

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



This edition of Global Information Society Watch is dedicated to the people of the Arab revolutions whose courage in the face of violence and repression reminded the world that people working together for change have the power to claim the rights they are entitled to.

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CROATIA

FIGHTING FOR A FREE MEDIA



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Introduction

The reorganisation of the Croatian media landscape began in the early 1990s, with the transition from the socialist system to a democratic political system and liberal market economy. Yet building a legal environment that enables a free media given an authoritarian past is a considerable undertaking. The criminalisation of journalistic work, including defamation and libel laws, is generally considered to be a direct threat to media freedom. In 2011 the government proposed changes to the Criminal Code that included severe penalties for libel – even jail. At the same time, gaps in the current legal system could be seen as attempts to silence civil society. For example, the newly established Electronic Media Agency,¹ a regulatory body in the field of electronic media, finances the Fund for Promotion of Pluralism and Diversity of Electronic Media with 0.5% of the total annual gross income earned in the previous year by all media service providers offering and engaging in radio and TV media services. However, websites – which are the main publication platforms for civil society organisations – cannot apply for money from this fund.

Policy and political background

The Constitution² of the Republic of Croatia guarantees freedom of expression and freedom of the press. It bans censorship, and journalists are entitled to report and to access information. The Constitution also guarantees the right of correction if legal rights are violated by published news.

The Croatian media are governed by the Law on Media,³ the Law on Electronic Media,⁴ the Law on Croatian Radio-Television⁵ and the Law on the Right to Access Information.⁶ The Law on Media as well as

the Law on Electronic Media reaffirm that freedom of expression and freedom of the media are guaranteed. The Law on Media also stipulates the obligation of the government to stimulate and protect the pluralism and diversity of media by financing programmes and interventions from the state budget. Concerning the rules for civic journalism, the Law on Electronic Media regulates electronic publications and forbids hate speech as well as content that offends human dignity and contains immoral and pornographic content or might seriously impair the physical, mental or moral development of minors.

The media are indirectly governed by the Criminal Code and Civil Code through provisions regarding defamation and libel.

Challenges to free media in Croatia

The existence of a free and independent media is generally considered vital to democratic governance. In its recent history Croatia has experienced most of the problems that post-socialist states have faced regarding the media: self-censorship, pressure by advertisers and political groups, threats against journalists, especially investigative reporters, the crisis of the public broadcaster, the use of hate and nationalist speech, etc. In the latest Freedom House report on press freedom, published in 2011, Croatia is tied with Burkina Faso in 85th place on the global press freedom rankings (out of 196 states).⁷ It gives the country a “partly free” status considering the legal, political and economic environment.

Even though the legal framework ensures freedom of expression, political and corporate pressures can still be felt. For example, in February 2009, Interior Minister Tomislav Karamarko brought a criminal case against journalist and blogger Zeljko Peratovic for “disseminating information likely to upset the population,” after Peratovic accused him of obstructing an investigation into the death of a witness in a war crimes case. According to Freedom House, legal harassment against Peratovic continued in 2010.⁸

1 The Agency was established in 2009 based on the Law on Electronic Media (OG 153/09).

2 OG 56/90, 135/97, 113/00, 28/01, 55/01

3 OG 163/03, 59/04

4 OG 153/09

5 OG 137/10

6 OG 172/03, 144/10, 37/11, 77/11

7 www.freedomhouse.org/template.cfm?page=251&year=2011

8 www.freedomhouse.org/inc/content/pubs/pfs/inc_country_detail.cfm?country=8021&year=2011&pf

In April 2010, Zagreb police searched the home of famous blogger Marko Rakar and interrogated him after Rakar published a leaked list of registered war veterans on his blog. According to Human Rights Watch, “the government had resisted efforts to release the list, which civil society activists believe contains [the names of] people fraudulently receiving pensions as war veterans.”⁹

Moreover, the changes to the Criminal Code proposed in 2011 provide that a journalist found guilty of libel could face imprisonment of up to a year, and a fine equalling half of the journalist’s annual wage.

The example of blogger Damir Fintic, who has been sentenced to prison for a comment published on his blog¹⁰ back in 2005, underscores the potential impact of defamation and criminal libel laws on new media – especially when they are misused by a government that feels threatened. The critical comment on his blog was related to a post about Vukovar’s mayor Vladimir Stengl and his wife, and the person commenting on his blog had written critically about circumstances in relation to a real estate purchase by the Stengl family.¹¹

Prison sentences for libel were abolished in 2006, but reappeared in the new proposal for legislative change, causing strong reactions from journalists and international free press watchdog organisations who argued that the government should rely on civil rather than criminal remedies. Zdenko Duka, president of the Croatian Journalists Association, warned that truth was not a defence for libel charges under the proposal, and that journalists could be subject to penalties for reporting items judged not to be in the public interest.

Eventually, the justice minister announced that the threat of jail will be removed from its draft law on defamation and libel.

