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LABOR RELATIONS AND MEDIA:

ANALYZING PATTERNS OF LABOR RELATIONS IN THE MEDIA OF SEENPM MEMBER COUNTRIES

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This publication is based on the results of the project ***“Labor Relations and Media: Analyzing patterns of labor relations in the media of SEENPM member countries.”***

The project, which was coordinated by the Independent Journalism Center-Moldova, aimed to evaluate the observance of labor laws in the media sector of South East European Network for Professionalization of the Media (SEENPM) member countries, to identify problems in the way labor laws are applied to so-called “typical” and “atypical” employees, to propose solutions for the problems identified and to share best practices throughout the region.

The following target groups were identified:

- fully-employed staff of TV and radio stations, newspapers, news agencies and online publications;
- freelancers working for various media organizations;
- managers of news outlets;
- trade union representatives;
- non-government media organizations;
- media regulators.

The SEENPM centers participating in the project were the Albanian Media Institute (Albania); the Center for Independent Journalism (Hungary); the Center for Independent Journalism (Romania); the International Center for Education of Journalists (Croatia); the Macedonian Institute for Media (Macedonia); the Media Center (Bosnia-Herzegovina); the Media Center (Serbia); the Media Development Center (Bulgaria); the Montenegro Media Institute (Montenegro) and the Peace Institute (Slovenia).

In-depth studies involving extensive primary and secondary research were carried out by the following country reporters:

- **Boljkovac-Borkovic, Marinka**, Secretary, Trade Union of Croatian Journalists, Zagreb;
- **Danov, Danail**, Program Director, Media Development Center, Sofia;
- **Hodzic, Sanela**, Research Assistant, Mediacenter, Sarajevo;
- **Jurancic, Iztok**, President, Union of Slovenian Journalists, Ljubljana;
- **Kommenic, Petar**, Journalist, Independent Weekly Monitor, Podgorica;
- **Kozul, Dejan**, Journalist and Media Researcher, Independent Journalists' Association of Serbia (IJAS) and **Kujundzic, Lidija**, President, Union of Serbian Journalists - Union of NIN, Belgrade;
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- **Marciuc, Alexei**, Director, Informational Policy Institute, Chisinau;
- **Mihis, Mihaela**, Lawyer and Legal Researcher, Bucharest;
- **Misev, Vladimir**, Executive Director, Institute for Democracy “Societas Civilis,” Skopje;
- **Tóth, Borbála**, Media Researcher, Center for Independent Journalism, Budapest.

Country reports focus on the legislation regulating labor relations in the media, the implementation of the legislation in practice (including the current status of typical and atypical media workers), censorship and self-censorship as an effect of labor relations as well as the existence and effectiveness of journalists' trade unions. An important part of each report is the section on conclusions and recommendations which includes a general evaluation of the state of labor relations as well as proposals for major stakeholders with a view to improving the situation.

In addition to a country-by-country analysis, the present study also features a regional overview produced by **Neva Nahtigal**, media and labor relations analyst, Ljubljana. It provides a general context for the issues addressed including an analysis of major trends and policies in labor relations throughout the region and a study of relevant international treaties and directives. Key challenges facing media workers in SEENPM countries are reviewed, and specific patterns within the region are highlighted. Similar to the country reports, the regional overview contains a set of recommendations for major stakeholders.

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Labor Relations in the Media in South Eastern European Countries

by Neva Nahtigal

I. GENERAL CONTEXT AND RELEVANCE

Trends in labor relations are relevant for the entire workforce regardless of the specific industry, so in-depth enquiries into the situation in a particular sphere can provide valuable starting points for considering the general situation in the labor market and for making necessary adjustments in public policy. The relevance of issues addressed in the South East European Network for Professionalization of the Media (SEENPM) research is further enhanced by the fact that it focuses on the industry frequently labeled as “the fourth estate” for its influence, power and social role. In the context of labor relations, the International Labour Organization’s (ILO) recognizes that the media are vital to democracy by making information, knowledge and a range of opinions openly available and ensuring the accountability of public and private institutions. That calls for particularly high levels of corporate social responsibility.¹

Media products “have a social, cultural and democratic value that makes them special within market conditions,”² but just as media owners tend to overlook the special values of media products, debates about the media and journalism tend to overlook the fact brought to the forefront in this SEENPM research: all media content is a product of work and is strongly affected by the conditions under which individual workers perform.³ Orderly social conditions in which media professionals are able to perform their work undisturbed are in the interest of society as a whole.⁴

¹ ILO. 2004b. p. 6

² European Federation of Journalists (EFJ) as cited in Organization for Security and Cooperation in Europe (OSCE). p. 32

³ Further on, we will point to the unclear definition of the term **employee** in European Commission Directives. Likewise, the term **worker** is interpreted less or more broadly. We understand it in line with the broad interpretation of the European Court of Justice that insisted on the term covering all persons engaged in economic activity and not only employees with a contract of employment. (Worker, in European Industrial Relations Dictionary [EIRD])

⁴ Bašić Hrvatinić, Petković. p. 37

Previous research in the region “emphasized pressure on journalists, particularly economic pressure, and also drew attention to the reduction of their social rights and autonomy.”⁵ Media owners and managers determine not only labor relations within their companies but also budgets and other conditions for editorial work. The availability of funds decisively affects the ability of editors to commission and of journalists to pursue investigative reporting. Editorial budgets have been persistently shrinking, and the decline of investigative reporting is broadly observed in the present study. The European Federation of Journalists (EFJ) has warned about the “professional crisis” of modern journalism, “seen in the consequences of cuts in editorial budgets that have compromised editorial standards and eliminated the amount of time and research needed by journalists to do their work.”⁶

Experts note that “social conditions of work within the media industry influence the quality of work and professionalism of journalists and other media professionals”⁷ and that in “such a sensitive activity as journalism, it is actually the stability of the employment relationship, together with the related economic stability, which can contribute significantly to the effectiveness of independence and autonomy in the exercise of this profession.”⁸ Country reporters in this study confirmed that the more precarious⁹ and insecure the position of journalists as workers, the less chance that they will withstand pressures and defend ethical codes, freedom of information, the right of the public to be informed and other prerequisites for the media and journalists to fulfill the role ascribed to them in democratic societies.

5 *Ibid.* p. 33 (The OSCE report contains similar observations.)

6 EFJ. November 5, 2007

7 Bašić Hrvatinić, Petković. p. 37

8 EFJ. 2003. p. 6

9 ILO defines “precarious employment” (also atypical work) as “a work relation where employment security, which is considered one of the principal elements of the labour contract, is lacking. This term encompasses temporary and fixed term labour contracts, work at home and subcontracting.” (ILO Thesaurus)

TRENDS IN LABOR RELATIONS AND LABOR POLICIES

The stability and security of employment relationships have been severely undercut as labor markets and economies in general have been going through profound structural changes.¹⁰ “Working life is being radically transformed by the combined effect of technological progress, changing economic demands and the growth of the services’ sector.”¹¹ As noted by the Commission of European Communities (CEC): “Fixed term contracts, part-time contracts, on-call contracts, zero-hour contracts, contracts for workers hired through temporary employment agencies, freelance contracts, etc. have become an established feature of European labor markets.”¹² Challenging trends are not at all limited to the European Union (EU). Examining a broader context in Central and Eastern Europe (non-EU) and in the Commonwealth of Independent States, ILO concludes that the “challenges for labor markets, social security systems, pension policies, health care, savings and consumption patterns are enormous.”¹³

The evident pursuit of flexibility in labor relations, downsizing outsourcing, subcontracting and a shift to new types of work organization present individual workers with a higher level of social and economic risks, worsened by the fact that legislative frameworks have not been coping with the evolution of labor markets and have not been ensuring satisfactory social protection. There is a need to rethink labor and social policies and the enforcement of legislation since those precariously and informally employed now “occupy a grey area where basic employment or social protection rights may be significantly reduced, giving rise to a situation of uncertainty about future employment prospects and also affecting crucial choices in their private lives (e.g. securing accommo-

10 See Supiot for a thorough insight into those changes.

11 Commission of European Communities (CEC). 2007b. p. 5

12 CEC.2006a. p. 7 (The Green Paper on modernization of labor relations notes that the share of total employment taken up by those engaged in working arrangements differing from the standard contractual model as well as those in self-employment has increased from over 36% in 2001 to almost 40% of the EU-25 workforce in 2005. Fixed-term employment has increased as a percentage of total employment from 12% in 1998 to over 14% in 2005 in the EU-25.)

13 ILO. 2007. p. 35

dation, planning a family).¹⁴ In terms of legal regulations, the debate focuses on the distinction between “typical” and “atypical” employment which is the result of the disintegration of the standard employment relationship. According to the European Foundation for the Improvement of Living and Working Conditions, there is an important gender dimension to the debate on atypical work as men are disproportionately represented in standard employment relationships and increasing numbers of women in the labor force work under atypical conditions.¹⁵

A phenomenon that has been gaining ever more attention and relevance in public policy discussions is that of economically dependent workers, the term encompassing “the forms of employment which combine the features of subordinate employment and self-employment.”¹⁶ Such forms are becoming very widespread, but legislative frameworks are typically based on the binary distinction between the two traditional categories that is “no longer an adequate depiction of the economic and social reality of work.”¹⁷ The “emergence of diverse forms of non-standard work has made the boundaries between labor law and commercial law less clear,”¹⁸ or as some would argue, completely blurred.

In 2006, the European Commission (EC) launched a Green Paper aimed at modernizing labor legislation and encompassing new forms of organization of work.¹⁹ In its response, the European Parliament (EP) argued that any form of employment, “whether non-standard or otherwise, should carry with it a core of rights regardless of the specific employment status, which should include: equal treatment, workers’ health

14 CEC. 2006a. p. 8.

15 *Atypical work in EIRD*

16 Perulli. p. 76

17 CEC. 2006. p. 10

18 *Ibid.*

19 *The analytical framework of the Green paper was criticised for its claims that the standard indefinite employment contract is outdated, increases labor market segmentation and the gap between “insiders” and “outsiders” and must therefore be regarded as an obstacle to employment growth and improved economic dynamism (see, for example, European Parliament 2007), and the scope of the paper was deemed to be too narrow by many stakeholders since it focused only on the individual employment relationship. In the view of the critics, it should have integrated collective labor law aspects. In addition, the introduction of a third category between employment and self-employment was generally opposed. (CEC. 2007c. p. 4).*

and safety protection and provisions on working/rest time, freedom of association and representation, collective bargaining, collective action, and access to training.²⁰ Following public consultation, the Commission identified a “demand for improved cooperation, more clarity or just more and better information and analysis in a number of areas such as: the prevention and combating of undeclared work, especially in cross-border situations; the promotion, development and implementation of training and life-long learning to ensure greater employment security over the life cycle; the interaction between labour law and social protection rules in support of effective employment transitions and sustainable social protection systems; the clarification of the nature of the employment relationship to promote greater understanding and facilitate cooperation across the EU; the clarification of the rights and obligations of the parties involved in subcontracting chains to avoid depriving workers of their ability to make effective use of their rights.”²¹

Overall, debates in EU institutions have been evolving around the concept of “flexicurity” defined as “an integrated strategy to enhance, at the same time, flexibility and security in the labour market,”²² but there has been strong criticism, especially from the trade unions, that the EC is biased against the protection and stability of jobs and that the core idea seems to be giving companies more freedom to dismiss workers.²³ Current trends in labor markets and policies pose serious challenges to trade unions that have been finding it very difficult to organize and represent the fragmented labor force.²⁴ Journalists’ unions are no excep-

20 EP. 2007

21 CEC. 2007c. p. 10

22 CEC. 2007a. p.11. *According to the European Commission, “flexicurity policies can be designed and implemented across four policy components: (1) flexible and reliable contractual arrangements (from the perspective of the employer and employee, of “insiders” and “outsiders”) through modern labour laws, collective agreements and work organisation, (2) comprehensive lifelong learning strategies to ensure the continual adaptability and employability of workers, particularly the most vulnerable, (3) effective active labour market policies that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs; (4) modern social security systems that provide adequate income support, encourage employment and facilitate labour market mobility. This includes broad coverage of social protection provisions (unemployment benefits, pensions and healthcare) that help people combine work with private and family responsibilities such as child-care.” (CEC. 2007a. p. 13)*

23 See, for example *European Trade Union Confederation. June 27, 2007*

24 According to *Liddle and Lerais (Bureau of European Policy Advisors (BEPA), n.d.), trade union*

tion facing, “the crisis of organising, recruitment and defence of union rights.”²⁵ EFJ has highlighted the need for the unions “to review their current structures and strategies for organising to take account of the changing nature of work, ownership structures and employment relations within the industry.”²⁶

PRECARITY IN THE MEDIA INDUSTRY

The media as a part of the cultural industry have been at the forefront of many socio-economic changes outlined by various organizations.²⁷ That fact has some serious implications regarding the quality of the service they provide to the public. ILO notes that many media and entertainment workers are employed on short-term contracts or through subcontracting: “Their lack of continuity in employment, often combined with the so-called ‘independent’ employment status, can mean they are locked out of social security schemes and have limited access to benefits such as paid holidays, maternity protection, and safety and health protection.”²⁸ The majority of respondents in a recent global survey of the media industry²⁹ reported that the major form of employment relationship had changed in their countries in the last five years, and the main trend was away from collective bargaining and toward deregulation and individual negotiations/individual contracts. Journalists’ organiza-

density has fallen in the last decade – in Britain and Germany by about a quarter; in Italy and the Netherlands by over 10%. It more than halved in the New Member States. Only in the Nordics has the union density been maintained. Authors point to the huge issue for the trade unions in how they make themselves relevant to employees in private sector services and small and medium sized businesses and among young workers.

25 EFJ. October 7, 2007

26 Ibid.

27 Notably, the Committee on Employment and Social Affairs of the European Parliament made a particular reference to the media in its proposal for the text of the EP resolution on modernizing the labor law. According to that text (later modified), the EP would also strongly condemn, “...the abusive replacement of regular employment with new forms of employment without any imperative economic necessity, which is commonly resorted to in European media undertakings in particular, with the aim of maximising short-term profits to a far greater than normal extent, at the expense of the general public, employees and competitors” (emphasis by N.N.). Furthermore, the EP was to stress, “...that such action violates the European social model, as it lastingly destroys the consensus, fairness and trust between employers and employees,” and to urge, “...Member States and the two sides of industry to take action in this regard in order to halt irresponsible abuses.” (EP. June 25, 2007)

28 ILO. 2004a. p. 98

29 IFJ.2006

tions also reported that the average rate of pay for journalists had either decreased or significantly decreased in real terms over the past five years.

Respondents in the global survey raised some burning issues regarding the effects of the nature of employment relationships on the quality of editorial content: (1) insecurity of employment leads to timid reporting; (2) employment changes dictate a decline in critical and investigative reporting; (3) media concentration and government pressure lead to bland news; (4) media has been tamed by advertisers and governments and (5) low wages lead to a decline in ethical reporting.³⁰

According to a study by EFJ, about 20% of journalists were freelancers in 2003, and the number of self-employed in journalism was increasing at a faster rate than staff journalists as a whole.³¹ On the global level, the International Federation of Journalists (IFJ) notes that about 30% of all members are atypical workers.³²

While freelance journalism has existed for as long as the media themselves have, the first remarkable rise in the number of freelancers in occupations connected with the mass media occurred as early as the 1960s and 1970s.³³ Traditionally however, “this form of employment relationship involved a limited number of all journalists: generally those who both chose to be self-employed and were experienced enough to be confident of their ability to gain better conditions as freelancers than as employees.”³⁴ That has changed as, “media companies have increasingly become more reliant on freelance journalism, implementing a strategy characterised by transnational media expansion, de-verticalisation and de-concentration of firms and flexibilisation of organisational structures in order to quickly adjust to volatile and ever-changing demands.” That means that “freelance contractual arrangements extend to a greater

³⁰ *Ibid.*

³¹ *EFJ. 2003. p. 7*

³² *IFJ. 2006. p. VI*

³³ *Perulli, p. 109*

³⁴ *EFJ. 2003. p. 4*

number of press workers and to journalists who do not show the above-mentioned combined features—such as young people who are starting to work as journalists or older journalists made redundant in reorganisation processes.³⁵ In such circumstances, it has become common to speak about “fake,” “false” and “forced” freelancers and to observe that the share of “true” freelancers of the total number of journalists who work outside of the scope of a traditional employment relationship (and therefore, of the protections of labor legislation) has been on decline.

The position of freelance journalists as compared to employed journalists is much weaker: their wages are usually lower; contractual rights are frequently not respected and even the contract itself might be missing; job security is limited as there is no protection against dismissal and few costs involved in firing; it is difficult to organize collective action and welfare protection is often lacking.³⁶ EFJ has issued warnings about the social crisis, “seen in the precarious nature of journalistic work today. The scandal of low-pay and unprotected jobs is evident in every country where there are rising numbers of people forced out of regular, full-time employment into casual work with little or no social protection.”³⁷

In spite of some specifics of the region, those general observations are also valid for south eastern European (SEE) countries where conditions are further aggravated by the fact that many journalists who have been forced into freelancing (for the major part fake freelancing that is in fact disguised employment³⁸) have no possibility to legally settle their status and are therefore completely excluded from social protection schemes.

The SEENPM research addressed all journalists and labor relations in the media in general, but the issues of outsourcing (particularly to those who are economically dependent on one organization but not perma-

³⁵ *Ibid.*

³⁶ *Ibid.* p. 7-8

³⁷ EFJ. November 5, 2007

³⁸ “Disguised employment occurs when a person who is an employee is classified as other than an employee so as to hide his or her true legal status and to avoid costs that may include taxes and social security contributions. This illegal practice can occur through the inappropriate use of civil or commercial arrangements.” (CEC. 2006a. p. 10)

nently employed by that organization) and the general insecurity of labor relations had to be underlined at the outset of the review since new (and in many cases illegal) ways of organizing work are decreasing the bargaining power of employed workers³⁹ and undermining the position of all journalists. SEENPM research confirms the warnings already cited: that the public has many reasons for concern about the conditions in which journalism is performed and about the service it can provide in such conditions.

II. A REVIEW OF INTERNATIONAL TREATIES, DIRECTIVES AND RECOMMENDATIONS

A large body of documents regulating labor relations has been adopted at the international level; it is impossible to provide an overview of all of them, however brief. Therefore, only key texts that are most frequently referred to in decision making and public policy discussions are cited.⁴⁰

All countries examined in the SEENPM study have ratified scores of ILO conventions, and all are members of the Council of Europe (COE) that has set some relevant standards as well. ILO and COE standards are frequently quoted in the various resolutions and *acquis communautaire* of the EU that is briefly dealt with in the final section of this chapter.

The first instrument that needs to be highlighted, however, is the *Universal Declaration of Human Rights*, adopted and proclaimed by the United Nations on 10 December 1948. The declaration established a number of rights related to work and to labor relations as basic human rights. Other articles are indirectly relevant, but the most prominent ones are articles 23 and 24. Article 23 guarantees everyone the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment and to equal pay for equal work without any discrimination. Furthermore, everyone who works

³⁹ For supporting arguments, see Muehlberger and Supiot.

⁴⁰ Interested readers will find useful collections of further information on the web pages of the International Labour Organization, DG Employment, Social Affairs and Equal Opportunities of the European Commission, of the European Foundation for the Improvement of Living and Working Conditions and on the European Industrial Relations Observatory online that served as the main sources for this review.

has the right to just and favorable remuneration ensuring for oneself and one's family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection. The right to form and to join trade unions is also specifically guaranteed as a human right. Article 24 grants everyone the right to rest and leisure including a reasonable limitation of working hours and periodic holidays with pay.

INTERNATIONAL LABOUR ORGANIZATION

Since 1919, the ILO comprised of government, employer and worker representatives has maintained and developed a system of basic principles and rights at work stipulated by international labor standards that emphasize conditions of freedom, equity, security and dignity.⁴¹ In the ILO Declaration of Philadelphia of 1944, the international community recognized that "labor is not a commodity,"⁴² and according to ILO, international labor standards are first and foremost about the development of people as human beings. The ILO functioning as a specialized agency of the UN has been pursuing the so-called Decent Work Agenda, stressing that it is "central to efforts to reduce poverty, and a means for achieving equitable, inclusive and sustainable development." Decent work refers to "opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men."⁴³ The pillars of the Decent Work Agenda are (1) employment creation and enterprise development; (2) social protection; (3) standards and rights at work and (4) governance and social dialogue.

International labor standards are drawn up by ILO constituents either as conventions or recommendations. ILO member states are required to submit any convention adopted at the International Labour Conference to their national competent authorities for the enactment of relevant

⁴¹ ILO, 2005, p. 8

⁴² *Ibid.* p. 10

⁴³ <http://www.ilo.org/public/english/decent.htm>

legislation or other actions, including ratification, whereby a state accepts the convention as a legally binding instrument. Recommendations, on the other hand, serve as non-binding guidelines.⁴⁴ International labor standards have been developed in numerous areas, for example regarding freedom of association, collective bargaining and industrial relations; equality of opportunity and treatment; tripartite consultations; labor administration and inspection; employment policy and promotion; employment security; wages; working time and social security among others.⁴⁵

Eight conventions have been identified as “fundamental” covering subjects that are also contained in the *Declaration on Fundamental Principles and Rights at Work (1998)*. Those fundamental principles and rights are freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor and the elimination of discrimination in respect of employment and occupation.⁴⁶ The most relevant fundamental conventions for the present study are the following.

- *Freedom of Association and Protection of the Right to Organise* (No. 87): It sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization, and it stipulates that workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority and that they shall have the right to establish and join federations and confederations which may in turn affiliate with international organizations of workers and employers.⁴⁷
- *Right to Organise and Collective Bargaining* (No. 98): This convention stipulates that workers enjoy adequate protection against acts of anti-union discrimination including requirements that

44 ILO. 2005. p. 20

45 For an up-to-date list of conventions by subject please see <http://www.ilo.org/ilolex/english/subjectE.htm>

46 ILO. 2005. p. 15

47 *Ibid.* p. 28

a worker not join a union or relinquish trade union membership for employment or dismissal of a worker because of union membership or participation in union activities. It further states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations with a view to the regulation of the terms and conditions of employment by means of collective agreements.⁴⁸

- *Equal Remuneration* (No. 100): Ratifying countries must ensure the application of the principle of equal remuneration for men and women for work of equal value; the term “remuneration” is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment.⁴⁹
- *Discrimination (Employment and Occupation)* (No. 111): Discrimination is defined as any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Ratifying states have to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations and terms and conditions of employment.⁵⁰

The ILO's governing body has also designated another four conventions as “priority” instruments because of their importance to the functioning of the system of international labor standards. One of these is the *Labor*

⁴⁸ *Ibid.* p. 28-29

⁴⁹ *Ibid.* p. 35

⁵⁰ *Ibid.* p. 36

Inspection Convention of 1947 (No. 81).⁵¹ Another important convention in the context of the SEENPM study is the *Termination of Employment Convention* (No. 158) that stipulates reasons for termination that cannot be considered valid including those based on union membership or participation in union activities, filing of a complaint against an employer, race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin and temporary absence due to illness or absence from work during maternity leave.⁵²

The general socio-economic trends outlined in the previous chapter have been gaining prominence within ILO, and the media have been in the spotlight on several occasions. More generally, there have been serious discussions on the scope of employment relationships and on ways to counter disguised employment. The tri-partite body has not reached a consensus on a convention that would redefine employment relationships, but in June 2006, ILO adopted the *Employment Relationship Recommendation* (No. 198) that has already been referred to in EU and national policy making.

Recommendation 198⁵³ states that employment or labor laws seek, among other things, to address what can be an unequal bargaining position between parties in an employment relationship, and that there are “difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application.” According to this recommendation, some contractual arrangements can have the effect of depriving workers of the protection they are due, and it is important to establish who is considered a worker in an employment relationship, what rights the worker has and who the employer is. The recommendation further states that difficulties in establishing the exist-

51 *Ibid.* p. 16

52 *Ibid.* p. 49

53 ILO. 2006

ence of an employment relationship may create serious problems for those workers concerned, for their communities and for society at large and offers a set of guidelines for national policy makers and for those implementing and supervising the implementation of legislation.

Some key points are the following.

- Members should formulate and apply a national policy for reviewing at appropriate intervals and, if necessary, clarifying and adapting the scope of relevant laws and regulations to guarantee effective protection for workers who perform work in the context of an employment relationship.
- National policy should at a minimum include measures to provide guidance on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers. It should combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status of the employee.
- Effective access to appropriate, speedy, inexpensive, fair and efficient procedures and mechanisms for settling disputes regarding the existence and terms of an employment relationship is a necessity.
- Determining the existence of an employment relationship should be guided primarily by the facts relating to the performance of work and to the remuneration of the worker notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.
- A broad range of means for determining the existence of an employment relationship should be developed that provides for the legal presumption that an employment relationship exists when one or more relevant indicators is present.⁵⁴

54 Those indicators might include (a) the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be

- Measures to ensure respect for and implementation of laws and regulations concerning the employment relationship, for example, through labor inspection services, and their collaboration with the social security administration and the tax authorities should be enacted and enforced.
- Special attention should be paid to occupations and sectors with a high proportion of female workers.
- The role of collective bargaining and social dialogue as a means, among others, of finding solutions to questions related to the scope of the employment relationship at the national level must be promoted.
- An appropriate mechanism should be established for monitoring developments in the labor market and organizing work and for formulating advice on the adoption and implementation of measures concerning the employment relationship within the framework of national policies representing employers and workers on an equal footing.

COUNCIL OF EUROPE

The *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), adopted by COE in 1950 includes a number of rights relevant to employment and industrial relations, among them the freedom to form and join trade unions, contained in Article 11 (freedom of assembly and association). ECHR established the European Court of Human Rights, but the European Court of Justice has also acknowledged human rights stipulated in ECHR in relation to the fundamental principles of the EU legal order. Moreover, respect for ECHR is specifically guaranteed in some basic EU documents such as the Maastricht Treaty, the Treaty of Amsterdam and most recently in the Treaty of Lisbon.

carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability or involves the provision of tools, materials and machinery by the party requesting the work and (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work or absence of financial risk for the worker.

Another important COE document that was also “the first international treaty expressly recognizing the right to strike”⁵⁵ is the *European Social Charter* (ESC) adopted in 1961 and revised in 1996. ESC stipulates fundamental rights related to health, social security and welfare as well as specific employment rights namely:

- prohibition of forced labor;
- prohibition of the employment of children under the age of 15;
- special working conditions between 15 and 18 years of age;
- the right to earn one's living in an occupation freely entered into;
- an economic and social policy designed to ensure full employment;
- fair working conditions regarding pay and working hours;
- protection from sexual and psychological harassment at work;
- freedom to form trade unions and employers' organizations to defend economic and social interests and the individual freedom to decide whether or not to join them;
- promotion of joint consultation, collective bargaining, conciliation and voluntary arbitration;
- protection in case of dismissal;
- the right to strike;
- access to work for persons with disabilities.⁵⁶

In contrast with ECHR, ESC is not enforced by a court that accepts individual complaints but by the European Committee of Social Rights that examines mandatory reports of individual states on the implementation of ESC and that can initiate recommendations of the Committee of Ministers. The special protocol of 1995 established an additional system of collective complaints.⁵⁷

⁵⁵ *European Social Charter*, in EIRD

⁵⁶ http://www.coe.int/t/e/human_rights/esc/1_general_presentation/CharterGlance_en.asp#TopOfPage

(States that ratify the Charter have to accept at least five of the seven core articles of the Charter: the rights to work, organize, bargain collectively, social security, social and medical assistance, rights of the family to social, legal and medical protection and the protection of migrant workers.)

⁵⁷ COE. 1995

ESC is also referred to in the EC Treaty “as one of the sources inspiring the social objectives of the EU,”⁵⁸ and through the “attachment to fundamental social rights as defined in the European Social Charter” in the Preamble.

EUROPEAN UNION

An important document, although its legal status is that of a mere political declaration, is the *Community Charter of the Fundamental Social Rights of Workers*, constituted with a special declaration adopted by the member states in 1989.⁵⁹ The fundamental social rights of workers are defined in 30 articles clustered under the following headings: freedom of movement; employment and remuneration; improvement of living and working conditions; social protection; freedom of association and collective bargaining; vocational training; equal treatment for men and women; information, consultation and participation for workers; health protection and safety at the workplace; protection of children and adolescents; elderly persons; disabled persons and member states' actions (implementation). As noted by the European Foundation for the Improvement of Living and Working Conditions, the Charter “contributed to the launching of initiatives in employment and industrial relations policy which produced a number of Directives during the 1990s,”⁶⁰ and it “anticipated much of the potential of the fundamental individual employment rights in the Charter of Fundamental Rights of the European Union adopted in Nice in December 2000.”⁶¹ The latter specifically referred to the Charter of Fundamental Social Rights thus making it possible for the European Court of Justice to use it “as an interpretative guide in litigation concerned with social and labour rights;”⁶² the subsequent Treaty of Lisbon retained that reference.

The Charter of Fundamental Rights of the European Union was envis-

⁵⁸ *European Social Charter in EIRD*

⁵⁹ *The United Kingdom acceded to the Charter in 1997.*

⁶⁰ *Community Charter of the Fundamental Social Rights of Workers in EIRD*

⁶¹ *Ibid.*

⁶² *Ibid.*

aged to become a part of the European Constitution signed in October 2004 but later defeated in referendums in France and the Netherlands. In 2007, the EP, the Council of the European Union, and the EC introduced an adapted version before the signing of the Treaty of Lisbon. That makes the Charter legally binding;⁶³ it was undergoing ratification in individual member states at the time of submission of this overview.

The Charter consists of seven chapters divided into 54 articles covering fundamental rights relating to dignity, liberty, equality, solidarity, citizenship and justice. Issues in the context of this SEENPM study are most specifically dealt with in the provisions on the following:

- freedom of assembly and association (Article 12 stipulating “the right of everyone to form and to join trade unions for the protection of his or her interests”);
- freedom to choose an occupation and right to engage in work (Article 15);
- non-discrimination (Article 21 prohibiting discrimination on any grounds such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation);
- equality between women and men (Article 23 requiring equality in all areas including employment, work and pay),
- workers’ right to information and consultation within the undertaking (Article 27);
- right of collective bargaining and action (Article 28 including protection of the right to strike action);
- protection in the event of unjustified dismissal (Article 30);
- fair and just working conditions (Article 31 including the “right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave”);

⁶³ The article referring to the Charter reads “the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.” (European Council, Parliament, Commission. 2007)

- reconciliation of family and professional life (Article 33);
- social security and social assistance (Article 34).

Numerous directives more or less aimed at labor relations have been adopted at the EU level, and there will likely be many more considering the intensity and complexity of debates on the modernization of labor laws.

Existing directives are inconsistent as to the interpretation of the term “worker.” In most cases, the term refers to employees, and an employment relationship presupposes a contract of employment. The other important criterion to determine whether labor legislation can be applied is subordination to the employer. Some EU directives, however, extend beyond employment contracts and also include other employment relationships, for example Council Directive 91/533/EEC on an employer’s obligation to inform employees (in writing) of the conditions applicable to the contract or other employment relationship. The directive affects “any working relationship emanating from a contract of employment or any other legal form of recruitment (e.g. teleworking, training, employment-training, etc), which links a worker to an employer and which is subject to the legislation in force in a Member State.” Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work stipulates specific requirements for employers that extend to temporary and hired workers working in the enterprise or establishment and workers from any outside undertakings working in the employer’s establishment. In most cases, however, the EU legislation leaves the definition of employee to the member states. The consequence is that EC law applicable to employees covers different parts of the labor force in member states depending on the national definition of employee.⁶⁴

Other relevant directives include but are not limited to (1) the Council directive (CD) supplementing measures to encourage improvements in the safety and health at work of workers with a fixed-duration employ-

⁶⁴ *Employee*, in *EIRD*

ment relationship or a temporary employment relationship (91/383/EEC); (2) CD 1999/70/EC concerning the framework agreement on fixed-term work concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)⁶⁵; (3) CD 97/81/EC concerning the framework agreement on part-time work concluded by UNICE, CEEP and ETUC⁶⁶; (4) CD 76/207/EEC on the implementation of the principle of equal treatment for men and women regarding access to employment, vocational training and promotion and working conditions along with Directive 2002/73/EC of the European Parliament and of the Council amending CD 76/207/EEC; (5) CD 2000/78/EC establishing a general framework for equal treatment in employment and occupation; (6) CD 93/104/EC⁶⁷ concerning certain aspects of the organization of working time along with Directive 2000/34/EC of the European Parliament and the Council amending CD 93/104/EC and (7) CD 94/45/EC on the establishment of a European works council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees.

III. THE MAIN PROBLEMS IN THE REGION

As a rule, labor relations in the media have been rather non-transparent and poorly researched, but all over the SEE region, there is a clear correlation with the major trends in the media in the rest of Europe: jobs are ever more precarious and there are major problems with the social, legal and professional security of journalists and other media workers.⁶⁸

65 A *fixed-term worker* is "a person having a contract of employment or relationship entered into directly between an employer and a worker, where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event." (CEC. various)

66 The directive guarantees part-time workers the right to equal treatment. (CEC. various)

67 Includes rules on daily rest (11 hours per 24-hour period), breaks, weekly rest periods (uninterrupted period of 24 + 11 hours), maximum weekly working time (48 hours), annual paid leave (minimum four weeks), night work (not to exceed 8 hours per every 24 hour period). (CEC. various)

68 Unless indicated otherwise, facts and quotations referring to the situation in individual countries are taken from country reports in the SEENPM study.

Researchers reported that labor codes defining basic rights generally provide a suitable basic framework for fair labor relations (with the exception of Montenegro where strongly criticized labor legislation is currently under revision), but it can be concluded from their reports that legislative frameworks evolved from traditional categories that have been seriously questioned as already highlighted. There is an overwhelming gap between legislative theory and actual practice, mostly due to inefficient enforcement of legislation and to lengthy court proceedings but also to the weakness or non-existence of journalists' trade unions, their low level of solidarity and a very low awareness of their rights among media workers.

Respect for rules and norms in labor relations is related to the broader political and economic framework, characterized by the transition after the fall of Communism, and in some countries by EU accession, post-conflict and other extraordinary conditions.⁶⁹ Markets in the region offer "essentially different conditions for media operation," but it is possible to identify certain common denominators: "Most of these markets are small and fragmented, hosting a great number of media, particularly broadcast media, or there are parallel markets divided along linguistic lines. Another feature shared by these markets is the existence of close links between the largest and most influential media on the one hand, and local owners of capital and political parties on the other."⁷⁰ The abundance of media in the countries in this study would not be sustainable in the existing markets were it not for serious cost cutting in the production process. A general practice of media owners/employers reported in the present study is that of tax evasion, a problem that has not been properly addressed.

69 For example, with only 21% of the purchasing power of the average European Union (EU) citizen, Albania has the lowest per capita income in Europe and one of the highest unemployment rates, at 13.8% in 2006 (ILO, n.d.). Excluding Slovenia and Hungary, the region examined comprises 55 million people with an average income per capita (in 2006) ranging from US\$720 in Moldova to US\$6,820 in Croatia (Economic Reconstruction and Development in South-East Europe, n.d.). Also notable is the observation that as regards general satisfaction with life, Bulgaria and Romania are the only new member states where more people are dissatisfied than satisfied with the lives they lead. (Bureau of European Policy Advisers [BEPA], p. 19)

70 Bašić Hrvatinić, Petković, p. 20 (It should be noted that the region examined encompassed more countries than the present study, and the findings quoted refer also to the Czech Republic, Estonia, Latvia, Lithuania, Poland and Slovakia.)

The observations of the country researchers can be summarized as follows.

- On average, respect for journalists' labor rights seems to be better in public media outlets than in private ones. That does not mean that violations do not occur in public media as well: in some countries they do so to a great extent. In addition, there are generally more possibilities to exert political pressure on public media.
- The most common violations occur in relation to the duration of working time and the right to rest time. In spite of legislative limitations, work days can regularly extend to 12 and in some cases even to 14 hours, and weekends are broadly considered as regular working days. Legislative standards regarding extra remuneration for overtime work are generally ignored.
- While journalists' salaries are generally above the average salaries in the countries in question, a vast majority of all respondents indicated that they are not adequately rewarded for their work, and there are considerable salary gaps between those operating in the capitals and those who work in the regions (national vs. local media). Furthermore, in several countries there are frequent delays in paying salaries, sometimes even for months, and withholding payment has been noted as a means of sanctioning.
- Inadequate protection of journalists from dismissal was reported by several researchers and nearly all reported the problem of imprecise labor contracts, especially with regard to job descriptions. That creates potential for burdening journalists with extra work not originally agreed upon and—especially worrisome—for sanctioning and disciplining.
- Contractual practices are highly disputable and in many cases illegal. Forced and fake freelancing is ever more common. Media managers either refuse to employ journalists or pressure them to register as self-employed or independent entrepreneurs, terminate their employment contracts and substitute them with civil contracts.

In most SEE countries, there seem to be fairly small numbers of

those who could be considered freelancers in the sense of freely choosing to be self-employed and to work for various media but many journalists work without employment or any other sort of contract. In numerous cases, employment contracts stipulate only minimum wages; the rest of the salary is paid via a supplementary civil contract or without any formal agreement at all. Contracts are also frequently concluded for fixed terms beyond the limitations imposed by legislation, and the terms can be as short as one month which raises serious concerns about the professional freedom of journalists.

The main purposes of such practices are cost cutting (lower tax and social insurance payments) and avoiding the legal protection provided to regularly employed journalists. As a result, journalists are faced with the constant prospect of termination of contracts that can generally be cancelled by merely giving notice and without providing justifications. In addition, journalists have extremely low levels of social security.

- Court and other formal proceedings are slow, and inspections that should supervise and ensure the implementation of labor legislation are inefficient.
- A particularly vulnerable group is that of young journalists who are regularly exploited by being required to work long hours for low pay or for no pay at all.
- Discrimination on the grounds of age; gender; political, religious or other beliefs; ethnicity and nationality was mentioned although it was not perceived as a serious problem.
- Conscience clauses in journalists' contracts are the exception rather than the rule.
- Authors' rights are frequently breached, and there is low awareness of their significance for the quality and integrity of journalism.
- Journalists' professional and social insecurity makes it easier to impose censorship and enhances self-censorship. There are different levels of recognition of such practices, but they are

present in all countries, both as a result of political and commercial pressure.

- With few exceptions, journalists' trade unions are weak or non-existent, social dialogue is very limited and collective agreements in the media sector are a rarity. Many employers have very negative attitudes toward trade unions, and in spite of legislative guarantees of freedom of association, journalists fear to form or join them. In some cases, lack of transparency of media ownership is cited as an additional problem for trade unions and individuals who want to defend workers' rights.

IV. SPECIFIC TOPICS

LEGISLATIVE FRAMEWORK

All countries in the region have ratified a number of relevant ILO conventions, including the eight Fundamental Human Rights Conventions; national legislation has to be in line with the international labor standards contained in those conventions. The (revised) ESC has been signed by Bosnia and Herzegovina, Montenegro and Serbia and is now awaiting ratification. The rest of the countries in this study have already ratified that COE document, although not all have ratified the additional protocol establishing the right to collective complaints. Additionally, Slovenia, Hungary, Bulgaria and Romania had to synchronize their legislation with the *acquis communautaire* in the process of EU accession and have to implement all EU directives and other relevant EU regulations. The case of Bosnia and Herzegovina is specific for the fact that labor rights and social security are not regulated by a single law at the national level but are placed under the jurisdiction of the Federation of Bosnia and Herzegovina, Republika Srpska and of District Brčko, the three jurisdictions into which the country is organized.

In all countries in the region, basic labor-related rights are stipulated in their constitutions starting with the right to work and extending to the freedom to organize trade unions and in some cases also specifi-

cally guaranteeing the right to strike. National constitutions also contain general prohibitions against discrimination. Specific regulations for labor relations are stipulated in general labor codes that apply to all employers and employees; as a rule there are no particular regulations specifically for the media, with the exception of some provisions in media legislation that more or less directly affect the position of journalists as employees/workers.

The concept of employee/worker is relevant as the term in the labor codes applies only to workers with employment contracts. Considering the nature of journalists' work and their increasingly precarious labor relations, additional relevant regulations are found in copyright acts and laws that regulate civil contracts as well as in some specific regulations regarding taxation. There have been problems in that respect. For example, the Croatian law on authors' rights and related rights states that "daily news and other news characterized as basic media information are not subject to copyright," and the Slovenian authors' rights legislation exempts "periodical press" from the obligation to conclude written authors' rights agreements.

As will be highlighted in the following section, tax evasion (for example by concealing employment relationships) is very common in the media industry, and there have been several attempts by legislators with amendments to legislation to discourage such practices. In Hungary, one such step was the abolition of *ad hoc* employment contracts that were typically used to place the burden of taxation on the journalist. Another change was the introduction of a simplified taxation method applicable to journalists, editors and others in creative professions. In contrast, the latest changes in tax legislation in Slovenia established a very complicated system of taxing income, and the relevant authorities have been extremely slow to interpret legislative provisions which has in turn led to significant confusion in practice.⁷¹

⁷¹ observation based on the authors' personal interviews with journalists and other creative workers

General norms in labor legislation that are of particular relevance for journalists' work (especially in view of the most frequent violations and general practices) include the following.

- The regular working week is limited to 40 working hours, and there are limits on extra work (for EU members the limit is 8 hours a week; in most others it is 10 hours).
- Extra remuneration is stipulated for overtime work as well as for work on Sundays, official holidays and night-time work among others.
- An employment relationship requires a written contract (of indefinite or definite duration but in all countries there are limitations on concluding fixed-term contracts).
- Contracts must contain job descriptions.
- Employment contracts can be terminated only with justification, and there are specific stipulations on unacceptable reasons (such as discrimination, pursuit of workers' rights in courts of law, membership in a trade union).
- All workers are ensured judicial protection of their rights.

