insults and pressure on journalists and the media. There are also other violations of journalists' rights, such as the officials attempting to find out the source of information from journalists.<sup>26</sup>

<sup>25</sup> ISNZB, stranice 7, 19 i 36.

<sup>26</sup> Vid. više: *Napadi na novinare*, [Safejournalist, <https://safejournalists.net/napadi-na-novinare/?lang=bs>]; ISNZB, stranica 6; Beta, *Banja lučki novinar odbio policiji da otkrije izvor, pa proglašen za osumnjičenog*, [N1: 24. 2. 2023, <https://n1info.rs/region/banja-lucki-novinar-odbio-policiji-da-otkrije-izvor-pa-proglašen-za-osumnjicenog/>]; *Trifunović i Morača: Stvorena je atmosfera straha. Pitamo se šta je sljedeće?*, [Buka: 9. 3. 2023, <https://6yka.com/bih/trifunovic-i-moraca-stvorena-je-atmosfera-straha-pitamo-se-sa-je-sljedece/>]; Elvir Padalović, *Sramotno je okriviti novinare da su sami sebi uništili automobile*, [Buka: 10. 3. 2023, <https://6yka.com/bih/sramotno-je-okriviti-novinare-da-su-sami-sebi-unistili-automobile/>]; *Uhapšena osoba osumnjičena za oštećenje vozila banja lučkih novinara*, [Radio Slobodna Evropa: 16. 3. 2023, <https://www.slobodnaevropa.org/a/banja-luka-novinari-policija/32321364.html>]; *Dodikov novi napad na novinare i medije*, [Gerila: 17. 11. 2023, <https://www.gerila.info/dodikov-novi-napad-na-novinare-i-medije/>]; Dragan Maksimović, *Napad u Banja luci: „Jedan me udario flašom, drugi šakom”*, [19. 3. 2023, <https://www.dw.com/sr/napad-na-lgbt-aktiviste-i-novinare-u-banja-luci-jedan-me-udario-flašom-drugi-šakom/a-65039285>]; MCOonline Redakcija, *Milorad Dodik ne prestaje sa verbalnim napadima na novinare*, [Mediacentar: 13. 9. 2023, <https://media.ba/bs/vijesti-dogadaji-vijesti/milorad-dodik-ne-prestaje-sa-verbalnim-napadima-na-novinare/>].

If we look at the regulation of hate speech and death threats to journalists, there is a certain legal regulation in this regard; however, no significant progress has yet been made in terms of establishing an effective mechanism for reporting hate speech and death threats by institutions. Namely, journalists often first report threats and hate speech to specialized associations and their services, such as the Free Media Help Line, and then to the police. In most cases, the police react in a timely manner, although in many cases of online hate speech and hacking attacks on the media, the attackers remain unsanctioned.<sup>27</sup>

When it comes to the public's position towards media freedom in BiH, according to the *2023 Media Freedom in BiH* report, the majority of surveyed citizens believe that media freedom in the Federation of BiH (hereinafter: FBiH) is partially present or not at all, and a similar situation is also in Republika Srpska, where the majority of citizens believe that there is no media freedom. As many as 2/3 of the citizens of Bosnia and Herzegovina believe that politicians and political parties are the main violators of journalistic rights and freedoms. However, such an opinion is less present among respondents from the RS (37%) than among those from the FBiH (83.7%). The frightening findings of this report, confirming the failure to process verbal attacks on the media and journalists, show that every fourth respondent believes that an attack on a journalist *can be justified*, which is 16% more than the result obtained in 2022, while in Republika Srpska, as many as 74% of respondents justify attacks on journalists.<sup>28</sup>

Perhaps the best indicator of the attitude towards the media in Bosnia and Herzegovina is the impression given by representatives of the *Media Freedom Rapid Response* (hereinafter: MFRR), i.e. the *International Press Institute, Article 19 Europe, the European Federation of Journalists, Free Press Unlimited, Osservatorio Balcani Caucaso Transeuropa and the European Center for Freedom of the Press and the Media*, who, together with the Association of BH Journalists, met in October 2023 with representatives of the government, the media, the non-governmental sector, the EU and the OSCE in Sarajevo and Banja Luka. During this visit, it was pointed out that the legal security of journalists in BiH is threatened, that the recriminalization of defamation in the RS is retrograde, and that it violates the recommendations of international institutions that work on human rights. Also, special concern has been expressed due

<sup>27</sup> ISNZB, stranica 5.