In addition to the legal provisions explicitly targeting certain media content, there is indirect influence that can be exercised by way of both substantive rules and their application. There are certain shortcomings in current media regulations, particularly in relation to the status of the not-for-profit electronic publications of civil society organisations. The Electronic Media Agency keeps the records of the providers of audio and audiovisual media services and services of electronic publications. According to the Law on Electronic Media, the Agency is financed with 0.5% of the total annual gross income earned in the previous year by

all media service providers offering and engaging in audio and audiovisual media services.

In 2011 the Agency notified civil society organisations running non-profit online newspapers that they are subject to that tax as well. As it came as a surprise, organisations could not have planned for such a cost within their budgets. Most of the non-profit media are funded through grants under strict financial rules from donors, and with no income from advertising mainly due to the lack of interest of the advertising industry. This means that every extra tax that is not budgeted for affects the sustainability of civil society media.

The Electronic Media Agency regulates TV and radio broadcasting but also manages the Fund for Promotion of Pluralism and Diversity of Electronic Media. The resources of the Fund are aimed at stimulating the production of programme content published by electronic media (television and radio) at the local and regional level, which is of public interest and is of particular importance. However, online newspapers run by civil society organisations are not eligible for these funds. Considering the fact that a concession is not available for online newspapers run by civil society, the reason why not-for-profit organisations should pay the operating fee to the Agency is not clear.

In an interview with Liderpress,¹² Damir Hajduk, a member of the Electronic Media Council, admitted the mistake and announced a public discussion on the criteria to register the electronic media. He also said that non-profit portals and blogs with several contributors will not be required to pay the fee – unless they publish media information aimed at a wider audience than they currently do(!). This explanation caused additional confusion since according to the Law on Electronic Media, electronic publications include edited websites and/or portals republishing electronic versions of printed articles in the press and/or media information available to the general public anyway. The public discussion on the criteria for the registry was held in March 2011 and the deadline for paying the dues to the Agency was May 2011. At the time of writing this report,¹³ the new version of the criteria for the registry was not available on the Agency’s website.

At the same time some other legal norms are not implemented properly in the country, as the MEDIADEM report on Croatia shows.¹⁴ For example, Croatia

9 www.hrw.org/world-report-2011/croatia

10 www.vukovarac.net

11 www.croatiablognews.com/croatian-first-european-blogger-to-go-to-prison

12 www.liderpress.hr/Default.aspx?sid=122193

13 2 September 2011

14 Popović, H., Bilić, P., Jelić, T. and Švob-Đokić, N. (2010) *Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Croatia*, MEDIADEM. www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Croatia.pdf

has a legal obligation to stimulate and protect pluralism and diversity of the media with support from the state budget. Since 2005 it was due to stimulate the programmes of local and regional media, as well as media intended to inform persons with special needs. It should have established new printed media, especially local and non-profit media, and supported the media published by non-governmental organisations. Unfortunately the state failed to carry out this obligation, according to the MEDIADEM report, due to a lack of money, as well as due to the rather marginal public interest in this media.

Although civil society online news portals cannot compete with corporate news portals in terms of resources available for content production and the number of visitors, they promote public interests often marginalised by the state or private sector. Civil society online newspapers will not be frequently visited if they do not have the resources to provide a quality product on a daily basis. Even the leading Croatian commercial online newspapers contain scarce news compared to advertisements, entertainment and lifestyle stories, as the publishers try to survive the recession. The MEDIADEM report noted that the political and economic crisis also incites the political elites to strengthen their interests in the media, and the media to rely more on public sources and funds. In this context independent, alternative and critical discourses are hard to maintain, the report concludes.

Conclusions

Democracy requires a media system that provides people with a wide range of opinion and analysis, facilitates debate and promotes the public accountability of the power holders.

In the process of democratisation, the concept of a legal enabling environment that supports a free and independent media is central. It is not

only about the particular laws, but the institutional structure which administers those laws, including the courts and regulatory agencies. During the negotiations on Croatia's accession to the European Union, the Croatian media legislation was assessed as fully harmonised with European media standards and the *acquis communautaire*.¹⁵ However, the inconsistencies of current legislation and practices clearly show that legislative changes are not rooted in coherent media policy aimed at supporting a free and independent media, but reflect a fast-changing interplay of different influences and interests. For instance, media run by civil society organisations seem to be neglected by the government when it comes to the measures that encourage their productivity. On the other hand, they were not ignored when legal instruments that repressed free speech were applied.

Action steps

Although the number of internet users is growing in Croatia and the media are being easily accessed online, the involvement of citizens in online content production is low. In the context of a transitional society where the level of consciousness about the value and functioning of free speech and its practice is low among the citizenry, this should not be surprising. It should also not be forgotten that in the 1990s, civil society activities were viewed as dangerous when not in accordance with state politics.

Such circumstances require that civil society organisations, as well as professional journalists associations, educate the citizenry about the role that the independent media play in society. It is also important to strengthen collaboration between professional journalists and civil society activists to influence the drafting of media legislation, so as to ensure the freedom of public expression. ■

¹⁵ Wikipedia defines this as the "accumulated legislation, legal acts, court decisions which constitute the body of European Union law." en.wikipedia.org/wiki/Community_acquis

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

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GISWATCH 2011 is the fifth in a series of yearly reports that critically cover the state of the information society from the perspectives of civil society organisations across the world.

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www.GISWatch.org