Also relevant in connection to the general (constitutionally and universally guaranteed) freedom of speech that is the basic tool of journalistic profession is the liability of workers for damages and the duties of (journalists as) employees to obey their employer's instructions and to protect (commercial) confidentiality.

COLLECTIVE AGREEMENTS

The labor codes in these countries typically contain more or less specific regulations regarding collective negotiations and agreements. In Slovenia, they are regulated by a specific legislative act. Collective agreements stipulate additional rules at the national, branch and/or company level. The general rule is that they cannot lower any standards set by national legislation. They typically define general workers' rights (e.g., minimum wages, ratios between different jobs, working hours, overtime work, breaks and paid annual leave and dismissal procedures), and deal

with some specifics of the branch or the profession. There is an air of uncertainty regarding many of the existing collective agreements.

In the region, Slovenia is the only country with a national collective agreement specifically for professional journalists. It was concluded in 1992 and is currently being renegotiated. Due to legislative changes, it will cease to be valid in April 2009 unless a new agreement is reached by then. The agreement is valid not only for the regularly employed journalists but also for freelancers. It coexists with the Collective Agreement for Publishing and Book Selling that was concluded in 2000.

No collective agreements have been reached in the media sector in Albania. In Romania, there has been a national collective agreement for the media sector since 2005. In neighboring Bulgaria, collective agreements for media workers exist only for national radio, national television and the Bulgarian News Agency and affect about 4800 employees. Macedonia is another country where there is a collective agreement for employees of the public station RTV (which is undergoing reforms due to a financial crisis), but private media generally do not have collective agreements. In Montenegro, there are no collective agreements in the private media while the collective agreement for the employees of the national public radio and television station has been in force since May 2007. In Serbia, there is no single collective agreement for all media, and a vast majority of media outlets do not have collective agreements either. Researchers there noted that changes in the ownership structure of the media usually result in violations of the collective agreement or in the employer pressuring trade unions into modifying the existing agreement and making it less favorable for employees.

In Bosnia and Herzegovina, a branch collective agreement exists only in Republika Srpska, but it does not regulate anything specific to journalism. At the federal level, the Association of Graphic, Publishing and Media Employers was established only last year, and talks about a collective agreement have just begun.

In Croatia, there are currently 10 collective agreements in individual media companies. Ever since 2003, the journalists' trade union has been conducting "very difficult negotiations" on a national collective agreement that would encompass freelance journalists. Notably, according to existing collective agreements, journalists have the right to refuse an assignment if it is against their beliefs or against the code of conduct.

OTHER MEASURES

An important mechanism in relations between journalists and media owners/managers/employers in Bulgaria is the Professional Code of Ethics of the Bulgarian Media stipulating that journalists "shall maintain a clear distinction between editorial decision making and the commercial policy of the media and can refuse assignments if in breach of their professional ethics..." The code was not only adopted by journalists (as for example in Slovenia), but also by their employers. The "right to refuse assignments of contradicting ethical principles" is restated in the Radio and Television Law thus becoming legally binding for all electronic media. It is also contained in the Statute of the Bulgarian Newspapers Group that sells over 30% of the newspapers in the country.

In Romania, the code of ethics for journalists has been annexed to the collective agreement for mass media since 2006 making it a constituent part of labor relations. That raised concerns that employers would abuse the very general provisions in the code to impose disciplinary sanctions.

The Slovenian mass media act touches upon labor relations by stipulating that the so-called (mandatory) program concept of the media outlet is a constituent element of the employment contract. Therefore, in order to fulfill contractual and other obligations, the journalist/worker has to be familiar with the program concept which is related to the protection of editorial independence guaranteed by the mass media act. The act prohibits any deterioration in the working position of a journalist as a consequence of expressing opinions and standpoints that are in line with the program concept and professional standards; however, as will

be highlighted further on, these guarantees are merely statements that hardly offer any actual protection for journalists from unfair treatment and unwarranted sanctioning.

In Moldova, the press law grants journalists the rights to refuse to prepare and sign material that is contrary to their convictions, to refuse to sign material that has in their opinion been distorted during editing, to demand that authorship is not disclosed and to benefit from privileges regarding transport.

IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

All researchers noted that the implementation of legislation in practice was highly problematic. Breaches of legislation in contractual practices are an acute problem in the entire region, but cases when journalists go to courts to solve labor disputes are rather rare, although those that are pursued are generally successful. For example, the Croatian trade union has won more than 95% of its cases, but there are no special labor courts and court proceedings last on average between three to five years, some even for ten years. A representative of the Bosnian trade union pointed out that journalists fear that court proceedings will cost them their jobs, and a similar observation was made by the Romanian researcher. The Slovenian and Bosnian reports also highlighted the inefficiency of courts and other state institutions, particularly of labor inspectorates. The latter were exposed as an important part of the problem in most of the country reports.

In Serbia, researchers observed that although the legislation itself is mostly harmonized with EU standards, violations are frequent. "The reasons lie in the attitude that the interests of the owners, political parties and economic groups are more important than truth in reporting. Additionally, enforcement of the law is hindered by the lack of transparency in media ownership as well as the judicial system's disinterest and inefficiency in prosecuting those who violate the law and the basic principles of the journalistic profession." Over a quarter of Serbian respond-

ents did not have any kind of contract, and payments were usually made to someone else's account or in cash. When employment contracts did exist, they were frequently concluded for the minimum/base salary, and there were no formal arrangements for the remaining amount of journalists' remuneration which was usually paid in cash. This practice was also reportedly widespread in Bosnia and Herzegovina and in Montenegro.

The country with the most striking proportion of journalists working without any written contract was Albania. There, the journalists' union estimates that 95% of journalists and media employees have no contracts and/or proper health and social benefits. Only 9 of 72 media employees surveyed for this study had signed work contracts for their current jobs, and 58 said they did not get any social benefits. In Bosnia and Herzegovina nearly 58% of 190 journalists who participated in a study in 2002 worked without a contract. In Moldova, 25% of respondents in the SEENPM study were working without the mandatory written employment contracts required by law.

In contrast, the Bulgarian researcher noted that (due to a sophisticated system of checks and balances) "working without a contract in the media ... is something that simply could not occur." There was not a single such case among respondents; however, the practice of mixed contracting (combining employment and civil contracts with fewer tax obligations) "seems to have acquired tremendous dimensions dramatically enlarging the volume of the shadow economy." In Romania, Slovenia and some other countries, copyright agreements are (ab)used for that purpose. The Slovenian report noted that in contractual relations with freelance journalists, breaches of the copyright and related rights act are the rule rather than the exception. Breaches of authors' rights were also emphasized in the report from Moldova; a particular problem there is the non-observance of the right to protect work from distortions. In Bosnia and Herzegovina, most journalists "seem not to believe that the protection of authors' rights is possible in the chaotic market economy".

In line with the general trends summarized in the introduction, the

Croatian report states that employers overwhelmingly prefer fixed-term contracts. Some of them are signed for only three or six months; some even only for one month at a time. There is a three-year limitation on fixed-term contracts, but even at the end of that period, some employers avoid signing permanent employment contracts by simply changing the job description thus circumventing labor legislation. Another problem is the fact that employers pressure journalists to reject long-term employment contracts in favor of the more precarious self-employment status of registered independent entrepreneurs. Freelancers and those working in small local media often have no contracts and are paid late or not at all.

Fixed-terms contracts are concluded beyond the limitations imposed by legislation and/or without proper justification of the fixed term in other countries as well. In Moldova, for example, fewer than half of all respondents had contracts for indefinite periods of time. Many breaches of legislation in Moldova occur in relation to probationary periods. The probationary clause should be stipulated in the employment contract, but many media outlets conclude the contract only after the worker had finished the probationary period.

Considering the social role of the profession and the importance of journalists' independence, the poor protection of journalists from dismissal is a grave concern. Those without any contracts or with civil contracts are at all times faced with the prospect of a sudden loss of income. "The possibility of dismissal is like Damocles' sword," as one respondent in Hungary put it. Even journalists who are officially employed in many cases do not feel safe from unjustified dismissal. In Serbia, 60% of respondents did not believe that employment contracts protected them from dismissal or sanctioning, and only about one third of respondents in Macedonia and in Bosnia and Herzegovina gave an affirmative response in that regard. Furthermore, the existing legislation in Bosnia and Herzegovina includes "overly generalized wording that leads to difficulties in practice." The broad formulation that terminations of employment are permissible, "if there are justifiable economic, technical or organizational

reasons" can be and reportedly is abused to execute employers' arbitrary decisions. The survey revealed that the low quality of labor contracts represents one of the basic problems in labor relations in the media. A similar observation was made in Albania where even those few journalists who had contracts mostly did not think they would offer any real protection against sanctions or removal from their jobs.

A key concern is the imprecision of labor contracts, especially with regard to job descriptions. In Bosnia and Herzegovina, most of the media employees interviewed stated that their jobs were defined as "journalistic tasks" without any further explanation, and many respondents affirmed that they were often engaged in work that was not stipulated in the employment contract. In Moldova, one interviewee explained that many journalists "have problems because the duties set out in their contracts are not concretely specified, ... as a rule, the topics the journalist should specialize in are not stipulated nor are the volume and genre of articles, topics and programs." In Montenegro, contracts frequently do not contain the basic mandatory provisions stipulated in the labor law, and even when the form is proper, obligations do not meet the criteria specified. . A particularly striking practice in Romania is employers making journalists' employment conditional on their obtaining sponsorship and advertising funds (that is not included in the job description). In some cases, the employer further stipulates that the client must be of a value sufficient to cover the salary and taxes of the journalist.

While there are explicit legislated limitations on the maximum amount of overtime work in addition to the regular (eight) daily working hours, and extra payments are defined for extra work, there seems to be hardly any regard for those provisions; instead, there is a general acceptance of extended working hours by journalists. Journalists do not perceive overtime work as a violation of their rights but rather as a necessity in performing their jobs. As a consequence, work days can regularly extend to 12 or even 14 hours, and journalists' social lives suffer. Saturday and Sunday are frequently considered normal working days and there is

no extra compensation for those who work on weekends, as noted by the Romanian country reporter. In a discussion, a respondent from a Romanian commercial television station “admitted that journalists work between 12 and 14 hours per day and even during the night, but as compensation he allows them to take one or two days off every two to three weeks to pay bills and fulfill other obligations that can be done only during normal working hours.”

Journalists’ salaries are sometimes paid after delays that can last for several months, most prominently in Albania and Serbia. Withholding payment has been noted as a means of sanctioning “disobedient” journalists. One quarter of respondents in Bosnia and Herzegovina considered problems with payment (low, irregular wages, only minimum salaries reported) as the most prominent violations of journalists’ labor rights. Overall, a vast majority of respondents indicated that journalists were not sufficiently remunerated for their work. For example, only 8% of the persons surveyed in Albania said they considered their salaries to be appropriate for their jobs, and journalists could not determine their position in the overall hierarchy of salaries in the country. In Moldova, 88% of respondents mentioned that the wages they received did not correspond to the work they did.

Another issue that was examined in the study was discrimination which is explicitly prohibited under international and national law. In many cases, respondents in the study failed to recognize and were unwilling to discuss discrimination, but during interviews researchers could detect that discrimination actually existed in larger proportions than statistical data revealed. For example in Serbia, about three quarters of respondents did not answer the question about discrimination in the survey, but during the interviews, most of the participants recognized discrimination on the basis of sex, age, financial status, education, professional skills or political affiliation. In Bosnia and Herzegovina, 80% of respondents perceived that there were no discriminatory practices, but one editor noted: “There is already an opinion that there is ethnic segregation in the

media so that employees do not apply for posts that are clearly oriented toward the 'other' ethnic groups." In Bulgaria, age discrimination was rather common according to one respondent, and the Romanian reporter noted "systematic discrimination against women. There are overwhelmingly more women than men in entry level-jobs, but this ratio changes in middle management where men dominate." It can be concluded that there are also cases of discrimination on the grounds of political and other beliefs, for example in Slovenia where journalists have been sanctioned for expressing opinions. Serbian reporters noted that freelancers are victims of discrimination in society by not being allowed to enjoy the benefits offered by commercial banks like applying for loans, although many of them receive regular salaries just like typically hired employees. In some countries, freelancers are even discriminated against by trade unions.

FREELANCE JOURNALISTS

The SEENPM country studies confirm the existence of significant pay gaps between regularly employed and freelance journalists. Researchers generally report that freelancers/atypical workers⁷² are paid less than their employed colleagues and that their social security is a major cause for concern.

In Slovenia, it became evident when amending the tax and labor legislation that the numbers of *de facto* fake and forced freelancers were massive. Neither tax nor labor inspections have been efficiently overseeing the implementation of the new stipulations. There is "the typical inequality between the obligations and the rights of freelance journalists." They have the same responsibilities as those in employment contracts, in many cases including the competition clause, but the financial, economic and other obligations of their employers are consid-

⁷² It is somewhat difficult and risky to directly compare results from individual countries as there are apparently different applications of the terms freelance journalists, atypical workers, etc. We will adjust to the individual reporters' use of terms. Notably, this study overall does not apply the term "atypical worker" to all categories that are encompassed in the ILO's definition of precarious/atypical work (please see note 9). For example, those working on fixed-term employment contracts are generally not included in the researchers' overviews of atypical workers.

erably less than those for the regularly employed. It is estimated that nearly two thirds of freelance journalists are forced into that status; the most frequent violator of the explicit prohibition against concluding civil contracts when there are elements of an employment relationship has been the national public broadcaster. Overall, major media are leading in that respect, but local RTV stations provide a good illustration of the general observance of labor legislation. Of the total of 75 registered radio stations, 18 operated without one single employee in 2004, and 11 of the 52 TV stations did so likewise. Furthermore, about one half of the total of 127 private RTV stations employed only managers, so the reporter concluded that about two thirds of publishers operated exclusively by hiring freelance journalists.

In Bosnia and Herzegovina, 30% of respondents in the survey worked as non-employed journalists, but the trade union representative estimated that the proportion of freelancers was much higher, possibly around 50%. In principle, freelancers are more affected by delays in payments and they “face violations of virtually all listed labor rights more frequently than those respondents who have signed labor contracts.” The practice of pressuring journalists to engage in fake freelancing while performing full-time jobs is “a commonly used strategy of employers to avoid welfare and social insurance payments.”

The trend of shifting the majority of work to freelancers has been noted in Macedonia as well, and most interviewees who are not regularly employed “perceive themselves as employees.” While their duties are the same as those of the employed journalists, their employers do not make contributions to their health insurance and pension schemes, and they have no right to paid annual vacations. The same situation was observed in Serbia where almost 60% of one and 40% of the other journalists’ trade union members were not permanently employed. In Hungary, a previous study revealed that between 1992 and 2000, the number of full-time journalists decreased every year; currently freelancers are estimated to be about one third of all journalists. The Albanian report noted

that against the “backdrop of the highly unstable media market and the constant need for journalists, the distinctions between typically hired and atypically hired workers are extremely blurred.”

Moldova, Bulgaria and Romania are the only countries where fake and forced freelancing has apparently not reached great proportions.⁷³ The Bulgarian report noted that freelancing is not a widespread phenomenon and that freelance work is much more a personal decision than a necessity or a consequence of a lack of other employment opportunities. The way the Moldavian reporter described freelance journalists seems closer to traditional freelancing (outlined in the introductory chapter) with a higher bargaining power than that in most other countries. Moldovan freelance journalists reportedly very often are “prominent journalists who gather unique information, produce competitive articles, get exclusive interviews or obtain the rarest photographs and then sell them to media outlets. They may work independently, or they may get orders for articles from employers with whom they have concluded civil contracts. These can be temporary employment contracts or agreements or contracts for specific assignments.” In Romania, freelancing is “a relatively new domain,” and seems to be limited to journalists who actually work independently from media outlets, in many cases working on investigative projects that are financed by international institutions. The Romanian report highlighted very frequent breaches of freelancers’ authors’ rights, particularly the unauthorized uses of copyrighted work beyond the scope of agreements reached between media outlets and freelancers.

Young journalists are a particularly vulnerable category in all countries, including those with limited numbers of freelancers, and they generally fall into the category of atypical workers. Researchers reported that they are often exploited, underpaid, work long hours and are subject to a continuous prolonging of their atypical work status. In Bulgaria and Romania, a lot of work is conducted by undergraduate students who may

⁷³ Referring to countries where that issue was dealt with in the country report which excludes Montenegro.

work for several months without any remuneration, hoping that they will eventually conclude some sort of contract with the media outlet. In Romania, younger workers (between 18 and 30 years old) are particularly desired in print media, “as they are better able to cope with the intense work and demanding hours.” In Montenegrin private media, a particular problem is the attitude toward trainees with whom employers conclude fixed-term contracts. Mostly they are “young and inexperienced individuals, with or without education, accepting poor conditions in order to try themselves in media jobs and gain some experience.” Employers frequently “keep trainees working for months in almost slave-like conditions” and then simply replace them with a new, fresh workforce that will be treated in exactly the same manner.

CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

The significant social, economic and professional insecurity that journalists face in the region has negative effects on their performance of the watchdog function. The Albanian researcher concluded that in the “climate of insecurity, it is difficult to expect anything from journalists other than obedience to the economic and political interests of the owners.” Likewise, the Bosnian reporter observed that due to “the alarming socio-economic situation, journalists find themselves in a highly vulnerable position, where censorship, self-censorship and violations of professional ethical standards become possible and real.” In Montenegro, journalists reportedly constantly feel the insecurity of their situations and their fate largely depends on the good will of their employers. “In such a situation, truth and public interest are often victims of interested powerful financial lobbies that control not only state-owned media, but also a number of privately owned media companies.”

This research confirms previous findings that local media markets are particularly problematic, and it is journalists working for those media who are particularly exposed to strong pressure, “owing to the limited advertising potential (and local advertisers are also local entrepreneurs

and politicians) and dependence on advertising income.”⁷⁴ In Serbia, local politicians reportedly “do everything in their power to abuse the media for political purposes,” particularly in relation to local public media. “Every change in local government results in changes in the top-level management of the media outlet. New editors are hired, often without any previous experience in journalism. Their main professional quality is affiliation with ruling political parties.” Private media owners reportedly use the media for the promotion of their primary (non-media) businesses and require journalists not to report negatively on their clients. The Romanian report noted that indirect censorship is harder on journalists working regionally “because when an influential person in the region decides that a journalist is undesirable, no outlet in the region will offer him/her employment.”

The Bulgarian report suggested that to a greater degree in the capital and to a lesser extent in the countryside, the Bulgarian media resist external pressure, but in the words of a regional journalist “No political or economic interests could influence the labor relations at my media outlet. The editorial policy of the media is decided solely by the journalists and by the owners.” (There is no emphasis on owners) There are other indications that owners do influence media content in Bulgaria, and there are even individual cases when editors may be in agreement with politicians and their political and/or economic interests may dominate at the expense of press freedom. A Bulgarian journalist stated that the situation in the regional media outlets is more complicated “because the owners, usually businessmen with several other businesses besides the media, might use the media to boost their economic interests.”

Respondents in Bosnia and Herzegovina highlighted that censorship and self-censorship as well as employment policies are predominantly governed by the commercial interests of the employers. One of the respondents argued that the politically driven censorship culture is declining while a certain “corporative marketing dictatorship” is on

⁷⁴ Bašić Hrvatinić, Petković, p. 20. (Authors explain that local media markets suffer the most serious consequences of media concentration and of the interplay of economic, political and media power concentrated in the hands of a single owner.)

the rise in the sense that companies that are attractive for marketing contracts are influencing editorial policies. The general secretary of the Croatian journalists' trade union observed "Under Communism, there was open political pressure on the media, but today interconnected political and economic power centers have a more subtle influence with the full participation of media owners. (...) Advertisements are more important than news."

Regular or occasional censorship or self-censorship was indicated by 67 of 114 respondents in Bosnia and Herzegovina and by over one half of respondents in Serbia. In Albania, only 15 out of 72 respondents gave a negative reply when asked whether labor relations imposed a certain censorship or led to self-censorship, and only one Albanian interviewee denied that journalists often resort to ethical violations in order to protect the interests of the media owners. Only 30 respondents in Albania claimed it was their decision what to report, while the other 42 said it was up to their employers. "In many ways, it is the media owners' interests that determine not only the manner of reporting, but also what should and what should not be reported," noted the researcher. All of the editors-in-chief interviewed in Albania were aware that they adjusted their work to the interests of media owners, with or without the direct intervention of the latter. "There is no clear editorial policy as such; the general rule is that after a couple of incidents of interference from the publisher, one gets the idea of this policy and what self-censorship should be like," said an editor-in-chief of a daily newspaper.

When journalists in Hungary were asked about their professional autonomy in a survey conducted in 2000, 56% replied that they could not ignore the business interests of the owner of their outlets, and 42% mentioned the interests of the advertisers as taboo issues.⁷⁵ Almost half the journalists cited attempts to withdraw completed articles or programs

75 In the OSCE survey about the impact of media concentration on professional journalism conducted in eight countries (Germany, Finland, Great Britain, Hungary, Italy, Lithuania, Poland and Romania), 26% of journalists "admitted that advertisers have an influence on the editorial line of their newspapers," and "the sarcastic comment of a British journalist to the question, whether the editorial line of his paper was independent from advertisement influence, simply read: 'Money talks!'" (OSCE. p. 74).

under political pressure, and an equal proportion had noted such attempts by business groups. Overall, about two thirds of those attempts were not rejected by the editorial boards. In the SEENPM research, 65% of typical workers and 86% of atypical workers in Hungary mentioned that their superiors censored their work. One of the respondents said that there is no censorship, “but I know the expectations.” The contracts of only 8% of employed respondents in Hungary contained conscious clauses, and one respondent added “Disagreement is not recommended.” The Albanian researcher reported that even in those few contracts that exist in Albanian media, the conscience clause is unheard of, either on paper or in practice, and the majority of respondents in Bosnia and Herzegovina also claimed that there were no such clauses in their contracts.

In Macedonia, 60% of the total number of journalists surveyed in a study on ethics had been censored by their editors-in-chief or employers. It can happen that whole sentences are added to journalists' stories or journalists are asked to sign already made or ordered stories. The reporter cited media ownership and close relations to political structures as the main obstacles to combating censorship or self-censorship in the media.

In Slovenia, a particular problem has been the Employment Relationship Act stipulating that the worker is obliged to refrain from all actions which could cause material or moral damage or might harm the business interests of the employer. That has reportedly been abused to sanction workers/journalists for expressing opinions, even though that is prohibited by media legislation. Such abuses have also occurred in relation to workers' obligations to protect commercial confidentiality. The Slovenian report noted that informal disciplining for expressing opinions and standpoints has been on the rise as well, preventing journalists from seeking legal protection. Such proceedings in media companies have led to a deterioration of the position of journalists (transfers, demotions to lower paying jobs), and in some cases to consensual termination of employment contracts. The journalists' union has also recorded a number of

unauthorized changes in texts and refusals to publish commissioned texts and other content that could be critical of the government. Legislative provisions that guarantee journalistic autonomy in the pursuit of information in the public interest are deficient, their implementation is difficult and state supervision over the implementation of the provisions in force has not been functioning well.

The Moldovan researcher also reported that although censorship is prohibited by the constitution, it nevertheless exists: “While there are plenty of articles in the legislation on media that generally define guarantees for independence and freedom, there are no clearly defined mechanisms that would help to ensure those guarantees.” Moldovan respondents acknowledge the impact of cases of abuse of legislation on defamation, and two thirds of interviewees said that they constantly or from time to time feel that labor relations impose a certain censorship or self-censorship.

In Romania, the researcher observed the impact of the “obedience clause” in the labor code. In practical terms, those who do not agree with the editorial policy are “free to leave.” If they do not leave willingly, the employer may abuse the subjective clauses and construe the dismissal of the undesirable journalist as a disciplinary sanction with the possibility to use the ethical code annexed to the collective agreement.

JOURNALISTS' TRADE UNIONS

As has been noted, the changing socio-economic context poses serious challenges to trade unions in all industries and all around the globe. In the SEE region, trade unionism has been additionally burdened with the negative image associated with the Communist past. Researchers also underlined the general lack of solidarity among journalists (the perception that “journalists must fight against competition”), and the perceived inefficiency of trade unions, aggravated by the reluctance of employers to negotiate collective agreements. Particularly worrying is the hostility of employers to trade unionism, especially in Romania and Serbia. One

owner “clearly said that everyone who tries to form a trade union will be fired.”

The membership of freelancers in trade unions seems to be even lower in the SEE region than elsewhere, and in some cases, trade unions do not address freelancers' issues at all. In Bosnia and Herzegovina, none of the atypical journalists/freelancers from the survey sample was a member of a trade union, although they have the right to membership, and the issue of atypical workers is not dealt with at all in the ongoing collective negotiations. The Croatian trade union organizes journalists from all media, including freelancers, and so does the Slovenian journalists' union, but its president observes that freelancers “are much more difficult to draw into a trade union, particularly in the framework of the existing rules of trade union organization and the existing practices of trade unionism.” In Macedonia, to become a member of the trade union, one needs to have a valid contract with an employer, but one third of respondents in the survey worked without contracts. In Serbia, the freedom to form trade unions is guaranteed only to employees, and freelance workers (although admitted to the unions) are excluded from any type of agreement reached with a media outlet. The Romanian researcher also noted that the right to affiliate in trade unions was only for those who had an individual labor contract.⁷⁶

ALBANIA

A journalists' trade union was established in 2005, and it now has branches throughout the country. In 2006, the union signed a memorandum with the Ministry of Labor that would enable the signing of a collective agreement, but negotiations have not been concluded. Due to the highly insecure conditions journalists work under, most of the persons interviewed were pessimistic regarding a quick empowerment of the trade union. Skepticism has grown due to the ineffectiveness

⁷⁶ EFJ argues that “definitions of freelance vary from country to country but, as a minimum, anyone working on employers' premises, using employers' equipment, or subject to employer jurisdiction and instruction must be entitled to collective representation, even if their social payments are not covered and they do not obtain other benefits applying to staff journalists” (EFJ & ETUI).

of previously established journalists' associations (not acting as trade unions). All interviewees noted that there is very little solidarity among journalists. One said "In 17 years of independent media I can count on the fingers of just one hand the cases of public protest and solidarity among colleagues." Previous research has shown that journalists "are almost helpless when faced with the arbitrary decisions of owners who can fire their staff without cause."

BOSNIA AND HERZEGOVINA

Postwar circumstances and the process of privatization have reportedly had "devastating effects" on trade union organizing. There are currently three trade unions – one for each of the entities and the trade union of Brčko District – but only in the two entities are there also specific branches for graphic, publishing and media workers. Their efficiency "has been diminished by the non-existence of an equivalent body within the Association of Employers," so the trade unions have not been able to initiate collective negotiations. Negotiations with a newly established employers' association are in progress, but there is no guarantee that the agreement will be binding for all employers, and the long track record of unchallenged violations of workers' rights has made employers reluctant to improve labor relations. In private media, trade union organizing virtually does not exist. Generally, research shows that the interest of journalists in trade union organizing and collective bargaining is extremely low. Trade unions have a poor image and are often considered as only formal organizations without any substantial results in promoting the labor rights of journalists. There are also fears that trade union representatives are not impartial and are connected with media employers. A particular problem is the fragmentation of journalists along ethnic and regional lines.

BULGARIA

The tradition of trade unionism is over a century long. During Communism, trade unions "became a symbol of conformism, blind compli-

ance with the politics of the communist party and hardly a mechanism to protect and guarantee the rights of the workers and employees.” After the change of regime, a new umbrella trade union organization, Podkrepa, was established. It soon formed branches in all spheres of the economy including the media. Politics and internal problems triggered a significant drop in membership in the 1990's, and the role of trade unions has been diminishing since. In the media sector, there are three general journalists' trade unions; two are registered at Bulgarian national radio and television. Researchers reported that “their voices are neither very loud nor especially influential,” and concluded that trade unions in the Bulgarian media sector “seem to have outlived their time and belong to the past rather than to the present or the future.”

CROATIA

The Trade Union of Croatian Journalists (TUCJ) established in 1990 coexists with the Croatian Journalists' Association that has existed since 1910. There are initiatives to merge the two organizations. Trade union membership is estimated at about 70% of the total number of journalists (about 4000) which is probably the highest percentage in the region. TUCJ has negotiated collective agreements in private and public media and was the first trade union in any transitional country to sign a collective agreement with a media company co-owned by the German corporation WAZ, a major media owner in the Balkans. Overall, lack of transparency in media ownership has been a severe obstacle for the trade union. TUCJ has been negotiating a national collective agreement for journalists and media workers to protect their basic rights including freelancers and those working in small, local media outlets. Negotiations have been ongoing since 2003, and some major issues remain unsettled. TUCJ has been actively providing legal assistance to its members and requests continuous supervision by state inspectors who discovered in 2001 that almost half the journalists and other media workers had no legal contracts.

HUNGARY

The Press Union is the only journalists' trade union, but there are also a number of journalists' associations which "shows the divisions in the journalism community." The Press Union enjoys "low prestige with the community," and only one respondent in the survey was a member, another one noting that "the trade union is inefficient." Respondents suggested that "even if they were members of such organizations, they would likely not protect them in the event their rights were infringed."

MACEDONIA

Journalists are represented by one trade union: the Union of the Graphical, Information, Film, Publishing Industry and Production of Paper. The union has only one employee and five boards covering specific areas, including journalism. It has seen a large drop in membership ascribed mainly to the closure of factories in the publishing industry and the privatization of a major print media outlet. The union has negotiated a collective agreement with the public broadcaster and drafted a proposal for a special collective agreement for the media sector but has so far not been able to initiate collective negotiations. Individual assistance includes legal advice and actions on behalf of members that are normally successful if workers have valid contracts. Success is hindered by the fact that most journalists do not have such contracts and are afraid to take action against their employers. The union has organized training in labor rights and has adopted rules on the protection and insurance of journalists during combat and conflict reporting.

MOLDOVA

The Union of Journalists has existed since 1957 and nowadays has about 1500 members. In June 2007, it became an associate member of the Romanian MediaSind Trade Union that is a branch of the International Federation of Journalists. Some Moldovan journalists are members of trade unions of cultural workers in the National Confederation of Trade

Unions of Moldova. In this SEENPM survey, 17% of the respondents were members of trade unions, but they were not positive about their effectiveness. There have been initiatives and attempts to create a new trade union for journalists. The League of Professional Journalists that was created in 2002 aims to consolidate press workers and to protect their interests in court and in dialogues with authorities.

MONTENEGRO

There are several journalists' associations and the Independent Trade Union of Journalists of Montenegro, but they are deemed to be extremely disinterested and non-functional in relation to the positions and rights of those who work for the Montenegrin media. They reportedly exist "only formally" and raise no relevant initiatives to improve the position of journalists. The union could not provide any relevant data for this SEENPM research.

ROMANIA

There are a number of trade unions in the media sector, but few represent journalists. The researcher noted that the most efficient ones are those in public radio and television. Journalists are afraid to join or set up trade unions because of the obvious opposition of employers to them. When unions were set up, their existence was frequently concealed from employers. Once their existence was discovered, journalists were threatened with dismissals, pay cuts and demotions if they didn't withdraw their membership. The researcher also noted that journalists do not trust the leadership of trade unions and doubt their effectiveness, but there are more and more cases when journalists turn to the trade unions for support and intervention when their rights are breached. Journalists named free legal assistance and financial assistance as two key expectations from trade unions.

SERBIA

There are two national journalists' trade unions, and journalists are "deeply divided over their affiliations." Divisions have political connotations and a negative effect on the position of journalists and the protection of their rights, including the possibility of negotiating a national collective agreement. Some private media owners "feel so empowered by the lack of strong trade unions and the inadequate enforcement of laws and regulations that they often threaten journalists with dismissal at the slightest hint of a desire to form such organizations." Trade unions have generally been more successful in public than in private media where their influence is reportedly "negligible," but new problems have been arising with the privatization of public media. A major obstacle for the efficiency of trade unions, considering the large proportion of journalists without employment contracts, is the provision in the labor law that guarantees the right to organize trade unions only to employees. Overall, journalists are rather dissatisfied with trade union effectiveness.

SLOVENIA

The national journalists' trade union organized a general strike in 2004 to bring the employers' association to the negotiating table to revise the national collective agreement. The president of the union reported that in media outlets with internal trade union organizations (covering about two thirds of employed journalists), all employed and freelance journalists took part in the strike, while other journalists mostly did not. Negotiations on wages for the employees of the public station RTV Slovenija took five years, and are considered to be one of the more successful efforts of the trade union. On the other hand, the trade union "has been far less successful in adjusting to the conditions in the journalists' labor market." Membership has been stagnating for several years and currently covers about 40% of the employed work force and about 17% of the estimated total number of freelance journalists. The union president observed that transition to new forms of organizing is made harder by transitional legislation and by the internal organizational and financial limitations of the trade union.

V. CONCLUSIONS

The role of the media and journalists and the relationship between working conditions and the quality of performance make settled labor relations in the media important for society as a whole. There is a clear connection between the journalists' working conditions and their ability to put the theory of freedom of expression into practice. There can be a wide gap between the perceived external freedom of the media and the internal freedom that largely determines what use journalists can make of prohibitions against censorship and guarantees of editorial independence. Labor relations greatly determine internal press freedom, and they can impose severe limits on freedom of expression and independence. The non-observance of authors' rights further reduces the possibility to pursue journalism with professional integrity, accountability and in the public interest. Currently, the latter frequently gives way to commercial and political interests of media owners.

Problems in the SEE region are in many ways similar to those in the rest of Europe, but in the post-socialist and in some cases post-conflict countries, there are the additional hardships of political and economic transition. Although the countries in this study differ in many respects, some basic and binding international labor standards are repeatedly, even systematically breached. This study focuses on specific issues repeatedly highlighted as problematic by country researchers or particularly striking in individual countries. They include issues of working time, just remuneration, social security, the right to freedom of association, protection from dismissal, the implementation of legislation in force, the accessibility of legal means to solve disputes and the general legal protection of workers. The research revealed a large shadow economy that has developed and is still developing in the media industry through the increasing use of fake and forced freelance work, a significant proportion of undeclared work, abuses of civil contracts to disguise regular employment and many other forms of tax evasion.

There is a need to rethink labor and social policies and the enforcement

of legislation as well as trade union strategies and the role of civil society in safeguarding media freedom.

In the generally worrisome picture of the situation in the media and journalism with respect to labor legislation, some examples of good practices can nevertheless be found in the country reports. For example, some journalists' trade unions have been seriously addressing the issues of atypical workers; some have organized training for media workers to educate them about their rights; some have been very active in the pursuit of justice in courts; some have actively sought international cooperation and some have been conducting research that helps shape trade union strategies and general public policy. There are also positive examples of significant efforts by civil society organizations to monitor and improve labor relations and the general conditions for professional journalism. Last but not least, some media owners and managers have conducted social dialogues and concluded collective agreements, offered properly remunerated work to students over the summer break and have shown respect for professional codes of ethics. These practices should be encouraged and taken up in other countries with strong support from civil society and international organizations.

Trade unions have to be strengthened and have to redefine their roles, develop new services and address new issues and new types of workers. The International/European Federation of Journalists should assume a very active role in the process. Above all, trade unions should be inclusive and organize all workers regardless of their legal status, and they should include freelancers in their activities involving regulations and negotiations on collective agreements. They should prepare model contracts, adopt and publish recommendations on payment for work (that should include social benefits), provide legal advice and organize training and campaigns to raise awareness of the situation in the media industry. In many cases, trade unions lack the necessary capacity and should be supported by NGO's, for example, by non-profit marketing to improve their image and to attract new members or through legal

support. There should be strong networking, cooperation, consultation and exchanges of best practices across professions and nations, and available technologies should be used to their best advantage. The expansion of multinational media corporations that reportedly often have double standards in their countries of origin and in the SEE region further highlights the need for international cooperation.

Researchers highlighted the extreme lack of awareness of journalists of their rights; that is another area where not only trade unions but also other civil society agencies should be more active. An example of a good practice is the *Employee Rights Guide for Journalists* that was drafted in Romania. Given the high vulnerability of young journalists, awareness-raising should begin at an early stage; many country reporters recommended that labor relations should be addressed in universities and other educational institutions.

State authorities should immediately address the inefficient labor inspectorates and other supervisory bodies. There is every reason to believe that problems in that area are not limited to the media industry. Some reporters suggested that special labor courts should also be established where they don't exist which surely would be a step toward giving a greater priority to labor disputes. Even where such courts do exist, for example in Slovenia, proceedings are slow, and given the lack of respect of the right to legal protection, workers' positions often deteriorate while law suits are resolved. The time frame for filing a law suit for breach of labor rights (often just 30 days) is too short and should be extended.

State agencies should establish closer cooperation, and effective mechanisms of checks and balances should be established for the conclusion of contracts. For example, in Bulgaria no contract is valid unless approved by the National Revenue Agency, and it seems impossible that journalists could work without contracts. On the other hand, there is nevertheless a great deal of mixed contracting, an important loophole in that system that should be examined.

Settled labor relations could be made a condition for state financing or any other form of state approval of media outlets like registration where procedures exist. Media outlets could be required to submit regular reports regarding the structure and engagement of their work forces (in the same way that countries submit reports on the implementation of the European Social Charter that should be ratified in all countries, as well as the additional protocol enabling collective complaints). Media owners and managers should bear personal and collective responsibility for the observance of legislation and the submission of those reports, and any concealment of the actual state of affairs should be considered a serious fraud punishable by strict financial sanctions.

There should be continuous social dialogue and consultation in the media industry encompassing labor as well as professional issues. To prevent abuses of professional codes of ethics for sanctioning workers and to promote publishers' respect for those codes, special tribunals or other bodies could be constituted to examine individual disputes regarding professional ethics. Conscience clauses should become a standard part of all journalists' contracts, and journalists should have the right to resign and benefit from unemployment insurance if there are major changes in editorial policies that interfere with their freedom of expression.

It is also necessary to rethink the obligations of journalists to their employers and vice versa, as prescribed by labor codes. If a journalist as a worker must not do anything to damage the material or moral interest of his or her employer, does that mean that it is legitimate (and legal) to require journalists to refrain from any reporting that could be unsettling to the advertisers and other business partners? Researchers reported that such prohibitions (more or less formal) are currently very common, and with the very prevalent concentration of media ownership and the widespread business (and political) interests of media owners, the space for freedom of expression and the pursuit of professional journalism is ever narrower. Media employers should be required to be particularly

specific in the contracts they conclude with their workers regarding job descriptions. In the current situation, there is a lot of room for informal sanctioning as well as for imposing obligations that journalists did not originally agree upon and that could even be in conflict with their professional ethics, such as the practice of concealed advertising.

It should become an international legal norm that workers' rights are not tied only to a contract of employment; they should cover anyone engaged in economic activities. Regardless of specific employment status, every worker should be entitled to a set of core rights, including the right to equal treatment, to health and safety and to provisions on working/rest time, freedom of association and representation, collective bargaining, collective action, and access to training. Currently, growing numbers of journalists do not have basic labor protection because they are formally registered as "small businesses" though in many cases it was not a matter of free choice but rather one of necessity as the only way to ensure access to pension and health insurance given the widespread reluctance of managers to conclude employment contracts with their personnel. Promoting entrepreneurship and self-employment is actually at the core of contemporary policies, seriously undermining the declared focus of international labor standards on people as human beings. According to ILO conventions, freedom of association and the effective recognition of the right to collective bargaining are, "fully applicable to all people everywhere," but once registered as an "independent entrepreneur," a person is primarily considered to be a legal entity and his or her human rights are overridden by legislative protection of the free market and competition. Self-employed workers are considered to be on an equal footing in their bargaining power with media (and other) firms, and collective bargaining on behalf of freelancers registered as small businesses or even the mere recommendation of minimum tariffs has been deemed a breach of the rules of free markets by some authorities.

This SEENPM study should not be the end of the examination of labor relations in the media industry in the region. There is a strong need for

continuous monitoring and for further systematic research and analyses to assure a proper basis for interventions. In general, examinations and evaluations of media freedom need to be broader and deeper than many of them have been in the past. They should be broader in recognizing that the determinants of external media freedom extend beyond the existence or non-existence of direct censorship imposed by the state and that laws against censorship and guarantees of freedom of expression can be overridden by the economic centers of power. They should be deeper in the sense that examinations should extend *into* media outlets, they should question *internal* media freedom and they should explore the possibilities and limitations of editorial departments as a whole and of every one of their members. Those issues cannot be relegated strictly to the domain of journalists' trade unions and other journalists' organizations. They should be examined and highlighted by all organizations that are dedicated to media freedom, and international foundations and state authorities should support such activities with funding and expertise.

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Albania

by Ilda Londo

I. ABSTRACT

This report is a review of existing relevant legislation and an analysis of 72 questionnaires and 15 interviews. It also includes findings from previous research projects.

There is no specific legislation or regulation that addresses labor relations in the media. Regulations for labor relations start with the Constitution. In addition, Albania has ratified 38 conventions of the International Labor Organization which is reflected in greater detail in the Code of Labor, the most important piece of legislation that regulates labour relations. Of the 72 media employees surveyed, only 9 had signed a work contract for their current jobs, and most who had did not think the contract would offer real protection against sanctions or removal from their jobs. Payments for benefits are usually based on the minimum wage and not on the real salary. In addition only 1% of the persons surveyed said they considered that their salaries were appropriate for their jobs. Most agreed that journalists work long hours and are poorly paid. Only 21% stated that they worked less than 40 hours per week. As for sanctions, they were financial according to 79% of the sample.

In view of the relatively few rights journalists enjoy and of their insecurity, they are quite vulnerable to censorship and self-censorship. Only 20% of those surveyed replied that this was never the case. As a result, the first casualty is the quality of content offered to the public as it mirrors the political and economic interests of the media owners or managers.

Although there are several organizations of Albanian journalists, they have had little activity in the last 15 years especially in labor protection. A trade union was established in 2005 and at the moment it has about

385 members, but journalists are still afraid to join because of the unlimited arbitrary powers of their outlet owners. Thus while progress has been made in the past 15 years, journalists' rights and the observance of fair labor relations remain underdeveloped, and Albanian journalists fail to reap the benefits that the law guarantees them.