<sup>28</sup> *Medijske slobode u BiH 2023 – Usporedni izvještaj 2015 – 2023*, [BH novinari, Prime Communications i Friedrich Ebert Stiftung Bosna i Hercegovina: april 2023, <https://bhnovinari.ba/wp-content/uploads/2023/06/FES-i-BHN-Istrazivanje-o-medijskim-slobodama-u-BiH-u-2023..pdf>],

to the fact that there can easily be an “overflow” of legal initiatives from Republika Srpska to the Federation of BiH.<sup>29</sup>

The MFRR pointed out that BiH has been stagnating for many years in its progress in terms of media freedom and freedom of expression, but also that **there has been an overall decline** despite the fact that BiH received the status of a candidate for EU accession. After reviewing the package of restrictive laws that have been adopted or are currently being drafted or discussed in Republika Srpska, the MFRR highlighted a major problem related to its criminalization. Namely, although the recriminalization of defamation is modelled on similar problematic laws from all over Europe, its impact in Republika Srpska is *exacerbated by the wider lack of independence of the judiciary and prosecutors*, and the law itself *violates* international human rights standards.<sup>30</sup>

Another legal initiative related to the drafting of a new media law in Republika Srpska, which is implemented in an insufficiently transparent process, without an appropriate structure or procedure for appointing a working group, may pose a special problem, which calls its legitimacy into question. A package of interrelated laws (criminalization of defamation, regulation for non-profit organizations and media law) aims to **further stifle the space for critical reporting and contributes to a wider atmosphere of pressure and isolation** among the journalistic community in Republika Srpska. When viewed together, the laws represent an **existential threat to the future of independent journalism** in the RS.<sup>31</sup>

However, the situation is not only problematic in Republika Srpska, as the rest of the country is not immune to the deterioration of media freedom. So, for example, the *Draft Law on Offenses Against Public Order and Peace in the Area of Sarajevo Canton* caused a storm among the media, whose imprecise solutions, according to legal experts, would bring more harm than good, limit freedom of expression and create an atmosphere of censorship, which represents a serious threat to the media pluralism. This draft law expands the definition of a public place to social networks and the Internet, prescribes penalties for presenting or spreading false news, as well as for disparaging state authorities, which leaves the door wide open for abuses and threats to freedom of expression. Looking at the draft, one gets an impression that the fight against hate speech and fake news requires much more

work and “effective tools adapted to the context, but also in accordance with international standards on freedom of expression”, without leaving too much room for abuse, which was not done in this case.<sup>32</sup>

The *Law on Freedom of Access to Information at the Level of BiH Institutions* also caused a great controversy, both among civil society and parliamentarians. The most controversial were possible abuses of restrictions on the right to provide information, as well as the independence of the Appeals Council.<sup>33</sup> Obtaining information is a very important segment of journalistic work, and preventing access to it by institutions is a violation of the public’s right to be informed, that is, to find out important information.

Although the situation was not ideal even in previous years, 2023 was not a good year for freedom of expression and media freedom in Bosnia and Herzegovina in terms of legal solutions, as well as in the terms of the relationship of institutions, politicians and citizens towards journalists.

#### 4. CASE STUDY: THE CRIMINALIZATION OF DEFAMATION OR HOW IS FREEDOM OF EXPRESSION SHACKLED

Freedom of expression as a fundamental human right is guaranteed both at the internal level in BiH, in the state and entity constitutions, as well as the international level in many instruments for the protection of human rights, such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* or the *Convention for the Protection of Human Rights and Fundamental Freedoms*.<sup>34</sup>

29 Anida Sokol, *Nettransparentne izrade zakona za medije u BiH*, [Mediacentar Sarajevo: 26. 10. 2023, <https://media.ba/bs/magazin-novinarstvo/nettransparentne-izrade-zakona-za-medije-u-bih/>].

