

INDICATOR I: A SYSTEM OF REGULATION AND CONTROL CONDUCTIVE TO FREEDOM OF EXPRESSION, PLURALISM AND DIVERSITY OF THE MEDIA

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SUMMARY

After leaving the former federation in which the system did not encourage freedom of expression, Croatia faced a long road to ensuring the respect of basic human freedoms. First the legislative framework had to be changed and conditions needed to be created for the development of a free democratic society in which the government would not sanction the exchange of information and the open expression of opinions. The ruling set of the nineties, led by the HDZ (Croatian Democratic Union) with Dr. Franjo Tuđman, changed the legislative framework and allowed freedom of speech in this way; however, the new laws were hybrids of the old Yugoslav laws. Thus immediately after the establishment of independence, the Constitution, as the supreme act of the state, granted all the rights of freedom of expression, exchange and disclosure of information, however, other laws pertaining to these freedoms foresaw an entire range of exceptions and sanctions that brought into question the constitutional provisions on the freedom of speech. One way of limiting freedom of speech was through media processes against journalists, i.e. what are considered to be indirect attempts at censorship, and which found a foothold in the media laws that were meant to punish offences, such as, for example (the often-used), mental anguish.

It took all of the way until 2003 and the democratic change of government for Croatia to welcome a law which would resemble media law as it is known by developed democratic countries. The Media Act of 2003 was initiated by a coalition government and with minor modifications, was confirmed in 2004 and is still in effect today. This law is not controversial in the sense of the freedoms that it guarantees, however, it is disputed in its application in practice, and this is especially applicable to the rights of journalists for whom the Media Act guarantees the right to participate in decision-making in the newsroom, which in practice does not work. Most newsrooms either have no statute that is provided for by this law at all, or if they do, it does not mention journalists nor do journalists have representatives in the decision-making process.

Problems are not lacking on the issue of the right to information either. Even though in Croatia most information is not classified as secret and therefore is not inaccessible to the public on this basis, information is still not given to the media and to the public. By law, the civil service must provide information to journalists in the 'appropriate amount of time', however, the law does not provide a definition for what this appropriate amount of time is and in turn, this ambiguity is largely exploited. Although the law provides for such a possibility, in practice it is almost impossible for example, for a ministry to forward a request for some clarification to another ministry.

Problems are not lacking either on HRT, the public television, which experienced the most law changes. However, despite modifications and an acceptable law which regulates the operation of public television, the pressures on journalists and editors are still present and it seems that in 2008 and 2009 the situation became worse. What happens is that some programs are not aired because of the topics that they are meant to deal with and that journalists and editors are fired, receive warnings or they even have their benefits and wages reduced. In some cases, sanctions were even placed on editors who only expressed solidarity with their

colleagues who were deprived of their rights. In addition, the problem of the appointment of the HRT Program Council, which was assessed as non-transparent, remains, and this problem has not been solved despite pressure from the EU.

There is a similar problem with the Electronic Media Act, which is also non-transparent in the regulation of appointment of members of the Council for Electronic Media, and despite objections from the EU and the harmonization of these laws in 2009 this problem has not yet been resolved.

Within the private media sector there is a problem with ownership structure and ownership ties to politics. That is, according to the legislative framework, the owner of a Croatian media outlet can be anyone, and a journalist can be anyone whom the owner wants to hire. In this way a pyramid is formed, at the top of which is the owner who controls the media, and further down an editor in chief, editors and journalists, and employees who receive orders in chain from the top. The owner may have political connections and may realize private interests through the media which he owns, and media workers can do little to resist the pressures. Those who try often end up unemployed, and it is difficult to achieve restitution of rights as a violation of the law under the Labour Act because this is difficult to prove, and moreover, there is the problem of pressure on the judiciary.

Civil society remains perhaps the biggest stumbling block on the issue of media law and the independence of the media. That is, civil society played a role in preventing the extinction of Radio 101 and in the democratization of the media landscape in the nineties, but after this all of the efforts of civil organizations for greater inclusion in the media system (especially in the oversight system) have remained without success.

One major improvement that has been made on the issue of media freedom is the abolition of prison sentences for journalists for the criminal acts of libel and defamation, an area in which Croatia has taken the initiative ahead of many developed countries of the EU who do not have such provisions and additionally, the protection of sources of information, something that European countries also lack.

The conclusion of this work is that Croatia, despite significant progress regarding media legislation, is still a long way from securing true freedom of the media that will not only be guaranteed by the law declaratively but also truly be applied in practice. The problem of ownership structure and the preference of politicians, non-transparent (often politically motivated) selection of members of the Council which should monitor the media and ensure their independence, and the exclusion of the public and civil society from the process of making laws, are large problems that the Croatian legislature, but society as well, still need to solve. In addition, the issue of the culture of public administration which will consider it necessary and binding to provide information of public importance to the public and journalists is a burning problem which will first require a change in the mental awareness of public administration. This will be possible only when the public itself realizes that it has the right to know which decisions are being made and when that same public, through representatives of civil society, begins to work towards this direction more intensively.