II. OVERVIEW

Since the emergence of the first private newspaper, Albanian media has grown in quantity and quality as well as in professionalism. This has led to more responsible reporting and to higher ethical standards. Progress has been mainly due to a combination of the initiative of reporters themselves and continuous training.

While progress is evident in many areas of Albanian media, one of the least developed areas is that of journalists' rights and the observance of fair labor relations. After 15 years of developing free and independent media, journalists continue to find themselves in a weak position vis-à-vis their owners. Working without contracts or viable regulatory mechanisms to protect them from internal and external pressure, they retreat into self-censorship.

The lack of a strong trade union tradition for journalists as well as the fragmented and weak journalists' associations reflect and nurture this situation. Having in mind also the relatively informal nature of labor relations in the country in general, journalists find themselves without any real protection or security. In this context, it becomes increasingly difficult for them to preserve professional independence and integrity.

Although these conditions have been alarming for 15 years now, no ongoing studies, research or systematic gathering of data have been done regarding the situation of journalists and especially of their work conditions. This situation is also worsened by the inability or lack of willingness of the State Labor Inspectorate to monitor the enforcement of labor relations in the country. So at this point, given the weak implementation

of the law, Albanian journalists, like many other workers, fail to reap the benefits that the law guarantees to workers.

This research reviewed existing relevant legislation including the Constitution, the Code of Labor and international treaties and government decisions. In all, 84 questionnaires were distributed, 66 in Tirana as most of the media is focused in the capital, and 18 in other cities. The questionnaire was mailed to persons holding various positions in media from photographers to editors-in-chief so that problems could be addressed from various perspectives. The same reasoning was used with regard to the kinds of media chosen: they included radio, television, newspapers, magazines and news agencies. In addition, the survey covered both private and public media and the few existing international media outlets. Of the 84 questionnaires distributed, 72 were returned out of which 56 were Tirana based. These 72 questionnaires constitute an important source for the findings of this research.

Fifteen interviews were conducted with managers, editors, and journalists from both print and electronic media. Radio, on-line journalism and news agencies are relatively underdeveloped, so greater attention was paid to TV and newspapers. In this context, five editors-in-chief were interviewed from both print and electronic media along with two managers, seven journalists and the chairman of the trade union of Albanian journalists. These interviews provided a greater insight into the range of problems and factors that affect the situation of Albanian journalists and their labor relations.

The findings of this research are also based on previous research projects addressing this issue such as a report drafted by the Albanian Centre for Media Monitoring and the trade union of Albanian journalists, past editions of International Research and Exchange Board's (IREX's) Media Sustainability Index (MSI) and interviews with management representatives of the South East European Network for Professionalization of the Media's (SEENPM's) "Media: The business of ethics, the ethics of business" as well as other relevant data.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

There is no specific legislation or regulation that addresses labor relations in the media. There is almost no regulation of print media while there is fairly detailed legislation on electronic media; however, none of these laws concerns the regulation or specification of labor relations. Consequently, labor relations in the media are subject to the same laws and general norms that govern every other sector in the country.

The specification and regulation of labor relations start with the Constitution which has precedence over any other law. More specifically, in several of its articles the Constitution addresses different facets of labor such as forced labor and the freedom to organize trade unions. Article 28 states that forced labor is forbidden unless it takes place in specific circumstances such as carrying out military service, executing a court order or something that happens in extraordinary circumstances such as war or a natural disaster.¹ More importantly for this research, the Constitution states that the freedom to organize trade unions is a right protected by law.²

This right, along with other labor rights, is specified in greater detail in numerous international treaties and conventions. Albania has ratified 38 conventions of the International Labour Organization. The spirit of these conventions is reflected in greater detail in the Code of Labor which is the most important piece of legislation that regulates labor relations. The Code details general rules and norms that have to be applied in labor relations, specifying certain conditions that have to be present for the establishment, modification and termination of labor relations. It starts by defining labor relations, stating that they are established based on a contract that an employer and an employee sign specifying the task of the employee and the reward for performing this task.³

¹ *Constitution of the Republic of Albania, Law no.8417, dated 21.10.1998, art.28, available at http://www.qpz.gov.al/botime/kusht_kode/Kushtetuta_alb.pdf.*

² *Ibid, articles 50, 51.*

³ *Code of Labor, Law no.7961, dated 12.07.1995, amended by Law no.8085, dated 13.03.2006, and Law no.9125, dated 29.07.2003, Art.12, available at <http://www.mpcs.gov.al/images/stories/files/kodi-punes.pdf>.*

The Code stipulates that the individual contract is legally binding and can be considered void only by mutual agreement or in specific cases the contract or law defines. There are no specific forms of work contracts: they can be completed by oral or written agreement. However, once the sides orally agree on the contract and its conditions, the employer is forced to present a written contract to the employee within 30 days. This contract has to include such elements as the identities of the signatories, the location of the job, a general job description, starting date, duration of contract, length of paid vacation, the notice for termination of the contract, the payment mode, weekly working time and if applicable, the elements of the collective contract.⁴

In addition, the Code of Labor defines a series of contracts depending on the length of work and its nature and purpose as follow:

- work contract for an indefinite period;
- work contract for a defined period;
- contract for probationary work;
- contract for part-time work;
- collective contract;
- apprenticeship contract;
- home work contract;
- commercial agent contract.

In spite of these specific kinds of contracts, the Code sets out some general norms and obligations for both the employee and the employer that are applicable in all work contracts. Article 22 determines that the employee should do the job personally unless otherwise agreed. In addition, the employee has to respect the employer's instructions unless they change the essence of the job description or endanger the safety and health of the employee.⁵ Article 26 of the Code also sets out some important obligations for the employee such as prohibiting the employee from taking on a second work contract that leads to increased competition for or damages to the present employer. The employee must also

⁴ *Ibid.*, Art. 21

⁵ *Ibid.*, Art. 23.

regard as confidential the activity or products that he/she deals with; the employee and employer can determine a period after the termination of the contract for keeping the confidentiality of the activity.

In this regard, the Code of Labor also regulates those cases when the employer is damaged by the employees' work. According to Article 27, the employee can be held liable when either wilfully causing damage or when causing it out of recklessness. The consequences include disciplinary or administrative measures and civil or legal lawsuits depending on the damage. However, the Code also determines three circumstances in which the court can partially or fully relieve the employee of his/her obligations in these cases:

- the employee's recklessness was minor;
- the employer has also made a mistake in organizing or controlling workers;
- the employer's resources can comfortably afford to repair the damage.

While these are the main norms that the employee has to respect in labor relations, the Code of Labor also determines a series of obligations for employers. One of the main conditions the law imposes is the protection of the personality and dignity of the employee in relations with the employer.⁶ This protection is mainly related to sexual harassment by the employer or by other persons in the workplace. In addition, the employer should not collect or process data on employees except when the information is related to professional skills.⁷ In order to achieve transparency on rights and obligations in this relationship, the employer has to make a copy of the Code of Labor available to employees.⁸

Article 36 of the Code of Labor obliges employers to keep a register of employees. The register should contain general information on the employee such as name, date of birth, home address, job position, starting and termination dates, monthly salary, social and health secu-

⁶ *Ibid*, Art. 32.

⁷ *Ibid*, Art. 33.

⁸ *Ibid*, Art. 38.

rity, taxes on income, dates of annual vacation and dates of medical check-ups.⁹

Another fairly detailed aspect of labor relations in the Code is the payment mode. While the minimum wage is established by legislation, the Code defines the system of salaries which includes:

- payment according to time units;
- payment according to work done;
- payment according to the enterprise's profits.

In addition to the salary, there are also bonuses that the legislation details for work done such as the experience bonus, a bonus for difficult or harmful jobs and bonuses for employees working far from their homes. Although there is no legal obligation for the employer to distribute a bonus at the end of the year, if the employer chooses to do so for three years in a row, the law states that the employer must continue this practice in the future as well. In addition, the Code establishes that in cases of overtime work and work carried out between 19:00 and 22:00, the employee should have a bonus of no less than 20%. If work is done between 22:00 and 6:00, the bonus should be no less than 50%.

The employer deducts taxes on income and social security and health benefits from the employee's salary as defined in legislation or contracts in force. The Code of Labor also regulates those cases when the salary payment is delayed. If the salary is paid with a delay, an annual interest rate tax of no less than 10% of the unpaid sum and no more than 150% of the inflation rate during the delay period is due.

If the employer chooses to terminate the work contract unexpectedly and for no justifiable reason, he/she has to pay one year's salary to the employee. If the employee has worked for more than three years, the employee should also receive an experience bonus.

Apart from the salary and payment modes, the Code of Labor also regu-

⁹ *Ibid*, Art. 36.

lates the length of work time. Weekly working time should be specified in individual or collective contracts; however, it cannot be longer than 40 hours per week and no more than 8 hours per day. Weekends and national holidays are not paid vacations; if employees work on these days, they should receive a bonus of at least 25% of the salary or an equally long vacation to be taken one week before or after the holiday.

The Code defines overtime work as any work that takes place beyond the normal working hours. The maximum allowed for overtime work should be specified in the work contract, but it cannot be more than 50 hours per week. Exceptions are made by government and labor inspectorate decisions when a job is particularly harmful for the health of the employee or in emergencies. If overtime work is not compensated by extra vacation, the employee should receive a 25% bonus. If overtime work takes place during vacations or national holidays, the bonus or extra vacation should be 50% greater than the overtime work.

The length of an annual vacation, on the other hand, is defined in the work contract, but it should be no fewer than four calendar weeks. This vacation should be paid the same way as if the employee were working. If labor relations terminate before the employee has taken his/her vacation, he/she is entitled to a bonus of the amount of payment he/she would normally get while on vacation. The law also stipulates that in specific cases such as marriage or the death of a spouse or direct descendant, the employee gets up to five days of paid leave. In cases when the parents or children of the employee are seriously ill, they get no more than 10 days of unpaid leave.

Finally, the Code determines a series of causes for ending specific contracts along with the proper procedures to follow in these cases. One of the most important provisions concerns the termination of the work contract by the employer for no justifiable reason. Reasons for termination are considered as unjustifiable when:

- the employee makes claims that derive from the work contract;

- the employee has acted lawfully;
- the cause is not labor related but rather is motivated by race, sex, age, civil status, family obligations, pregnancy, religion, nationality or social status;
- the employee exerts a constitutional right that does not violate the obligations set out in the work contract;
- if termination is because the employee is member of and participates in trade union activities.

The Code determines that if the employer terminates the contract for unjustified reasons, the employee has the right to sue the employer within 180 days from the notice of termination. If the court rules the termination of the contract was unjustified, the employer should pay the employee one year's salary.

On the other hand, the reasons for the employer to terminate the contract are considered justifiable if the employee seriously violates the contract's obligations or has repeated minor contraventions. In these cases, if the employee commits serious violations of the contract, the court may exempt the employer from paying the salary for the notice period. The employee, if rightly fired, also loses the benefit of the experience bonus but is still entitled to payment for vacations not taken.

The law also defines procedures for those cases when the employee terminates the contract. The Code states that if the employee does not start working or abandons the job with no justification, he/she is liable for financial damages in the amount of no more than a week's salary. In addition, if any damage was caused to the employer because of the contract's termination, the employee should pay for that; it is up to the court to rule if any significant damage was caused and on the amount to be paid.

In addition, inappropriate times for terminating a contract are specified such as while completing military service, if the employee is on paid sick leave or when the employee is on vacation with the employer's consent.

On the other hand, probationary contracts can be terminated by either side at any time with five day's notice.

The Code also determines what constitutes collective firing. Collective firing happens because of reasons not related to the performance of employees. In addition, the quantity of people fired is a criterion. Specifically, to qualify as collective firing, in 90 days' time:

- at least 10 employees are fired in an enterprise of up to 100 employees;
- at least 15 are fired in an enterprise of 100–200 employees;
- at least 20 are fired in enterprises of 200–300 employees;
- at least 30 are fired in enterprises of more than 300 employees.

Before collective firing, the employer should notify the employees through the trade union or in its absence should tender a public notice. The notice should include reasons for firing, the number of persons to be fired as well as the period of firing. The employer must also negotiate with the trade union in order to reach an agreement in 20 days unless the employer agrees to an extension. If the sides fail to agree, the Ministry of Labor assists in reaching an agreement for another 20-day period of negotiations. However, the Ministry is not in a position to stop collective firing.

The Code of Labor also sets specific periods of notice for the termination of a contract. The main criterion in this case is the length of experience on the job. If the employee has held the job for up to six months, the notice should be no less than two weeks. If he/she has held the job for six months to two years, a one-month notice is required. For two to five years of experience the notice is two months, and for more than five years it is three months.

These timeframes can, however, be changed in individual or collective contracts.

The Code has detailed provisions on the procedures the employer should

follow in cases of immediate termination of the contract or termination of contracts of employees on probation. The employer should give a written notice to the employees at least 72 hours before they discuss this issue. The discussion should clarify the reasons for terminating the contract. The notice of termination should be in written form and submitted no earlier than 48 hours or later than one week after the oral discussion. If the employer does not respect this procedure, the employee can claim up to two months of salary in addition to other remuneration. However, not following the proper steps does not mean that the termination of the contract can be reversed.

A very important aspect the Code of Labor addresses is collective agreements and contracts. The definition and content of a collective contract is the same as an individual one. The difference is that the contract is signed between one or some employers or employers' organizations on one hand and one or some trade unions on the other hand. The Code specifies that collective contracts cannot contain any dispositions that are less favorable than the legislation or regulations in force.

Every employer that signs a collective contract is bound by it. If the employer is no longer a member of the employers' organization that signed the contract, the employer is bound by the contract until its termination up to a maximum of three years. If the enterprise changes ownership, the new owner is also bound by the contract until its termination.

The collective contract is valid only in a written form when it is signed by all parties. When one of the parties is an organization, representatives are selected according to its statutes. Each of the parties is bound by the contract, and organizations have to guarantee it is respected by their members. Collective agreements also have to specify an impartial referee in case of any disagreements that may arise. No party can render judgement on the other in this regard.

Collective contracts can be signed for a definite or an indefinite period of time. If indefinite, the contract can be terminated by either party with

six month's notice. The notice is the same when the collective contract has a definite period of more than three years; however, the Code states that if there is any major change in the situation that could not have been foreseen at the time of signing, the contract is no longer valid and the referee should decide how to adjust it.

With regard to collective agreements, trade unions have a special role. The regulation for the activity of trade unions is found both in the Constitution and in more detailed dispositions of the Code of Labor. In order to start functioning legally, trade unionis should register at the commercial register. The minimum number of signatories of members of trade union should be 5 for the employers and 20 for employees. However, essentially the dispositions and principles of organization are the same for both types of trade unions, those of employers and those of employees.

The law states that employers should enable all necessary facilities and conditions so that the employers' representatives in the trade union can carry out their jobs normally. An exception is made for the army and police which are not entitled to organize in trade unions. In addition, the Code of Labor prohibits any interference or intervention by state bodies or employers with employees' trade unions.¹⁰ Another fundamental right guaranteed by law is the right to strike, provided that the dispositions of the Code of Labor are respected in this regard.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

While there seem to be no serious drawbacks in legislation on labor relations, implementation in the media sector seems to suggest a different picture. In order to better understand the dynamics of labor relations, a brief description of the media landscape in Albania is necessary.

The present picture of the television market in Albania and its evolution in recent years is remarkable. Today, according to official data, Albania

¹⁰ *Code of Labor, Art. 10, 184-5.*

has 68 local television stations, 2 national television stations, 2 satellite televisions and 44 local cable televisions. With regard to radio stations, there are 46 local radio stations and 2 national ones. While there are no official data on print media, there is a general agreement that the number of publications exceeds the existing demand in the market. In fact, 25 daily newspapers are published in Albania at the moment for a market of about 3 million people. In addition, there are numerous other newspapers and periodicals amounting to approximately 250 publications.

In this overall picture of a growing media sector, the demand for journalists is also greater. In these circumstances, it is very easy to enter this market. As one report put it, "You can finish your studies in agriculture and still immediately become a journalist in Albania."¹¹ Although there are no official figures on the number of journalists in the country, the trade union of journalists estimates it to be approximately 5,000.¹²

Against this backdrop of a highly unstable media market and the constant need for journalists, the distinctions between typically hired and atypically hired workers is extremely blurred. Due to demand and to the high mobility of jobs in the media market, there seem to be no differences among journalism students, freelancers or full-time experienced journalists in terms of labor relations. A report on Albanian media suggests that in the last five years, the longest period that an editor held a job in one place did not exceed six months.¹³

The high mobility of journalists in different media, apart from affecting quality reporting, is also indicative of their lack of job security. In view of the demand for workers in the media, it is easier for media owners to behave arbitrarily with respect to their employees.¹⁴ The fundamental problem with labor relations in this regard starts with the lack of working contracts or their inadequacy when there is a signed contract.

11 Unidentified source quoted by IREX) See: IREX, *MSI 2003 Albania*, IREX, 2004, p. 6.

12 Albanian Center for Media Monitoring, "Labor protection and social security of journalists and media employees, a necessity for a free media," 2006, p.1. (hereafter, *Labor protection report 2006*.)

13 Aleksander Cipa, head of Union of Albanian Journalists, *qtd.* In IREX, *Media Sustainability Index 2006*, p.8.

14 *Labor Protection Report 2006*, p.3.

Of the 72 media employees surveyed, only 9 had signed a work contract for their current jobs. The contract term was either indefinite or up to one year; longer terms were not mentioned by any of those surveyed. Furthermore, most persons who had signed a contract did not think it would offer real protection against sanctions or removal from their jobs: only three of them were confident that their contract offered any protection in this regard.

This alarming statistic is also confirmed by the Union of Albanian Journalists which carried out a survey of 120 journalists and media employees in different areas of the country in 2005. The Union estimated that about 95% of journalists and media employees worked without any contracts and/or proper health and social benefits.¹⁵ Furthermore, “Media owners sign formal contracts of no legal value with journalists and media employees which media owners can violate with no fear of consequences and sanctions.”¹⁶

The concern about the validity of signed contracts was also raised during interviews with editors and journalists when 80% of interviewees mentioned that although a contract was signed, its legal validity was never tested for various reasons. An editor-in-chief of a daily newspaper¹⁷ said that, “Contracts were too formal and were not detailed regarding the job description of the journalist and as such they are useless in a court of law.”¹⁸ Another editor-in-chief also pointed out the deficiencies of these contracts as they do not contain any job descriptions or specify the rights of the journalists, and as a result the journalists have no legal basis for suing the owner when unjustly fired.¹⁹

In fact, as previous research has pointed out when looking at existing contracts of the main media in the country, these contracts are confined to details of working hours, duties and company rules with no considera-

¹⁵ *Ibid*, p.6.

¹⁶ *Ibid*, p.3.

¹⁷ Since some of the interviewees preferred not to go on record for some of these issues in fear of retaliation, the survey will not mention any names when quoting information from the interviews.

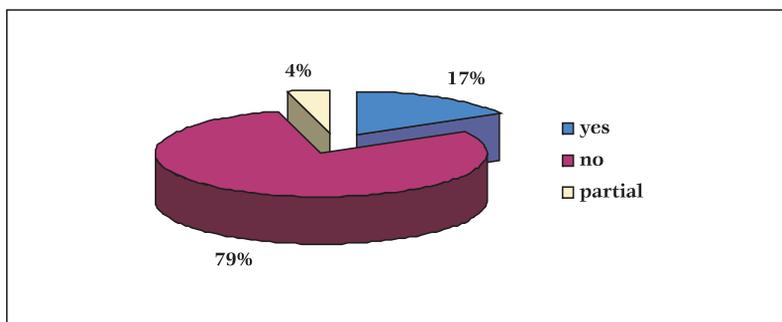
¹⁸ Interview with deputy editor-in-chief of Tirana daily newspaper, male, 36.

¹⁹ Interview with editor-in-chief of Tirana-based national daily newspaper, male, 33.

tion for the social value of a media organization.²⁰ Not only do very few media outlets sign work contracts, but those signed are also very ineffective and do not offer any real job protection.

In addition, as a result of the lack of appropriate work contracts, there are huge problems with the welfare benefits of media employees. Of the 72 persons surveyed in this regard, 58 of them (79%) said they did not receive any benefits while the rest said they received pensions and/or health insurance (Figure 1).

Figure 1: Do Journalists Receive Work Benefits?



The 2005 survey of the Trade Union of Albanian Journalists yielded similar conclusions. When asked how many years they had contributed to social security, 20% had no idea, 20% said they had not contributed, and only 20% said they did have insurance. A total of 33% said they had benefits but not from their work as journalists; rather, the benefits were from positions they had held while also working as journalists.²¹

Apart from the lack of social security, another problem is that even when there is a scheme, it is based on the lowest possible level of payment allowed by law and not on the real wage.²² An exception in this case

²⁰ I. Londo, chapter on Albania, quoted in SEENPM, "Media: Business of ethics, the ethics of business."

²¹ Labor Protection Report, p.7.

²² Interview with Aleksander Cipa, head of trade union of Union of Albanian Journalists, Tirana, July 2007.

seems to be one of the main media companies in the country that has established a regular practice of paying benefits to its employees. The employees choose which class of social security payments²³ they wish to be paid.²⁴ According to Albanian legislation, these payments can also be made by the employees themselves and consequently journalists can pay their own social security insurance, but according to the survey conducted by the trade union, the salary of most of the journalists is such that they cannot afford voluntary payments for social security.²⁵

The payment of journalists is another major, controversial issue in the area of labor relations in the media. As mentioned above, this market, as most of the market sectors in the country, suffers from informality and a lack of data on various aspects including journalists' salaries. The first public statement on this problem came from then Prime Minister Nano in July 2004 when he alleged that the main media companies in the country had committed fraud in the payment of social security for their employees. He mentioned that national TV Klan had paid social security for 21 persons receiving the national monthly minimum wage of 10,184 lek (80 euros); national TV Arberia had declared 30 employees with a wage of 13,000 lek (102 euros) and Top Channel had declared 90 employees with an average salary of 10,000 lek (78 euros).²⁶ Nano alleged that the figures declared were extremely low and did not correspond to the real salaries paid to media employees. When Nano made these allegations, the editorial policies of these three media groups were at odds with the Prime Minister and the Government. Unfortunately, the practice of addressing these fundamental problems for journalists seems to fade away once the editorial policy of the media changes. As another report put it, "Independence and transparency are symbols to be displayed when the situation becomes critical for any of the sides involved, and once the storm calms down, the debate moves on to another topic."²⁷

23 Albanian law does not calculate payments for social security as a percentage of the salary received; they are based on clusters that correspond to several ranges of salaries.

24 interview with editor-in-chief of TV station owned by this company

25 Labor Protection Report, p.5.

26 Speech of Prime Minister Fatos Nano to Parliament on 5 July 2004, as reported in Sot, 6 July 2004.

27 Chapter on Albania, OSI/EUMAP, "TV across Europe: Regulation, policy, and independence," 2005.

As a result of the lack of interest and of systematic attempts by the state to formalize the labor market, the chances of changing journalists' working conditions are far from auspicious. The last two years have marked some improvement according to the trade union as there has been an increase of 15% in the total sum of contributions paid for social security for journalists.²⁸ However, much more work needs to be done in this regard.

In this overall climate of informality, there are no data on the real wages of journalists and media employees. According to this survey, only 6 of the 72 persons surveyed (1%) said they considered that their salaries were appropriate for their jobs. In addition, due to the lack of accurate data, journalists cannot seem to determine their positions in the overall hierarchy of salaries in the country. Of the 72 persons surveyed, 33 stated that their salaries were higher than the average salary in the country, 24 said they were in the same range, and only 12 said they were lower.²⁹

This is also an indication of the wide disparity and diversity of payment for different positions within the community of journalists, a trait confirmed by all interviewees. All interviewees pointed out that some positions are extremely well paid while the opposite is true for reporters who are badly paid although they work the longest hours. According to the IREX 2005 report, the monthly salaries of some editors-in-chief or news directors at private stations are considered very high if they fall in the range of 1,140 to 1,900 euros.³⁰ However, these are isolated cases, as the overwhelming number of journalists earns salaries in the range of 152 to 380 euros.³¹ Having this in mind, in general the interviewees agreed that it is especially reporters who are poorly paid and do not get a salary that adequately compensates them for their strenuous jobs. Some

28 Labor Protection Report, p.6.

29 The minimum wage in the country is determined by a decision of the Council of Ministers. At the moment the minimum wage cannot be lower than 14,000 lek (approximately 113 euros) while the latest figures indicate that the average salary in the state sector was 31,850 lek (approximately 257 euros) in the first quarter of 2007. There are no official data on the average salary and employment in the commercial sector. The statistics are available from INSTAT at http://www.instat.gov.al/graphics/doc/tabelat/Fp/3Mujori_I_07/tab1.xls

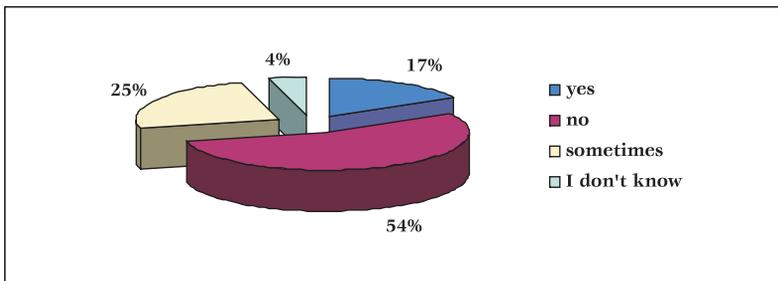
30 IREX, MSI 2006, p.9.

31 Ibid.

newspapers are more like workshops than newsrooms: a staff of only five or six reporters does everything which is very hard for them and a difficult task.³²

In fact, most of the persons surveyed and interviewed seemed to agree that journalists work long hours and are poorly paid. In addition, employers seem to violate most of their labor-related rights such as those related to vacation time, working conditions and payment of salaries. In all, 39 persons surveyed said they had not experienced problems with payment of salaries, while 30 others indicated otherwise (Figure 2). Delay in payment of salaries, sometimes even for months, was also a problem raised by 73 percent of the interviewees and also by the trade union.³³ Talking about bonuses, even the ones guaranteed by law, seems to be a luxury; in fact, 70% of persons surveyed by the trade union declared they had never received a bonus for their work experience or for any other contribution.³⁴

Figure 2: Violations of Salary Payments



Another major problem that came up in the interviews and survey was related to working conditions, mostly to long hours. Only 15 persons out of the 72 surveyed (21%) stated that they worked fewer than 40 hours per week; 18 of them said they worked 40 hours, and 39 said they worked more than 40 hours per week (Figure 3). In fact, with only a

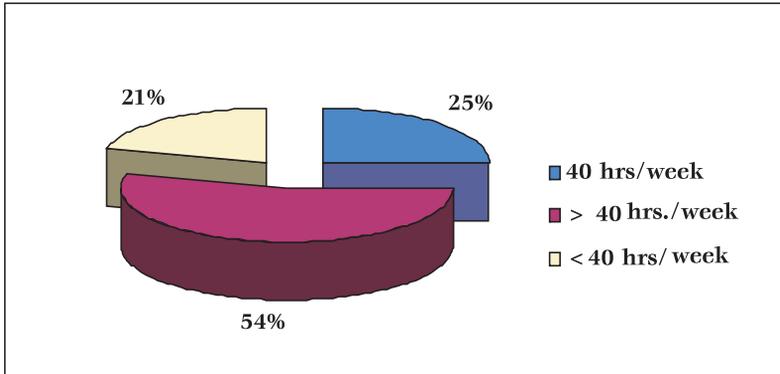
³² Interview with deputy editor-in-chief of Tirana daily newspaper, male, 36.

³³ Labor Protection Report, p.3.

³⁴ *Ibid*, p.7.

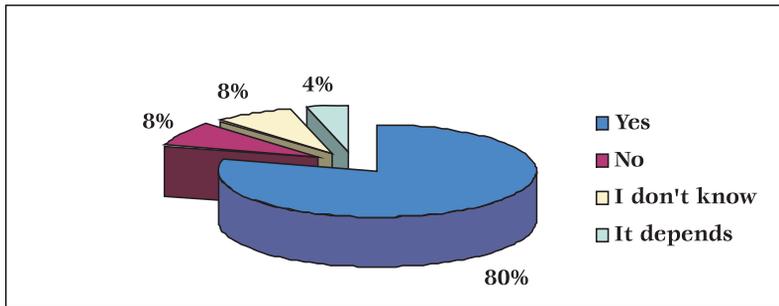
few exceptions, most daily newspapers come out every day of the week which leaves no time for a weekly holiday of at least one day for the journalists. To make matters worse, only two of the persons interviewed indicated that their media outlets paid the seventh day as overtime work. In this overall context, some of the interviewees expressed their concerns that reporters failed even to have a satisfactory social life due to their long working hours and all for a salary less than satisfactory. It was even noted that reporters in many cases even get married within their own communities as they only stick to each other all day long, doing their work.³⁵

Figure 3: Length of the Work Week for Journalists



In addition to the level of payment, the potential sanctions that can be imposed on journalists and media employees are also a problem for the journalism community. According to the survey, the most widespread sanctions were financial, confirmed to be in use by 57 of the 72 persons surveyed (Figure 4). Considering that sanctions are imposed by newsroom management on a case-by-case basis instead of under any clearly defined internal regulations, this alarming figure poses serious questions about the impact of these measures on censorship and self-censorship.

³⁵ Interview with deputy editor-in-chief of Tirana daily newspaper, male, 36

Figure 4: Financial Sanctions on Journalists

The same is true when it comes to other potential sanctions and measures. Official reprimands were also measures that were frequently used as confirmed by 58% of the persons surveyed. In addition, 42% of the 72 journalists surveyed indicated that firing journalists for their mistakes was a sanction used by media management.

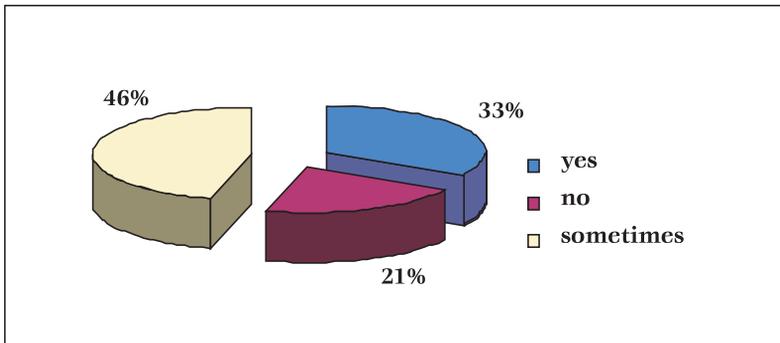
V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

According to the information obtained through the interviews and the survey, there are hardly any guarantees that Albanian journalists can develop stable careers in a particular media outlet. Most of them indicate they lack working contracts or any legal basis on which to build mutually nurturing labor relations. In view of the relatively few rights journalists enjoy and the high degree of insecurity that haunts them, they are quite vulnerable to censorship and self-censorship.

When asked whether labor relations imposed a certain degree of censorship or led to self-censorship, a mere 15 out of 72 persons replied that this was never the case (Figure 5). On the other hand, this is a problem that concerns not only reporters but starts with editors-in-chief themselves. All of the editors-in-chief interviewed were aware that they adjusted their work in accordance with the interest of the media owners either with or without the direct intervention of the latter. One of them

said, “The owner does not intervene directly in the story; however, the journalist asks what the editorial policy of the media is and in this case we are certainly practicing self-censorship.”³⁶ Similarly, another editor-in-chief of a daily newspaper also described how the owner talks with the editor and then it is his job to let the reporters know what the policy is. “However, there is no clear editorial policy as such; the general rule is that after a couple of incidents of interference from the publisher one gets the idea of this policy and what self-censorship should be like.”³⁷

Figure 5: Self-censorship in the Media as a Result of Labor Relations



Difficult as it may seem, editors-in-chief not only have come to terms with this practice, but they also have no problems admitting this problem exists. The latest report on media reliably quotes the concern of the director of one of the top daily newspapers in the country who admits he constantly exerts self-censorship. Even he, in spite of being editor-in-chief, is forced to apply self-censorship as he is aware of the political preferences of the media owners.³⁸ In addition, even in those few contracts that exist in Albanian media, those surveyed and interviewed said a conscience clause was unheard of either on paper or in practice leading to yet another chance and justification for self-censorship.

³⁶ Interview with editor-in-chief of Tirana-based TV station, male, 35

³⁷ Interview with editor-in-chief of daily newspaper, male, 38

³⁸ IREX. 2006. *Op. Cit.* p.7.

The impact of the media owners' interests in this area have a direct reflection on the content produced. The survey indicated that only 30 of the participants (41%) claimed it was their decision about what to report on while the other 42 said it was up to their employers. In many ways, it is these interests that determine not only the manner of reporting but also what should and what should not be reported. The latest example was a civil society campaign against the high monopolistic tariffs applied by mobile telephone companies in the country in which the organizers found it very difficult to convey their message to the public through the media. The media refused to report on this movement claiming that these two companies were among their biggest advertisers and that they would withdraw their ads; in fact, this did happen in the case of one news station that reported on the protests.³⁹

When asked whether journalists often resorted to ethical violations in order to protect the interests of the media owners, only one of the interviewees denied such a practice. All the others agreed that such a thing had happened, although for some more often than others. The most representative answers were, "It might happen; it does not happen very often; about once a week; it happens all the time."

The reasons that lead journalists to submit to censorship or to self-censorship become understandable in light of the lack of appropriate work contracts, the lack of clear internal regulations, and the lack of recognition of and respect for the code of ethics by the owners. When asked who would pay the expenses in a case of libel or defamation against the media, only 18 of the 72 persons surveyed (25%) said they would not have to, 6 said probably not, 24 were not sure and another 24 (33%) indicated they would probably have to pay. These replies reveal not only a general climate of insecurity and vulnerability vis-à-vis lawsuits, they also indicate the lack of any deeply rooted practice, regulation, or establishment of clear labor relations and positions in these cases. Luckily, Albanian courts are not awash with defamation cases, and some of the editors indicated that in the few cases that have occurred, the media paid the expenses. However,

³⁹ *Ibid*, p.8.

the lack of any specific regulation in this regard leaves journalists vulnerable and constitutes another reason for self-censorship.

Another very problematic consequence of the self-censorship syndrome is the creation of a vicious circle of unprofessionalism. According to a 2005 survey on media ethics, self-censorship in a way seemed to be partly responsible for low professional standards. Given the current *modus operandi* of the Albanian media, self-censorship is an asset rather than a liability, for both media owners and government and political institutions.⁴⁰ As a result, the first casualty is the quality of content offered to the public, which, with rare exceptions, mirrors the political and economic interests of the media owners or managers. The latest example in this regard emerged when monitoring the prime-time news editions of the public broadcaster (TVSH) and the main TV station in the country. The monitors concluded that the news criteria in both television stations followed a specific agenda whose order, selection and sources of news were close to the government line or its politics in general or to that of the TV management and its interests at the moment. In fact, as repeatedly shown in the analysis, political presence or the presence of persons who promote a specific interest for the TV station is one of the main criteria in defining news value.⁴¹

The report found no significant differences between public and private broadcasters in this case. This might also be related to the fact that TVSH journalists do not enjoy any greater protection in their jobs than their colleagues in commercial television do, and they are plagued by the same problems and mentality.⁴² As a result, the lack of working contracts coupled with relatively low wages do not motivate them to pursue editorial independence and produce quality programs for the public.

In fact, other reports indicate that TVSH is still highly dependent and

⁴⁰ Chapter on Albania, SEENPM, „Ethics and journalism in South East Europe,” 2005.

⁴¹ Research was done in the framework of TV prime time domestic news - monitoring and analysis of TV news programs in 10 SEENPM countries, published in the book *Indicator of Public Interest (2007)* issued by Media Plan Institute, Sarajevo, Bosnia and Herzegovina.

⁴² Interview with Aleksander Cipa.

influenced by politics. Unlike other TV stations that seem to have gained a greater degree of at least the appearance of political independence, the main obstacle for TVSH is still interference from the political establishment. As a former chair of the Steering Council of TVSH put it:

Both political parties and their heads, instead of getting their hands off this institution and assisting its independence as guaranteed by law through their statements, use labelling, pressure and orders that start from their mobile phones which has forced the public screen to change from blue to pink and vice-versa in accordance with the taste of the heads of two main parties who measure the 'quality' and independence of TVSH with the length of their own sound bites and appearances on this screen.⁴³

Political influence on TVSH is especially visible when there is a change of power which is almost invariably followed by a change of government and staff. The past elections when the democrats came to power after eight years in opposition were no exception. After the formula of the Steering Council was changed, so were the Steering Council, the management and the staff. "More than 80 employees were fired from TVSH, including 10 journalists known to be of leftist convictions, while other people were hired who were not so much known for their professional standards as for their sympathy to the ruling party and government."⁴⁴ In this context, public broadcasters' employees are far from privileged compared to their colleagues in the commercial sector.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

Although there are several organizations of Albanian journalists, they have had little activity in the last 15 years especially in the area of labor protection which is also due to the fact that these associations have not worked as trade unions. After a previously failed attempt, a trade union was established in 2005 with the support of IREX. The union has established branches in the main cities in the country and at the moment

⁴³ Kico Blushi, "The television that has remained hostage to the parties," *Standard*, 17 March 2006, p.23.

⁴⁴ IREX, *MSI 2006 - Albania*, p.5.

it has about 385 members that regularly pay their membership fees.⁴⁵ Although journalists have started to become members of the trade union, they are still afraid of the unlimited arbitrary powers of their outlet owners.⁴⁶ In 2006 the union negotiated with the Ministry of Labor signing a memorandum that would enable the signing of a collective agreement. At the moment, this collective agreement contract is under revision and discussion among the union and the ministry on one hand, and the union and media owners on the other. So far, this agreement in process constitutes the only collective document for Albanian media.⁴⁷

The union and the media community are aware that this process will take some time due to the prevailing working conditions for journalists over the years: in 2005, about 95% of journalists in the country worked without contracts and without social security.⁴⁸ In fact, 66% of the persons interviewed were pessimistic regarding the rapid empowerment of the trade union stating that there is a lack of confidence in journalism associations after their failure to have any impact so far.

In fact, the existence of other journalism associations has not offered any help in this regard. In the words of one of the chairman of these organizations:

Even though we have 15 years of free press in Albania, there are only a few cases when colleagues of one media raise their voice or protest about the fate of other colleagues who are unjustly fired, censored or threatened. Such topics are raised only in the cafés where journalists gather and are never revealed to the public, leading to a situation where nobody talks of a phenomenon that affects everybody.⁴⁹

This trends is confirmed by all interviewees, stating that only in a few flagrant cases journalists staged public protests in favor of

45 Interview with Aleksander Cipa.

46 *Ibid.*

47 *Ibid.*

48 Labor Protection Report, p.6.

49 Interview with Armand Shkullaku, "Media, transparency for its own news", *Shqip*, 10 May 2006, p.12.

their colleagues. “We are always willing to express solidarity among colleagues, but only as we sit in cafés and talk; that’s the length we are ready to go to”, one of the interviewees said.⁵⁰ Another interviewee stated that, “In 17 years of independent media I can count on the fingers of just one hand the cases of public protest and solidarity among colleagues.”⁵¹ This situation again renders journalists highly vulnerable to the desires and whims of their owners. “They are almost helpless when faced with the arbitrary decisions of owners who can fire their staff without cause.”⁵²

In this climate of insecurity, it is difficult to expect anything from journalists other than obedience to the economic and political interests of the owners. This aspect of the media landscape certainly influences the information conveyed to the public where the owners’ interests rather than public interest define the agenda. In the words of a well-known editorialist, “Our media has been alienated and has not served as an honest and independent watchdog; it has been misused.”⁵³

VII. CONCLUSIONS AND RECOMMENDATIONS

Overall, the findings of the research indicate that there is a significant discrepancy between labor legislation and its implementation in practice in the media. The lack of working contracts and the vulnerability of the numerous Albanian media outlets has led to an extremely unstable market for journalists. Because of this, the mobility of journalists within the market is very high in the short term preventing the development and grounding of their careers and the establishment of their professional profiles.

In addition, with no legal protection and weak trade union tradition and efficiency, journalists find themselves working long hours and suffering from low salaries and violations of several of the rights they are entitled

50 Interview with editor-in-chief of TV station, male, 35.

51 Interview with editor-in-chief of national daily newspaper, male, 33.

52 IREX, MS 2005 – Albania, IREX, Washington DC, 2006, p. 14, available on the IREX website at http://www.irex.org/programs/MSI_EUR/2005.asp (accessed on July 20, 2007)

53 Interview with Fatos Lubonja, Standard, 27/05/2006, p.35.

to. In these conditions, journalists are in no position to choose professional integrity over a media owner's editorial line. As a result, self-censorship instead of self-regulation is the norm in the media community affecting all information conveyed to the public. Although the status of labor relations is in no way entirely responsible for the quality of reporting at the moment, it certainly affects it to some degree. In the words of a well-known journalist, "Working without contracts, the lack of a strong union of journalists and therefore the absence of protection for journalists against media owners has been and will be one of the main causes not just for self-censorship but also for all the silent, psychological intimidation and pressure exerted on journalists."⁵⁴

RECOMMENDATIONS

The Government should take specific steps to enforce the Labor Code in media organizations and regularly monitor its implementation.

Journalists' associations, with the assistance of other civil society agencies, should demand enforcement of the Labor Code in media companies and eventually should demand collective bargaining.

Publishers/broadcasters should have contracts with their personnel that provide a clear job description. Contracts should detail the duties and responsibilities of all parties in a clear and undisputable manner.

Written regulations should be produced and implemented in the newsrooms to safeguard editorial independence and freedom from interference, be it internal or external, after consultations.

Civil society organizations should support individual journalists whose rights are violated by media owners, state authorities or other parties.