30 *Bosnia and Herzegovina: Media Freedom in Survival Mode* – MFSM, [Media Freedom Rapid Response, <https://www.mfrr.eu/bosnia-and-herzegovina-media-freedom-in-survival-mode/>].

31 MFSM.

32 *Nacrt Zakona o prekršajima protiv javnog reda i mira na području Kantona Sarajevo*, [Vlada Kantona Sarajevo: 27. 4. 2023, [https://skupstina.ks.gov.ba/sites/skupstina.ks.gov.ba/files/nacrt\\_zakona\\_javni\\_red\\_i\\_mir.pdf](https://skupstina.ks.gov.ba/sites/skupstina.ks.gov.ba/files/nacrt_zakona_javni_red_i_mir.pdf)]; Lejla Gačanica, [Tendenciozni zakonski zalogaj u Kantonu Sarajevo, Mediacentar Sarajevo: 16. 6. 2023, <https://media.ba/bs/magazin-novinarstvo/tendenciozni-zakonski-zalogaj-u-kantonu-sarajevo/>]; MFSM.

33 *Zakon o slobodi pristupa informacijama na nivou institucija BiH*, [Službeni glasnik Bosne i Hercegovine, broj 61/2023].

34 *Ustav Bosne i Hercegovine* (Aneks IV Opšteg okvirnog sporazuma za mir u Bosni i Hercegovini), [pregovori započeti u Dejtonu 21. novembra 1995, a sporazum potpisan u Parizu 14. decembra 1995], II/3/h; *Ustav Republike Srpske*, [Službeni glasnik Republike Srpske, brojevi 21/1992, 28/1994, 8/1996, 13/1996, 15/1996, 16/1996, 21/1996, 21/2002, 31/2002, 31/2003, 98/2003 i 115/2005], član 25; *Ustav Federacije Bosne i Hercegovine*, [Službene novine Federacije Bosne i Hercegovine, brojevi 1/1994, 13/1997, 16/2002, 22/2002, 52/2002, 60/2002, 18/2003, 63/2003, 9/2004, 20/2004, 33/2004, 71/2005, 72/2005 i 88/2008], II/A/2/1/1; *Universal Declaration of Human Rights*, [A/RES/217, 1948], article 19; *Međunarodni pakt o građanskim i političkim pravima (International Covenant on Civil and Political Rights)*, [United Nations General Assembly, 2200A (XXI), 1966, Treaty Series, vol. 999], article 19; *Konvencija za zaštitu ljudskih prava i osnovnih sloboda (Convention for the Protection of Human Rights and Fundamental Freedoms)*, [Council of Europe, European Treaty Series Nos. 005, 009, 044, 045, 046, 055, 114, 117, 118, 140, 146, 155, 177, 187, 194, 204, 213 and 214], član 10.

When we talk about the area of the European Union, an extremely important document for the member states is the *Charter of Fundamental Rights of the European Union*. In relying on the constitutional traditions and international obligations common to the member states, it prescribes that everyone has the right to freedom of expression and this includes the freedom to hold one's own opinions, to receive and communicate information and ideas without the interference of state authorities and regardless of borders.<sup>35</sup>

Although freedom of expression is a fundamental right, it is not an unlimited right, so there is a possibility of limiting the right to freedom of expression for the sake of protecting the reputation or rights of others through the legal system of defamation. Bearing in mind this possibility, the Ministry of Justice of the RS proposed, and the National Assembly adopted, amendments to the *Criminal Code* to incorporate provisions on defamation and exposure of personal and family circumstances through the legal title that prescribes criminal offenses on the protection of honour and reputation.<sup>36</sup> Resistance directed towards this limitation of freedom of expression was publicly and loudly demonstrated by numerous media, non-governmental organizations, lawyers, activists and international organizations.