Journalists/media employees should be able to benefit from training/public awareness campaigns on the relevant legislation/Code of Labor that guarantees their rights and duties.

⁵⁴ *Fatos Baxhaku, quoted in IREX, MSI 2005, p.8.*

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Bosnia and Herzegovina

by Sanela Hodžić

I. ABSTRACT

There is a body of laws generally consistent with international standards which represents a solid basis for the protection of labor rights. Collective bargaining led to signing a collective agreement in Republica Srpska while signing a specific collective labor agreement for media employees is currently in process in the Federation of Bosnia and Herzegovina.

For this report, a total of 27 in-depth interviews were carried out with employees from different types of media outlets, and survey questionnaires done partly on-line and partly via direct contact with media employees totaled 122. The findings indicate that procedures related to labor issues conducted either in courts or in administrative agencies are extremely slow and inefficient. Labor inspectors lack authority, personnel and competence. Existing legislation includes overly generalized wording that leads to difficulties in practice. For example, labor law articles related to conditions and reasons for dismissal do not explicitly define justifiable reasons and thus fail to protect employees from the arbitrary decisions of employers.

The most prominent violations of labor rights of media employees are related to salaries, working conditions, length of the working day and health and pension security payments. Some of the problems identified were unregistered working engagements and freelance engagements that often violate labor rights more frequently. The quality of the labor contract is often poor (job description is inadequate; payment rates are not always listed). Journalists mostly consider that they are not protected by individual labor contracts in terms of unjust penalties or dismissal. There are some indications that labor rights and relations are particularly fragile in private media while in public media outlets employees are at least more protected from unwarranted dismissal.

There is a considerable lack of awareness among journalists of relevant legislation and mechanisms for protecting labor rights and on the functioning of trade unions. In addition, evaluations of trade unions are generally negative. Trade union organizing in private media virtually doesn't exist.

II. OVERVIEW

In all, 27 in-depth interviews were carried out with employees from different types of media outlets: seven from TV stations, seven from radio stations, six working in newspapers, three news agency journalists, one on-line media employee, and three representatives of media associations and trade unions. The research sample included employees from media with different types of ownership based in Sarajevo, Banja Luka and Mostar. Survey questionnaires done partly on-line and partly via direct contact with media employees totaled 122. Direct contacts with media employees were realized mostly by contacting managers then visiting media outlets and distributing questionnaires among the employees present. Thus, the research sample is stratified primarily according to the type of media outlet (Table 1) and is limited geographically, so the findings presented cannot be treated as representative of the entire population of journalists.

Table 1: Survey Sample by Type of Media Outlet

<i>Type of media outlet</i>	<i>Frequency</i>	<i>Percentage</i>
TV	34	28.1
radio	40	33.1
newspapers	24	19.8
News agencies	7	5.8
Online media	3	2.5

Other (engaged in more than one type of media outlets)	13	10.7
Total surveyed	121 *	100.0

**One of the respondents failed to answer to this question.*

The war in Bosnia and Herzegovina from 1992 to 1995 had devastating demographic consequences. There were around 200,000 casualties, 240,000 people were wounded, around 1 million became refugees.¹ It also had grave economic consequences as the economy and a great deal of infrastructure were destroyed, and the living standards of the population drastically declined. The process of transition and privatization coupled with state-building efforts and the implementation of the peace process has led to the growth of a black market economy and to the degradation of the basic rights of employees. However, in spite of these rather grave conditions, it can generally be said that labor laws as well as the relevant international conventions on human rights that have been ratified by Bosnia and Herzegovina, some of which were even incorporated into the constitution, represent a solid basis for the efficient protection of both labor and social rights in all parts of the country.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The fields of labor rights and social security are not regulated by a single law at the national level but are placed under the jurisdiction of the Federation of Bosnia and Herzegovina (FBiH), Republica Srpska (RS) and of District Brčko (BD), the three jurisdictions into which the country is organized. The constitution(s) of Bosnia and Herzegovina² incorporate(s) several international human rights instruments of relevance for labor relations in general:

1 According to Council of Ministries of Federation of Bosnia and Herzegovina- Report on Implementation of Economic, Cultural and Social Rights in Bosnia and Herzegovina i 1993-2003, p. 60

2 Constitutions of RS and of FBiH, as well as Constitution of Bosnia and Herzegovina

- International Covenant on Economic, Social and Cultural Rights;
- conventions of International Labour Organization (ILO);
- UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ;
- European Social Charter and additional protocols (currently only in FBiH) ;
- European Convention for the Protection of Human Rights and Fundamental Freedoms (not ratified by FBiH and RS).

Accordingly, these instruments protect rights related to labor relations such as the right to work, the right to fair and good working conditions, the right to associate in trade unions, the right to social security and safety, equal rights for men and women, protection of the family and the right to an adequate standard of living. The realization of these standards represents both the international and constitutional obligation of Bosnia and Herzegovina and its entities.

Labor relations in the media are governed primarily by general labor and labor-related norms since there is no specific legal regulation of labor rights in this field with the exception of the branch collective agreement signed in RS.³ The general legal documents regulating labor relations in Bosnia and Herzegovina are the following:

- labor law of FBiH;⁴
- labor law of RS;⁵
- labor law of BD;⁶
- general collective agreement for FBiH territory;⁷
- general collective agreement of RS;⁸
- general labor law documents of employers.⁹

3 The branch collective agreement defines obligations of employers related to salary payment for transport to work, and health and social security payments (Sekul Popović, president of Trade Union of Graphic and Media Workers of RS, telephone interview 05/09/2007)

4 Official Gazette of FBiH No. 43/99, 32/00 and 29/03

5 Official Gazette of Republika Srpska No.: 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07

6 Official Gazette of Brcko District 7/02 7/00, 8/03 and 33/04

7 Official Gazette of FBiH No. 54/05

8 Official Gazette of Republika Srpska No.27/06 and 31/06

9 Internal Labor Statutes if defined within media outlets

The labor laws of FBiH, RS and BD regulate labor contracts, working hours, salaries, the termination of labor contracts, rights and responsibilities in labor relations, collective labor contracts and other relevant issues concerning labor relations. Hence, labor and labor-related issues in the media are regulated depending on the location of the media in question; there is no overall state-level legislation.

Although all three labor laws are similar in their fundamental nature, some important differences in wording can be identified. Labor laws incorporate regulations concerning the terms and conditions of the labor contract. There are two types of contracts: indefinite and definite, the latter for the maximum of two years. An employer is obligated to sign an indefinite labor contract with an employee within one month of engagement and on the very first day of work for definite contracts. The labor law of RS includes a clause specifying the conditions under which a contract for a definite period of time can be signed.¹⁰ If a definite contract is renewed so that the employee continues working for the same employer for more than two years, the contract will be considered an indefinite labor contract.¹¹ The laws envisage the possibility of probationary work but limit its length to a maximum of six months.¹² Terms of engagement and the elements of labor contracts for first-time workers, elements and conditions of volunteer labor contracts¹³ and contracts for temporary and occasional working engagements¹⁴ are defined as well.

According to the labor laws,¹⁵ collective agreements, internal labor rules

10 Performing work for less than six months; temporary enlargement of the workload; replacement of an absent employee for up to one year, duration of which is beforehand determined by the nature of absence (Article 16 of the Labor Law of RS; also in Law on additions and changes of Labor Law of BD (LACLL BD), Official gazette No. 33/04 Article 2)

11 Article 19 FBiH, Article 17 RS; Article 12 BD

12 Article 18 FBiH; Articles 21 and 22 RS.

13 Articles 26–28 FBiH, Articles 28–31 RS, articles 19–21 BD according to which interns and volunteers can be engaged for a period defined for a specific profession. Both engagements require the signing a contract. The duration of a volunteer's engagement is considered as working experience.

14 on the condition that the engagements in question are defined in collective agreements or internal labor rules, that they don't last longer than 60 days per year and that "(...) temporary and occasional jobs are not jobs over which indefinite or definite labor contracts are concluded (...)." (L\RS, Article 34; \FBiH, Articles 136–137; Article 109 BD)

15 Articles 68–74 FBiH, Articles 57–60 BD, Articles 90–92 RS

within companies and institutions and individual labor contracts establish the minimum wage. Periods between payments cannot be longer than 30 days, and an employer is obliged to deliver a salary receipt.¹⁶ Furthermore, an employee has a right to additional payments for difficult working conditions, overtime work, night shifts and for work on Sundays and holidays.

Labor laws define that the length of a working week should not be longer than 40 hours except in extraordinary circumstances (if there is a need for dealing with consequences of earthquake, fire, epidemics, accidents etc; in cases of unexpected increase in workload and other cases of necessity) or by employee's own free will. Overtime work can never be longer than 10 additional hours per week. If this additional work continues for 3 weeks, or 10 weeks in total per year, the employer is obliged to report this to the relevant labor inspection institution.¹⁷

The laws also contain provisions on the right to lunch/rest breaks (minimum of 30 minutes a day), annual leave (minimum of 18 days) and on the conditions for attaining the right to annual leave (six months of continuous employment).¹⁸ Several articles in the labor laws are aimed at the protection of motherhood (pregnant women cannot be denied the right to employment and cannot be fired because of pregnancy) and family.¹⁹ Labor laws also contain nondiscrimination requirements and protection measures regarding sex, race, religion, political or other opinion, national and social origin, political affiliation and membership in trade unions.²⁰ The right to participate in trade union functioning is defined in the labor laws as well as in general collective contracts.

16 General collective contracts of FBiH, in contrast to those of RS treat salary receipts as documents that offer opportunities for a direct proceeding for exercising the right to unpaid salaries. In practice, there is no significant distinction, since salary receipts are rarely issued (Analiza propisa i stanja u oblasti radnih prava, [The Analysis of Labor Laws and the State of Labor Relations], Vaša Prava, Sarajevo, 2006, p. 9)

17 Articles 29 and 32; Articles 43–46 RS, Article 25 BD

18 Articles 37–45 FBiH, Articles 57–65 RS, Articles 32–35 BD)

19 Articles 53–63 FBiH, Articles 76–85 RS, and Articles 41–49 BD define the right to maternity leave. FBiH also defines the right to parental leave for the father. RS defines the right to the prolonged maternal leave.

20 Article 3 FBiH, Articles 107–112 RS, Article 4 BD

Employers can discharge employees provided that there are economic, technical or administrative justifications as well as if the employee in question has lost the ability to perform his or her job (but only if he/she cannot be reassigned to another post).²¹ Employers must give a minimum of 14 days notice unless the employee has committed a severe offense or violation of labor obligations. Employers should compensate employees unless circumstances allow for exceptions. What these circumstances might entail is not specified. An employer is obliged to provide evidence of justifiable reasons for dismissal if the case is brought to court.

An employee has a right to financial compensation in case of dismissal if he/she has been continuously working for the employer for at least two years unless the employee violated the obligations specified in his/her contract. This compensation cannot be less than one third of the average monthly salary paid to the employee in the three months preceding dismissal and is supposed to be paid for every year of work.²²

Labor laws obligate employers to define internal labor statutes in consultation with a council of employees or with a trade union only if more than 15 workers are employed. Employees have a right to form the councils and trade unions in order to protect their rights in relations with the employer.²³ In addition, it is important to note that all labor laws in Bosnia and Herzegovina contain provisions for penalties for employers that violate specific elements of labor and labor-related obligations.

General collective agreements in RS and FBiH²⁴ define the following: labor relations, salaries, terms and conditions of trade union functioning, rules on collective bargaining and signing of collective contracts, the operation of bodies authorized for peaceful resolution of labor disputes and issues related to the right to strike. General rules concerning salaries are defined in the collective agreement of FBiH (similarly in RS) as follow:

21 Articles 87, 88, 90, 91 and 95 FBiH.

22 Article 100 FBiH, Article 141 RS, Article 85 BD

23 Articles 108–110 FBiH; Articles 6–12 RS, Articles 5–9 and 93–95 BD

24 A general collective agreement for BD has not yet been signed.

- equal salaries for work of equal value regardless of ethnicity, religion, sex, political and trade union membership;
- salary payments not longer than 30 days apart;
- a salary receipt delivered with salaries;
- salary increases for every year at the same post of 0.6% with a maximum overall incentive of 20%;
- the minimum wage determined at least once a year or more often depending on changes in the economy;
- basic salary is the minimum wage plus additional amounts according to the level of complexity and difficulty as defined for specific professions;
- extra pay for overtime work, night work, working on days of rest and on holidays;
- paid sick leave;

The labor legislation in Bosnia and Herzegovina is to a great extent adjusted to relevant international conventions, but some critics (for instance Vaša Prava Association²⁵) argue that the existing labor laws are inconsistent, imprecise and open to various interpretations. According to them, these legal documents often contain overly generalized provisions that prove to be inefficient.²⁶ Also, the same source points out that the procedures related to labor issues conducted either with employers, in courts, or with administrative bodies are intolerably slow, inefficient and expensive. For example, the regulations on the conditions and reasons for dismissal are inadequately formulated in labor laws and general collective agreements.²⁷ As noted above, clauses on dismissal permit the ending of labor contracts within a defined time frame if there are justifiable economic, technical or administrative reasons or if the employee is not able to perform the obligations in the contract. However, it is not specified what can be considered as justifiable dismissal or who is

25 Non-government, non-profit organization that assists all beneficiaries by providing free legal aid related to all aspects of protecting human rights and freedom.

26 See more in Analiza propisa i stanja u oblasti radnog prava [The Analysis of Labor Laws and the State of Labor Relations], Vaša Prava, Sarajevo, 2006 (pg.7-8)

27 Article 87 FBiH, Article 124 RS; Article 73 BD. The collective agreement of RS defines only the right to severance pay while the collective agreement of FBiH does not address this issue at all.

authorized to assess one's capability to meet obligations.²⁸ According to the experience of Vaša Prava legal advisors, dismissing workers under the pretext of economic, technical or administrative reasons has become a routine way for executing employers' arbitrary decisions.

Furthermore, the necessary preconditions for this kind of collective bargaining in the media have not yet been fully established at all levels in FBiH. Only recently²⁹ was the Association of Graphic, Publishing and Media Employers (as part of the Association of Employers of FBiH) established. Currently, negotiations with this newly established Association aimed at defining a collective agreement are taking place. In addition to the standard provisions already listed, the pending agreement is supposed to include the protection of workers from practices like pressuring, psychological blackmailing and various forms of harassment. However, it is most likely that this document will have to contain modest requests so that the employers can accept it without being unreasonably burdened with new obligations.³⁰

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

Based on available information, it is evident that the norms on labor and labor-related rights contained in international covenants and in relevant domestic legislation are not being implemented to the full extent in practice. The unanimous opinion of the participants in this study is that journalists are in a relatively difficult position when it comes to their social status and labor rights; however, many of our respondents pointed out that media outlets are not unique in this regard since violations of fundamental social and economic rights are a byproduct of existing general socio-economic circumstances and are common to most businesses. "Taking into account the discrimination of BiH citizens during employment, because of ethnic and party affiliation, nepotism and corruption,

²⁸ *Vaša Prava Op. Cit.*

²⁹ *May 2007, although the official registration of the Association is still in process (According to Amer Toskić, representative of the Trade Union of Graphic, Publishing and Media Employees of FBiH, interview by the author, Sarajevo, 08/08/2007)*

³⁰ *Amer Toskić, Op. Cit.*

it is possible to say that in Bosnia and Herzegovina the right to labor is one of the most jeopardized human rights.³¹ According to Vaša Prava, the differences in labor laws and collective agreements in the jurisdictions rarely lead to the significant differences in practice since their wording is often vague and their rules are often ignored.³²

The Free Media Help Line which offers assistance in defending journalists' rights has reported that they received many complaints from 3 May 2006 to 3 May 2007 concerning labor relations, especially irregular salary payments.³³ Similarly, data of the journalists' association BH Novinari for 2005 show that 35 journalists asked for, "protection and public support in defending their elementary rights and working conditions,"³⁴ in which irregular salary payments and social security and health insurance contributions were at the core of their complaints.

As the analysis of labor laws in practice published by Vaša Prava suggests, some of the clauses of existing legal documents are imprecise. This fact, together with a strong tendency for employers to consider financial factors exclusively combined with tendencies toward nepotism in making employment and labor-related decisions (that our respondents often referred to) in reality leads to insufficient protection of the labor rights of journalists. For example, a trade union representative we interviewed confirmed that while media employees with labor contracts should be protected by the provisions in labor legislation, noncompliance with those rules is very common.³⁵

Furthermore, the state institutions that should control the implementation of labor-related laws³⁶ were evaluated as inefficient by a trade union

31 CCPR/C/BIH/1, 106

32 See Association Vaša Prava, *Analiza propisa i stanja u oblasti radnog prava [The Analysis of Labor Laws and the State of Labor Relations]*, Sarajevo 2006 (pg. 7-8).

33 Press release of Free Media Help Line, 03 May 2007; available at: <http://www.bhnovinari.ba/linija/en/?ID=47> (as of August 22 2007).

34 See the data available at <http://arhiva.bljesak.info/modules.php?name=News&file=articele&sid=19051> (as of August 15, 2007).

35 Amer Toskić, *Op. Cit.*

36 Proceedings are initiated by labor inspectors (authorized by RS, Article 149 and FBiH, Article 131) and the court for minor offences decides on the punishments for violations.

representative³⁷ who indicated that the labor inspectorate has insufficient personnel and authority which leads to its ultimate ineffectiveness. It has to be noted that the labor law in RS envisages a more efficient solution in this sense: contrary to that of FBiH, it authorizes labor inspectors to close down an enterprise due to the failure of the employer to conclude labor contracts and include employees in the health and pension insurance system.³⁸

Despite continuous violations of the social and labor rights of media employees, only a small proportion of them resort to legal means of protection and decide to take their cases to court. As noted by a trade union representative, the judicial system is inefficient and slow to the extent that the results of court proceedings are mostly confined to moral satisfaction for the worker while financial rewards remain limited. According to this respondent, one of the biggest problems is related to potential consequences—journalists fear that court proceedings will lead to losing their jobs and that the costs they would suffer thereby would be greater than those caused by the violations of their rights.

As shown in Table 2, 38% of participants considered that they were not protected by individual labor contracts from unjust penalties or dismissal.

Table 2: Does Your Contract Protect You from Unjustified Sanctions and Dismissal?

<i>Media Outlet</i>	<i>Yes</i>	<i>No</i>	<i>Other</i>	<i>No answer</i>	<i>Total</i>
Newspapers	3	13	3	5	24
Radio stations	12	16	4	8	40
TV stations	16	9	1	8	34

37 Amer Toskić, *op cit.* He suggested that the new law on inspections that increases personnel by 150 inspectors should enable efficient inspection within a short period of time. However, he remains skeptical when it comes to reducing corruption and nepotism..

38 Article 180 RS

News agencies	1	2	4	0	7
On-line media	1	1	0	1	3
Other - multiple engagements	6	5	0	2	13
Total	39	46	12	24	121

The most frequently violated rights were related to salary payments (43%), the length of the working day (39%) and overall working conditions (33%) while other violations occurred less frequently.

The results of this research suggest that radio and newspaper journalists are somewhat more affected by violations of labor rights, mainly rights related to salary (50% radio and 34% newspaper) and rights regarding annual vacation (29%). Radio journalists are especially affected by violations of rights regarding working conditions (48%), while TV journalists were especially affected when it came to the length of the working day (53%). Overall, it can be assumed that the situation in this regard depends on the type of ownership since according to the respondents interviewed, public media tend to have more developed internal procedures and mechanisms that partially protect the labor rights of the employees. Approximately three fourths of the respondents employed in TV (N=33) and in radio outlets (N=40), as well as 6 out of 7 news agencies journalists were employed in public sector. The most vulnerable category when it comes to the violations of labor rights, i.e., newspaper journalists, were predominantly employed in private media outlets (21 out of 22).

TYPICALLY HIRED STAFF

Table 3 shows that the highest rate of regular staff employment is in TV outlets and news agencies. A total of 67 were employed in public media, 46 in private national media and 4 in private international media.³⁹ This

³⁹ Remaining five failed to answer, or offered multiple answers

proportion of employees in public media is probably somewhat higher than in the general population and is especially high in news agencies and TV stations. Therefore, the results should be considered in that context.

Table 3: Type of Employment by Media Outlet

<i>Media Outlet</i>	<i>Typically Hired Staff</i>	<i>Freelancers</i>	<i>Total</i>
TV stations	26	8	34
Radio stations	27	13	40
Newspapers	14	10	24
News agencies	5	2	7
On-line media	2	1	3
Multiple engagements	11	2	13
Total	85	36	121

Of the 85 regular staff, the majority had signed an indefinite labor contract while 25 of them had definite contracts. Also, public media outlets had a slightly higher rate of long-term employment as 72% had indefinite contracts compared with 70% of private media employees.

The survey results also showed the existence of violations related to salaries, working hours and working conditions. One of the participants reported that labor rights and relations were particularly fragile in private media:

(...) I left one of those media outlets (...) although I was one of the reputable journalists (...) I was unsatisfied... my salary was not fully reported, many more working hours than legally permitted, small salaries in comparison to the work accomplished, annual vacation not in accordance with the law. (male age 25–34 regular staff journalist in a public TV station)

Similarly, 56% of those interviewed considered the rights of public media employees were protected more efficiently. Although they too had experienced various infringements of their labor rights, there were protective mechanisms in place. Most significantly, public media tended to respect internal procedures in cases of dismissal, and there were internal trade unions that offered some support and protection to the employees. Overall, the main difference identified during interviews was that public media employees enjoy somewhat more security in terms of keeping their posts.

The survey results, on the other hand, indicated that the frequency of violations of labor rights did not always demonstrate that public media employees were more protected. Infringements related to annual vacation were frequent in private media, while difficult working conditions and violations related to the length of the working day and work not stipulated in contracts appeared to be more frequent in public media (Table 4).

Table 4: Violation of Labor Rights by Type of Ownership

Does the employer frequently violate	(%)	Public	Private
Your rights related to annual vacations	Yes	4.5	17.4
	No	83.6	69.6
	Sometimes	10.4	6.5
	I don't know	1.5	6.5
	Total	100 %	100%

Your rights related to work conditions	Yes	17.9	8.7
	No	52.2	76.1
	Sometimes	25.4	13.0
	I don't know	4.5	2.2
	Total	100%	100%
Your rights related to length of the working day	Yes	11.9	6.5
	No	49.3	69.6
	Sometimes	35.8	17.4
	I don't know	3.0	6.5
	Total	100 %	100%
Your rights related to work not stipulated in the individual labor contract	Yes	9.4	9.1
	No	62.5	63.6
	Sometimes	23.4	18.2
	I don't know	4.7	9.1
	Total	100%	100%

Discrepancies in the results suggest that some of the respondents were unfamiliar with the basic terminology and legal regulations on labor relations which rendered them unable to estimate or to assess even the basic elements of their status. For example, 11 freelancers said that they had signed labor contracts (five of which were indefinite), and 10 regular staff journalists noted that they had not signed any labor contracts at all. This unfamiliarity could account for the discrepancies between numbers of regular staff in Table 3 and the number who had signed indefinite or three to five year contracts in Table 5.

LABOR CONTRACTS

Overall, 96 respondents had signed labor contracts; the types are shown in Table 5.

Table 5: Length of Contracts by Media Type

<i>Media Outlet</i>	<i>Indefinite</i>	<i>3-5 years</i>	<i>less than 1 year</i>	<i>other</i>	<i>No answer</i>	<i>Total</i>
TV stations	21	1	6	3	3	34
Radio stations	23	1	2	1	13	40
Newspapers	15	0	0	4	5	24
News agencies	5	0	2	0	0	7
On-line media	1	0	1	0	1	3
Multiple engagements	6	3	1	0	3	13
Total	71	5	12	8	25	121

Fifteen of those interviewed stated that the duties of an employee are not defined in detail in labor contracts though four employees of private media outlets and two employees of public news agency said that they were. Most said their duties were defined as “journalists’ tasks” with no further specifications. The poor quality of labor contracts is one of the basic problems in labor relations in the media. In addition, some of the respondents asserted that labor contracts do not always include the definition of salaries for different positions.⁴⁰

It appears that the minimal specifications for legal individual labor contracts, including working conditions, rights and obligations of both the employers and employees, are often left out which is not in the inter-

⁴⁰ According to one respondent, “(...)salary is not defined in the labor contract, nor are coefficients used for salary calculation (...)” (female, 25-34, regularly employed print media journalist).

ests of the employees. A representative of the trade union of FBiH stated that the continuation of these practices demonstrates the incompetence of labor inspectors.⁴¹

A representative of the Organization of Croatian Journalists suggests that the generalized and abstract wording of labor contracts leaves journalists unprotected from engaging in tasks that can be in conflict with their professional interests and their reputations.⁴² In this context, 27% of respondents affirmed that they were often or sometimes assigned work that was not stipulated in the individual labor contract. Furthermore, 54% of the respondents claimed that there was no conscience clause⁴³ in their labor contracts.⁴⁴ The fact that 33.9% of respondents failed to answer this question can possibly be explained by unfamiliarity with meaning of this clause. For example, several respondents did not know whether this clause was included or whether it should be included.

In all, 4% of respondents thought the contracts they had signed offered protection from unjustified sanction and dismissal, but 47% did not believe they did.⁴⁵ Respondents employed in public media had somewhat more confidence (41%) than those employed in private media outlets (37%).

SALARIES AND SOCIAL BENEFITS

A total of 38% of respondents who had signed labor contracts considered problems with payment frequently or sometimes violated their labor rights. Those problems included low wages, irregular payment and minimum salaries reported to the state to reduce benefit payments for employers. Although the 67% of journalists with labor contracts stated

41 Amer Toskić *op. cit.*

42 Ilko Barbarić, representative of Association of Croatian Journalists, interview by author, Mostar 02/08/ 2007

43 A conscience clause is defined in the questionnaire as the right to refuse doing work that does not correspond to the beliefs of the journalist.

44 10.7% claimed that conscience clauses were included in their labor contracts, 2.5 % offered alternative answers.

45 Here is one more divergence in comparison to data presented in Table 2; namely, the table also includes answers offered by journalists that had not signed labor contracts.

that their salaries surpassed the national average (in 2006 the average salary in the country was 580.9 marka or 297 euros⁴⁶), 61% of them nevertheless considered the payments to be inadequate compared to the work accomplished. Salary rates were somewhat higher in private media as 58% of respondents said their salaries were higher than the national average compared with 55% of respondents in the public sector.

According to the FBiH trade union representative, violations of workers' rights are indeed serious when it comes to payments:

There are companies that have not paid up to 60 salaries to the employees(...)unfortunately, all criminal court proceedings are (...) put aside, on hold, covered up etc. (...) some of them last for three years (...) when the proceedings are over, there is no more capital (...) workers cannot get (...) their wages and social and health security contributions. (Representative of the Trade Union of Graphic, Publishing and Media Employees of FBiH, interviewed by the author, Sarajevo, 08/08/2007)

Although the labor laws require employers to provide health and pension insurance for their employees, only 59% of those responding to the survey indicated that these contributions were regularly paid by the employers. One of journalist asserted that part of the problem is the fact that there is practically no legal punishment for not paying health and social security contributions for the employees.

According to 16 media employees and to the trade union representative interviewed, it is a widespread practice that only minimum wages are officially reported. A representative of the trade union of FBiH pointed out that this can happen without the employee's knowledge since in some cases they don't have access to this information despite the fact that the salary receipt is legally required.⁴⁷ In addition, this practice may be preferred by journalists as well because it increases their take-home pay and because of the general disrespect for and disbelief in the public health and retirement insurance system. According to several respondents interviewed, these kinds of practices and other forms of infringe-

⁴⁶ Agency for Statistics of Bosnia and Herzegovina, data available at <http://www.bhas.ba/arhiva.html>

⁴⁷ Amer Toskic, *Op. Cit.*

ments of labor rights are a result of a combination of factors including financial limitations, the excessive concentration of employers on financial gains, the perceived ineffectiveness of mechanisms that should protect labor rights and the low level of awareness of labor rights and the importance of their protection among employers and employees.

ANNUAL VACATION, LENGTH OF THE WORKING WEEK, REST TIME

Although 49% of the respondents said they worked more than 40 hours a week, they did not perceive of this as a violation of their rights. One of the reasons for this attitude could be the tendency of journalists to regard long working hours as a necessity for performing their jobs. Twelve survey respondents did point to disrespect for the legally defined working hours as one of the most severe infringements of labor rights in the media.

In all, 67% of the salaried, permanently employed staff reported that their rights to an annual vacation were normally respected, 12% stated that violations of this right often took place while 19% reported that such violations sometimes occurred.⁴⁸ Three survey respondents said that problems with annual leave, rest time and the length of the working week were more severe and more frequent in the private sector than in public media outlets. These rights were the subject of collective bargaining between the trade union and the association of employers that was to be concluded by the end of September 2007.

DISCRIMINATION

Interestingly enough, only two survey respondents mentioned discrimination on the basis of age, gender and national identity as frequent labor rights violations in media outlets, 12 believed that it occurs sometimes, while 81% perceived that there were no discriminatory practices in labor relations in the media. Among the participants interviewed, only the representative of FBiH Trade Union of Graphic, Publishing and Media

⁴⁸ Remaining two failed to answer

Employees explicitly expressed his belief that various forms of discriminatory practices were very common in everyday experiences in labor relations. Although the labor laws of FBiH and RS protect women during pregnancy and after delivery, in practice, according to Vaša Prava⁴⁹ and confirmed by one of our respondents,⁵⁰ employers not only rarely decide to employ pregnant women, they also often dismiss them or pressure them to return to work before the end of their maternity leave. The same respondent also stressed that there is gender discrimination because women are generally not in high managerial posts. Another respondent⁵¹ expressed an opinion that there is ethnic segregation in the media so that employees do not apply for posts that are clearly oriented towards the “other” ethnic groups.

PUNISHMENT AND DAMAGE REIMBURSEMENT

According to the survey results, frequently used methods of penalizing journalists for mistakes and violations of professional ethics or working schedules were financial penalties (reported by 72%) and official warnings (72%) while dismissals were less frequent (36%). A total of 45% did not know whether they were obliged to reimburse their employers for damages they caused to their media outlet. These results further confirm the significant lack of knowledge and information on labor rights and obligations among the respondents.

AUTHORSHIP

According to the Law on Author's Rights and Related Rights in FBiH,⁵² authorship rights cover creations made in the course of a labor relation, either as a part of performing one's working obligations or at the employer's request. These rights are considered to be transferred to the employer for a period of five years beginning from the day the product

49 *Vaša Prava Magazine No. 18, September 2006, p. 22*

50 *Amer Toskić, Op. Cit.*

51 *Ahmed Burić, editor, private newspapers Oslobođenje, interview by the author, Sarajevo, 14/08/2007*

52 *Official Gazette of FBiH No. 7, 10 April 2002*

was completed if not otherwise specified in a specific labor contract. After a five-year period, authorship rights belong exclusively to the author. Authorship rights over products made during the execution of a contract for temporary or occasional work belong to the author if not otherwise specified by the individual contract.⁵³

There were wide variations in respondents' assessments of the protection of their authorship rights. Overall, 17% considered that their authorship rights were protected, 28% believed they were protected in principle, 21% said they were unprotected and 9% believed they were unprotected in principle. It is particularly important to note that 18% were not familiar with the protection of their authorship rights.⁵⁴ In the interviews, positive individual experiences were not unusual, but a need for more legal guarantees and mechanisms for protecting authors' rights in a systematic manner was indicated.

Authors' rights are generally considered to be an important mechanism of control over remuneration for journalists' work as well as an important protective mechanism for moral rights (the right to be recognized as an author) and consequently are a valuable means for maintaining the ethical standards that define and guarantee professional journalism.⁵⁵ However, the research results suggest that awareness of the importance of developing these mechanisms is rather low among journalists and managers of media outlets in Bosnia and Herzegovina. While 19% of survey respondents considered their authorship rights were protected and 30% believed they were in principle protected, 21% perceived these rights were unprotected, and 10% mostly unprotected. A total of 20% of respondents failed to answer. Six interviewed stressed that material produced during employment usually stays in the possession of the media outlet even after the termination of the contract. Only one journalist employed in a public TV station reported that employees were transferring their authorship rights to the employer by signing individual

⁵³ *Law on Authorship and Neighboring Rights in FBiH, Articles 24–27*

⁵⁴ Remaining 7.4% failed to answer

⁵⁵ See more in *International Federation of Journalists, Author's Rights Manual*, available at: <http://www.ifj.org/default.asp?Issue=manual&Language=EN> (web page accessed on August 15, 2007).

contracts. Nevertheless, even though in this media outlet there was a possibility of signing an additional contract on authorship rights for specific projects, this option is rarely used in practice.

In sum, participants asserted that their authorship rights were not formally protected and that this is why journalists generally choose not to report on what they believe to be authorship rights violations by media employers. The majority of those interviewed who believed that their rights were partly protected in practice (9 out of 15) were of the opinion that this was due to favorable individual contracts with the employer. A tendency to disregard the importance of the protection of authorship rights can be partly explained by the general disbelief in the possibility of protection of authorship rights in the chaotic market economy of Bosnia and Herzegovina.

FREELANCERS. STUDENTS. YOUNG PROFESSIONALS

According to a statement by the General Secretary of International Federation of Journalists (IFJ),⁵⁶ these atypically hired workers make up around 30% of its membership. This proportion corresponds with the percentage of freelancers in the research sample although one respondent estimated that the proportion could be as much as 50%.⁵⁷ Atypical working arrangements include predominantly task or single-purpose engagements, false temporary labor contracts and unregistered hiring.

One of the major problems of the economy of Bosnia and Herzegovina is certainly related to unregistered hiring. Data from the report of Media Task Force of 2002⁵⁸ indicated that out of 190 journalists, 58% of them had not signed contracts. Most of those who reported that they had signed contracts were employed in public media outlets. The results of

⁵⁶ Speech given at the 95th International Labor Organization Conference in Geneva, 05/06/2006, available at: <http://www.ijf.org/default.asp?Index=4169&Language=EN> (as of August 12 2007).

⁵⁷ Amer Toskić, *Op. Cit.*

⁵⁸ See Tarik Jusić, *Vlasništvo nad medijima i njegov uticaj na nezavisnost i pluralizam medija u Bosni i Hercegovini* [Media ownership and its influence on independency and pluralism of media in Bosnia and Herzegovina] in Sandra Bašić Hrvatini, Brankica Petković, Tarik Jusić, *Vlasništvo nad medijima i njegov uticaj na nezavisnost i pluralizam medija* (Mediacentar Sarajevo, October 2004, p. 106).

our research also confirmed that the incidence of signing labor contracts was higher in public media (78%) than in the private sector (61%). Seven participants interviewed for this study expressed the opinion that unregistered work is to a great extent still present in the media, but three said it was decreasing.

According to the interviews, many journalists are engaged on the basis of contracts for temporary and occasional assignments that are regulated by labor laws while a significant number are hired on the basis of task or single-purpose contracts that are regulated by obligation and contract laws. Two respondents said they had been volunteers during their studies. The manager of one public radio station reported that virtually all workers in that media outlet were engaged without signing any kind of contract. He pointed out that these arrangements were satisfactory for students who work couple of hours a day and even get adequate compensation for their work. According to one respondent who was a volunteer at the time of the survey, it is common that a volunteer engagement does not include any kind of contract.⁵⁹

Based on the interviews, it can be stated that some freelancers are in fact satisfied with their status. Most of them are established journalists (especially those contributing to weekly newspapers) who have the opportunity to work for several media outlets at the same time which brings the reasonable expectation of a higher overall income. In addition, the lack of confidence in existing public health and social security systems can make signing a labor contract somewhat less desirable.

On the other hand, young professionals on their first jobs seem to be particularly vulnerable and are often exploited by their employers. They report frequently prolonged working hours, underpayment for their work and constant prolonging of their temporary status due to delays in signing labor contracts despite their expectations in this regard. One female freelancer at a public radio station stated, "A big problem is

59 According to labor laws (Article 30 RS, Article 28 FBiH, Article 21 BD) an employer is obligated to sign contracts for engaging volunteers and to pay 35% of minimum wages for health insurance in case of injury or illness.

maximum exploitation of young professionals who sometimes don't have adequate working conditions or payment for their work."

Even though the labor laws offer the possibility of a probationary period that would enable an assessment of young journalists prior to entering into regular salaried employment, employers prefer signing contracts for temporary and occasional assignments. According to the labor laws, this kind of engagement should be used for specific jobs of determinable outcome and duration that cannot last longer than 60 days in one year. In practice there is a common misinterpretation of these clauses since most of the first-time engagements of young journalists regulated by this kind of contract lasted much longer than 60 days. In fact, according to our respondents, this status is often prolonged for years. This practice of pressuring journalists to freelance while performing full-time jobs represents a commonly used strategy of employers to avoid welfare and social insurance payments. A task or purpose contract is often used with this same intention. Young journalists are seen as a qualified but cheap workforce.

In all, 84% of the freelancers surveyed mainly performed their tasks at their employers' premises, and among journalists without signed labor contracts, it was the employer who decided where their jobs were to be performed for 70% of them. For 66% the employer made the decision as to the specific hours for performing the job. It is furthermore important to note that 44% of freelancers did not know whether they had to reimburse their employers for damages caused to their respective media outlets.

These results suggest that in practice jobs that are formally registered as temporary work are often not distinguishable from permanent employment arrangements and that registering them as temporary serves only the employers as they can avoid their legal obligations to journalists and to the state. According to nine survey respondents, such atypical hiring leads to greater job insecurity. The resulting difficult labor relations

and overall socio-economic insecurity can in turn potentially lead to compromising ethical standards in journalism and often to a decline in quality.⁶⁰ As indicated by 11 survey participants, job insecurity and low salaries and violations of labor rights appear to have a negative impact on the quality of editorial content and in effect jeopardize the objectivity, professionalism and ethical standards in media outlets.

According to one respondent, young journalists are often forced to accept difficult working conditions and to engage in assignments that can conflict with their professional roles, and they do not get adequate opportunities for their professional development.⁶¹ The results presented in Table 6 demonstrate that the position of employees who don't have labor contracts is more difficult and that violations of their rights are more frequent.

Table 6: Violations of Labor Rights with and without Signed Contracts

Type of employee		Does Your Employer Frequently Violate Rights Related to (%)									
		Salaries		Working conditions		Length of working day		Rest time		Annual vacation	
		Yes	Some-times	Yes	Some-times	Yes	Some-times	Yes	Some-times	Yes	Some-times
Signed labor contract (N = 86)		20.9	17.4	11.6	19.8	8.1	31.4	5.9	24.9	8.1	7.0
Without labor contract (N = 36)		37.4	17.1	41.2	24.1	16.7	19.4	13.9	27.8	13.9	13.9

60 As indicated in the research report of the International Federation of Journalists "The changing nature of work: a global survey and case study of atypical work in the media industry", <http://www.ifj.org/pdfs/ILOReport070606.pdf>

61 Ilko Barbarić. Op. Cit.

In all, 69% of freelancers considered their salaries were inadequate for the work they accomplished, and 74% asserted that their salaries were below the national average. Comparing this with data on regular salaried staff, 73% said their salaries were above average and 17% said they were equal. This indicates that freelancers (especially young freelancers) may be paid less for the same work. According to the freelance journalists interviewed, their salary rights were particularly violated since payments were frequently delayed for several months.⁶² One respondent asserted that if these violations are frequently made by public broadcasters, it can be assumed that they are even more common in private media outlets.⁶³ In addition, payment rates for freelance and temporary workers mostly depend on employers' decisions in the absence of adequate regulations in that respect.⁶⁴

The issue of enhancing regulations concerning terms and conditions for temporary, task and single-purpose engagements in order to limit their extensive misuse was not included in the negotiations for the collective agreement, although the trade union representative who participated in this study recognized the need to address this problem in future.⁶⁵

Although freelance journalists should exclusively enjoy their authorship rights as prescribed by the Law on Author's Rights and Related Rights in FBiH, one stated that the articles he produces as a freelancer stayed in the possession of his employers and that he did not have control over the use of this material. Protection of authorship was not an issue that 39% of freelancers were familiar with in the survey. Only 14% said they were protected, 22% said they were protected in principle, 17% said they were not protected and 8% said they were not protected in principle.

62 *According to one young honorary journalist engaged in a public TV station, she was still waiting to get paid for her engagement in August 2005 (interviewed by the author, July 2007). Also, on the on-line forum of FTV public media outlet, the director confirmed that honorary journalists are treated as second-class workers: 'I regret that we are not able to pay all honorary workers on time. However, RTV FBiH is trying to deliver salaries to employees as regularly as possible and honorary workers come right afterwards.'*

63 Ilko Barbarić, *Op. Cit.*

64 Amer Toskic, *Op. Cit.*

65 *Ibid*

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

Due to various political and social pressures, the United Nations High Commissioner for Human Rights report in 2004 concluded that the professionalism and protection of journalists had been exceedingly neglected,⁶⁶ and that as a result, employees were forced to resort to strikes as the means for promoting and protecting their rights.⁶⁷ This kind of report suggests that under the pretext of protecting national interests, there are hidden aspirations of politicians and other important persons in the public arena to maintain or promote their socio-political positions by controlling mass media. In those circumstances, media owners are not immune to polarization and to pressure from socio-political and economic factors in the country. Moreover, according to Mehmed Halilović, “wars against journalists” that political elites initiate and carry out are usually, “covered and private, rarely public and open.”⁶⁸ Due to the alarming socio-economic situation, journalists find themselves in a highly vulnerable position, where censorship, self-censorship and violations of professional ethical standards become possible and real.⁶⁹ This is confirmed by the results of this research as 18% respondents considered that labor relations actually demand a certain censorship, or self-censorship, 40% argued that there are occasional cases of censorship or self-censorship and 41% did not report this kind of conduct.

In all, 16 survey respondents indicated that the most prominent problems in labor relations in the media are the lack of journalistic freedom and the practices of censorship and self-censorship. One of the partici-

66 HCHR report on the status of human rights in 2004, available at <http://www.bh-hchr.org/Reports/reportHR2004.htm>, as of August 15 2007

67 For example, on 23 November 2004 the employees of BHRT and RTV FBiH entered into a 20-minute warning strike because of the difficult economic situation in these public broadcast systems. Salary payments were delayed for four months, and health insurance for most of them was not paid. (See Radenko Udovičić, *Između novca i politike [Between Money and Politics]*, available at <http://www.mediaonline.ba/ba/?ID=418>, as of August 11, 2007)

68 Halilović Mehmed, *Profesionalci i podanici: na margini sukoba Vlade RS i BHT1 [Professionals and vassals: on margin of conflict between government of RS and BHT1]* Puls demokratije Available at <http://www.pulsdemokratije.net/clanak.php?sjfra=070206002&lang=bh>, as of August 16 2007.

69 Amer Toskic, *Op. Cit.*

pants interviewed⁷⁰ was a victim of pressure from cantonal authorities in 2005 that illustrates the various means of censorship over local public media that authorities have. This journalist was pressured to leave the media outlet where she was employed after publishing a negative representation of a high cantonal official. Another survey participant had a similar experience, “(...) I had strict orders not to touch the governmental agencies (...); in the end (...) I was dismissed” (male, 34–45 freelancer for several private newspapers). Eighteen of the in-depth interviews asserted that a large number of mass media outlets is clearly oriented toward certain political parties.⁷¹

Respondents pointed out that censorship and self-censorship as well as employment policies are predominantly governed by the commercial interests of the employers. One of the respondents argued that the politically driven censorship culture is declining while a certain “corporate marketing dictatorship”⁷² is expanding in the sense that companies that are attractive for marketing contracts are influencing editorial policies.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

The right to organize independent unions in Bosnia and Herzegovina is defined by labor laws in all three jurisdictions and is also guaranteed by the entities' constitutions. Currently, there are three trade unions in Bosnia and Herzegovina, one for each jurisdiction. An additional level of trade union organizing in FBiH is the confederation of these three trade unions which functions at the state level.⁷³ Composite parts of the trade unions are branch trade unions of graphic, publishing and media workers. As noted previously, the efficiency of these trade unions has been diminished by the non-existence of an equivalent body within the

⁷⁰ Female journalist in a private TV station, interviewed by the author, Sarajevo 07/08/2007.

⁷¹ See more in *De(kon)strukcija javnog diskursa: Stapani mediji u predizbornoj kampanji u BiH od 5. augusta do 5. oktobra 2002*, [De(con)struction of public discourse: Print media in pre election campaign in B&H from 5 August to 5 October 2002] available at: <http://195.222.62.54/media-centar/documents/Dekonstrukcija%20javnog%20diskursa%20pdf> (as of August 10 2007). and HCHR Report of the Status of Human Rights in FBiH, *Analysis for the period January-December 2006*, available at <http://www.bh-hchr.org/Reports/reportHR2006.htm#top> (as of August 17 2007)

⁷² Ilko Barbarić, *Op. Cit.*

⁷³ See the information published on the official site of the Trade Union of FBiH, at <http://www.sindikatih.ba/sssbih.asp> (as of August 10 2007)

Association of Employers in FBiH which has made collective bargaining impossible.

There is no reliable information on the total number of media employees, so it can only be assumed that most of them are members of one of the four journalists associations.⁷⁴ According to the membership data issued by the associations, 1758 journalists are members.⁷⁵ The initiatives of these organizations are separate and independent, and their potential strength is diminished by the fragmentation of journalists along ethnic and regional lines. According to a respondent interviewed,⁷⁶ the four media associations currently functioning in Bosnia and Herzegovina were formed on a geographic and/or ethnic basis and are predominantly devoted to local initiatives which makes them unable to advocate for the advancement of journalists' labor rights nationally.

According to the research results, only 31% of respondents were members of branch trade unions⁷⁷ out of which only two journalists were from private media outlets. This indicates that trade union organizing in private media virtually does not exist.⁷⁸ None of the freelancers from the survey sample was a member of a trade union, although the trade union representative stated that they have the right to membership.⁷⁹

Postwar circumstances and the process of privatization have had devas-

74 See the information on the official site of BH Novinari association, <http://www.bhnovinari.ba/?ID=29> (as of August 10 2007)

75 *Ibid.*

76 Ilko Barbarić, President of the Union of Croatia Journalists, interviewed by the author, Mostar, 02/08/2007.

77 According to the data presented in the Report of Bosnia and Herzegovina on the Implementation of the International Covenant on Civil and Political Rights, CCPR/C/BIH/1, 24 November 2005, p. 104, the total number of trade union members was 478,640, out of which 277,450 were in the FBiH and 201,190 of them were in RS. The union is organized into associations and branch unions; however, the data from different sources are inconsistent. For example, according to the information published on the web site <http://www.sindikاتبih.ba/sssbih.asp> (as of August 12 2007), the number of members in this trade union was around 150,000. There are 22 branch unions in the FBiH and 15 branch unions in RS. The trade union of BDiencompasses around 20% of the total number of the employed persons there.

78 It needs to be stressed that members of trade unions and associations are exclusively journalists while this research included a small proportion of non-journalist media employees (technicians, photographers etc.) as well.

79 Amer Toskic, *Op. Cit.*

tating effects on trade union organizing, and the process of re-establishing the trade unions and gathering members is still in progress.⁸⁰ The perception of the efficiency of trade unions among the respondents is mostly negative. Only 7 survey respondents considered trade unions as efficient, and 19 of them believed that these associations are sometimes efficient. On the basis of these responses, it can be concluded that the interests of journalists in trade union organizing and collective bargaining are extremely low. At present, trade unions have a poor image and often are considered as only formal organizations that do not achieve substantial results in promoting the labor rights of journalists. Some participants have also expressed doubt over the impartiality of trade union representatives and fears related to their connections with the media employers.

As mentioned earlier, negotiations that should result in signing a specific collective agreement for this sector were to be concluded for FBiH in September 2007. Although the representative of the FBiH Trade Union is reasonably optimistic regarding the response of media employers to the requests and to their involvement in dialogue that will lead to the improvement of the existing legislation,⁸¹ many of statements of the media workers suggest that this issue should be approached with a certain caution. That this problem is rather complex is shown in the fact that the process of including all media employers in the union of employers is ongoing, but there are no mechanisms for stimulating their inclusion in that body. Consequently, there is no guarantee that all employers will have to respect the articles of the new collective contract when it enters into force. To be precise, according to current laws there is no positive obligation on the part of the employers to negotiate with workers and their unions to define and implement the collective agreement. However, labor laws⁸² do authorize the relevant ministries of FBiH and RS once the collective agreement is signed to extend its obligations to other legal persons if it is a matter in their interests. This is an

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Article 116 FBiH, Article 159 RS

important potential measure for increasing the efficiency of collective contracts in practice.

Considering that there is already a long history of employers violating the rights of workers in Bosnia and Herzegovina with relative impunity, there is an impression that the employers have unlimited authority and power which makes them disinclined to collective bargaining.⁸³ The trade union representative who participated in this research, however, stressed that this trend is changing and that the negotiations with the representatives of journalists make the employers increasingly recognize the need for improving labor relations in this professional branch.⁸⁴

VII. CONCLUSIONS AND RECOMMENDATIONS

The results of this research suggest that labor rights violations in the media are persistent and that the most frequent among them are violations related to salaries, health and pension insurance, the length of the working day and overall working conditions while other types of violations occur less frequently. There are some indications that labor rights and relations are particularly fragile in private media while in public media outlets there is general respect of legally determined procedures when it comes to dismissing employees. Labor contracts are mostly evaluated as inadequate due to imprecise job descriptions and frequent noncompliance with legally defined patterns of formulation.

Many journalists, especially those employed in newspaper (and private) outlets, considered that they are not protected by individual labor contracts in terms of unjust penalties or dismissal. Journalists mostly consider that public media employees enjoy somewhat more security, especially in terms of keeping their jobs. The results show that young journalists without regular employment in media outlets are particularly vulnerable. Due to their specific positions and since they are not protected by labor regulations, they face violations of labor rights more

⁸³ See the report of the HCHR on the State of Human Rights in FBiH in 2005, available at: <http://www.bh-hchr.org/Reports/reportHR2005.htm> (last visited on 15 August 2007).

⁸⁴ Amer Toskić, *Op. Cit.*

frequently than those respondents who signed labor contracts. Pressuring journalists to work as freelancers while actually performing full-time jobs represents a commonly used strategy by employers to avoid welfare and social insurance payments. Nevertheless, these kinds of engagements are sometimes (usually for experienced and established journalists) more preferable because of potential multiple engagements and thus higher overall incomes. Temporary, one-task and occasional engagements usually don't include signing any kind of contract. Moreover, unregistered working engagements remain one of the major problems of the economy in general.

The results suggest that jobs that are formally registered as temporary work in practice are often indistinguishable from regular salaried staff positions and that registering them as temporary serves the interests of only the employers by avoiding their legal obligations to journalists and to the state.

Authorship rights are not formally protected, and it appears that journalists generally do not believe that the protection of authorship rights is possible in the chaotic market economy in Bosnia and Herzegovina.

While assessments of levels of censorship and self-censorship diverge, respondents indicated that infringements of labor rights and job insecurity due to atypical working arrangements make the practice of censorship and an overall decline in critical and investigative reporting more probable.

Initial positive steps toward enhancing labor regulations were ratifications of relevant international conventions and the inclusion of these documents in the body of constitutional law. There have also been certain positive tendencies in developing labor rules and regulations. By enacting labor laws and signing general labor contracts and branch general agreement in RS and through an agreement on collective bargaining in FBiH, a basis for further initiatives aimed at the enhancement of labor relations in the media has been established.

The alleged readiness of employers to participate in collective negotiations with the trade union is in itself an indicator of the rising awareness of the necessity to promote further labor rights and their protection in media outlets. However, collective agreements, even when signed, only oblige employers that are members of the association of employers, and there is no obligation for all to join. Relevant ministries of FBiH and RS are authorized, once the collective agreement is signed, to extend its obligations to other legal persons if it is in their interests.

It seems, however, that negotiations are focused on several key questions (mainly specifying minimum wages, additional payments for night shifts and working on holidays and length of working day) and do not include other important issues such as conscience clauses or atypical working engagements. Moreover, collective agreements are not a panacea for problems with labor relations, especially if they are not followed by more efficient mechanisms of control over the implementation of those agreements.

Labor inspections and court proceedings are evaluated as inefficient and intolerably slow. This in turn reinforces employers' further neglect of labor rights and the lack of trust of employees in state protection of their rights. Consequently, employers continue to violate labor rights of media employees with relative impunity.

Discrepancies between some of the statements of the participants in this research point to the lack of awareness of journalists of the relevant legislation and mechanisms of protection of labor rights. In addition, evaluations of trade union functioning are generally negative to the extent that the majority of respondents were not familiar with potential and actual trade union activities. Trade union organizing is particularly unpopular in private media outlets and virtually doesn't exist. At present, associations of journalists and trade unions are fragmented, and thus their potential strength in promoting labor rights is weakened.

RECOMMENDATIONS

Legislators

- Amend relevant laws with precise definitions of labor rights, protective mechanisms and standards. More precisely, labor law articles related to the conditions of and reasons for dismissal⁸⁵ must be specific in order to protect workers from arbitrary decisions of employers.

Governments

- Develop efficient mechanisms for stimulating as many employers as possible to engage in collective bargaining or make collective agreements obligatory for all media companies.

Law Enforcement Agencies (courts, prosecutor's office, inspectors)

- Improve the effectiveness of labor inspections by increasing the number of personnel, and give the inspectors more authority, for example, in terms of immediate implementation of legally defined penalties for the infringement of labor rights.
- Increase inspections, and control the labor black market.
- Improve efficiency and shorten the length of court proceedings.

Journalists' Trade Unions

- Promote journalists' trade union organizing, and use different ways of raising awareness among journalists regarding labor rights and issues.
- Enhance union organizing by connecting fragmented media employees' organizations in a network that defines common goals and interests.
- Continue and intensify collective bargaining through which specific conditions of work for a journalist are defined.
- Include additional issues in collective negotiations, e.g., conscience clauses and the status of freelance media employees.

⁸⁵ Article 87 FBiH, Article 124 of RS; Article 73 BD. The collective agreement of RS defines only the right to the severance pay, while the collective agreement of FBiH does not address this issue at all.

- Develop mechanisms that will impede the misuse of temporary and occasional contracts by employers. More concretely, the collective agreement could define the maximum proportion of such workers in each media outlet in order to combat the practice of forcing them to enter into this kind of engagement contrary to their preferences.

Journalists Associations

- Facilitate educational programs for journalists' rights in labor relations and the means for protecting labor rights. Continuous seminars and workshops on this topic, distributing educational materials and other forms of promoting labor rights of journalists would be strongly recommended.
- Involve and inform other stakeholders (governmental bodies and employers) to become part of the process of improving the quality of labor contracts by including a more specific definition of professional obligations and the rights journalists are entitled to on the basis of applicable international and domestic labor rights standards.

Journalists

- Inform yourselves about labor rights, means of protecting them, and the content of signed contracts.

Employers

- Inform yourselves about international and domestic labor rights standards.
- Involve yourselves in collective negotiations with the journalists' trade union in order to promote professional standards in media outlets and the quality of journalism.

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Bulgaria

by Danail Danov

I. ABSTRACT

For this research project, 30 face-to-face interviews were conducted with journalists and senior media managers and 42 questionnaires were returned from a representative sample of media outlets. Relevant laws and job descriptions were also reviewed. The existing regulatory framework governing labor relations in the Bulgarian media follows the most liberal tendencies, is largely synchronized with European Union standards and requirements and offers a platform highly conducive to press freedom. The practical implementation of this framework is, however, another story, especially with regard to the media outlets operating in the countryside. Although working without a contract in the media simply does not occur, there are three types of contracts used, i.e., permanent, temporary and civil, and mixed contracting is commonly used as a tool to avoid taxation and diminish the size of mandatory social insurance contributions especially among private print and electronic media outlets outside of Sofia. No gender discrimination is practiced, but recruitment policies seem to show preferences to younger journalists.

The feedback received for this research indicates that the big, Sofia-based print press and commercial electronic media with national coverage are highly independent, strong and avoid external political control, while regional and local media are not so independent. The 2006 Media Sustainability Index for Bulgaria concluded that there is not always a firewall between the management, sales and editorial departments and that pluralistic reporting sometimes yields to self-censorship. The Radio and Television Law should be amended to insure the independence of the main regulatory body, CEM, by introducing a quota of members from civil society that would balance the currently overt political decision making in its composition. This would positively affect the appointments of the top managers of both Bulgarian National Television and Bulgarian

National Radio and together with an urgent, mandatory introduction of a public register of the media ownership in the country would ultimately improve labor relations and press freedom.

Trade unions in the Bulgarian media sector seem to have outlived their time and belong to the past rather than to the present or the future.

II. OVERVIEW

With regard to labor relations, over the past 17 years of pluralist democracy and transition to a market economy, the Bulgarian media has to a large extent succeeded in setting up a well-designed legislative framework that is conducive to stimulating both the freedom and positive development of the press. These trends were strongly supported by the principles and requirements for achieving full membership in the European Union (EU) as laws and regulations, including those on labor relations, were revised and harmonized with European standards. Although on January 1, 2007 Bulgaria joined the EU, there are still deficiencies and loopholes that impede positive growth, especially with regard to implementation. There is, in fact, a shadow economy in the media business often questioning ethical rules and professional standards and practicing unfair employment relations and competition. Key factors that allow this shadow economy are the following:

- poor implementation of the Labor Code;
- violations of copyrights and related laws;
- mechanisms to avoid taxation based mainly on the use of two contracts of employment, a primary one providing insurance coverage that usually barely exceeds the minimum wage and a secondary, civil contract with no taxation that leaves the entire tax burden on the employee;
- lack of transparency in media ownership.

Thirty face-to-face interviews were conducted with journalists and senior managers—six from TV, six from radio, eight from newspapers, four from news agencies, three freelancers working for several different

media outlets and three representing the media trade unions and non-government organizations (NGOs). Selecting journalists and managers from single media outlets and freelancers who work for several of the same outlets allowed for checks and balances that maximized fairness and objectivity. Balance was deliberately sought between local media and those based in the capital and operating nationally. Twelve interviewees were based in Sofia and the rest were not. Likewise, 12 worked in media outlets with national coverage and 15 worked in local outlets. Bulgarian media is female-dominated both in rank-and-file positions and in management (more than 50% of senior media managers and 75% of journalists), so the ratio of men to women interviewed was 7:23.

In addition to the interviews, 100 questionnaires were distributed—20 to television stations, 30 to radio stations, 40 to newspapers and 10 to news agencies and freelancers—reflecting the numbers of each type of media organization in the country, i.e., 100 TV stations, over 150 radio stations, more than 500 newspapers and approximately 10 news agencies. Only 42 questionnaires were returned but more than 10 each were received from TV, radio and press organizations and 2 were from news agencies which yielded a representative sample.

It is evident from both the interviews and questionnaires that freelancers have not been given a great deal of attention. Data from this as well as from previous research show, however, that freelancing is not a widespread phenomenon in Bulgarian media and that freelance work is much more a personal decision rather than a necessity or because of a lack of other employment opportunities. Students were among the interviewees, and the statutes for students working in the media were given special attention. The findings matched the conclusions reached for contract journalists.

Acts such as the Labor Code, the Obligations and Agreements Act, the Copyright and Related Acts Law, the Radio and Television Law, the statutory documents of Bulgarian National Radio (BNR), Bulgarian National

Television (BNT)¹ and the Bulgarian News Agency (BTA) as well as of bTV,² Nova Television³ and DARIK Radio⁴ were reviewed. Great attention was paid to the various collective labor agreements signed at BNR, BNT and BTA and also to the Professional Code of Ethics of the Bulgarian Media that has been signed currently by over 90 media outlets including all national ones with the exception of the Monitor Group (*Monitor Daily, Telegraph Daily* and *Politics Weekly*). The Professional Code of the Bulgaria Newspapers Group⁵ was also considered in-depth as by and large it is the code that shapes the profile of the newspaper industry in the country.

In addition, 16 different job descriptions were reviewed that described the rights, duties and obligations of reporters, news desk editors, presenters and senior journalists such as correspondents or department heads at radio, television and newspaper offices in Sofia and in the regions.

Two other documents were also consulted: *The Green Book of Bulgarian Labor Legislation*⁶ prepared during the last phase of Bulgaria's pre-accession to the EU in 2004–2005 and *Bulgarian Labor Legislation: One Hundred Years of Existence*.⁷ They both focus mainly on achievements and deficiencies in labor relations and make a comparative analysis of developments and situations in other EU countries.

1 Both BNR and BNT represent public service broadcasting in Bulgaria (PSB)

2 The first commercial television station that was licensed for national coverage, belonging to Rupert Murdoch's company, News Corporation, registered in 1999.

3 The second private television with national coverage belonging to the Greek Antenna Group licensed initially as a regional operator in 1994 and awarded a national license in 2004.

4 The biggest commercial information radio station, licensed in 1993 and with a license for national coverage since 1998.

5 Belonging to the West-Deutsche Allgemeine Zeitung and registered in 1997, the Bulgaria Newspapers Group owns seven publishing houses that produce five newspapers and nine magazines and has over 30% of the Bulgarian print media market including the newspapers with the highest circulation.

6 The document is accessible at www.mlsp.bg

7 The report was produced by professor Krassimira Sredkova and presented at the International Labor Relations Conference in Sofia, 31 October 2005.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

There is no special legal act that regulates labor relations in the Bulgarian media. The legislative framework is provided mainly by the Labor Code,⁸ a set of norms that defines relations among employers and employees, the Obligations and Agreements Act⁹ that regulates the civil contracts widely issued to the journalists and to some extent the Copyright and the Related Rights Law¹⁰ as it often provides the grounds for contracting civil agreements in the media. The journalists who work for radio or/and television stations fall under the Radio and Television Law¹¹ as some of its clauses impose additional, specific requirements on them that are usually reflected in employment contracts. Among these documents, the most important is the Labor Code as all employment contracts (permanent, short-term, part-time, civil) copyrights and royalties are based on it and cannot be signed in breach of it.

Drafted in the late 1980s during the communist regime, the Labor Code underwent radical amendments first in 1991–1993, then in 1998–1999 and finally in 2003–2006 to comply better with the requirements of the *acquis communautaire* which states:

...Code aims at providing the freedom and the defense of labor, fair conditions for exercising labor rights and better implementation of a social dialogue among the state, the workers, the employees, the employers and their respective organizations...¹²

The Labor Code sets out in detail the prerequisites for an effective social dialogue¹³ among employers and employees and constitutes the tripartite council (National Council for Tripartite Cooperation)¹⁴ as an effective mechanism that guarantees labor relations and social insurance rela-

⁸ *Labor Code, State Gazette No. 26, 1988, last amended in SG No.64, 07.08.2007*

⁹ *In force since 22.10.1950 last amended with State Gazette No.36, 02.05.2006*

¹⁰ *In force since 01.08.1993, last amended with State Gazette No. 73, 2006, cf. articles 15,41,42,43, 46, 51, 63*

¹¹ *In force since 24.11.1998, last amended with State Gazette No.10 from 30.01.2007, cf. articles 11,27, 56, 62, 67.*

¹² *Art.1, paragraph 3*

¹³ *Art. 2*

¹⁴ *Art.3 (a,b,c)*

tions. In addition, the Code defines trade union rights and relations¹⁵ and the rights of employees to participate in the management of all enterprises and labor relations organizations.¹⁶ Moreover, the Code grants independence to trade union organizations allowing them to draft and adopt statutes and regulations and form representative bodies.¹⁷

The Labor Code also stipulates details of collective labor agreements focusing mainly on issues such as labor rights and social insurance rights not envisaged by the law and/or subsequent rules and regulations.¹⁸ For the media sector, collective agreements¹⁹ exist only in BNR, BNT and BTA and thus affect about 4800 employees or about 27–28% of the approximate²⁰ number of media employees in the country.

The Labor Code sets requirements for employers with regard to employee relations and types of employment agreements and contracts. There are three main types of contracts: permanent, temporary and civil. A legal requirement guaranteed by the Labor Code is that no temporary contract can be signed for a period exceeding six months after which the contract is either terminated or it automatically turns into a permanent one.²¹ A civil contract allows employment on a temporary basis (though here the focus is not on the term but on the amount of work to be done) and is very often used in the media sector as a supplementary employment tool that allows greater flexibility for employers and employees.²² What is most important here is the fact that no contract is considered valid unless endorsed by the National Revenue Agency or by its respective regional unit.²³ Another key text that regulates fair

15 Art. 4

16 Art. 7

17 Art. 33 (1,2)

18 Art.50, 52, 53, 57, 59

19 Further details on collective agreements and their impact on labor relations in the media appear later in this section.

20 Figures are approximate as they are taken separately from various organizations and are not reflected in the official data of the National Statistical Institute, www.nsi.bg. The 2006 edition of the Southeast Europe Media Handbook claims there are about 7000 journalists operating in Bulgaria, but our estimations show larger figures.

21 Art. 70

22 This type of contract is tackled in greater depth in the next section

23 Art.60

labor relations is Article 66²⁴ that requires concrete details on the position including a job description, the term of the contract, bonuses such as annual and additionally paid leave, equal terms for contract termination for employers and employees and duration of work. Moreover, the Labor Code amendments of 2006²⁵ gave rights to employees working on temporary contracts equal to those for employees employed on permanent contracts.

With concrete definitions of overtime work²⁶ and employment on a second contract²⁷ with the same or another employer, the Labor Code also provides sufficient guarantees for employees' health, rest, bonuses and checks and balances against violations. The Labor Code defines overtime work²⁸ and the cases and conditions when it can be allowed,²⁹ how it must be managed and how it is to be compensated.³⁰ Overtime work cannot exceed eight hours per week,³¹ and all employers who intend to assign it must inform the National Labor Inspectorate.³²

Detailed provisions in the Labor Code allow for strict observation of and adherence to the regulations. They mainly relate to the National Labor Inspectorate³³ and to the availability of mandatory external³⁴ and internal³⁵ mechanisms for monitoring in each organization. Employers who violate the provisions are liable to severe financial sanctions.³⁶

Another tool to better regulate labor relations is provided by the collective agreements signed with BNR, BNT and BTA by media trade unions' head representatives. These agreements regulate labor and insurance

24 Art. 60 saw important amendments in 2004 and 2006 to better meet the requirements of Bulgarian membership in the European Union

25 Art. 68 (2)

26 Art. 110 and Art. 113

27 Art. 111

28 Art. 143 (2)

29 Art. 144

30 Art. 150 and Art. 262

31 Art. 113 (2)

32 Art. 113 (8)

33 Art. 399

34 Art. 401

35 Art. 406

36 Art 413 (2) and 415 (2)

relations; social issues that remain outside the scope of the labor code and concrete details on the organization and formation of salaries, additional bonuses and forms of reimbursements. They also provide employees with more job security, better and safer working conditions, social insurance and the right to participate in management. For instance, the collective agreement signed at BNR obliges the employer to do the following:

- inform trade unions in advance of all decisions that might bring about collective labor conflicts;³⁷
- consider union opinions when measures such as downsizing staff are at stake;³⁸
- consult with unions on any amendments to the minimum wage;³⁹
- get union approval for all activities that might require additional work including how and how much members will be compensated;⁴⁰
- decide jointly with the unions on any amendments to existing social security policies;⁴¹
- consult unions before making any changes in the organizational structure and before implementing new technology;⁴²
- get union approval of any amendments to the texts of the collective agreement.⁴³

Definite mechanisms for labor protection and additional guarantees for employees are provided in labor contracts and in corresponding job descriptions; both are mandatory instruments required by the Labor Code,⁴⁴ a requirement restated in all statutory documents. In fact, job descriptions are actually part of the contracts, and, as became evident in the interviews,⁴⁵ they are widely used as a tool for better defining labor relations. Normally a job description will give details on the following:

37 Art. 2

38 Art. 6

39 Art. 18

40 Art. 37

41 Art. 50

42 Art. 56

43 Art. 65

44 Art. 66 (2)

45 For more details see the next section.

- job title;
- job summary;
- duties and responsibilities;
- position in the organization;
- qualifications needed for the job;
- prospects for development;
- appraisals.

If designed this way, as they are in all the big media outlets in Bulgaria, job descriptions can effectively do the following:

- prevent conflicts and arguments over the distribution of work and responsibilities;
- define the hierarchical structure of the organization;
- allow for easy settling of disputes;
- set out criteria for promotion;
- assess professional performance and identify training needs;
- clarify tasks, qualifications and the wage system;
- specify the selection and recruitment policies of the company.

In addition to these tools, there are other mechanisms especially important for the media as they provide strong guarantees for freedom of expression and prevent the employer from exercising overt pressure that could influence editorial independence. Among them is the Professional Code of Ethics of the Bulgarian Media that states in an absolutely unambiguous manner that:

Journalists shall maintain a clear distinction between editorial decision making and commercial policy of the media and can refuse assignments if in breach of their professional ethics...⁴⁶

Formally adopted at a public ceremony on 25 November 2004 and signed currently by nearly 100 media outlets, the Ethical Code applies to both print and broadcast journalists and commits signatories to supply the public with accurate information, to distinguish clearly between facts and commentary and to observe a range of ethical principles. The Code

⁴⁶ Art. 3.3 and 3.7

also addresses editorial independence and provides a definition of “the public interest” as the protection of the health, safety and security of the public from the danger of being seriously misled. Furthermore, the Code regulates relations within and between media outlets and enshrines the principle of mutual respect and fair competition and the public’s right to know who owns and controls the media. It should be pointed out that the right to refuse assignments that contradict ethical principles is restated in the Radio and Television Law⁴⁷ thus making it a mandatory practice in all electronic media. It is also in the Statute of the Bulgaria Newspapers Group that sells over 30% of the newspapers in the country and is applicable to all of its employees.

To conclude, the existing regulatory framework governing labor relations in the Bulgarian media follows the most liberal tendencies, is largely synchronized with EU standards and requirements and as such offers a platform highly conducive to press freedom. The practical implementation of this framework is, however, another story, especially with regard to the media outlets outside of Sofia.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

Assessing the implementation of labor legislation in the media is not an easy thing to do. The difficulties come mainly from the fact that practices vary from media type to media type and depend on various factors such as the personality of the top manager, the availability of leaders among the employees, the availability and credibility of the trade unions and the type of media ownership and the competition in the region to mention just a few. In addition, the reluctance of respondents to share frankly what the real situation is and the desire of managers to paint a picture closer to the ideal than to reality also pose challenges. One way to cope with those problems was to include all sorts of media—print, electronic, regional, local, national, with strong trade unions and leaders and with no unions— in the research. The journalists interviewed were also reminded that if they wished, their anonymity would be

⁴⁷ Art. 11(4)

respected. However, none expressly demanded it. The strongest factors for ensuring the objectivity of the results, however, remain the balance between managers and journalists interviewed and the existence of a rich data base⁴⁸ that made it possible to provide multiple perspectives on the profiles of both the media outlets and respondents.

The major goals of the research were the following.

- Assess the quality of the employment contracts and check the degree to which they are capable of offering sufficient protection of journalists' rights and hence, to stimulate freedom of speech and the role of the media as a genuine fourth estate.
- Evaluate the degree to which labor relations as practiced in the media sector correspond to the standards and requirements set by existing legal acts and regulations.
- Compare the overall welfare of the average journalist with that of the average Bulgarian employed in other sectors and assess the results.
- Examine the status of the so-called atypically hired workers (freelancers, students) and the way their employment rights are respected.
- Look for deficiencies in equal opportunity policies in the media sector.
- Check for other factors (if any) that impede proper labor relations in the media.

As already mentioned, 30 interviews were carried out and 42 questionnaires were returned that by and large reflect all media in terms of type, size, ownership and coverage (circulation). The feedback received can be summarized as follows.

Regulated mainly by the Labor Code, labor relations in Bulgaria at least on paper provide adequate and sufficient protection of the rights of

48 The data base used belongs to the Media Development Center in Sofia and covers the entire media landscape of the country. Launched in 1998, the data base is revised annually and accounts for all the changes in licenses, scope, ownership, management, audience, ratings etc. It is accessible upon demand at www.mediacentrbg.org

the employees according to modern European standards. There is a working, sophisticated system of checks and balances (Ministry of Labor and Social Policy, Finance Ministry, Bulgarian National Audit Office, Public Internal Financial Control Agency, National Labor Inspectorate, National Revenue Agency, National Insurance Institute and the National Council for Tripartite Cooperation) that tries to regulate the practical implementation of the Labor Code, especially when it comes to labor relations. Hence, working without a contract in the media not only is not a practice, moreover it is something that simply could not occur. Journalists, media managers, trade union representatives and media lawyers all share this view. There was not a single case quoted in any of the interviews of journalists working without a contract. As the Chief Legal Adviser of Bulgaria Newspapers Group Radomir Cholakov says:

Even though it may sound unbelievable, there is no breaching of labor relations in any of the media from the WAZ group since all the journalists here work on permanent contracts and enjoy all the benefits of the Labor Code. The Labor Code is neutral toward the 'quality of the work' and guarantees equality and fairness in the payment for the work done, as well as all the social benefits.

The same ideas were expressed by Diliانا Bobeva, a former regional correspondent to *TRUD Daily* and currently a freelancer for radio, TV, BTA and various newspapers. She stressed also the use of the two-contract employment system:

My experience with various types of media, different managers and owners shows that contracting is by and large the form used to employ journalists. The problem is that usually they give you a small salary-bound permanent contract and a civil one for more money but with no insurance.

As already mentioned, there are three types of labor contracts used in the media: permanent, temporary and civil. Though drafted as a flexible mechanism to allow thorough labor protection (permanent), possibilities to make a better initial selection of employees as well as to offer bonuses for early promotion (temporary) and opportunities to increase income by carrying out additional tasks to those included in the job description

(civil), in practice this mixed system has turned into a tool to avoid taxation and diminish the size of mandatory social insurance contributions. This practice is mainly used by private print and electronic media outlets outside of Sophia and seems to have acquired tremendous dimensions dramatically enlarging the volume of the shadow economy. In this system, employees work under two types of contracts at the same time: one permanent and one civil. The permanent contract provides a small salary and the required social insurance payments and is supplemented by a civil contract that covers the rest of the initially agreed reimbursement. Employers have no obligations, however, to pay taxes on this money or to provide insurance to the employee. As a result, journalists get the same net salary, but long-term benefits such as better pension plans, improved insurance schemes and good salary histories, especially needed when changing employers, are severely compromised. Thus, the practice of mixed contracting, though superficially offering benefits to both the employer and the employee, eventually proves to be detrimental to the employees' interests and seriously erodes national tax revenues. Moreover, it creates conditions for unfair competition among media outlets as it is obvious that employers who stick to the provisions of the Labor Code literally and do not avoid taxation would have higher expenses and hence a higher final product cost. That same practice allows for the employment of undergraduate students and for making undue profit on their behalf since instead of offering them temporary or permanent contracts, media bosses employ them on civil contracts without insurance, paid leave, sick leave and other social protection. In fact, it is precisely that group that forms the category of the atypically hired worker in the media because no strict limitations exist on working for the media, and journalism has a nice reputation and offers chances for mobility, promotion and flexibility and has an attractive atmosphere. In purely economic terms, it has a status higher than that of the average Bulgarian. Such is the case with the journalists in the WAZ group. As both Radomir Cholakov and Nikola Kitsevski, journalist and deputy-editor-in-chief of *TRUD Daily* underline:

Our people get tons of money, enjoy 30-day holidays and are not forced to go against their ethical principles in their work. (Radomir Cholakov)

Our journalists are not only very well paid, but they are insured at the maximum insurance level for Bulgaria. (Nikola Kitsevski)

These statements were independently confirmed by journalists interviewed who worked for the WAZ group. As Deian Yotov, a former news desk editor with over 10 years of experience in radio who is currently with *TRUD Daily* summarizes, “Never so far have I seen a better working atmosphere, career development opportunities and payment than in WAZ.”

Although that may not be the case for regional and local media employees, in most cases journalists working for such media are well paid, at least in comparison with average salaries. As Stanimira Dimova, Executive Director of TV Stara Zagora puts it, “I can’t make any generalizations about journalists in Bulgaria, but as far as our journalists are regarded, I can well claim that the payment they get is more than good for the standards of our region.”

Other interviewees who didn’t talk so positively about their salaries did stress the fact that none of the journalists worked at other jobs to make additional money. It has to be mentioned here, however, that this exclusion does not concern the public relations (PR) activities that Bulgarian journalists often engage in on a temporary basis, especially during election campaigns as is evident from this comment by Tsvetoslava Georgieva, former journalist with Darik Radio (Pleven) and currently anchor at Radio Mila Gold, Sofia:

Being a journalist is interesting and very dynamic, and we love that. It also brings you in day-to-day contact with politicians who, although they can criticize us for not portraying them in the best possible way, are the first to ask us journalists for help with public relations during elections. So we would normally take a paid leave from the media and make some money as PR officers.

The overall dynamics of the Bulgarian media market, the availability of hundreds of media outlets offering employment, the various bonuses that the work provides—flexibility, relative security, development opportunities in media-related sectors such as advertising and PR—along with the fact that there are no specific impediments to practicing journalism⁴⁹ clearly has made it into an attractive profession, especially for women. Hence, 75–80% of the staff in each of the media outlets contacted in this research project were women. Given the fact that 65% of those outlets are managed by women and that more than 50% of the managers of the so-called national media (print and broadcast) are women, it can be concluded that Bulgarian media offers equal opportunities and that no gender discrimination is practiced. Dimitrina Petrova, a journalist with the regional *Botevgradski Vesti* newspaper and an anchor at TV Botevgrad mentions another type of discrimination that is quite common in Bulgarian media, “As far as discrimination goes, there are cases of age discrimination. When reporters are hired, usually they are young people, although nowhere has such a requirement been noted beforehand.”

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

As already stated, Bulgarian media legislation provides various mechanisms to prevent censorship and political and/or economic interference in the editorial content of both print and broadcast media though specific laws exist only for the electronic media⁵⁰ while print media is completely deregulated. In addition, the Code of Ethics clearly says that no external interference (political or economic) should influence editorial content and allows journalists to refuse assignments if they conflict with their personal convictions as a mechanism to prevent self-censorship. The insufficient legal knowledge of journalists in general and the lack of specific legal protection, especially with regard to local and regional media outlets, however, results in practice in self-censor-

⁴⁹ The job descriptions consulted had no mandatory requirements such as a journalism degree, or a degree in communications or even a certificate for courses taken. Practice shows that especially in the countryside, anyone can have a career in journalism and start learning on an ad hoc basis while working.

⁵⁰ The Radio and Television Law, cf. articles 8,9,10,11

ship and even to individual cases in which editors may be in agreement with politicians and their political and/or economic interests may dominate at the expense of press freedom. The 2006 Media Sustainability Index for Bulgaria concluded that there is not always a firewall between the management, sales and editorial departments and that pluralistic reporting sometimes yields to self-censorship.⁵¹ Some media analysts⁵² would also mention the fact that public service broadcasting in Bulgaria (both radio and TV) is still a potential target of external interference as it is completely funded by the state budget and the top management teams are appointed by a regulatory body (CEM)⁵³ which is in turn appointed by Parliament and the President and thus can influence editorial policy. The feedback received for this research indicates that the big, Sofia-based print press and commercial electronic media with national coverage are highly independent, strong and avoid external political control, but that regional and local media are not so independent. As deputy editor-in-chief of TRUD Daily Nikola Kitsevski puts it:

Only shamed-faced or guilty politicians would try to interfere, but in vain. We do not depend on them, and they know it. It is the public interest, not the political that motivates us and hence, no censorship is possible with our newspaper. As for self-censorship, it is much more a matter of a personal decision, but again I would say that no other interests but the public can shape our editorial policy.

Zhanet Zaharieva, bTV chief legal adviser supports the same view of media independence and goes even further to suggest an interesting perspective with regard to the concentration of media ownership. In her opinion it even can boost the freedom of speech:

It (the concentration of media ownership) has a positive effect on our journalists, because they could work at the other media outlets that we have, such as radio stations, something that increases their opportunities for better professional realization, enlarges their horizons and gains them more money.

51 www.irex.org/msi/bulgaria

52 Bulgaria, Chapter 4. *Regulation and Management of Public Service Broadcasting*, pp.370-390 in OSI published *Television Across Europe: regulation, policy and independence*, Gyoma, Hungary, 2005

53 CEM, Council on Electronic Media, www.cem.bg

A contrary view to that opinion however, is expressed by Svilen Ovcharov, a media lawyer with the Bulgarian Helsinki Committee, who claims that:

Overt concentration in the media along with insufficient transparency in media ownership could most probably result in limited press freedom and quasi-pluralism. It could enforce new forms of control (economic) and construct conglomerates detrimental to media independence.⁵⁴

Hence, it is important to see if the Bulgarian media is capable of efficiently balancing concentration of ownership and press freedom. For the time being it seems to be the case as Alexander Hashumov, a publicist and a well-known media lawyer with the Bulgarian Media Coalition (BMC)⁵⁵ argues:

The question is whether the system as a whole and the media in particular has the necessary resources to oppose the pressure that is always there. This is the major question of any democracy. Here I have to say that the Bulgarian media have these resources.

Regional journalist from Botevgrad Dimitrina Petrova also says that,

"No political or economic interests could influence labor relations at my media. The editorial policy of the media is decided solely by the journalists and by the owners."

This last statement, however, points to a possible way of exerting economic pressure over the journalists working in small local and regional media outlets. Mila Milcheva, a journalist with the regional *Yantra Daily (Veliko Tarnovo)* and also a correspondent to the national *Dnevnik Daily* and *Capital Weekly* answered the question on whether there is censorship by saying:

Yes! There is hardly a media outlet in the country that could claim without hesitation that it does not consider the interests of its owner. The situation in the regional media is more complicated because the owners,

⁵⁴ "Media Concentration Endangers Freedom of Speech, *Objective Magazine*, May 2007, Round table discussion, accessible at www.bghelsinki.org

⁵⁵ BMC is an umbrella organization of media and media NGOs lobbying and advocating for freedom of speech and transparency in the media. It is accessible at www.bmc.org

usually businessmen with several other businesses besides the media, might use the media to boost their economic interests. In a small town, where the representatives of the local authorities, the political parties and the businessmen drink at one and the same table, it is difficult to imagine that no decisions taken at that table would not be directed to the media.

In that same vein is what Stanimira Dimova from TV Stara Zagora says:

There are moments when we can feel certain pressure exercised, though it's not strong or direct; some representatives of the authorities would mention that by the way, they do not feel happy with the treatment of a topic on our television station, but that's all. They would never dare to go beyond that.

All those quotes lead to the conclusion that to a greater degree in the capital and to a lesser extent in the countryside, the Bulgarian media resists external pressure, so such influences do not have an impact on labor relations.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

Trade unions have more than 100 years of history in Bulgaria. They were mainly formed in the start of the 20th century along with the development of the working class, and hence the formation, modernization and improvement of labor legislation in the country are largely due to their efforts. It is worth mentioning that newspaper publishers' unions were on the front lines of trade union battles. During communism however, though strongly advocated by the state, both professional and trade unions became a symbol of conformism, of blind compliance with the politics of the communist party and hardly a mechanism to protect and guarantee the rights of the workers and employees. Therefore, immediately following the political changes of the late 1980s, the newly forming political elites did their best first to dismantle the real face and interests of the communist trade unions⁵⁶ and second to set up new unions that would answer the needs of employees and correspond best to the political changes. Thus, the new, huge umbrella trade union organization Podkrepa (Support) came into existence and within quite a short period

56 They all were united in an umbrella organization called Bulgarian Professional Unions (BPU)

of time had branches in all spheres of the economy and of labor organizations, media included. There was even a time (1991–1994) when its membership exceeded 300,000. Due to political infighting and intrigues and the clear dominance of self-interest among its leaders, however, its influence diminished (1996–1998) and membership dropped dramatically to fewer than 70,000. It would hardly be an exaggeration⁵⁷ to say that especially after 1999 during the process of Bulgaria's accession to the European Union (1999–2006), the role of unions got smaller and smaller, and though they are represented in the National Council for Tripartite Cooperation, they barely have the support and confidence of the workers and employees. This is especially valid in the media sector where currently the best-known professional organizations are the following:

- the long-established Union of Bulgarian Journalists, part of the Bulgarian Trade Union Confederation;⁵⁸
- the Podkrepa Union of Journalists in Bulgaria that is affiliated to the Podkrepa umbrella;
- Freedom of Speech Syndicate of Journalists;
- Union of Radio Employees (registered only at BNR);
- Union of Television Employees (registered only at BNT).