When it comes to EU countries, despite the fact that there are good foundations for freedom of expression in some of them, they do not meet all international standards on freedom of expression when it comes to the phenomenon of defamation. Namely, a significant number of the EU member states still regulate defamation within the framework of criminal laws and do not comply with standards and recommendations in the field of human rights related to freedom of expression. International human rights standards are based on the foundation of having defamation under criminal law as a **serious threat to freedom of expression**, mainly due to *the penalties that can be imposed*, but also *the fear of possible penalties and prosecution*.<sup>37</sup>

Advocates of the recriminalization of defamation in the RS often referred to the fact of the existence of defamation within the framework of criminal laws in EU

countries.<sup>38</sup> Nevertheless, the situation in Republika Srpska and the whole of Bosnia and Herzegovina is *significantly different* compared to the majority of EU countries, even though EU countries that still have criminal penalties for defamation should remove defamation from the scope of criminal law if they want to be *true supporters* of stronger protection of freedom of expression. Namely, defamation in Republika Srpska is *not criminalized* for the protection of the honour and reputation of individuals, but as a useful tool for limiting freedom of expression, media freedom and as a deterrent for those who would like to speak publicly against certain problems in society.

This can be clearly seen through the entire process of criminalization of defamation, which proceeded in a very authoritarian manner and in certain parts did not take into account the opinion of the general and expert public at all. The very process of writing the law began when it was announced via the Twitter profile of the president of the Alliance of Independent Social Democrats, the largest political party in Republika Srpska, who asked "the Government, i.e. the Ministry of Justice" to prepare new and amend existing laws. This kind of beginning of legal changes was not done in accordance with the regulations, which sent an image to the public that legal obligations mean practically nothing. In addition, regulations related to public participation and consultation in the drafting of regulations and other legal documents were not complied with.<sup>39</sup>

During the process of publicly issuing the *Draft Law*, many organizations requested the withdrawal of disputed provisions. However, their voice was not heard at all and the *Draft Law* was adopted by the National Assembly without a hitch. After the Draft was adopted, four public hearings were held regarding it in Banja Luka, East Sarajevo, Bijeljina and Trebinje. While the representatives of the Ministry of Justice insisted that such changes are necessary, *without explaining why this is so*, the main

<sup>35</sup> *Charter of Fundamental Rights of the European Union*, [Official Journal of the European Union, C 326/391], preamble, article 11; Dejan Lučka, *Tolerancija i njeni neprijatelji – Sloboda izražavanja i (ne)tolerisanje netolerantnih u demokratskom društvu*, [Friedrich-Ebert-Stiftung, Sarajevo: 2022], stranica 49.

<sup>36</sup> *Krivični zakonik Republike Srpske*, [Službeni glasnik Republike Srpske, brojevi 64/2017, 104/2018, 15/2021, 89/2021 i 73/2023], članovi 208a-208d.

<sup>37</sup> Dejan Lučka, *Treba li nam kleveta kao krivično djelo?* – TKKD, [https://dejanlucka.com/treba-li-nam-kleveta-kao-krivico-djelo/].

<sup>38</sup> Vid. „Obrazloženje Prijedloga zakona o izmjenama i dopunama Krivičnog zakonika Republike Srpske”, *Prijedlog zakona o izmjenama i dopunama Krivičnog zakonika Republike Srpske*, [Ministarstvo pravde Republike Srpske: 2023].

<sup>39</sup> *Twitter status Milorada Dodika*, [31. 10. 2022, https://twitter.com/MiloradDodik/status/1587051984506568704]; Dejan Lučka, *Zajedno protiv ograničavanja prava i sloboda*, [Inicijativa za monitoring evropskih integracija, https://eu-monitoring.ba/zajedno-protiv-ogranicavanja-prava-i-sloboda/]; *Smjernice za konsultacije u izradi propisa i drugih opštih akata*, [Službeni glasnik Republike Srpske, broj 86/2022]; *Pravila za izradu zakona o drugim propisa Republike Srpske*, [Službeni glasnik Republike Srpske, broj 24/2014]; *Inicijativa za preispitivanje Nacrta zakona o izmjenama i dopunama krivičnog zakonika Republike Srpske u pogledu primjene Pravila za izradu zakona o drugim propisa*, [Transparency International Bosna i Hercegovina, broj: 02-04(5839): 7. 3. 2023].