None of these organizations is very active. They try to protect the interests of journalists when problems of freedom of speech arise, but it seems more and more that their voices are neither very loud nor especially influential.

Along with them there are also some branch organizations including:

- The Association of Bulgarian Broadcasters (ABBRO);
- The Association of Cable TV Operators;
- The Union of Print Media Publishers;
- The Association of the Regional Media.

These organizations lobby rather than safeguard employees' interests, their purpose being to defend their common interests before state

⁵⁷ See further quotes in the interviews about syndicates

⁵⁸ Successor to the Bulgarian Professional Unions

authorities. Although none of them represents all the organizations active in the media, they represent a significant move toward their consolidation.⁵⁹

Among the key reasons for the weak Bulgarian trade unions, especially in the media sector, is the fact that to be officially recognized on a national level a union should have at least 50,000 members and branches in at least 50 employment organizations with at least five members each⁶⁰ which is definitely not the case with the media (except for BNR and BNT). Moreover, this article is often used by commercial media organizations as a formal reason for not allowing any union activity. On the other hand, none of the respondents had any regrets about this situation thus providing additional evidence that trade unions in the Bulgarian media sector seem to have outlived their time and belong to the past rather than to the present or the future. This is a view expressed by Nikola Kitsevski who says,

“The trade unions in the media have simply become out-dated in Bulgaria and in reality defend the interests of their leaders only.”

Rostislav Velichkov, a leading journalist from the TV 7 regional office agrees,

“I strongly believe that the media trade unions are obsolete now with no place in our lives. This comes out of my already 12 years of professional experience.”

Radomir Cholakov from Bulgaria Newspapers Group even points out a paradox that emerged during the talks the 168 Chasa Media Group had with the Union of Bulgarian Journalists for signing a collective labor agreement.

When we suggested that the collective labor agreement should include the Ethical Code, the representatives of the Union refused since that meant that the media owners could punish journalists for a violation of the ethical standards of journalism.

59 See further quotes on syndicates in this chapter

60 Code of Labor, article 34 (1 and 2)

VII. CONCLUSIONS AND RECOMMENDATIONS

As currently designed, Bulgarian labor legislation in the media sector offers a sound platform for the protection of the freedom of the press providing guarantees for pluralism and maintenance of the role of the media as a watchdog in society. The Labor Code sufficiently regiments employment relations, while the existence of other acts such as the Obligations and Agreements Act, the Copyright and the Related Rights Law provide a good balance with modern European standards and requirements. The numerous institutions that regulate labor relations—the Ministry of Labor and Social Policy, Finance Ministry, Bulgarian National Audit Office, Public Internal Financial Control Agency, National Labor Inspectorate, National Revenue Agency, National Insurance Institute and the National Council for Tripartite Cooperation—strongly stimulate the checks and balances needed to make the system of employment and contracting efficient and effective. Last but not least, additional media tools such as the Code of Ethics and Statutes offer complementary guarantees to make labor relations in the media an effective instrument for press freedom and for freedom of expression. The poor implementation of the existing regulations, however, along with the loopholes (inability to convince employers to give up using the double contracting system) has brought about a situation where labor relations are used as a tool to minimize the power of the media and to turn journalists into a self-interested, egocentric guild subjecting public favor to its narrow interests. To cope with that situation the following recommendations might be of interest.

- The Radio and Television Law should be amended to insure the independence of the main regulatory body, CEM, by introducing a quota of members from civil society that would balance the currently overt political decision making in its composition. This would positively affect the appointments of the top managers of both BNT and BNR and hence labor relations and press freedom in public service broadcasting.
- Mechanisms to hold CEM, BNR and BNT management board

members responsible both collectively and/or personally should be designed especially with regard to violations of terms of employment contracts.

- A flat taxation rate should be introduced on all income resulting from both employment and civil contracts to avoid the current practice of double contracting.
- ABBRO and the Union of Publishers should be allowed access to media outlet registration files to monitor the observation of and adherence to the Labor Code in regard to existing contracts.
- Sanctions for violations of contractual relations should be envisaged not only for employers but also for employees.
- Ethical commissions for both print press and broadcasting should be empowered to make decisions on the implementation/violations of the Professional Code of Ethics with regard not only to editorial content but also to employer-employee relations.
- More detailed texts dealing with unfair competition should be annexed to the existing Code of Ethics.
- A public register of media ownership should be implemented and made accessible to all citizens.
- Journalists' associations and syndicates should be re-registered to allow greater clarity of membership and representation.
- A professional code of ethics of media unions should be designed and adopted.

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Croatia

by Marinka Boljkovac-Borkovic

I. ABSTRACT

The Labor Law, enacted in 1996, is the main law regulating labor rights in Croatia. The Media Law was enacted in 2004, so it is too early to fully evaluate its usefulness; however, experience shows that in practice there has been resistance to implementing it fully. The lack of institutions to implement the Media Law, the lack of sanctions for those who breach it, the lack of will to sign a collective agreement at the national level and to develop social partnerships in the media sector, the lack of real social dialogue, special interests and political and other influences – are all obstacles to the freedom of the media. Job insecurity and the precarious freelance status of journalists is another factor. The Labor Law stipulates that only in special circumstances can employment contracts be for a fixed term, and fixed-term contracts cannot exceed three years. However, after a three-year period of short-term contracts, some employers avoid signing indefinite contracts by simply changing the job description and starting the three-year cycle all over again. Journalists, also, work illegally for years and then are pressured to register as entrepreneurs so their employers don't have obligations toward them and don't have to pay pension and health insurance benefits. Excessive commercialization is also hurting the profession. To earn greater profits, sensationalism is prevailing over serious topics and advertisements are taking up more and more space. The Trade Union of Croatian Journalists (TUCJ) has negotiated cooperative agreements with eight large media companies and two small, local ones and has been negotiating a national collective agreement with employers since 2003. TUCJ has gone to court frequently to defend labor rights of journalists and has been successful in 95% of the cases.

II. OVERVIEW

There are three important preconditions for a free and independent media sector. The first is legislation guaranteeing freedom and independence to the media and defining the rights of media employees. The second is transparency of media ownership and not allowing owners to influence publications. The third precondition is media independence from political and government influence either directly on journalists or indirectly on media owners.

A further assumption that is very important for the development of free media is the capacity and expertise of journalists and other media workers and the security of their employment independent of the impact and position of a given media outlet. Openness and the maximum availability of the media to citizens are important as is excluding interests that are not objective and do not provide truthful information. For truly free media, it is important that every violation of independence is resolved in court rather than by government executives.

As a country in transition, the Republic of Croatia adopted the conclusions of Council of Europe acts regarding freedom of expression and information (*Official Gazette* 7/1991). However, passing and harmonizing new laws that determine media freedom has been difficult recently mostly because of outside interests (owners or political) with media control as their goal. The Media Law was finally enacted in 2004 (*Official Gazette* 59/2004). Provisions of this law are to be applied and interpreted in accordance with the European Convention on the Protection of Human Rights and Basic Freedoms. For determining responsibility for reimbursing damages, provisions of civil obligations apply unless determined otherwise by law.

This law has been in effect for too short a time to fully evaluate its usefulness in the development of the media; however, experience shows that in practice there has been significant resistance to its implementation both to its consistent application and in the non-sanctioning of non-

application. For example, relatively stiff penalties for offences to state bodies were part of the penal provisions of the former Law on Public Information (LPI) (*Official Gazette* 69/2003), while offences to journalists' freedoms were not punished at all. In administrative terms, the issue of journalistic freedom is defined by law as the basic precondition for the freedom of journalistic activities, but in practice the provisions are not implemented.

For example, the media statutes, i.e. editorial statutes, stipulated in the former LPI to regulate relations between journalists, editors-in-chief and publishers had not been enacted even a year after passage, and no penalties were specified. Editorial statutes would improve the legal position of editors-in-chief and of journalists. The same situation remains with the existing Media Law where the obligation to enact editorial statutes is in Article 26, but the failure to create the statutes is not a misdemeanor or criminal offence. In addition, the Media Law does not include a good provision of the LPI according to which, "The principles of the statute of a public information media outlet (editorial statute) can be determined by a collective agreement." The lack of such a provision means representatives of media employers' organizations refuse to bargain using the excuse that Media Law regulates editorial statutes and they will act in line with that.

Another problem concerning the implementation of media legislation is the lack of transparency in media ownership despite relatively high penalties for non-disclosure as well as the lack of a single, powerful professional organization of media owners at the national level. There are two voluntary associations of media employers in Croatia. One includes national newspaper publishers, the other local media employers. Owners are private, public and local and as a rule cannot agree upon the minimum standards for media freedom and professional journalism.

This report is based on 15 years of efforts by the Trade Union of Croatian Journalists (TUCJ) to protect the basic labor and professional rights of

journalists during the turbulent transition from socialism to a market economy and four extremely difficult and tragic years of war. It is the TUCJ's experience that labor and professional rights of journalists are violated daily in editorial offices where they should instead be defended. Labor rights are core human rights guaranteed by a number of international documents such as the United Nations (UN) Universal Declaration on Human Rights and International Labour Organization (ILO) conventions, particularly numbers 87 and 98. These core human rights are also protected by the Constitution of the Republic of Croatia and by the Croatian Labor Law.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The Labor Law (*Official Gazette* 137/2004) is the main law regulating labor rights in Croatia. It stipulates that employers are obligated to start negotiations on collective agreements at the request of a trade union, but signing one depends on the strength of the trade union. According to the law, employment contracts should be signed for an indefinite time; only in special circumstances can they be for a fixed term. This is outlined in Article 15 which states that a fixed-term employment contract is to be signed in cases where the end of the working relationship is determined in advance by objective circumstances that are justified on the basis of a deadline, completion of a given task or the occurrence of a certain event. The employer must not sign one or more consecutive contracts of employment on a fixed-term basis for a continuous period of over three years, except in the case of substituting temporarily for an employee on leave, or if this is allowed by law or by a collective agreement. Furthermore, a break of two months is the minimum for restarting the three-year period of fixed-term employment. In addition, according to this article, the employer has the duty to inform his/her fixed-term workers of any jobs available for which the employer could offer permanent employment, and education and training must be available to fixed-term workers under the same conditions as those valid for regular employees.

In reality, however, employers overwhelmingly prefer fixed-term

contracts for journalists. Some of them are signed for one, three or six months. After a three-year period of short, month-by-month contracts, some employers avoid signing regular contracts by simply changing the job description and starting the three-year cycle all over again.

The Media Law (*Official Gazette* 59/2004) regulates the main principles concerning freedom of the media, freedom of expression and some professional rights. It defines a journalist as a person who deals with collecting, processing, shaping or distributing information to publish in the media and who does it as an employed person or as a self-employed person in line with the law. Article 32 of the Media Law says that publishers have a duty to inform the Croatian Chamber of Commerce about data on the company and its headquarters, including the name and residence of all legal entities and physical persons who either indirectly or directly own shares in that particular legal entity and information on the percentage of shares or ownership share. The publisher has the obligation to publish this data in *The Official Gazette* by February 28th of each calendar year. In practice, publishers do not respect this provision of the law.

Also, the Media Law states in Article 26 that relations between publishers, editors-in-chief and journalists and their rights are regulated by the editorial statutes of the media. As stated previously, with few exceptions, such statutes do not exist in the Croatian media. Editorial statutes regulate the way journalists participate in the process of appointing the editor-in-chief, so the opinion of journalists is currently not a decisive factor in this process.

The Law on Broadcasting Media (*Official Gazette* 122/2003) prescribes in Article 44 that publishers have the duty to inform the relevant ministry by January 31st of each calendar year about the legal entity and its headquarters including the names and residence of all legal entities and physical persons who either indirectly or directly are shareholders or owners of shares in that particular legal entity and the percentage of shares or ownership share. The publisher has the obligation to publish this data in *The Official Gazette*, but publishers in general avoid doing so.

The Ministry of Culture is in charge of broadcast media and print media are registered with the Croatian Chamber of Commerce, so TUCJ asked each for information on ownership. Some information was available on print media, but requests for the list of owners of electronic media remained unanswered.

The Law on Authors Rights and Related Rights (*Official Gazette* 167/2003) unfortunately actually reduces journalists' basic rights. Article 8 states among other things that, "Daily news and other news characterized as basic media information," is not subject to copyright. In addition, inappropriate temporary service contracts and copyright contracts are used by employers to deny freelance journalists authorship rights for work they have done or will do which is contrary to Article 52 which states that a contract provision that stipulates the employer's copyright to all future work is void. Provisions of the Law on Copyright and Related Rights should therefore be changed given that copyright protection is a very current topic in European Union countries.

The Law on Contributions for Obligatory Insurance (*Official Gazette* 147/2002 and 177/2004) obliges employers who use the work of freelancers to pay their contributions for obligatory pension and health insurance benefits. By making them register as individual entrepreneurs, however, employers can avoid these payments as entrepreneurs have to pay for the benefits from their gross remuneration.

The Penal Code (*Official Gazette* 110/1997 and 71/2006) regulates slander and offence. The 2006 version introduced an important change for journalism in that prison sentences were removed for acts of offence and slander. Both of these were frequent causes for lawsuits during the 1990s when persons, particularly politicians, mentioned in a negative context in an article or news report would go to court. The Penal Code of 1997 stated in Article 199, paragraph (2) that an insult in the printed media or on radio or television in front a large number of persons carried a fine of up to 150 days of salary or a prison sentence of up to six months. Likewise, slander in the media as described in Article 200 of the 1997

Code envisaged a prison sentence of up to one year. Article 201 aimed at protecting children by stating that publishing or broadcasting material in the media about personal or family life that could jeopardize the honor or reputation of a person would be punished by a prison sentence of six months to one year. In the new version of the Code this is replaced by a financial penalty.

There are also other laws concerning media and journalists like the Law on Croatian Radio and Television (*Official Gazette* 25/2003) and the Law on Croatian Informative and Newspaper Agencies (*Official Gazette* 96/2001) that regulate specifics in these two important public service media that used to be state media until several years ago. Concerning public control, these laws regulate the composition of and procedures for appointing the members of program control councils that should represent the public. These appointments always cause heated debates due to attempts to impose political influence on public media via these bodies.

INTERNATIONAL CONVENTIONS

In terms of international obligations and adherence to general rules pertaining to workers and to labor relations, among the ILO conventions that the Republic of Croatia has ratified the following are directly or indirectly of interest to journalists: C105 Abolition of Forced Labor 1957; C3 Maternity Protection 1919; C29 Forced Labor 1930; C87 Freedom of Association and Protection of the Right to Organize 1948; C98 Right to Organize and Collective Bargaining 1949; C111 Discrimination (Employment and Occupation) 1958; C121 Employment Injury Benefits Convention 1964; C122 Employment Policy 1964; C135 Workers' Representatives 1971; C102 Social Security (Minimum Standards) 1952; C148 Working Environment (Air Pollution, Noise and Vibration); C155 Occupational Safety and Health 1981; C100 Equal Remuneration 1951; C106 Weekly Rest (Commerce and Offices) 1957; C156 Workers with Family Responsibilities 1981.

As is clear from this list of ILO conventions, the right to organize in trade

unions and to bargain collectively is doubly enshrined both in Croatian legislation and internationally. ILO conventions take precedence over national legislation and have to be implemented even if national legislation is not in line with them.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

TYPICALLY HIRED WORKERS

Labor legislation in general regulates the rights of full-time employees; they form the core of trade union members. The same situation applies in Croatia. Most journalists and media workers in Croatia are covered by 10 collective agreements with media companies—8 with large ones and 2 with small, local companies. These agreements guarantee more rights than the labor laws. For instance, journalists have a 40-hour working week distributed over 5 working days in their cooperative agreements while the labor law stipulates a 40-hour week distributed over 6 working days. Another provision stipulates that work performed by a journalist and received by an editor is considered published and must be remunerated even if it is not actually published. This was to prevent the unfounded or politically motivated lay-offs of journalists that were common during the 1990s. Also, the agreements stipulate that the components that make up the working hours of journalists include travel time, time spent attending meetings and events, searching for facts, writing, studying and reading documents and materials and checking facts. This was to prevent attempts by editors and media owners to pay journalists by the number of lines written or by seconds of broadcasting in electronic media.

In spite of labor laws and cooperative agreements, there are still violations of journalists' rights. In such cases TUCJ resorts to law suits. Unfortunately, special labor courts do not exist in Croatia and court cases last an average of 3–5 years and some even for 8–10. Nevertheless, TUCJ has won more than 95% of its cases. In the 1990s, cases included job losses due to the dissolution of big socialist media companies and the appear-

ance of black lists of skilled journalists who were “put on ice,” i.e., not allowed to write due to political reasons. Black lists were followed by sacking journalists based on ethnic origin or political beliefs. In 1998/99 some “independent” media outlets founded with foreign capital went bankrupt, and the owners “forgot” to pay their journalists. These new media outlets lasted on average a year or two and attracted journalists by offering them high salaries and better benefits than Croatian media, but these salaries were actually much lower because workers did not get paid for months.

Another major case was in 2001 when 149 lawsuits were filed by the full-time freelance journalists of a daily paper who had not been paid for 1.5 years. There is currently a case in which 103 employees of a daily paper sued their Austrian employer for repeatedly violating their right to the Christmas bonus stipulated in their collective agreement. Several court cases have also been filed by long-term freelance journalists who demanded recognition of their basic rights as staff employees such as pension and health insurance benefits.

ATYPICALLY HIRED WORKERS

The most worrisome problem for freelancers is their growing numbers and their social and professional insecurity. In 2001, the State Inspectorate found that 50% of journalists did not have lawful employment contracts. After that, things began to improve, but as previously mentioned, media employers with help from state institutions devised a new tactic: getting freelancers to register as independent entrepreneurs. When freelancers register as independent entrepreneurs at the Registry of Taxpayers, they are self-employed, and state inspectors have no jurisdiction over them any longer although they continue to work as freelancers who should get benefits.

In order to collect data on freelancers in Croatia, TUCJ has prepared a questionnaire that will be distributed to several hundred of them. Ten journalists who had already completed questionnaires all preferred long-

term employment contracts to freelance status. The fact that employers are openly demanding more flexible labor relations in new amendments to the Croatian Labor Law is very worrying. The fact that both the government and the opposition support those amendments is even more worrying. It means that there will be more atypically hired workers in the media in the future and even less security for journalists.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

Concerning the professional freedom of journalists, which includes censorship and self-censorship, the situation in Croatia is more or less as follows. The media is over-commercialized, and ownership is dominated by foreign media corporations namely German Westdeutsche Allgemeine Zeitung (WAZ) and Austrian Styria. Some outlets are owned by Bonnier from Sweden, Sanoma from Finland and RTL from Germany, and some are owned by Croatians. Under communism, there was open political pressure on the media, but today interconnected political and economic power centers have a more subtle influence with the full participation of media owners. This pressure added to the pressure of commercialization results in a decline in the quality of information disseminated. Advertisements are more important than news. Also, media ownership is still not completely transparent, especially ownership of electronic/broadcast media.

The lack of the rule of law in the country encourages many employers to try to avoid their obligations. Conditions for professional work and corresponding salaries are increasingly becoming a field where the interests of journalists and media employers clash. Due to the rush for profit at any cost, many media employers often violate the basic rights and professional needs of journalists.

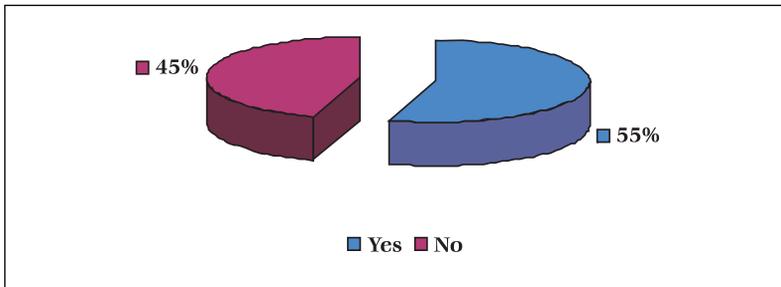
PROFESSIONAL FREEDOM OF JOURNALISTS

In general, it can be said that the media in Croatia have won their freedom concerning legal protection, free choice of topics, free choice in

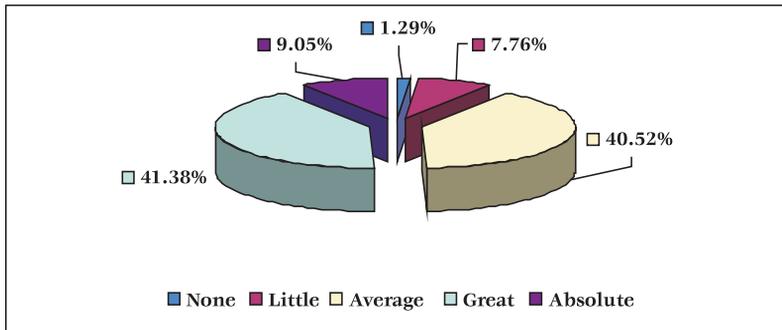
covering events and free commenting without open political pressure. Paradoxically, at the same time journalists cannot be considered as free as their media due to various factors. One of them is the precariousness of their employment arrangements with more and more informal forms of work. Also, they are highly dependent on the editors' decisions both professionally and economically. Polling done among journalists in Croatia mostly proves the assumption that many journalists do not feel professionally free.

TUCJ polled journalists on their professional freedom in September 2003 in cooperation with the Faculty for Political Science of the University of Zagreb, the International Center for Education of Journalists (ICEJ) from Zagreb and the International Press Institute (IPI) from Vienna. The poll contained 28 questions covering issues normally regulated by editorial statutes in democratic countries and in well organized media. Names of media outlets were not mentioned in the questionnaires, and all replies were confidential. In all, 1200 questionnaires were sent to 49 major media companies; 234 questionnaires from 23 media outlets were returned. The questions and responses were the following.

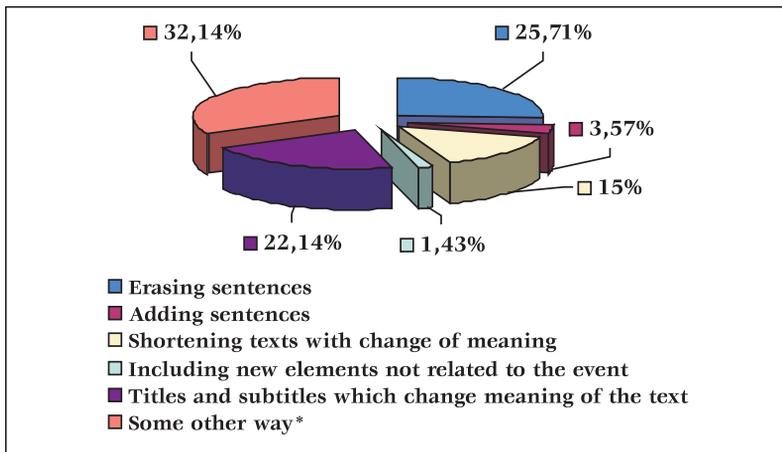
Question 1: Do you think you have complete freedom in your journalistic work today?



Question 2: How much freedom do you have in your work?

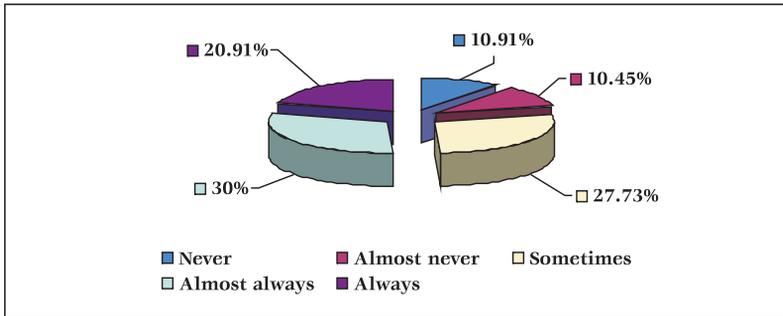


Question 3: If you do not have freedom, how is that manifested?



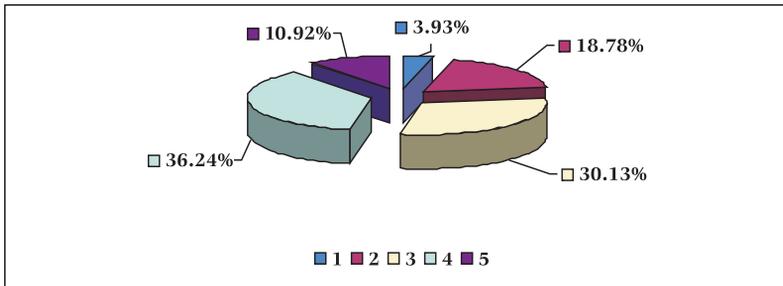
* self-censorship, choice of topics and order of topics with a defined theme, suggestions on how text should look, position of the text on the page or in the program, interventions from outside

Question 4: Does your editor inform you about changes made to your text?



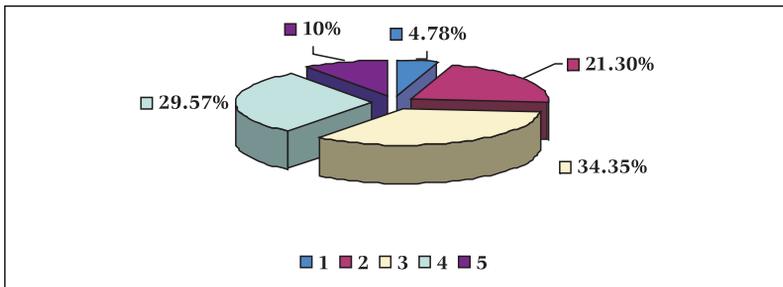
Question 5: How do you rate your relationship with your editor?

1 = bad - 5 = excellent

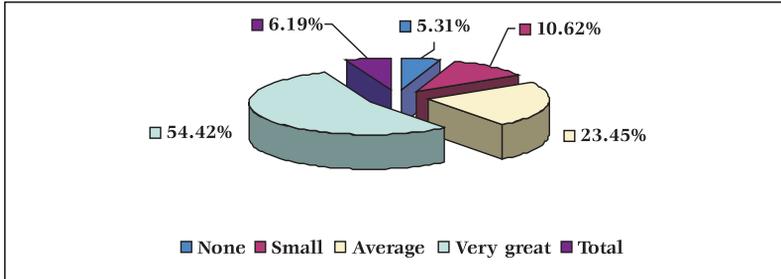


Question 6: How would you rate the competence of your editors?

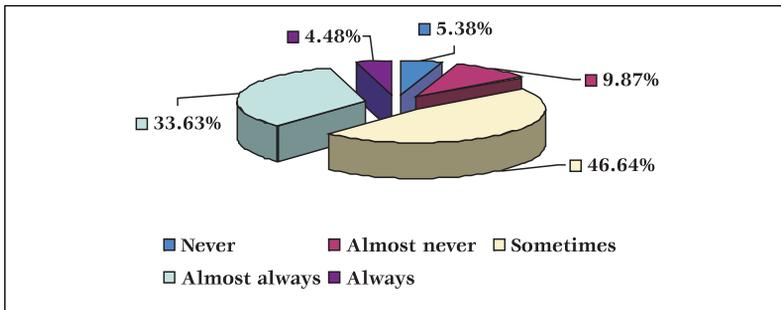
1 = poor - 5 = excellent



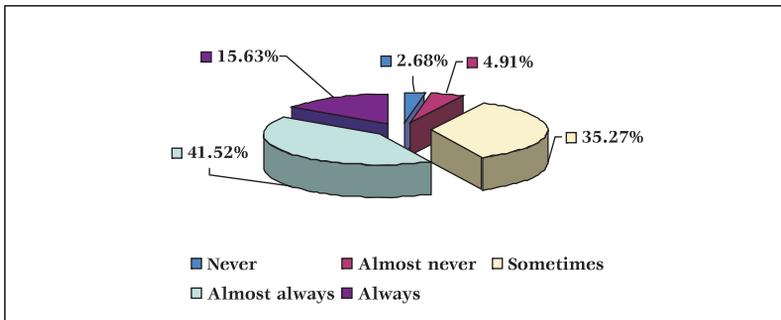
Question 7: Does editorial incompetence have an influence on the professional freedom of journalists?



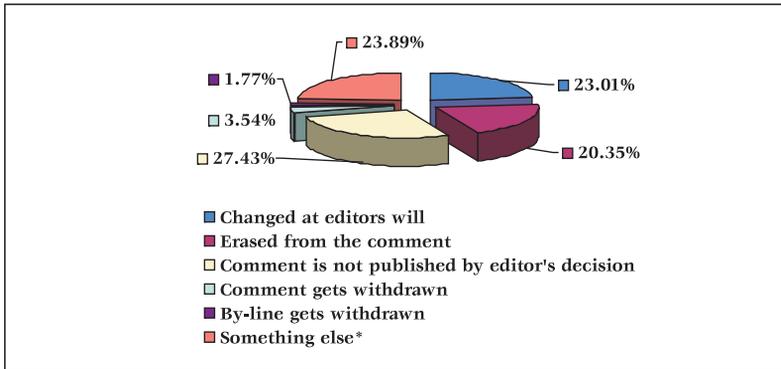
Question 8: Does your editor insist on strictly enforcing editorial policy?



Question 9: Is your point of view accepted in commentary?

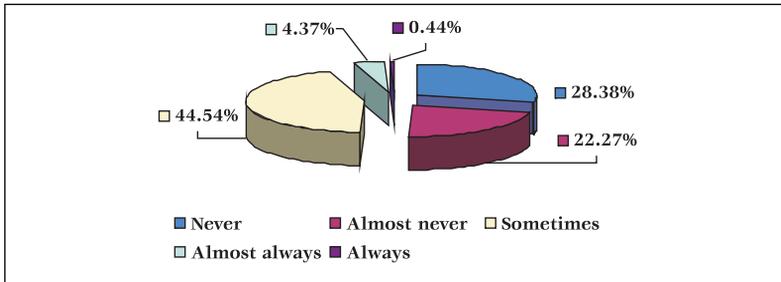


Question 10: If not, what happens?

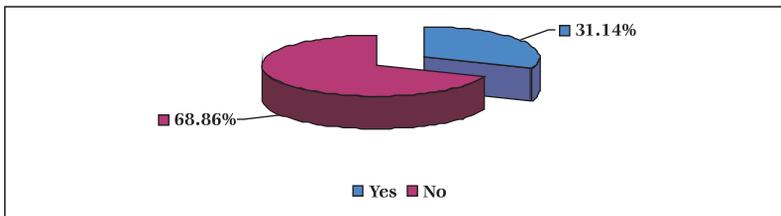


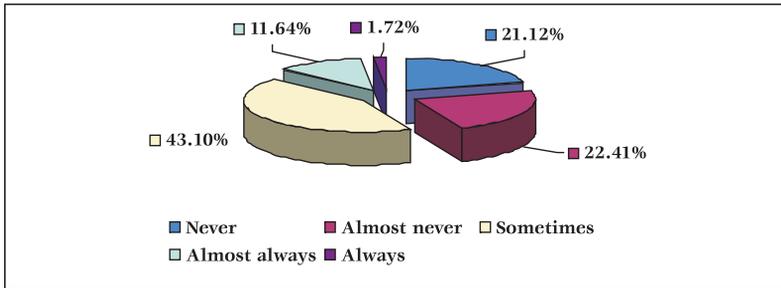
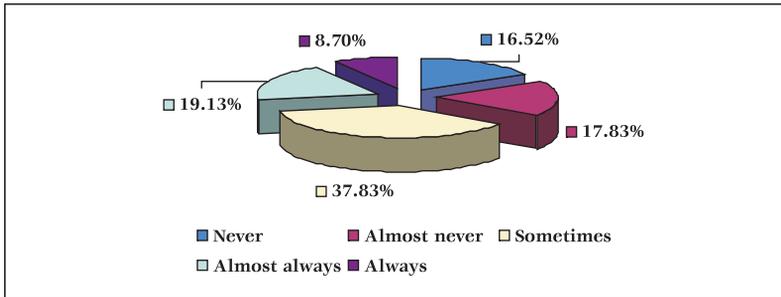
* Changes in the text not to damage advertiser or owner, self-censorship

Question 11: Do your editors suggest what points of view you should advocate?



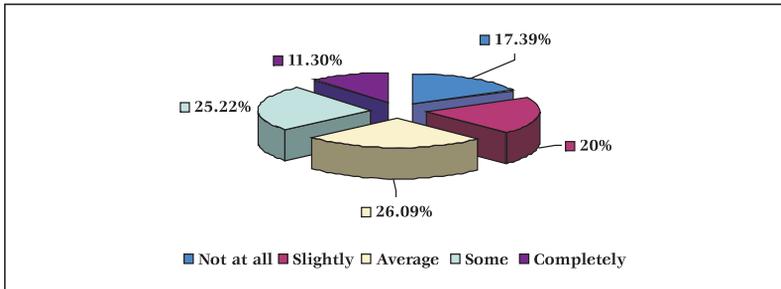
Question 12: Has a point of view you do not accept been imposed on you?



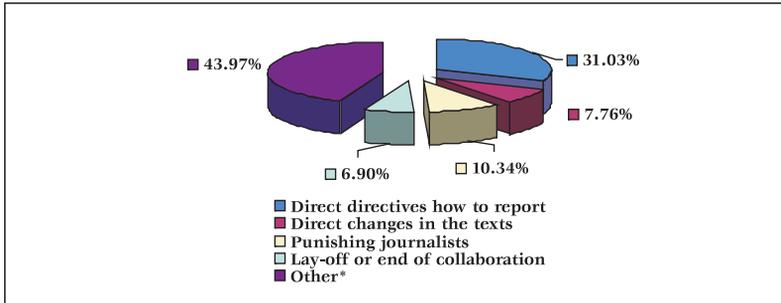
Question 13: Do you have any influence in creating editorial policy?**Question 14: Do you regularly analyze the contents of material published or broadcast by your media?****Question 15: If yes, what are the reactions to obvious errors? (Please describe)**

Discussions at editors' meetings, discussions between editors and journalists, warnings not to repeat the error, publishing an apology or denial

Question 16: How evident is the owner's influence on your work?

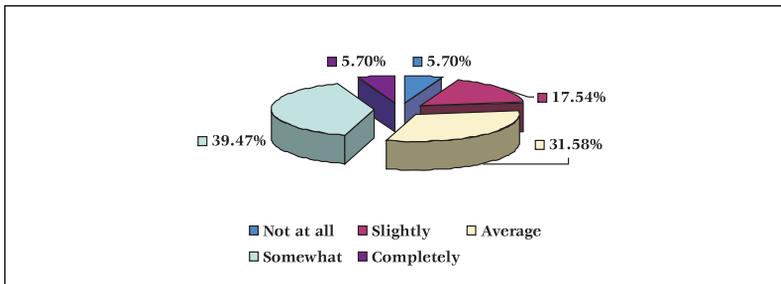


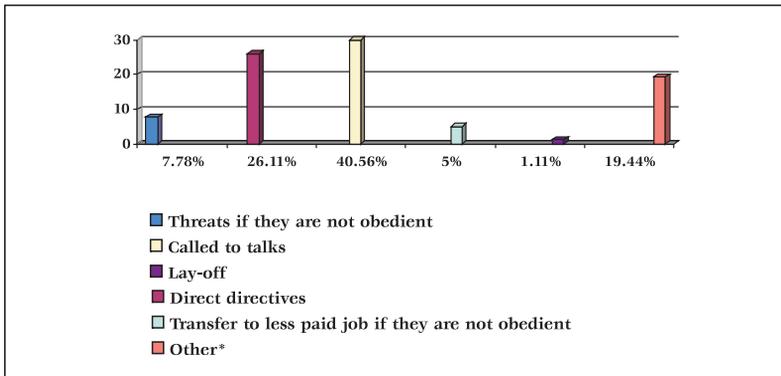
Question 17: If this influence is visibly felt, what are the methods used?



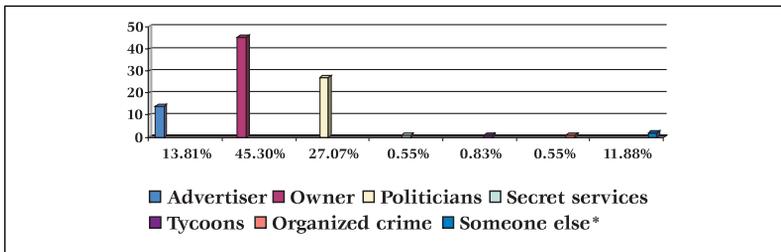
*Suggestions for topics, bad conditions at work, financial pressure, editor-in-chief intervenes, directives to the editor, self-censorship of editors

Question 18: Are editors independent in realizing editorial policy?

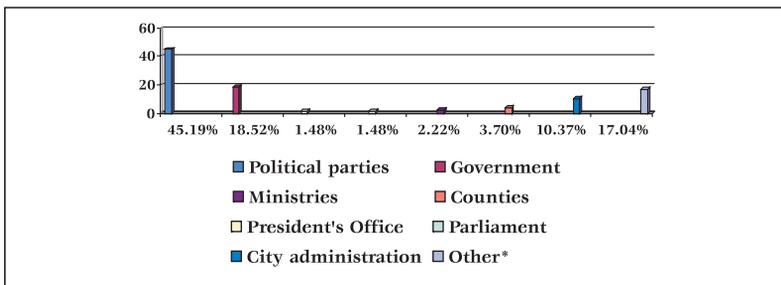


Question 19: If they are dependent, how is their dependence achieved?

*financial dependence - rewarding obedience in salary or status, self-censorship

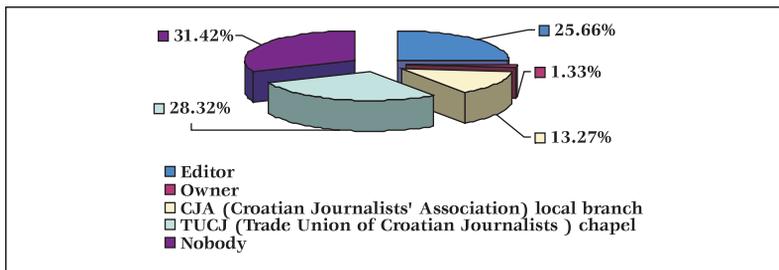
Question 20: Who influences editors the most? (choose two answers)

*Editor in chief, director/manager, owner

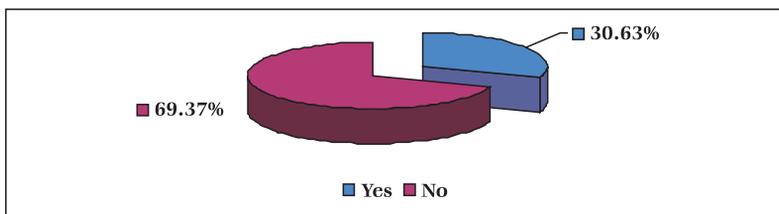
Question 21: If politicians are the most influential, whom do they represent?

* Individual politicians, local authorities, owners, all of them

Question 22: Whom should journalists address for protection of their rights?



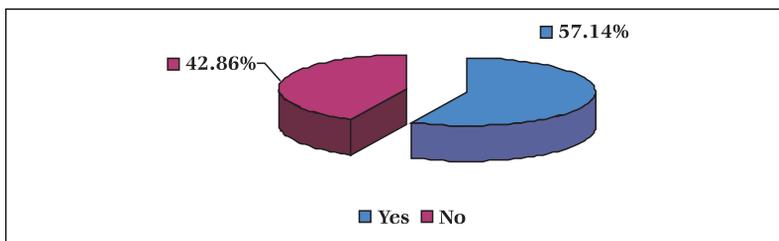
Question 23: Do you have an editorial statute?



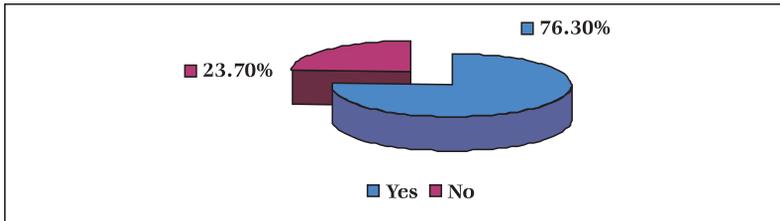
Question 24: If yes, how does it regulate the influence of journalists on editorial policy and the election of the editor-in-chief? (Describe)

I do not know, it does not, formally, unbinding opinion, by consent.

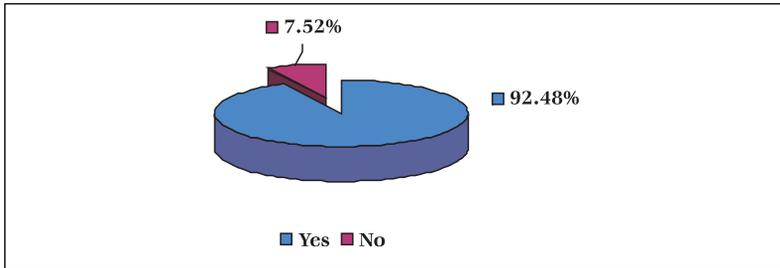
Question 25: Do you have a collective agreement?



Question 26: If yes, are the professional rights of journalists also protected?



Question 27: Are you prepared to act with solidarity to better protect journalists' rights?



Question 28: In your opinion, how can the professional rights of journalists be successfully protected ? (Describe)

Answers mostly mentioned collective agreements, strong trade union and professional organizations, solidarity, rule of law, editorial statutes, regular payment of salaries. TUCJ plans to repeat this poll probably in 2008.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

TUCJ was founded in May 1990. Its main objective is to protect the basic human social and professional rights of journalists. Due to legislation and ILO conventions, trade unions are the only organizations

authorized to negotiate collective agreements and to organize industrial actions, including strikes. The supreme body of the TUCJ is the assembly (congress) which meets annually. The executive body between congresses is the Executive Committee. The TUCJ president is elected by the assembly and serves as a volunteer. The TUCJ's basic source of income is monthly membership dues that amount to 1.2–2% of the net monthly salary. From its start, TUCJ has organized journalists from all the media, “independent” and “dependent” alike, freelancers included. Common interests include good conditions at work, paid salaries and guaranteed professional rights.

The fact that non-government organizations (NGOs) have no authority to represent the workforce was the main reason why Croatian journalists organized TUCJ although their professional organization, the Croatian Journalists' Association (CJA) has been active since 1910. A plan to merge these two organizations is gaining support among journalists who are members of both. One organization with a trade union role would be more efficient in protecting labor and professional rights. There are about 4000 journalists in Croatia (the total population of the country is about 4.5 million). Most of them are CJA members, and about 70% of them are the TUCJ members.

In 1996, TUCJ signed collective agreements with six major media companies in Croatia both state and privately owned. Today, with only a few exceptions, most media are privately owned. At present there are 10 collective agreements with media companies. TUCJ was the first (and so far the only) trade union in a transitional country to sign a collective agreement with a media company co-owned (50%) by WAZ, a major media owner in the Balkans.

Some stipulations in the collective agreements are the following:

- a 40-hour working week spread over five days;
- work on holidays, Saturdays and Sundays for extra pay or compensatory time;

- refusing an assignment if it is against beliefs or the Code of Conduct;
- additional insurance for dangerous tasks, etc.

TUCJ is has prepared the text of a national collective agreement for journalists and media workers (NCA) that should guarantee freelancers some rights now reserved for full-time staff journalists including paid pension and health insurance and lump sum payments for annual leave and sick leave. Negotiations with associations of media employers started in May 2003, and six major issues are still to be resolved, including freelancers' rights.

To improve the educational level of journalists, the NCA proposes an obligatory university degree for those entering the profession. Due to the ever increasing commercialization of the media, the quality of journalism is suffering, and undereducated journalists are more easily intimidated and manipulated by employers.

Recently, multinational media corporations have appeared in central and southern European countries. Regrettably, they often have double standards. While respecting labor legislation in their own countries, they tend to breach it in others. This makes international and regional cooperation between journalists more important. TUCJ cooperates very well with journalists in all these countries and helps them organize efficient trade unions.

VII. CONCLUSIONS AND RECOMMENDATIONS

There are many obstacles in practice that do not allow media freedom at the national level despite relatively good legal provisions. This also reflects negatively upon the status in society of journalism as a profession. Journalists belong to a profession that is exposed more frequently than others, to pressure, to assaults on dignity, to the gray economy and to overtime work without reimbursement, and almost no one is held responsible. Many journalists work without legal contracts and are

mostly poorly paid. Freelancers may work for years for a media outlet without a proper contract.

Journalists' labor rights are spelled out in the labor legislation of the Republic of Croatia and in collective agreements that TUCJ has signed with eight major media companies and with two small local companies. Professional rights are regulated also by media legislation and acts such as the Code of Conduct of Croatian Journalists. The lack of institutions to implement the Media Law, the lack of sanctions for those who breach it, the lack of will to sign a collective agreement at the national level and to develop social partnerships in the media, the lack of real social dialogue, special interests and political and other influences are all obstacles to the full freedom of the media.

Employers often engage insufficiently educated journalists who lack experience and can therefore be manipulated, controlled and underpaid. They are kept in an insecure freelance status for years, and when they begin to request their core labor rights, their employment may be terminated. Many employers provide labor contracts for one month at a time, and when the three-year limit on such work expires, the employer simply rewrites the job description and starts the monthly cycle again. Many journalists work illegally for years and then are pressured to register as entrepreneurs so their employers don't have any obligations for paying pension and health insurance benefits.

This lack of job security means that many young people work as journalists only while they are students. When they graduate, they abandon journalism for better paid, more gratifying jobs in a "real" profession like economics or law. This is not much of a compliment to the profession. What is also worrying is the fact that many of these young people interrupt their studies, so when they lose their jobs in journalism they no longer have professions.

The disintegration of the profession is obvious and is aggravated by political appointments of editors-in-chief who lack proper knowledge or

talent. For instance, when one such editor took up his position at the top of a daily newspaper he stated that, "There are too many women in the paper, and they are too old." This paper used to be informative, but the new editor-in-chief flooded it with content on entertainment thus favoring the company's interests. He did not understand that those "old" women were the ones saving the status of the newspaper with their decades of professional experience and expertise.

It has become increasingly difficult to protect the rights of journalists. In the draft NCA, TUCJ is therefore asking for a minimum of a B.A. degree for journalists entering the profession along with other specific knowledge and skills. Employers have accepted this proposal, but they added the words "in principle" to the B.A. degree as they are still trying to use student labor because it is cheap and does not involve any obligations for the employer. Employers have been bargaining with TUCJ on the NCA for four years, and it is still not signed. Some employers even want to abolish some rights that journalists have gained in collective agreements with individual media companies.

Excessive commercialization is also hurting the profession. Frequently editors press journalists into providing information that hasn't been thoroughly checked thus breaching the Code of Conduct of Croatian Journalists. Likewise, editors add content to text or change the text drastically without consultation. The pressure on journalists is huge, objectivity becomes a burden and a one-sided approach is becoming more and more frequent in which the opinion of the other side is frequently not sought. To earn greater profits, sensationalism is prevailing over serious topics, and advertisements are taking up more and more space. Such light content does not require an educated, talented journalist, and thus the circle closes.

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Hungary

by Borbála Tóth¹

I. ABSTRACT

Nine interviews were conducted and 37 questionnaires were analyzed. A secondary analysis of empirical data collected in former years by various researchers was also included. Labor relations in general are regulated by the Labor Code which quite recently has seen two major changes. One was the abolition of ad hoc employment contracts requiring journalists to pay their own taxes. The other modification was the introduction of the so-called simplified public burden undertaking support, a simplified taxation method applicable to journalists, editors and others in creative professions. Despite these modifications, freelancers are still vulnerable due to their working conditions.

Typically hired employees usually worked for one media outlet only while freelancers worked for at least two. The overwhelming majority of both types worked more than 40 hours per week. Although 86% of typically hired staff had to work more than 40 hours, just 38% felt it was a violation of their rights. More than half the freelancers said that they worked more than 40 hours per week and as a rule were free to decide when to work. The overwhelming majority did not receive fringe benefits. As for determining issues to cover, 30% of both regular staff and freelance journalists said it was the employer who decided.

Nearly all journalists suffered some kind of censorship on the premises of their media outlets. Of the respondents who were regular staff members, 65% mentioned that their superiors censored their work while 86% of freelance journalists had had similar experiences, although two thirds of them only occasionally.

There is only one trade union for journalists, namely the Press Union

¹ *Special thanks to Péter Bajomi-Lázár and Miklós Sükösd for their valuable remarks.*

(Sajtószakszervezet). It has some 3000 members and was founded under state socialism. Respondents suggested that even if they were members the union would likely not protect them in the event their rights were infringed. The trade union is inefficient, and the journalists feel their situations are insecure. A major journalists' association was founded before the transition called Hungarian Journalists National Association (Magyar Újságírók Országos Szövetsége or MÚOSZ) to protect the interests of member journalists in case of any kind of offense, but the respondents didn't have much faith in its effectiveness.

II. OVERVIEW

Research was conducted in July and August 2007 and included both a quantitative survey and a series of qualitative interviews with journalists. It also included a secondary analysis of empirical data collected in former years by various researchers. Questionnaires were sent to over 250 potential respondents but only 37 (18%) were returned. Nine interviews were conducted. Those surveyed or personally interviewed included radio, television, print and on-line staff and freelance journalists from both the public and the private sectors on the national as well as the regional levels (Table 1).

Table 1: Research Participants

	<i>Typically hired journalists</i>	<i>Atypically hired journalists</i>
Print	14	6
Television	10	-
Radio	7	2
On-line	10	4
News agency	2	1

Totals include journalists working for more than one outlet.

This sample is by no means representative of the entire Hungarian journalism community; however, it does allow us to draw some general conclusions. The secondary analyses included in this paper are mainly based on research carried out by Hungarian sociologist Mária Vásárhelyi who conducted representative surveys among Hungarian journalists in 1992, 1997, 2000 and 2006. The most comprehensive data were collected in the year 2000.

The data provided by Ms Vásárhelyi reveal that the vulnerability of Hungarian journalists increased significantly from 1992 to 2000, and that "...the number of full-time journalists decreased every year" (Vásárhelyi 2000). Because of the Hungarian tax system, one out of three journalists was a freelancer in 2000. This implies insecurity because unlike full-time journalists, freelancers were not entitled to fringe benefits (social insurance, etc.) or severance pay in the event they lost their jobs. The introduction of a special tax called "simplified public burden undertaking support (SPBS)" was intended to alleviate this situation.

Many journalists, especially freelancers, worked for two or even three media outlets simultaneously, albeit they would have preferred to work for but one had that one employer paid them a decent salary. This research project in 2007 confirmed Ms Vásárhelyi's findings.

There was a salary gap between journalists in the capital and those in the countryside though this is not unusual in Hungary.² It also needs to be noted that the costs of living are significantly higher in Budapest than in the rest of the country, although consumer goods are more expensive in the countryside due to the lack of supply. In addition to this, Ms Vásárhelyi found a salary gap between male and female journalists (which also is the case for other professions³). In general,

The journalists working for the commercial television channels have the highest net salary, then the associates of the nationwide daily newspapers

² According to research by András Kilinger, the average salary in Budapest is 172% more than the average in the countryside (Kilinger, 2006).

³ Research shows that men earn 30–40% more than women with identical qualifications. (Women are still earning less <http://www.mfor.hu/cikk.php?article=19419>, last accessed 28/08/2007.)

and journalists of commercial radio stations and regional dailies earn the lowest wages (Vásárhelyi 2000).

For details on the distribution of journalists' income, see Table 2. (The average net salary among Hungarians was 110,000 forint⁴ in 2006,⁵ but when comparing these data, inflation must also be considered.)

Table 2: Monthly Net Salary of Journalists in 1997 and 2000

<i>Monthly net income (forint)</i>	<i>1997</i>	<i>2000</i>
20,000 or less	5%	2%
20,000–39,900	20	6
40,000–59,000	25	10
60,000–79,000	18	17
80,000–99,000	10	12
100,000–119,000	8	14
120,000–149,000	5	12
150,000–199,000	3	10
200,000–299,000	2	10
300,000–499,000	1	5
500,000 and above	1	2
Total	100%	100%

Source: *Vásárhelyi (2000)*

The 2000 survey reveals that journalists earned more than others in creative professions which, however, does not imply that they earned

⁴ 1 euro = 250 forint; 110,000 forint = 440 euros

⁵ The average Hungarian earned 110,000 forint in 2006 (<http://hrportal.hu/index.phtml?page=article&id=58449> (last accessed, 28/08/2007))

enough—a finding that both the 2000 survey and the 2007 research confirm.

Regarding the number of working hours, in 2000 journalists at the commercial television channels worked 10 hours per day on average. Journalists with regional dailies, editors-in-chief and senior journalists worked 8.4 hours per day in 2000.

Journalists' satisfaction with their jobs in 2000 as measured by indicators such as working conditions, career opportunities, wages, working climate and workplace democracy scored 61 points on a 100-point scale. Those with the nationwide dailies and the commercial television channels were significantly more satisfied than those with the regional dailies and the public service television channels. The journalists working for Hungarian public service television (Magyar Televízió, MTV) were especially uncomfortable with their working conditions noting such problems as the lack of democratic decision making in the newsroom, an uneasy working climate and professionally unfit managers. The most satisfied with their working conditions were senior male journalists working for a national daily or a commercial television channel while the least satisfied were the youngest journalists in general as well as journalists with regional dailies and, as mentioned already, those with the public television channel.

When asked to elaborate on their professional vulnerability, 40% of respondents in 2000 named their relationship with the owner of their respective media outlets as a key problem area. In this respect, the employees of the public service television channels whose owners were actually the political elites were in the most troublesome situation. Twenty-nine percent felt unprotected when in conflict with their superiors. Fifteen percent said that they were never allowed to determine the

issues they were to cover and another 35% said that they were more or less free to do so. In our 2007 research about determining issues to cover, 30% of both staff and freelance journalists said it was the employer who decided.

Regarding professional autonomy, 56% of respondents in 2000 said that they could not ignore the business interests of the owner of their respective media outlets, and 42% mentioned the interests of advertisers as taboo issues. Twenty-one percent believed that, "...newsroom decisions were biased in favor of the incumbent government", and another 13% mentioned bias in favor of other political parties. Journalists with regional dailies, with monthly magazines and with commercial radio stations were more likely to refer to pressure by owners and advertisers while those with the commercial television channels and the public service radio station (Magyar Rádió) mentioned pressure by the government and the various political parties.

The research done in 2000 revealed that as many as 49% of journalists had experienced attempts to withdraw completed articles or programs under political pressure (in 1997 only 38% had). These attempts were the most successful with the regional dailies and the public service broadcasters where two-thirds of such attempts were not rejected by the editorial boards. Forty-nine percent had faced pressure by business groups to withdraw completed programs or articles (in 1997 44% had); 70% of those attempts were reported to have succeeded. Forty-four percent of media outlets had actually been threatened because of the planned airing or publication of programs or articles, and 29% of journalists interviewed had faced such threats.⁶

Before the political transformation in 1989–90, journalism education was the monopoly of the state socialist regime. Today, universities and

⁶ However, physical violence against journalists is very rare. An exception to this rule may have been the recent attack on investigative journalist Irén Kármán in June, 2007. This case, however, is largely contradictory, and it is too early to say as yet if the attack was related to her work. (see also <http://www.budapestsun.com/cikk.php?id=26743> and http://www.budapesttimes.hu/index.php?option=com_content&task=view&id=116&Itemid=1, last accessed, 28/08/2007)

colleges graduate hundreds of media and communications students every year, many of whom seek employment as journalists. Theoretically, anyone can be a journalist or launch a new publication (1986. II. Act on the Press, amended in 1990 and 1996, paragraphs 7, 8, 12). After the fall of state socialism, new publications mushroomed, and only the funds of consumers and advertisers limited the further expansion of the market. The supply then was diverse, but shortly thereafter many of the new publications disappeared. On the whole, women's magazines are the most popular as 40.5% of all print media sold belong to this category (Szakács 2007). New publications continue to appear, and old publications continue to disappear every year.

Investigative journalism is sporadic. Indeed, analysts tend to describe the Hungarian version of the genre as “dossier journalism” or “clan journalism”:

Whenever any journalist obtains a secret or confidential document from any authority —regardless of who leaked the papers and what kind of intentions lay behind the act of leaking information— both the representatives of the profession and the public start to say that this was a journalistic investigation. It is harmful for all the actors involved and for democracy overall, because investigative journalism—based on the Anglo-Saxon methodology and practice—should contain the journalist's original work and investigation instead of relying on somebody else's work (even if the source is an authority that has been established to reveal corruption or abuse of power) (Gálik 2004).

Or, as László Majtényi, newsroom ombudsman for *Népszabadság*, the high circulation nationwide quality daily said in an interview, “What makes the Hungarian media move is laziness. If someone touches the telephone, that is already regarded as an act of serious investigative journalism.”⁷ One may add, even when an investigative article is published, consequences are an exception, not the rule.

The reason for the lack of investigative journalism in the Anglo-Saxon sense of the term lies with the lack of financial resources. Few if any

⁷ Bita, Dániel: *I am not aggrieved, László Majtényi about liberalism and democracy* (Nem vagyok kárvallott, Majtényi László liberalizmusról és demokráciáról), 168 óra, 2007.07.02., nr 26.

media outlets can afford to cover the costs and wages of a journalist or team of journalists working several weeks or months on a single issue. In order to make up for this shortcoming, newspapers and broadcasters tend to publicize unverified, one-sided information (Sükösd 2000). Political parties and other invisible power centers use the media as a special communication channel. When one intends to harm another, they mail compromising information to the press and media which will likely publicize it. One wonders if this is journalism at all, or something completely different. The poor professional performance of the Hungarian press and media is no doubt a reason for the low social prestige of the industry: on a scale of 100 for perfect trust, journalists got 43 points, politicians got 13 and medical doctors got 87.⁸

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

Labor relations in general are regulated by the Labor Code which quite recently has seen two major changes. One was the abolition of ad hoc employment contracts; now media outlets have to employ their journalists as typically hired staff. Previously, the contracts were fictitious: in order to have journalists pay their own taxes, employers concluded ad hoc assignment contracts with them rather than long-term, individual work contracts. As of June 30, 2006,⁹ the tax authority (Hungarian Tax and Financial Control Administration) considered ad hoc contracts a form of tax evasion and may oblige both the employer and the employee to pay the tax arrears.

The other modification was the introduction of the SPBUS,¹⁰ a simplified taxation method applicable to journalists, editors and others in creative professions. SPBUS was introduced by Act CXX of 2005 and states:

⁸ <http://www.gfk.hu/sajtokoz/fr6.htm> (last accessed: 28/08/2007)

⁹ Sham employment contract, http://www.magyarorszag.hu/english/keyevents/a_alpolg/a_munka/a_munszerz20050805/a_szinleltmunkasz20061215.html?highlight (last accessed, 14/08/2007)

¹⁰ Simplified public burden undertaking support, http://www.magyarorszag.hu/english/keyevents/a_alpolg/a_adoilletkvam/a_szja20050804/a_ekho20070207.html?highlight (last accessed, 10/08/2007)

...who, in connection with any activity in the tax year—from an employment relationship, under the title of entrepreneur's withdrawal as a private entrepreneur, under the title of the valuable remuneration for personal cooperation as a member of a partnership, or on the basis of entrepreneurial contract or contract of commission as a private individual not constituting a private entrepreneur under the force of the personal income tax law—obtains revenue the fulfillment of the public burden obligations on which takes place according to the general regulations.¹¹

The employee pays 15% (11% personal income tax and 4% pension contribution unless the employee is a pensioner) of the base of the revenue for SPBUS which is deductible if the private individual pays value-added tax. The employer pays 20% (11% health insurance and 9% pension insurance) for SPBUS on the SPBUS base which is the gross salary itself.

The length of the working day is regulated by the Labor Code XXII of 1992 (paragraph 117/B). It is legally 8 hours per day and 40 hours per week. The Code stipulates that people can work more if they have to be "on the alert" meaning that the employee needs to be on call during a certain period of time which, however, cannot exceed 168 hours a month.

Journalists can be employed either as regular staff members or as freelancers. In the former case, the journalists have individual work contracts under which they dedicate their time to their employers, i.e., the media outlets. The working hours and locations are determined by the employer, and the income is fixed. The employee must be available on the premises of the media outlet. In the latter case, there is a commission contract for each program or article; the employee determines when and where to work and the remuneration covers their expenses and service fees, but is usually not fixed. The employee does not necessarily need to be available on the premises of the media outlet.

¹¹ *Ibid.* paragraph 2 (last accessed, 14/08/2007)

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

For this current research project, surprisingly few freelance journalists (9) responded possibly because of the legal ban on ad hoc employment contracts. Our research showed that typically hired employees usually worked for one media outlet only while freelancers worked for at least two. The overwhelming majority of both types worked more than 40 hours per week. Most of the freelancers who responded worked for private, nationwide media outlets. As for regular staff, nearly half of the respondents worked for private nationwide companies.

The main problems mentioned in the questionnaires and the interviews were the following.

For freelancers:

- “The commission did not even cover my expenses;”
- insecurity;
- not an officially announced (i.e., unrecognized by the tax authority) job;
- the commission is not pegged to the inflation rate;
- delays in payment;
- vulnerability;
- “There is no permanent contract; the possibility of dismissal is like Damocles' sword;”
- “as a freelancer, I must accept every single kind of job, or else I cannot make a living;”
- “the SPBUS tax payment method maintains vulnerability as some employers pay the social insurance on the basis of the minimum salary¹² as a result of which suffering an accident, being ill or becoming a pensioner implies a serious income drop;”
- “...forced enterprise, (self) censorship, political and economical influence.”

¹² As of January 1, 2007, the minimum wage has been HUF 65,500 HUF (262 EUR) by statutory order 316/2005 (XII. 25) http://www.apeh.hu/print/adoinfo/jarulek/minimalber_valtozas.html (last accessed: 28/08/2007)

For typically hired staff members:

- working hours regularly exceeding 40 hours per week;
- the lack of a working association to help journalists;
- the lack of ethical standards for the profession.

Typically hired staff with public service broadcasters also mentioned the following problems:

- shortcomings of the 1996 Broadcasting Act;¹³
- arbitrary decisions by the National Radio and Television Board (Országos Rádió és Televízió Testület);¹⁴
- the structure of the media landscape;
- the lack of modernization;
- financial problems with the institution;
- low wages;
- dependence on the owner (i.e., the state);
- dismissal policy;¹⁵
- “quantitative coercion due to lack of staff”
- the company is like a hospice, only those who cannot establish a career stay;
- colleagues aren't motivated by interesting cases;
- journalists don't speak foreign languages; it is common throughout the profession;
- “There will not be a need for independent journalists soon. We are walking towards a de facto dual parliamentary system; the press is moving in parallel realities.” (In Hungary all quality dailies are thought to be loyal servants of a party.)

13 i.e. the definition of “public”, it is not clear what programs public broadcasters have to produce and broadcast, the commercial channels can easily ignore the statements of the law because of long legal procedures. To change the Broadcasting Act, two-thirds of Parliament must agree. There have been many debates but no changes.

14 When cases are similar, the Board does not necessarily reach the same decision.

15 Since the rise of commercial television in 1997, i.e., the loss of MTV's monopoly, the public service broadcaster has undergone major financial difficulties.

TYPICALLY HIRED WORKERS

There were slightly more male than female respondents; their average age was 38. They had been working for one or more media outlets for 11 years on average. The majority (86%) worked at the premises of their respective media outlets. Eight percent said that they did not have any contracts at all as they were trainees. When they finished training they expected to be contracted, provided that both parties agreed. Those with contracts were employed for an undetermined period of time. Half of them said that the contract provided them with protection from unjustified sanctions and dismissal; the rest said it did not or that they did not know if it did. One respondent added that the contract, "does not make any sense." Only 8% had stipulations in their contracts regarding a conscience clause; one respondent added, "disagreement is not recommended."

Concerning violations of rights, the majority said that their salaries were paid regularly; only four reported that sometimes their salaries were not transferred. Regarding violations of working terms and conditions, 18% recalled such incidents happening on a regular basis and 11% said such events occurred sometimes; most importantly, the majority had not had any such experiences. Although 86% had to work more than the 40 hours stipulated by the Labor Code of 1992, just 38% felt it was a violation of their rights. In 43% of all such cases, working the extra hours was their own decision while the rest were assigned to do so. Twenty-seven percent of the respondents said that the employer had violated their right to rest time. The answers to the question regarding violations of annual professional holidays revealed that 14% of the respondents had encountered that problem. Nearly one-third of the respondents had had job-related activities imposed on them that were not stipulated in their individual work contracts although more than the half of them said that occurred infrequently. Two respondents mentioned gender discrimination. Of those two, one added, "...just positive (discrimination) as during

the clashes,¹⁶ only male editors were assigned to report from the streets.” The other respondent complained about ambiguous remarks on the premises of her media outlet.

Thirty-eight percent of respondents were satisfied with their salaries, but the rest were not (see also the data provided by Vásárhelyi above). One respondent added that in comparison with Western Europe, the salaries were too low. Two-thirds of the respondents answered the question about how their salaries compared to the average in Hungary; more than half of them did say that their salaries were either higher than the average or equal, and one third said that theirs was below the average.

Half of the respondents received some kind of welfare benefit, and 11% were members of some kind of trade union. One of them said that membership would not protect her against unjustified sanctions although journalists would win in the court against the employer if supported by the trade union. Many of those who said that they were not members of any kind of journalists' association added that the trade union would not protect them anyway.

Fifty-four percent had experienced financial sanctions by their employers. Forty-two percent had been officially reprimanded on the premises and 62% had witnessed dismissal as a punishment for an error. One journalist working for a public service broadcaster said that she had suffered “frequent verbal reprimands” at her workplace.

Seventy percent of regular staff journalists said that they themselves determined the subjects that they covered. Twenty-seven percent declared that they definitely felt their copyrights were protected; 22% felt that “as a rule, yes”; 13% could not answer this question and the rest (38%) did not feel secure as to their copyrights. Nineteen percent felt their authors' rights were completely unprotected.

16 In September and October, 2006, a series of anti-government street demonstrations was held on the streets of Budapest. Some of them turned violent; several demonstrators and policemen were wounded.

Their most frequently mentioned problems included the following:

- inadequate information from management;
- emphasis on sensationalism;
- low salaries (especially in comparison with Western European salaries);
- the lack of career opportunities;
- unqualified or unfit fellow workers;
- professional jealousy;
- problems with readers' reading habits and capabilities;
- corruption in finances and hiring;
- pressure by political parties and business groups;
- the division of media coverage among political parties;
- the premises of the employer is not well equipped;
- "They do not provide fine working conditions; extra hours are not paid;"
- "Journalists are not sole entrepreneurs by their own decisions but because of coercion;"
- "The employer pays less for the job, the payment is not by results which is unusual as this would be normal, the media outlet depends on payments from the local government and on money won on tender;"
- " There is no chance for a rise in salary;"
- "There are no serious problems."

ATYPICALLY HIRED WORKERS

As mentioned before, there were quite a few (nine) respondents who considered themselves as atypically hired workers. Their average age was 30, and they had been working for their respective media outlets for 7 years on average. There were slightly more female than male respondents among them. They worked for more than two media outlets; one person worked for more than six (print and online media). Most of them worked for private, nationwide companies and at home. Just one third said it was their employer who decided where they were to work. A little

more than half had a contract, and it was for an undetermined period of time. Only one of them said it meant protection from unjustified sanctions and dismissal; another respondent said, "I presume it does." Our respondents typically held ad hoc commission contracts. To all questions regarding the violation of the workers' rights (payment of salary, working conditions, length of the working day, rest time, annual professional holiday), our respondents replied that violations occurred every now and then. One respondent had experienced an "inappropriate tone" at her workplace. One respondent had a clause regarding conscience in his contract.

Regarding working hours, more than half said that they worked more than 40 hours per week, 22% worked exactly 40 hours per week and the rest of them worked less than the normal quota. Freelancers as a rule were free to decide when to work. More than the half were satisfied with their salaries while the rest were not stating that their salaries were lower than the national average. The overwhelming majority (two thirds) did not receive fringe benefits.

The majority of respondents did not know about any kinds of sanctions by their employers; 55% mentioned financial sanctions and one third mentioned dismissals. None of them could give any examples of a reimbursement for damages caused to the media outlet either because it had never happened or because they were unaware of it. In most cases, they said that it was up to them to decide what to cover. The majority (55%) did not feel that their copyrights were protected; just one respondent said it was.

Their main problems included the following:

- lack of teamwork;
- lack of human and financial resources and information from the company;
- "newsworthiness subordinated to a favor for someone;"
- lack of democratic decision making in the newsroom.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

Of the respondents who were regular staff members at media outlets, 65% mentioned that their superiors censored their work while 86% of freelance journalists had had similar experiences, although two thirds of them only occasionally. The research done in 2000 by Vásárhelyi found that politicians and businesses were trying to influence the press, sometimes successfully. This was even more frequent in regional media outlets where due to the small market and the “everybody knows everybody” attitude and social networking, there were many favors exchanged and the press was also involved. One of our respondents said, that at his media outlet, “There is no censorship, but I know the expectations.”

Self-censorship is also common, sometimes because they know what they have to produce or because they would like to save time and not have to rewrite the article. Some simply will not work on a story because it harms various interests (owner, advertiser, mayor). Table 3 presents trends in journalists' perceptions of press freedom in the country.

Table 3: Press Freedom in Hungary in 1992, 1997 and 2006

	1992 (%)	1997 (%)	2006 (%)
Total press freedom	45	27	38
Partial press freedom	51	69	58
There is no press freedom	4	4	4
Total	100	100	100

Source: Press release of the research of Mária Vásárhelyi in 2006

Miklós Sükösd conducted informal personal interviews with freelancers who had not published investigative material for fear that their employers either would not have protected them if they were sued or would not have hired a good lawyer for them. Once again, there is a demand for investigative journalism, yet the material is rarely published

partly because of the threats journalists and their employers encounter every now and then and partly because of a lack of financial resources.¹⁷

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

There is only one trade union for journalists in Hungary, namely the Press Union (Sajtószakszervezet). It has some 3000 members and was founded under state socialism. However, as mentioned already, only one of our respondents was a member—an indication of the association's low prestige in the community. "The trade union is inefficient, one does better if one consults a lawyer independently in case of any kind of problem," one respondent said. Furthermore, our respondents suggested that, even if they were members of such organizations, they would likely not protect them in the event their rights were infringed.

In addition, a major journalists' association was founded before the transition called Hungarian Journalists National Association (Magyar Újságírók Országos Szövetsége or MÚOSZ) which defines itself as, "an independent organization of cultural and advocacy issues related to professional journalism."¹⁸ The association has an estimated 5,000 members.

The main goal of MÚOSZ is to protect the interests of member journalists in case of any kind of offense, but one respondent complained about MÚOSZ:

There is no place, any kind of workshop for journalists, and they cannot be proud of their profession. The journalists' society has fallen apart, they have become redundant and there is nowhere to belong. Journalists have lost their authenticity. They missed a good opportunity after the political transition.¹⁹

¹⁷ There was a publication titled *Manager Magazin* that frequently published investigative articles revealing corruption cases. The former editor in chief and the former deputy editor in chief are both recognized journalists. They are both former employees because the whole staff of the editorial room quit when the publisher wanted to reduce the number of the employees because the magazine was operating at a loss.

¹⁸ See <http://www.muosz.hu/english.php> (last accessed: 28/08/2007)

¹⁹ There were a few cases mentioned. See Juhász, Gábor (2005): *Print media*. In: *Hungarian media history from late Kádár-era until the millenium* pg. 113-132.

Apart from MÚOSZ, there are half a dozen other associations which indicate the divisions in the journalism community. Only two respondents (freelancers) said that they were members of a journalists' association, but one of them could not answer the question as to whether the association would protect him from any kind of unjustified sanction imposed by his employer; the other respondent said it definitely could not.

VII. CONCLUSIONS AND RECOMMENDATIONS

Despite the recent abolition of ad hoc contracts, many employed journalists still work on the basis of commissions that do not provide them with benefits nor with any protection from violations of their rights or from pressure from interest groups. More intense control by the Hungarian Tax and Financial Control Administration could possibly diminish the number of these contracts.

Additional recommendations include the following.

- Abolish the influence of lobbies (political and financial, local government, advertisers, owners).
- Provide better education at universities focusing on practical knowledge so trainees do not enter the labor market without any experience.
- The trade union should function like a workshop and offer an intellectual background for the journalists' society; it should represent the interests of the journalists' society.
- Abolish coercion, give all journalists contracts with stipulations respecting their rights and providing security for them.

All these changes could return integrity to the profession of journalism and to media consumers also.

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Macedonia

by Vladimir Misev

I. ABSTRACT

A total of 100 questionnaires was distributed and 60 were returned. In addition, 21 in-depth interviews were held, 6 with freelancers, 2 with non-government organization representatives, 1 with a representative of the trade union that represents journalists and the rest with typically hired workers in the media. Also, an analysis of the legislative framework was done.

A large number of the typically employed journalists surveyed had not signed individual labor agreements with their employers, and nearly 30% of the freelancers had worked more than 10 years in media without signing individual labor contracts with their employers. Of those with contracts, 41% did not think the contract would protect them from dismissal or unjust sanctions. More than half of the survey respondents were not happy with their salaries. The phenomenon of censorship and self-censorship is present in Macedonia to a high degree. The main obstacles to combating it are the owners who are well-known businessmen and the close relationship of the media with the political authorities in the state.

There is only one trade union in Macedonia representing journalists, and that one is not exclusively for journalists or for the mass media sector. Macedonian journalists are therefore not truly protected. Furthermore, social dialogue and tripartite relations are very weak in the mass media sector. Generally, there is a very little interaction between the Association of Journalists, the associations of employers and the union while at the same time, government institutions are not specifically interested in improving labor relations in the mass media.

II. OVERVIEW

The topic of labor relations in the media in Macedonia is largely unexplored as comprehensive analyses and research in this field are absent. There have been a few pioneering studies related to the media, but this issue still needs to be further researched in-depth. Although the situation with labor relations in the media is not alarming, particular attention by government and non-government organizations (NGOs) is needed.

The general framework for labor relations in Macedonia is set in the Constitution and International Labour Organization (ILO) conventions to which the country is a party. There is one law for labor relations specifying the norms that the media outlets and journalist have to obey. A general collective agreement has yet to be signed in Macedonia, nor is there a specific one for the media sector. There is one collective agreement between the management and workers of the Macedonian Radio and Television Station (MRTV), the biggest public media outlet in the country. However due to high debts, inefficient performance, overstaffing and the reforms that are under way, the implementation of this collective agreement is uncertain. The only trade union representing all employees in the mass media, not only journalists, employs only one person and actually covers four other areas beside the mass media. While it has members from different media outlets and action programs, the actual membership is not extensive, and capacities and resources are quite weak.

II. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The legislation covering labor relations in the media in Macedonia derives from the Constitution of the country, from the relevant International Labour Organization (ILO) conventions and from the Law on Labor Relations. There are no specific legal documents that apply to the media sector as such that have been enacted by Parliament or other institutions of the Government. Only one media outlet, publicly owned MRTV, has concluded a collective agreement between management and the employees. The privately owned media mainly do not have

collective agreements for their employees, even though some of their employees are members of the only trade union dealing with the media sector in Macedonia. After the acquisition of the three daily newspapers (*Dnevnik*, *Utrinski Vesnik* and *Vest*) by the WAZ media group, a collective agreement was offered to the employees; however, only the journalists in *Vest* signed it while journalists working in *Dnevnik* and *Utrinski Vesnik* refused on the grounds that it was not in line with their interests.

CONSTITUTIONAL PROVISIONS¹

“Humanism, social justice and solidarity” are among the founding values of the Constitution of the Republic of Macedonia adopted in 1991. They come right after “free market and entrepreneurship” in Article 8. Further on, Article 20 stipulates the, “freedom of organizing for accomplishing and protecting the political, economical, social, cultural and other rights and beliefs.” Even more concretely, in Chapter 2 titled “Economic, Social and Cultural Rights,” Article 37 provides the right of the citizens to form trade unions to protect their economical and social rights. The unions can have different branches and be part of international trade union federations as provided in articles 32 and 34.

Article 32 stipulates, “anyone has the right to work, free choice of employment, protection during work and material compensation during temporary unemployment.” Also the article provides equal treatment for employment opportunities, the right to fair compensation and the right to a vacation all to be specified in separate laws as well as in collective labor agreements. Article 34 gives citizens the right of social security and social insurance to be determined in a specific law as well as in collective labor agreements.

INTERNATIONAL CONVENTIONS²

The Republic of Macedonia has ratified numerous conventions of the

¹ Constitution of the Republic of Macedonia, ([www.http://www.sobranie.mk/mk/default.asp?vidi=ustav](http://www.sobranie.mk/mk/default.asp?vidi=ustav))

² Overview of Multilateral Relations, Ministry of Foreign Affairs of the Republic of Macedonia (www.mfa.gov.mk)

ILO since the break-up of the Socialist Federative Republic of Yugoslavia (SFRJ) and has also taken on the responsibilities of the conventions that SFRJ had ratified prior to 1991, i.e., Convention 158 (stopping work on the initiative of the employer), Convention 98 (the right to organize and to conduct collective bargaining), Convention 142 (for the professional orientation and development of human resources) and many others. Most recently, on December 8, 2006, Macedonia became a party to ILO Convention 144 (on the three party consultations for the improvement of the implementation of international standards for labor).

LAW ON LABOR RELATIONS³

This law is the main legal document for employment and working relations in the Republic of Macedonia. It has 27 sections.

Part I. General Provisions (articles 1–12): The aim of the law is to include the workers in the work process with due respect for the freedom of labor, dignity and protection of the interests of the workers. It is a catch all that applies to all types of employment in all public or private organizations established in Macedonia. It prohibits all types of discrimination and sexual harassment, be they direct or indirect, including on the basis of membership in unions. If discrimination occurs, compensation will be awarded in an amount equal to up to five average monthly wages. In such a case, the employer carries the burden of proof that there were no illegal practices. This part also stipulates that no collective agreement can infringe on rights that are provided in the law; if there is such a case, the collective agreement should be considered null and void.

Part II. Employment Contract (articles 13–21): The employment contract should be in written form between the employer and employee, and both should have copies. The obligations for both begin on the day of signing. The contract can be for a defined or an undefined period of time, and the employer has to register the employee and pay the required social insurance fees (pension and disability funds, health and unemployment

³ Law for Work Relations, Official Gazette of the Republic of Macedonia, No 62/05, 28.07.2005

insurance). The lowest legal working age is 15 regardless of whether the person has Macedonian citizenship or not. The employer sets the employment criteria and has the freedom to choose the best qualified candidate who meets those criteria.

Part III. Rights and Obligations of the Parties when Concluding an Employment Contract (articles 22–29): Employers should publicly announce open positions and criteria for filling them and are responsible for interviewing candidates and checking references. Candidates should provide relevant evidence that they are the best suited ones for the position. The contract must contain a job description, the place and duration of work, the remuneration and vacation time.

Part IV. Obligations of the Employee (articles 30–39): The employee should respect the contract, obey work requirements and notify the employer of any substantial changes affecting his end of the agreement. The employee must not harm the interests of the employer and should preserve business secrets and not work for competitors.

Part V. Obligations of the Employer (articles 40–55): The employer should provide work and wages while protecting the freedom, dignity and privacy of the employee. The contract can be full time, part time or seasonal. In the latter two cases, the employee can work for different employers as long as there is no legal conflict.

Part VI. Traineeships, Volunteering and Probationary Work (articles 56–69): Traineeships are provided within some professions regulated with laws or collective agreements; they cannot last more than 18 months. At the end, an exam is taken to demonstrate full competence in the profession. Probationary work should be paid and cannot exceed six months. Volunteering is obligatory in professions in which an examination for a license to work is required.

Part VII. Canceling the Employment Contract when the Employer Fires the Employee (articles 70–104): Employees can quit willingly, but the

employers need due reasons to cancel the agreement. The employer must first warn the employee of any breaches or violations and must then provide written notification. Firing cannot be on the basis of union membership, as a result of suing the employer due to a breach of the employment contract or because of allowed exemptions for personal or vacation purposes and other cases provided by law. Cancellations must be made at least one month in advance.

Part VIII. Wages (articles 105–115): Wages must be paid in legal currency and cannot be less than the agreed minimum in the collective agreement. They must be paid every month not later than the 15th of the following month. Other paid expenses include food, transport, work trips, field work, use of private cars, living separately from the family and death of the employee or family member.

Part IX. Working Hours (articles 116–131): Full-time work cannot exceed 40 hours per week but cannot be less than 36 hours per week. Overtime can be up to 10 hours per week at the request of the employer. It is paid as a bonus, but after 150 hours of overtime, if the employee does not have more than 21 days of absence from work, the employee receives up to one average salary.

Part X. Breaks and Vacations (articles 132–155). Breaks during the work day are from 15 to 30 minutes. Depending on whether the employee is full time, at least one day per week is a holiday. During the year, 20 to 26 work days are holidays if not stipulated otherwise in the collective agreement. Paid vacations of up to seven working days are possible for personal and family reasons, while unpaid leave cannot exceed three months in one year. An employee cannot lose a job because of injury, vocational training, professional education or election to public positions. Concerning training and education, the employer should provide paid leave and other forms of assistance that should be stipulated in a collective agreement.

Part XI. Compensation for Damages (articles 156–159): Both the

employee and the employer should compensate each other for damages to the other party made either intentionally or accidentally.

Part XII. Special Protection (articles 160–171): This part provides protection of employees' positions during pregnancy and raising children. It is mainly intended for women but is applicable to both parents. Pregnancy leave is 9 months starting as early as 45 days into pregnancy and is compulsory 28 days before delivery.

Part XIII. Protection of Workers under the Age of Eighteen (articles 172–176): Workers under 18 years of age must not perform heavy physical work, work during the night or work longer than 40 hours per week.

Part XIV. Protection of Disabled Persons (articles 177–178): The employer is supposed to provide special conditions for disabled workers.

Part XV. Special Protection for Elderly Workers (articles 179–180): Women over 57 and men over 59 cannot work overtime or during the night and have other protection as well.

Part XVI. Implementation and Protection of the Rights, Obligations and Responsibilities of Work Relations (Article 181): The employee should first appeal to the employer about a breach of his rights. If a satisfactory answer is not received in 15 days, the employee can appeal to the courts.

Part XVII. Peaceful Resolution of Individual and Collective Work Disagreements (articles 182–183): Resolutions can be reached through a three-person council, through representatives of the employer and the employees and one chosen jointly or through arbitration if it is envisaged in the collective agreement.

Part XVIII. Unions and Associations of Employers (articles 184–202): Unions and associations are freely made on a voluntary basis, cannot be prohibited and are for protecting common interests. They are registered in the Ministry for Labor and Social Policy. They can merge with similar

organizations or enter international federations. They have their own statutes with procedures for making collective agreements. Membership in a union may not jeopardize a worker's right for employment in any way. The unions can have representatives in the organizations where they have members who enjoy legal protection from dismissal while performing this duty.