message of the citizens who attended the discussions was that the controversial articles must be withdrawn.<sup>40</sup>

After the public discussions were concluded, the text of the proposed law was drafted for second reading. In it, insult was removed from the basic text of the law, but defamation and disclosure of personal and family circumstances remained. Penalties for defamation were reduced, but the possibility of criminal prosecution remained, and the proposal in its new form was adopted by the National Assembly. The demands for the withdrawal of all disputed articles were not observed, and the fact that the public hearings were held only *pro forma* and that they represented a *thinly painted facade of democracy* was evident throughout the entire process.<sup>41</sup>

Many issues regarding these amendments to the *Criminal Code* remained unclear, so they were *not disclosed* to the public, e.g. who were the members of the working group that wrote the amendments, as well as whether the law may have been created outside the institutions, or whether it was really written within the Ministry, but no one wants to stand behind it as its creator.

So-called “general areas” were used to elaborate the need to criminalize defamation and exposure of personal and family circumstances, without viable legal arguments and a concrete explanation of the need for the amendments. An analysis of the current application of the civil law on protection against defamation has not been carried out, nor has it been indicated why civil law protection is ineffective, so that it would be necessary to transfer it to the criminal law sphere. Not even a detailed analysis of laws dealing with similar matters in the EU and the region has been performed.<sup>42</sup>

Relevant international institutions also gave their opinions on such amendments. The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association have **directly asked** the authorities of Republika Srpska to **withdraw the proposed amendments**.<sup>43</sup> Urgent comments were also

made on the *Draft Law* by the Office for Democratic Institutions and Human Rights of the OSCE, in which the authorities were invited **not to support the adoption of provisions** aimed at introducing “insult” and “defamation” into the *Criminal Code*. In addition, many organizations from different European countries that directly deal with the protection of human rights have also sent an open letter opposing the criminalization of defamation.<sup>44</sup>

The positions of the Parliamentary Assembly of the Council of Europe, the position of the OSCE Representative on Freedom of the Media, or the relevant practice of the European Court of Human Rights were not taken into account when writing and adopting the law, and the opinions of the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Special Rapporteur of the Organization of American States on Freedom of Expression were put aside.<sup>45</sup>

In short, the process of recriminalization of defamation **ignored the opinions of various European and international bodies** that criticized the imposition of criminal sanctions in cases of defamation. Although it was clear that the criminalization of defamation was **not justified** through public debates, various media appearances or at the parliamentary rostrum, and finally not even in the explanations for passing the law, **defamation was criminalized**.

Limiting the freedom of expression means to limit a fundamental human right. When rights protected by constitutions and international acts are restricted, non-compliance with procedures, speedy drafting of laws, failure to carry out necessary analyses, failure to provide adequate explanations, failure to accept the views of relevant international institutions and domestic and international organizations, as well as the professional public, is **unacceptable** in a society that wishes to be

<sup>40</sup> Dejan Lučka, *Javne rasprave - vrhunac slobode ili demokratska fasada* – JRVSDF, [Mediacentar Online: 8. 6. 2023, <https://www.media.ba/bs/magazin-novinarstvo/javne-rasprave-vrhunac-slobode-ili-demokratska-fasada>].

<sup>41</sup> JRVSDF.

<sup>42</sup> JRVSDF.

<sup>43</sup> Irene Khan, Clement Nyaletsossi Voule, *OL BIH 1/2023*, [Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association: 10 March 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicationFile?gld=27928>].

<sup>44</sup> *Urgent Comments on the Draft Criminal Offences Against Honour and Reputation in the Republika Srpska*, [OSCE Office for Democratic Institutions and Human Rights, Warsaw: 11. 5. 2023, <https://www.osce.org/files/f/documents/5/e/544543.pdf>]; *Open Letter from Civil Society Organizations in Support of Human Rights Defenders, Nonprofit Organizations and Media from Republika Srpska/Bosnia and Herzegovina*, [8. 5. 2023, <https://www.frontlinedefenders.org/en/statement-report/open-letter-civil-society-organizations-support-human-rights-defenders-nonprofit>].

<sup>45</sup> *Joint Declaration on Freedom of Expression and the Administration of Justice, Commercialisation and Freedom of Expression, and Criminal Defamation*, [The United Nation Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression: 2002]; *Resolution 1577 (2007) Towards Decriminalisation of Defamation*, [Parliamentary Assembly, Council of Europe: 2007]; TKKD.



called democratic and respectful of human rights. This specifically means that the issue of compliance with standards on entry into the European Union was not met with this restriction of rights, both in terms of *restricting the right to freedom of expression*, and in terms of *how this restriction was carried out*.

Moreover, the *authorities seem to have known* that criminal sanctions, compared to civil actions, have a *greater potential to generate a certain deterrent effect* (even an *intimidating effect*) on freedom of expression, and that defamation prescribed through criminal laws may be particularly susceptible to abuse in order to *silence opponents and critics of the government*, and **that is exactly why** they criminalized defamation.

A special problem is also the fact that although the final word remains, *de iure*, with the National Assembly when it comes to passing laws, the President of Republika Srpska, who has by far the greatest political power in Bosnia and Herzegovina, is *de facto* in charge of everything. Without his approval, it is impossible to adopt or amend any of the more important laws. This shows that great power is concentrated in the hands of one institution, which is actually managed by an individual, and that the Assembly serves only as a stage for maintaining the semblance of democratic procedures. This is a particularly serious problem when it comes to joining the EU, although it must be noted that certain member states of the European Union have very similar governance models.

## 5. CASE STUDY: “AGENTS OF FOREIGN INFLUENCE” OR HOW IS FREEDOM LIMITED

As we have already pointed out, a forceful attack on the media and freedom of expression in BiH also occurs through other regulations. In addition to the criminalization of defamation, the authorities in Republika Srpska have announced that they will proceed with the adoption of other laws, such as those that will prevent the spread of fake news and additionally regulate non-profit organizations and the media, so they have accordingly submitted to the procedure the *Draft Law on Special Register and Publicity of the Work of Non-Profit Organizations*. This *Draft Law* was adopted by the National Assembly on September 28, 2023. In the public, it is referred to as the “Law on Foreign Agents”, “NGO Law”, “Law on Agents of Foreign Influence”, “Law on Foreign Mercenaries”, etc.

The *Draft Law* provides for establishing a special Register of non-profit organizations in Republika Srpska that are financially or otherwise funded by foreign subjects as agents of foreign influence. Non-profit organizations

that should be recorded in the Register are associations and foundations, as well as foreign and international non-governmental organizations established and registered in Republika Srpska in accordance with the *Law on Associations and Foundations of the RS*, which are fully or partially funded by other countries, their bodies or their authorized representatives, international and foreign organizations, foreign nationals or registered non-governmental organizations financed from abroad.<sup>46</sup>

Should this law be adopted, it will practically **prohibit these non-profit organizations to engage in political activity**. Political activity is very *broadly defined* and it means any activity towards bodies, institutions or elected representatives of Republika Srpska or representatives of the RS in the institutions of BiH in terms of formulating, adopting or changing regulations and policies of Republika Srpska or in terms of political and public interest. *Almost any activity* of non-profit organizations that falls under e.g. advocacy activities or research can be thusly defined as political activity. These activities can range from initiatives to change laws, criticizing political decisions, to research into political processes. This could potentially include, as the Venice Commission and ODIHR/OSCE have said, any form of advocacy through activities such as participation in peaceful gatherings, giving statements to the media, participation in radio or television programs, publications, etc.<sup>47</sup>

New reports and the delivery of various documents to multiple parties are planned, which represents an unnecessary bureaucratization of procedures and the imposition of new obligations for which there is no basis, both in the standards related to the practice of freedom of association, and in practice, which represents an unnecessary burden on the work of associations and foundations. Additional burdens are also prescribed for these organizations, and the possibility of punishing and banning the work of non-profit organizations is foreseen, while the Minister of Justice receives significant powers.<sup>48</sup>

The *Draft Law* in its entirety and substance, as well as in specific individual provisions, **directly affects freedom of**

<sup>46</sup> *Nacrt zakona o posebnom registru i javnosti rada neprofitnih organizacija* – NZPRJR, [Ministarstvo pravde Republike Srpske, <https://shorturl.at/huDJL>], član 2.

<sup>47</sup> NZPRJR, član 3; *Joint Opinion of the Venice Commission and OSCE/ODIHR on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations*, [Venice Commission and OSCE/ODIHR: 9-10 June 2023, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)016-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)016-e)].

<sup>48</sup> NZPRJR, članovi 7-16; Dejan Lučka, *Šta tačno piše u tzv. „Zakonu o stranim agentima“?*, [29. 9. 2023, <https://dejanlucka.com/sta-tacno-pise-u-tzv-zakonu-o-stranim-agentima/>].

**expression and association**, as well as democratic forms of improving regulations and practices in Republika Srpska. The *Draft Law* is designed in such a way that a lot of it is not completely clear, it contains malleable norms that can be stretched according to the needs of individuals or institutions, and only with its application would we be able to see how they would be interpreted, which is, from a legal point, unacceptable. The adoption of the law is being justified by the need for greater transparency of the work of associations and foundations; however, the existing *Law on Associations and Foundations* sets most of the provisions that are presented as reasons for the adoption of the new regulation, while other laws determine other items related to the work of non-profit organizations.<sup>49</sup>

The provisions of the *Draft Law* are unclear, unspecified and insufficiently explained, and they also contradict the existing laws, the constitutions of BiH and RS, international instruments for the protection of human rights, as well as the practice of international bodies, such as the European Court of Human Rights. The provisions of the *Draft Law* are contrary even to the *Rules of Procedure of the National Assembly*, the body that should pass this law (*sic!*).<sup>50</sup>

Perhaps the crucial thing from the *Draft Law* is that the targeted organizations are labelled as “agents of foreign influence”, stigmatizing certain associations, which will directly affect their operations, and could discredit their activities in the eyes of the public. At the same time, the stigma of “agent of foreign influence” can lead to physical attacks on members of stigmatized associations and their premises, because an **atmosphere of fear has already been created and is still growing** in Republika Srpska. Thus, citizens are already being incited against the civil sector and the media with accusations that they are undermining the state, the authorities and the ruling parties in the RS, by calling activists and journalists “traitors”, “enemies of the Serbian people” and “foreign mercenaries”. The provisions contained in the *Draft Law* would only reinforce this.

Passing such a law would represent a direct blow to many independent media that operate within various associations. Namely, a number of the media operate within non-profit organizations and receive their funds through various projects. Hence, these media would be targeted by the public as foreign agents. As the part of

the media that operates through associations achieves its activities through international projects and aid from abroad, labelling them as “agents of foreign influence” would only further complicate their work, and simultaneously lead to new attacks on the media and media workers, in order to label them as someone who uses “media propaganda” to work against the interests of Republika Srpska, and in favour of their “instructors” from abroad, which directly calls into question the independence of those media.

The reasons for the adoption of the law, i.e. the explanation in the *Draft Law*, is very terse and poorly written and does not contain any explanation of the necessity to pass the law, as there is already a legal regulation of these issues. The foreign origin of the association’s funding in itself *does not represent a legitimate reason* for different treatment towards it, and if there is no concrete further justification, it is **contrary to the prohibition of discrimination** from international instruments for human rights, as well as domestic constitutions and other regulations. The wording used in the *Draft Law* goes beyond the provision of financial resources and refers to any other type of assistance, which may include, as the Venice Commission and ODIHR/OSCE state, the simple provision of equipment or services, or more informal forms of support, such as providing speakers for a conference or even providing information. Unclear and ambiguous wordings, *inter alia*, make the *Draft Law* a law that cannot be sufficiently predictable in terms of e.g. what funding and other types of assistance could qualify associations and foundations and related obligations and prohibitions.<sup>51</sup>

Together with the criminalization of defamation and the announced law that would regulate the media, taking into account the lack of transparency surrounding it, this *Draft Law* represents a set of restrictive regulations for citizens, freedom of expression, freedom of association, media and media freedoms. It is clear that the purpose of the *Draft Law* is to send a message to citizens that the targeted associations are enemies of the state. If it is adopted, it will certainly represent a setback in terms of fulfilling *Priority 12*. However, what is much more important, it will **signed off and allow writing proscriptions** for all those who will be targeted as foreign mercenaries, domestic traitors, agents, enemies, destroyers of the state and people... which will threaten the physical integrity of individuals, their free expression, the work of organizations, association, but also freedom itself.

<sup>49</sup> Vid. *Zahtjev za povlačenje Nacrta zakona o posebnom registru i javnosti rada neprofitnih organizacija* – ZPNZPR, [24. 10. 2023, Banjalučki centar za ljudska prava]; *Zakon o udruženjima i fondacijama Republike Srpske*, [Službeni glasnik Republike Srpske, brojevi 52/2001 i 42/2005].

<sup>50</sup> Vid. ZPNZPR; *Poslovnik Narodne skupštine Republike Srpske*, [Službeni glasnik Republike Srpske, broj 66/2020].

<sup>51</sup> Vid. ZPNZPR.



# INSTEAD OF A CONCLUSION: FREEDOM AS A CONVENIENT WORD

At the beginning of November 2023, the European Commission adopted the *2023 Enlargement Package*, assessing the current situation and the progress achieved by certain countries on their way to joining the European Union, including Bosnia and Herzegovina.<sup>52</sup>

The Commission recommended the opening of accession negotiations with BiH, but only when the necessary degree of compliance with the membership criteria is achieved, which means that efforts should be made to fulfil the key priorities from the *Commission's Opinion* from 2019. This means that BiH still has a long way to fulfil various priorities. So far, little has been accomplished, and as things stand, tectonic changes are unlikely to occur in the future.

However, as we have seen in this analysis, which was also confirmed in this year's EU report, there has been a **setback** in terms of fulfilling the priorities related to guaranteeing freedom of expression and freedom of the media through the protection of journalists from threats and violence and ensuring the financial viability of public RTV system.

The entire process of passing laws in Republika Srpska, first the amendment of the *Criminal Code* by criminalizing defamation, and then the adoption of the *Draft Law* targeting non-profit organizations and making it difficult for the media to operate, are certainly points that should at least be *recorded as minuses* in terms of accession of BiH to the European Union.

However, the narrative of the accession to the European Union is interesting in that the path to the Union seems to lead to the *tacit approval of reducing/limiting the rights of citizens* in Bosnia and Herzegovina. Thus, there were concerns were expressed and certain steps taken against these changes by the EU, but the impression is that the European Union **did not excessively advocate** for retrograde laws not to be adopted. Whether it is due to the political situation in Bosnia and Herzegovina, geopolitics in Europe, various political agreements or

something else, cannot be said with certainty. However, the fact remains that the laws were adopted, citizens' rights are limited, the media operate in an unfavourable atmosphere, and BiH continues its path towards the Union.

After obtaining the status of an EU candidate, one could logically expect that the place for freedom of expression and freedom of the media would expand, or that the respect for rights and freedoms would improve. However, the exact *opposite* happened, and freedom of expression and media freedom experienced a **significant decline**, perhaps *the biggest* in the past decade. It is clear that BiH not only did not fulfil *Priority 12*, but also went backwards in its fulfilment. That is why it remains an open question how much freedom of expression and media freedom in Bosnia and Herzegovina **actually matter to the European Union, and whether "freedom" is just a convenient word for general use or a principle on which a society should rest**. If the latter is the case, it is slowly beginning to be *chained in shackles in Bosnia and Herzegovina*. Journalists, media and activists can best see, feel and live this, while Bosnia and Herzegovina is still moving towards the European Union without fulfilling its priorities.

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