Part XIX. Collective Agreements (articles 203–235): A general collective agreement should be made on a national level between the association of employers and representatives of employees. For a union to represent employees for negotiating a collective agreement it should have at least 33% of the employees as members. Agreements are made after negotiations between interested parties. They last for two years with possibilities for extension. Once concluded they are registered with the Ministry of Labor and published in the *Official Gazette*.

Part XX. Strikes (articles 236–245): Strikes can be organized by the unions or other workers' organizations after written notification to the employer. The courts can prevent a strike. During a strike, the employer can remove no more than 2% of employees temporarily but cannot fire any and has to pay wages and other social benefits.

Part XXI. Economic and Social Council (articles 246–247): This is a tripartite body consisting of the Government, unions and associations of employers aiming to improve and protect economical development with social protection. The Council can comment on existing regulations, advise state institutions and propose new solutions.

Part XXII. Working Abroad (articles 248–249): The employer can ask the employee to work abroad in a contract specifying the necessary details.

Part XXIII. Work of Children under Fifteen Years of Age, Pupils and Students (articles 250–252): Full-time employment for minors is strictly prohibited. They can be engaged mainly in entertainment and arts on the basis of a contract for a certain paid period.

Part XXIV. Work Card (articles 253–255): Every worker has an ID with basic personal information that he/she gives to the employer for the duration of the contract after the work contract is signed.

Part XXV. Inspection Control in Work Relations (articles 256–263): The Ministry of Labor oversees that labor inspections fulfill the law and can be made in any organization at the request of employees, unions or employers. If employers do not respect the workers rights, they face fines of up to 150,000 dinars (about 2500 euros) or they are prohibited from operating for 7 days for the first offense and for 30 days for repeated violations.

Part XXVI. Sanctions and Penal Rules (articles 264–266): Employers face fines from 100,000 to 200,000 dinars (1600 to 3200 euros) for breaches of the law while unions or associations of employees can be fined from 50,000 do 70,000 dinars (820 to 1150 euros).

Part XXVII. Final Provisions (articles 267–273): A specific body regulating a part of the mass media sector is the Council for Radio Diffusion; however, it provides rules of a more technical nature and content for the electronic media. It does not deal with labor relations in the mass media. The Association of Journalists in Macedonia has enacted the “Code for Journalists” which provides the framework for performing the duties and obligations of a journalist in Macedonia. The Code strives to set best practices for professionalism and ethical standards in the profession and does not deal with the rights of the journalists.

In Article 8 of its statute, the Association of Journalists has included under goals and aims, “the protection and improvement of the freedoms, rights and responsibilities of journalists,” and further in Article 10 that it will accomplish its goals through “cooperation with unions representing journalists in the Republic of Macedonia.”⁴ However there is no concrete body or any procedure that would deal with labor relations in the mass media, their improvement or their protection. The list of duties

⁴ Statute of the Association of Journalists in Macedonia (ZNM), www.znm.org.mk

for the administration of the association (the Assembly, Executive Board, President and Advisory Board) is more oriented to the work of the organization itself. Only a vague remark on regional representation is made under the duties of the regional sections, basically that they should take care of "the working and living conditions of journalists."⁵

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

Of the 60 journalists who returned the survey questionnaires, around two thirds had signed contracts with their employers and the rest were freelancers. In all, 54% were male, and 83% were between the ages of 25 and 44. Most had worked more than 10 years in the profession (40%), while 30% had worked from 6 to 10 years and 26% had worked from 1 to 5 years. With respect to the type of media, 44% worked for newspapers, 36% for TV stations, 13% for radio stations and 7% worked in on-line media and news agencies. Seventy percent of the respondents were journalists and reporters, 30% were in managerial positions (editors and directors), 75% of the journalists were employed in private (national or international) media outlets and the rest were employed in public outlets.

The journalists strongly insisted on preserving their anonymity when providing data. This is because they were worried about retaining their jobs, but it also is an indication that owners' actions may be contrary to the provisions of the law and may further violate provisions in individual labor agreements. This could be one reason why only 60 out of 100 questionnaires were returned. According to informal contacts with journalists from some media outlets, they were advised by their chief editors or directors not to answer the questionnaire. According to these media outlets, answers to the questions could be given only at the request of official state authorities, not by NGOs. Such a low level of knowledge and understanding of the owners about modern needs for information, the research necessary to obtain it and the advantages of cooperating with NGOs clearly indicates the level at which employment standards are

⁵ *Ibid*, Article 35 line 3.

respected and the conditions under which Macedonian journalists have been working. According to the findings of the interviews, informal pressure on journalists is present to a significant extent.

An in-depth analysis of the questions related to contracts and working premises yielded the following results.

- More than 90% of the journalists worked on their employers' premises; in 60% of the cases the employer made the decision about the place of work.
- A total of 67% of the respondents had signed individual labor contracts with their employers.
- Around 45% of those agreements were for an indefinite period of time.
- With respect to protection from unjustified sanctions and dismissals, 41% did not consider the agreement they had signed offered protection, 35% thought the agreement did offer protection and 20% were not familiar with the guarantees in the agreement.

In conclusion, a large number of the journalists surveyed had not signed individual labor agreements with their employers and thus had no assurance of long-term employment or the benefits it brings and no formal obligations to or feelings of commitment and loyalty toward media outlet and its policies (Figure 1). Furthermore, of the journalists who had signed contracts, the majority (61%) were either not familiar with the provisions in the agreement or did not think it protected them from unjustified dismissal or groundless sanctions. One respondent who had been working in the same TV station for more than 14 years said he had never signed any agreement with the owner, "...in fact I have never heard that any of my colleagues have signed any detailed agreement with the owner. Some of them are signing very general contracts that don't guarantee them anything."

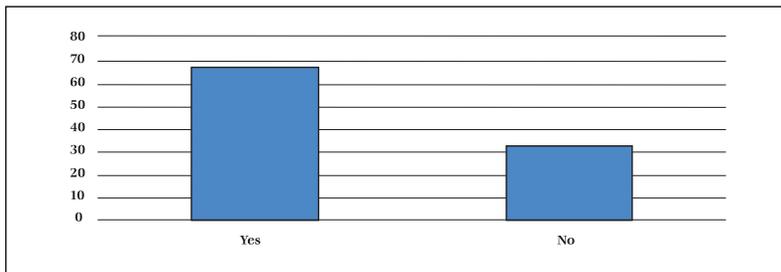
There is a trend among owners to hire freelancers to do most of the work. According to the interviews with freelancers, notwithstanding the

fact that they are not regular staff employees, they perceive of themselves as having many more responsibilities than regular employees. The only advantage of freelancing is that they are free to work for other media outlets.

Journalists' answers to the questions related to respect for basic labor rights indicated that in general, there were no serious violations. A closer look yielded the following results.

- In all, 13% of the respondents thought that employers usually didn't respect their rights concerning salaries while 11% thought that happened occasionally.
- Regarding working conditions, 30% believed that the owners violated their employment rights always or sometimes while 65% had the opposite opinion.
- A total of 40% thought that employers didn't respect the length of the working day by violating rest time.
- Most (around 70%) said that employers generally respected their rights related to annual vacations.

Figure 1: Percentage of Journalists with Individual Labor Contracts



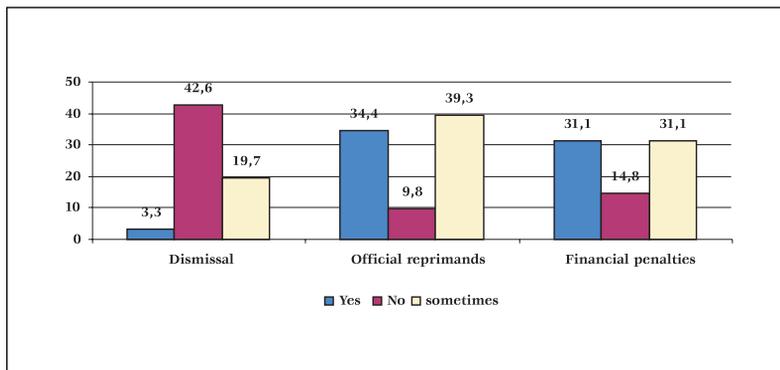
Most violations of rights occur when journalists are assigned work that is not stipulated in their contracts. In two cases, respondents said there was discrimination based on national or sexual orientation.

The overall perception is that journalists are not satisfied with their

salaries. Most of them believed that their salaries were not indicative of the work they accomplished. An argument against this statement is that 54% of the respondents had incomes higher than the average salary in the country.⁶ According to the regional research study *Ethics and Journalism*, "There is a considerable number of journalists in Macedonia who perform some other function on top of their journalistic one, but that fact usually is kept a secret."⁷

The most frequently used methods of penalizing journalists for mistakes or violations of professional ethics or working schedules was official reprimands. Financial penalties were also common while dismissals were the exception (Figure 2).

Figure 2: Frequently used Means of Penalizing Journalists



DIFFERENCES BETWEEN TYPICALLY EMPLOYED AND ATYPICALLY EMPLOYED WORKERS

Altogether, 27% of males and 32% of females were freelancers, and most of them were younger than 35 years of age. None of the journalists with contracts had been working less than one year at their media outlets, but nearly 30% of the freelancers had worked more than 10 years in media

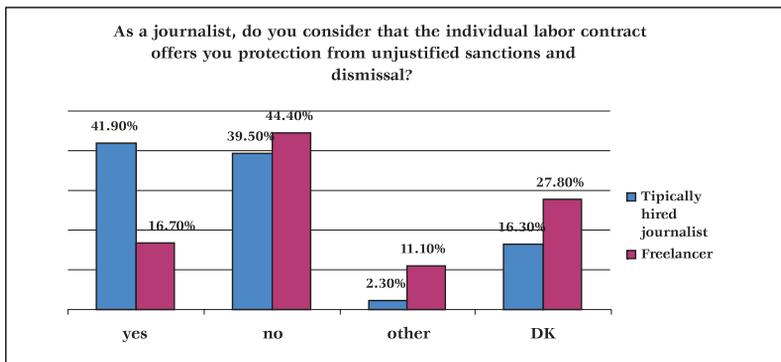
⁶ The average salary in Macedonia is 14,000 dinars (around 230 euros).

⁷ Regional research study *Ethics and Journalism*, Media Centre, Belgrade 2005, p. 65.

without signing individual labor contracts with their employers. Of the workers in TV stations, 90% were regularly hired as were 70% of those in newspapers. In contrast, 60% of the employees in radio stations were freelancers and 100% of those in the on-line media were. Public media had the largest number of freelancers (33%) while in the private national and private international outlets, 30% and 22% respectively were freelancers.

On the whole, freelance journalists were less likely to think that employment contracts offered protection from unjustified sanctions and dismissal. It is also interesting that a significant percentage of both groups did not know (Figure 3).

Figure 3: Protection from Sanctions and Dismissal



DK = don't know

An analysis of both the questionnaires and interviews showed that the status of workers with contracts was better than that of freelancers. Freelancers interviewed said they did not have any job security and did not have benefits like health insurance, pension schemes or annual vacations. According to one freelancer working for a daily newspaper, "In Macedonia the status of freelancer doesn't have any advantages because the real price of the journalist's product, no matter what the status of the journalist, cannot be evaluated. Freelancers don't have any employment

rights but do not have other options. As a freelancer it is almost impossible to survive if you don't have other sources of income." A freelance TV journalist said:

There is a standard procedure that freelancers are to be paid last in the media outlets. If there is not enough money for all journalists, first regular staff journalists receive their salaries while the freelancers are first not to be paid for a job accomplished. Another important issue is that the owner can dismiss you or sanction you without any explanation.

With respect to the place of work, all the typically hired journalists worked on their employers' premises while the atypically hired had more options for choosing their work places.

Regarding violations of labor rights by the owners and methods used for penalizing journalists, the general conclusion is that journalists working in TV stations and newspapers are subject to more violations of their labor rights with respect to the payment of their salaries. The same journalists had the most complaints about their working conditions. TV journalists also cited a lack of respect by the owners about their rights to rest time during the day (23%) and violations on the length of their working days (32%).

Imposing financial penalties for mistakes committed is mainly used in newspapers and TV stations in contrast to radio stations and on-line media where official reprimands were most commonly used. Dismissals were used in the on-line media more frequently than in other types of media, which could be due to the fact that 100% of the employees are freelancers. In private national media, financial sanctions were more likely while in the public and private international media, official reprimands were more common. Only 5% of the respondents (all of them in private national media) said that dismissal was the most frequently used method for penalizing journalists (30% freelancers).

To sum up, workers in the media, no matter what their status (typically or atypically hired) experienced violations of their employment rights in

an equal measure. In general, those violations were mostly connected with the payment of salaries and respect for the length of the working day. Additional information from the surveys is the following.

- All typically hired journalists worked on their employers' premises while one third of the freelancers surveyed worked at home.
- Freelancers had much more independence when deciding where they would work.
- The real length of the working week of typically hired journalists was much longer (very often more than 40 hours) compared to that of the atypically hired.
- The salaries of freelancers were much lower than the average salary in the country while those of journalists with contracts were higher than the average.
- Around 75% of the typically hired journalists benefited from health insurance, unemployment allowances or pension schemes; this was not the case for 83% of the freelancers.
- A significantly larger percentage of typically hired journalists decided on their own what they will write about.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

The phenomenon of censorship and self-censorship is present in Macedonia to a high degree. There are numerous examples in everyday journalism that support this statement, yet most of the journalists who have been censored don't want to speak about it or insist on anonymity. The main obstacles to combating censorship or self-censorship in the media is the owners (they are well-known businessmen) on one side and close relations to the political authorities in the state on the other. For instance, the owners of Sitel and Kanal 5 (two national TV stations) are leaders of political parties while the owner of A1 (the most popular national TV station) had extensive support for his own campaign for parliamentary elections from his station. According to *Ethics and Journalism*:

In order for media to be able to survive financially, they have to be very careful not to criticize advertisers in a direct and open way ... issues that cannot avoid censorship ... and even 'commercial prohibition' and limitations on the freedom of information.⁸ Whole sentences are added to [journalists] stories or ... they are asked to sign already-made or ordered stories.

Notwithstanding the fact that most regularly hired journalists decide on their own what they will write about, there is a great deal of influence from their superiors. More than 60% of the total number of journalists surveyed had been censored by their chief editors or employers. To the question, "Are you familiar with cases of imposing censorship on journalists?" one respondent from the NGO sector answered that he had never heard of journalists writing about anything related to the business of the owner of the media outlet, while in the words of another journalist, "The policy of the media is that editors always have the last word about the final product."

VI. JOURNALISTS TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

There is only one trade union in Macedonia representing journalists, and that one is not exclusively for journalists or for the mass media sector. GIFIH stands for the Union of Graphical, Information, Film and Publishing Industry and Production of Paper in the Republic of Macedonia. It is part of the Alliance of Unions in Macedonia (SSM) as one of the 17 branch unions. SSM with all of its branches, GIFIH included, is a legacy of socialist times. GIFIH has only one permanent staff member who undertakes responsibility for the five areas it covers as a, "...Union that coordinates the specific union organizations in the various areas."⁹ Each area has its own board. The President of the Board of Journalists performs this duty on a voluntary basis while being a full-time employee in a daily newspaper. The tasks of the Union are the following: to negotiate with the owners; to provide free legal aid; to protect material, work status and social interests; to improve working conditions; to improve conditions for wages and honoraria; to improve social and pension insur-

⁸ *Ibid*, p.66.

⁹ *Interview with Milka Maneva, General Secretary of GIFIH (SSM), Skopje 20.08.2007*

ance and to provide free training in the protection of labor and union rights.¹⁰

The union is a legal entity, registered with the Ministry of Labor and has the competence to represent its members to the employers. All persons working in the mass media are eligible to become members in the union, so it represents technical personnel as well as journalists. The membership fee is set at 1% of the monthly wage; however, in order to become a member, workers first must have a “valid contract with an employer.”¹¹

There are no current figures for the exact membership in the union due to drastic changes during the transition period 1990–2005. At the beginning of 1990, however, “GIFIH had some 6,000 members of which some 10–15% were journalists.”¹² The membership up to 2003 decreased by 50% due to the closure of factories mainly in the publishing industry and also to the restructuring and later privatization of *NIP Nova Makedonija*, the state-owned print media outlet. An estimate based on previous statistics would be that 300–500 workers from the mass media sector are members of GIFIH, but they are not all journalists, and they come from various media outlets.

Most work at the publicly owned MRTV, however there are members who work for news agencies (Macedonian Information Agency), daily newspapers (*Utrinski Vesnik* and *Vreme*) and local radio and TV stations. There is no special collective agreement for the mass media sector, and only MRTV has one between management and the workers. It took a year and half to negotiate the agreement, but now the outlet is undergoing reforms due to its debts and financial crisis, so implementation remains uncertain. The agreement covers the main responsibilities of the employers: minimum wages and indexes for calculating wages, working hours, obligations of employees and employer, overtime, breaks and vacations, dismissal procedures and workers' protection and special protection clauses following the framework of the Law on Work Relations.

10 GIFIH brochure, “Who are we?”, SSM: Skopje 2007

11 Interview with Milka Maneva, General Secretary of GIFIH (SSM), Skopje 20.08.2007

12 *Ibid*

GIFIH has prepared a written proposal for a special collective agreement for the media sector similar to the one with MRTV but points out that, "Further negotiations with employers and workers must be held to specify all of conditions."¹³ They have targeted potential negotiating partners, namely the Association of Private Electronic Media in Macedonia and the management of WAZ Group, as representatives of the largest employers but still have not made contact with them. Some members of GIFIH sporadically ask for assistance concerning their working relations. GIFIH tries to negotiate and persuade the employer if a breach is made, or when the need arises GIFIH advises the member to take legal actions and does so on the member's behalf. GIFIH representatives note that they have, "...a 95% success rate with legal actions against employers in mass media in cases when the workers had a valid working contract."¹⁴ However, they also note that most journalists do not have valid contracts and are sometimes threatened or are afraid to ask for assistance against their employers.

Other actions taken by GIFIH include training seminars for journalists on their labor rights and on trade union organizations working in partnership with a variety of different stakeholders. Also, GIFIH reacts whenever certain ILO conventions are not obeyed by asking for action by the Government. After 2001, rules for protecting and insuring journalists reporting on combat and conflict were enacted in Macedonia in line with international standards. GIFIH also aims to raise awareness among journalists and to expand its membership. A strategy for communication is being developed that is to be implemented in the outlets where they already have a branch organization.¹⁵

VII. CONCLUSIONS AND RECOMMENDATIONS

As a result of the survey and legislative analysis, several main conclusions can be emphasized.

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

- The majority of journalists had not signed individual labor agreements with their employers.
- Of those with agreements, 41% did not consider that the agreement protected them from unjustified sanctions and dismissals.
- Most of the owners were hiring freelancers to do the main work of the media outlet.
- More than a half of the journalists surveyed were not satisfied with the salary that they were receiving.
- The predominant method for penalizing journalists for mistakes was official reprimands.

RECOMMENDATIONS

- Enhance the membership of GIFIH, and create stronger interactions between the Association of Journalists and GIFIH.
- The Association of Journalists and GIFIH should engage in awareness raising of the need for trade unions for journalists.
- Start communications and negotiations between GIFIH and the largest employers in the mass media (MRTV, Associations of Electronic and Published Media in Macedonia, WAZ) for a sector collective agreement.
- The Association of Journalists and individual journalists should raise public awareness of the need for better regulated labor relations in the mass media as a necessary pre-requisite for improving the quality of coverage.
- Engage the Economical and Social Council to analyze labor relations in the mass media and give its opinion to the Government for improving the regulations where needed.
- Request an inspection of all media outlets to determine the current state of affairs and fulfillment of the provisions in the Law for Labor Relations in the mass media sector.

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Moldova

by Alexei Marciuc

I. ABSTRACT

In all, 53 people were interviewed: 72% were full-time workers and 28% were freelancers working in all types of media in Moldova. More than half of the participants worked as journalists or reporters, 21% were managers (editors, deputy editors, department editors, producers).

Moldova has signed the principle international acts regulating labor relations, and the Moldovan Constitution guarantees and protects the right to work and to choose a profession, the right to create and join trade unions and to strike and prohibits forced labor. The main document that regulates labor relations in the media is the Labor Code of 2003.

The Code stipulates that employers must conclude individual employment contracts in writing. While 75% of those surveyed said that they had an individual employment contract, many media outlets violate the rule for concluding them in writing. Furthermore, it is a common practice to unfairly conclude fixed-term contracts to avoid paying all the benefits guaranteed in an indefinite contract and to allow for ease of dismissal. Most violations were working weeks that exceeded 40 hours, underpayment of wages, substandard working conditions and loss of holidays and paid annual leave.

A journalist's right to professional independence with respect to internal editorial policy often is limited in Moldova. Although the offence of slander was removed from the penal code in 2004, there is still self-censorship because editors or media outlet owners refuse to publish or broadcast articles for fear of being sued in court. Information and state advertising are also denied to outlets that are not perceived as loyal to the government. Two thirds of those interviewed said that they either constantly or intermittently felt that their working relationships imposed

a certain censorship on them or that they practiced self-censorship as a result of these relationships.

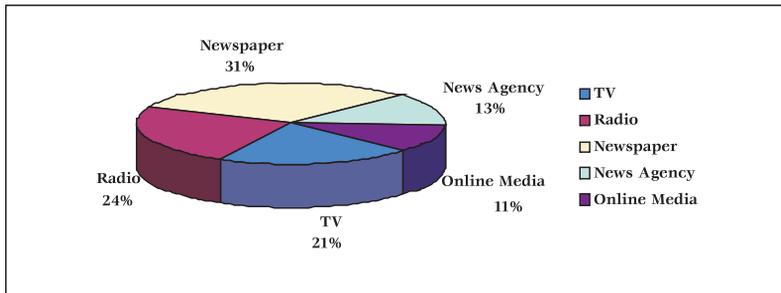
The Union of Journalists of Moldova (UJM) was created in 1957 and currently has about 1500 members. In all, 17% of the respondents were members of trade unions, but none of them thought their organization was efficient or that it would be able to protect them if their rights were violated. During the interviews, 80% expressed the need to create a professional union for media workers that would be able to protect its members' rights and ensure them a sufficient level of support.

The level of legal awareness both among the journalists and media management must be improved. Furthermore, the media in Moldova would benefit from the creation of special courts to solve labor disputes.

II. OVERVIEW

Questionnaires were distributed electronically, and personally during a series of workshops and at media outlets to journalists throughout the country. As a rule, the interviews were conducted directly at the workplace. The study included all types of media working in Moldova (Figure 1).¹ In addition to full-time media workers, freelancers and media managers, representatives of the International Labour Organization (ILO), the Council of Europe, non-government organizations (NGOs) and trade unions were surveyed. In all, 53 people were interviewed of whom 72% were full-time workers and 28% were freelancers. Regarding gender, 51% were women. Work experience varied from 1 to 39 years; 15% were 18–24 years, 51% were 25–34 years, 9% were 35–44 years (9%) and 25% were more than 45 years old. More than half of the participants worked as journalists or reporters, 21% were managers (editors, deputy editors, department editors, producers). Technical staff and photographers also participated. Two thirds of the respondents worked for private media, 23% for public media and 11% for private media financed with foreign capital.

1 Some respondents worked for two different types of media as full-time and freelance workers.

Figure 1: Percentage of Respondents by Media Type

National labor legislation and relevant international acts in Moldova that are directly or indirectly related to regulating labor relationships in the media were also studied and analyzed. While this is the first comprehensive study of media and labor relations in the country, information from related studies conducted by the Independent Journalism Center, the Association of Moldovan Journalists-Economists and other NGOs was also included.

The questionnaire was based on the sample from the Independent Journalism Center (IJC) and included questions on the validity of present labor legislation, the content of individual employment contracts, violations of labor legislation, working hours and rest time, social benefit guarantees, payment of wages and application of financial sanctions, trade union activities, censorship and self-censorship and the protection of journalists' copyrights. A separate block of questions referred to the professional and personal characteristics of the respondents; we ensured the confidentiality of their information. An especially important open question asked respondents to state the most critical issues in labor relations.

The respondents proportionally represented Moldova's media outlets, and their opinions accurately reflect those of journalists working in the field. The results of this study may therefore be used with a high degree of confidence.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The Republic of Moldova has signed the principle international acts regulating labor relations and has ratified 38 ILO conventions,² some of which refer to the media:

- Forty-Hour Week, no. 47, 1935 (09/12/1997),
- Labour Inspection, no. 81, 1947 (12/08/1996),
- Freedom of Association and Protection of the Right to Organize, no. 87, 1948 (12/08/1996),
- Protection of Wages, no. 95, 1949 (12/08/1996),
- Right to Organize and Collective Bargaining, no. 98, 1949 (12/08/1996),
- Equal Remuneration, no. 100, 1951 (23/03/2000),
- Discrimination (Employment and Occupation), no. 111, 1958 (12/08/1996),
- Minimum Wage, no. 131, 1970 (23/03/2000),
- Minimum Age, no. 138, 1973 (21.09.1999),
- Collective Bargaining, no. 154, 1981 (14/02/1997),
- Occupational Safety and Health, no. 155, 1981 (28/04/2000).

In 2001, Parliament partly ratified 63 of the 98 paragraphs of the European Social Charter of the Council of Europe of 1961. Their reservations were about the right of workers to remuneration that would ensure them and their families a satisfactory livelihood; about increased wages for overtime work and about the right of young workers and apprentices to fair wages and other corresponding raises in wages. In 2006, the European Committee for Social Rights negotiated with representatives of the government about ratifying the other clauses of the Charter, but this issue has still not been resolved.³

Regarding Commonwealth of Independent States (CIS) acts, the Conven-

² The information about the ratification of conventions was taken from the official website of the International Labour Organization: <http://www.ilo.org/ilolex/english/newratframeE.htm>.

³ The implementation of the European Social Charter in the Council of Europe Member States: survey by country. Moldova. http://www.coe.int/t/e/human_rights/esc/5_survey_by_country/Moldova_en.pdf

tion of the International Union for Improving Qualifications and Supporting the Creative Work of Journalists was ratified by Parliament in 1998.⁴ The objective of the Union is to make governments create good working conditions for independent media in member countries, but the principles of this Convention have not yet been implemented.

The Moldovan Constitution guarantees and protects the right to work and to choose a profession, the right to create and join trade unions and to a strike and prohibits forced labor.⁵ The professional activities of a journalist who has established a working relationship with a media outlet are also regulated by national legislation on media, but a journalist is simultaneously subject to the provisions of Moldovan labor legislation. As a rule, these laws treat journalists the same as other categories of citizens.

The main document that regulates labor relations in the media is the Labor Code of the Republic of Moldova adopted by Parliament on 28 March 2003. It regulates all aspects of individual and collective labor relations. Its provisions are mandatory for citizens, foreign nationals and stateless persons with individual employment contracts with local employers and for all employers including natural or legal persons in the public and private sectors. The Code states that the labor relations of media workers have special provisions set forth in legislation.⁶ In addition, the Press Law stipulates that a journalist is, “a person who develops literature and advertising for mass media based on a contract or in other conditions in compliance with the provision of the legislation in force.”⁷

As stipulated in Article 4 of the Labor Code, labor relations in the media are additionally regulated by the following:

- Constitution of the Republic of Moldova;
- parliamentary decisions;
- decrees of the President of Moldova;

⁴ Decision No. 1604-XIII of March 17, 1998.

⁵ Articles 42-45 of the R Constitution of 29/07/1994.

⁶ Article 325.

⁷ Article 19 of law 243 of 26/10/1994.

- government decisions and ordinances;
- labor acts issued by central public authorities within the limits of the powers delegated to them by the government;
- acts of local public authorities;
- statutes of enterprises;
- collective labor contracts and collective agreements;
- international contracts, agreements, conventions and other international acts, to which Moldova is a party.

In line with the provisions of international laws and the Constitution, the Code also includes the following basic principles that refer to the media:

- the right of each worker to fair working conditions corresponding to standards of safety and health and the right to rest including limiting working hours, annual paid holidays, daily rest, days off and non-working holidays;
- protection against unemployment;
- equality of rights and opportunities of workers;
- guarantee of full and fair remuneration to provide a decent livelihood;
- the right of workers and employers to associate to protect their rights and interests including the rights of workers to associate in trade unions;
- employer's responsibility to compensate workers fully for pecuniary and non-pecuniary damages caused while executing duties;
- state guarantees for ensuring workers' and employers' rights are observed;
- the right of each worker to directly address supervisory bodies with labor jurisdiction;
- obligations of collective and individual employment contracts including the employer's right to demand performance of duties and care for the property of the employer and the worker's right to demand employers observe labor laws;
- the right of trade unions to exercise control over the observance of labor legislation;

- the right to protect a journalist's honor, dignity and professional reputation;
- the right to mandatory social and medical insurance.

While the Code and labor laws provide for basic rights and guarantees for workers, individual and collective labor contracts may provide additional rights and guarantees, but any clauses that deny the basic rights in labor laws are void. In compliance with the Press Law, journalists also have specific rights and liabilities.⁸ In particular, they have the right to refuse to prepare and/or sign articles that are against their convictions or that have been changed during editing, they can demand anonymity and they have privileges regarding transport.

The Code provides for the concept of social partnership, i.e., “a system of mutual relationships between workers (their representatives), employers (their representatives) and corresponding public authorities in the process of determining and realizing the social and economic rights and interests of the parties.” The social partnership in an enterprise is between the workers and the employers via their representatives while at the branch, regional or national level, trade unions, employers associations and public authorities form the partnership.

Another form of social partnership is collective bargaining for collective labor contracts and collective agreements. According to the Labor Code, a collective labor contract is, “the legal act regulating labor and other social relationships at the enterprise concluded in written form between the workers and the employer by their representatives.” The content and structure of the collective labor contract are defined by the parties, but the Code provides a model of recommended mutual responsibilities for workers and employers that may be included. Collective labor contracts may stipulate privileges and advantages for workers and also more favorable working conditions than those stipulated in current legislation. The Code regulates in detail the conditions for concluding collective labor contracts, for their term of validity and for amending them.

⁸ Article 20 of the Press Law No. 243 of 26/10/1994.

The Code defines a collective agreement as, “the legal act establishing the general principles of regulating labor, social and economic relations concluded by authorized representatives of workers and employers at the national, regional and branch levels within the limits of their competence.” It may comprise clauses regulating remuneration, working conditions and safety, work and rest, social partnerships and other issues the parties may define.

The Code provides comprehensive details on regulating individual employment contracts including conditions of conclusion, amendment, dissolution and cessation. Such contracts represent, “an agreement concluded between the worker and the employer on the basis of which the worker pledges to perform work corresponding to a certain specialty, qualification or position to which he is appointed while observing the regulations of the enterprise, and the employer commits himself to providing the worker with working conditions as stipulated in the present Code and other statutes containing labor rights or in the collective labor contract and also to pay full wages.”

According to the Code, the content of an individual employment contract shall comprise the following:

- the worker's surname and name;
- the employer's identification data;
- the term of the contract;
- the date the contract takes effect;
- position and function of the worker;
- specific risks of the position;
- the employer's rights and responsibilities;
- remuneration including wages , bonuses, premiums and material aid;
- indemnifications and allowances for heavy work and work in harmful or dangerous working conditions;
- the place of work;
- work and rest time;

- probationary period (if there is a need);
- the duration of and conditions for granting an annual paid holiday;
- provisions of collective labor contracts and regulations regarding conditions of work;
- social insurance payments;
- medical insurance payments;
- other stipulations that do not contradict those of the legislation in force.

In addition to general terms, the parties may negotiate and include special clauses in an individual employment contract such as mobility, confidentiality and compensation for transport expenses, public utility costs and lodging. Such contracts are concluded as a rule for an indefinite term. An individual employment contract may also be concluded for a fixed period not exceeding five years for creative workers in art and culture and workers employed for temporary work in compliance with the Labor Code. If the term is not specified in the individual employment contract, then the contract shall be considered to be for an indefinite period.

In compliance with the Labor Code, a worker is entitled to conclude an individual employment contract with two or more employers at the same time. Unlike the former legislation, the current Labor Code stipulates that employers must conclude individual employment contracts in writing. The contract takes effect on the date it is signed if not otherwise stipulated. If an individual employment contract was not concluded in written form, the contract shall be considered as concluded for an indefinite term and legally effective from the date the employee started to work. When concluding an individual employment contract, the employer may set a probationary period of up to three months for employees and of up to six months for officers. For fixed-term contracts, the probationary period shall be reduced.

Special contracts can be written for performing specific assignments.

By entering into such a contract, the worker undertakes to carry out for the employer the assignments stipulated therein and is entitled to receive monthly remuneration in the form of wages. This contract shall be used in cases when it is not possible to determine the precise time for completing a task. The contracting parties may agree on the general terms of execution and on terms for carrying out certain aspects of the work. The content of the contract shall be determined by the parties observing the general provisions of the Labor Code. The legislation also provides special conditions for accepting and terminating this type of employment contract.

A worker is entitled to resign, that is, to dissolve an individual employment contract concluded for an indefinite term of his own volition. He shall notify his employer 14 days beforehand in writing. The Labor Code indicates the grounds for the dismissal of the worker by the employer. It is prohibited to dismiss workers who are members of trade unions without the preliminary consent of the trade union body or without preliminary consultation with it. The Labor Code stipulates a special procedure for dismissal in the event of the liquidation of the enterprise. Workers who are illegally dismissed or transferred to another job may be re-employed by means of direct negotiations with the employer or by a court decision in the case of litigation. If the court finds that the employee was improperly dismissed, the employer shall compensate the employee for damages caused including both compensation for the period of forced absence from work and for the costs of litigation.

The normal duration of the work week shall not exceed 40 hours. For some categories of workers depending on age, state of health, working conditions and other circumstances, in compliance with legislation and individual employment contracts, reduced work weeks of 24 and 35 hours have been established. Also, for some categories of workers whose jobs demand increased intellectual and psycho-emotional efforts, the work week shall not exceed 35 hours. Moldovan legislation does not include creative media workers in this category⁹ as countries like Russia do.

⁹ Government Decision No. 1254 of 15/11/2004 Regulations on Payment of Wages to Certain Categories of Workers Who Benefit from Reduced Duration of Work Time.

Working hours shall be distributed, as a rule, in a uniform way as eight hours per day for five days with two days off. Both the worker and the employer may, however, agree on a reduced working day or a reduced working week. Remuneration in such cases shall be proportional to the time worked, or it can depend on the amount of work done. This does not involve any restrictions on the worker's rights. In exceptional cases, provisions can be made in a collective labor agreement and/or the internal regulations of the enterprise for a six-day working week with one day off. Workers under 16 years of age may not work more than 5 hours, and workers from 16 to 18 years have a limit of 7 hours. The maximum duration of daily work shall not exceed 10 hours within the normal 40-hour working week. Employers may, with a worker's written approval, set up individual work schedules with flexible working hours provided they are allowable by enterprise regulations and collective or individual employment contracts.

The duration of the working day on the eve of a holiday shall be at least one hour less for all workers except those who have reduced working hours. The Labor Code also regulates overtime work and night work. The employer must keep track of the time that was actually worked by each employee.

During the working day, employees should have a break for a meal the duration of which shall not be less than 30 minutes that, as a rule, is not included as work time. Weekly rest shall be for two consecutive days, generally on Saturday and Sunday. In some cases, the weekly rest period may be granted on other days of the week. In any case, it shall not be less than 42 hours except for six-day working weeks.

The right to an annual paid holiday is guaranteed to all workers with individual employment contracts and is not subject to concessions, refusals or restrictions. The duration of a holiday shall be not less than 28 calendar days not including non-working days and holidays. The Labor Code also regulates the way to calculate the length of service entitling an employee to an annual paid holiday and the way it is offered,

the rules for setting up the schedule of holidays and payment of holiday allowances. The annual paid holiday may be deferred or prolonged only in exceptional cases. Not granting the annual paid holiday two years in a row and paying for unused annual leave are forbidden. If an individual employment contract is suspended or terminated, the worker has the right to receive pay for all annual paid holidays that were not used.

Due to family circumstances and for other valid reasons, workers may on written application and with the employer's consent be granted leave without pay for up to 60 calendar days. This may be attached to the annual paid holiday or it may be used separately as agreed with the employer.

Paid sick leave shall be given to all workers who provide a medical certificate. Establishing, calculating and paying the allowance for sick leave from the budget of the state social insurance funds is stipulated in the current legislation; there are no special circumstances for media workers. The Labor Code also regulates granting prenatal and postnatal leave, partially paid leave for child care until the child is three years old and additional leave for caring for children from three to six years old.

Discrimination in setting and paying wages is prohibited. Wages are guaranteed and confidential.

The government sets the guaranteed minimum wage, taxes and additional compensatory payments and bonuses as regulated by the legislation in force. The minimum wage does not include additional payments or bonuses and may not be reduced by clauses in collective or individual employment contracts.

The system for paying wages is established by the law or by other statutes depending on the legal and organizational form of the enterprise, its means of financing and its type of activity. Wage rates, official salaries and other forms and conditions of remuneration at self-supporting enter-

prises are established by collective or individual negotiations between the employer and the workers and are stipulated in collective and individual employment contracts. The employer has the right to establish systems of rewards, additional payments and bonuses. In addition to regular salary payments, workers can avail of profit sharing programs, and employers may grant additional material help according to provisions in the collective labor contract and/or the statutes in force.

The Labor Code also regulates the terms, frequency and place of salary payments; the amount of severance pay if an individual employment contract is terminated; the priority for paying wages in relation to other payments; compensation of loss from delayed wage payments; wage deductions and the responsibility for delay in delivering the work record.

In addition to the general guarantees and compensations stipulated by the Code, workers can also receive compensation for official trips, moving to work in another district and combining work with studies. The Code also specifies who has job priority in staff reductions. As a rule, workers with higher qualification and productivity get priority. The Code also guarantees severance pay for workers dismissed because the business closes, because of staff reductions or in a variety of cases of termination of individual employment contracts.

The internal regulations of an enterprise shall contain health and safety regulations; non-discrimination and non-harassment clauses; employer's and worker's rights and responsibilities; work rules; disciplinary procedures if rules are breached and sanctions applicable in compliance with current legislation and work and rest hours. Employers must acquaint workers with these internal regulations; workers are then legally responsible for complying with them from the date they were so informed.

Discipline is ensured through the creation by the employer of economic, social, legal and organizational conditions for the normal performance of duties, through applying stimuli and compensation for exceptional work and also through sanctions in case rules are breached. For excep-

tional performance, the employer may offer gratitude, bonuses, valuable presents or certificates of honor. Journalists have thus been nominated for state awards for their work and its merit for society.

If rules are breached, the employer may apply disciplinary sanctions in the form of warnings, reprimands, severe reprimands or even dismissal. No more than one disciplinary sanction shall be applied for the same breach; sanctions shall be applied not later than one month from the date of detection of the breach.

Labor legislation requires employers to create the necessary conditions and to promote the professional and technical training of workers who improve their professional skills or study in educational institutions while working. The conditions and forms of vocational training, its duration, the parties' rights and liabilities, as well as the volume of funds allocated for these purposes (not less than 2% of the wage fund) are defined by provisions in the collective labor contract or collective agreement.

A party that causes pecuniary and/or non-pecuniary damage to another party in a labor contract while performing his/her duties shall pay damages in compliance with the provisions set forth in the Labor Code or other acts. The parties may specify their pecuniary responsibilities in the individual and/or collective labor contracts. Compensation shall not, however, include any benefit lost to the employer because of a breach committed by the worker. Non-pecuniary damages shall be compensated in monetary or other form as determined by the parties involved. All disputes and conflicts in connection with compensation for damages shall be referred to the courts. The Labor Code specifies a series of circumstances that exclude workers' pecuniary responsibilities and define their limits.

Labor jurisdiction involves settling individual or collective disputes about negotiations for concluding collective or individual contracts; performance; modifying, suspending or terminating collective or individual employment contracts; collective agreements and workers' social,

economic, professional and cultural interests. The parties involved may be workers, employers, trade unions and other representatives of workers, employers associations and in some cases, the central and local public authorities and the public prosecutor.

Individual labor disputes are disagreements between workers and employers in connection with the individual employment contract and related issues. In 2006, based on practical need, Parliament specified a series of Labor Code amendments and included more grounds for individual labor disputes.¹⁰ An application to settle an individual labor dispute must be submitted to the court within one year of the day the worker learned or should have learned about the violation of his rights or within three years if the subject of the dispute is payment due to the worker. The legislation stipulates a 30-day period for resolving individual labor disputes in court. Judgments issued in such cases can be appealed in compliance with civil legislation.

In all cases when there is a collective labor dispute, the workers' representatives have the right to submit requests to the employer to set up new or to change existing working conditions, to hold collective negotiations and to conclude, modify and execute collective labor contracts. Such requests shall be submitted in writing and must cite concrete references to legislation that was violated. The employer shall provide the workers' representatives with a written answer within five working days from the date the request was received. Equal numbers from all parties to a conflict will form a commission to resolve the issue. If the parties cannot come to an agreement or do not agree with the decision adopted by the commission, each has the right to go to court within a certain time limit.

According to the Labor Code, strikes may be held only to protect workers' professional, economic and social interests and not to pursue political goals. Strikes may be declared provided that all means of settling a collective conflict have been exhausted within the framework of the reconciliation commission. An employer may not hire people to replace

10 amending and complementing the Labor Code. Law No. 8 of 09/02/2006.

strikers. Rules for strikers shall be considered by the National Commission for Consultations and Collective Bargaining under a special law.¹¹ The right to announce and organize a strike at the national level rests with the national trade union. The right to announce and organize a strike at the branch level rests with the branch trade union.

The main regulatory agency is the Labor Inspectorate of the Ministry of Economy and Trade. The Labor Code provides details on its objectives, main powers and employer's responsibilities; however, trade unions have the right to monitor the observance of labor legislation by employers at all enterprises thus creating their own labor inspectorates. They can appoint labor safety representatives who can visit and assess the premises; they can independently assess working conditions and the maintenance of workplace safety; they can request information from employers that is needed to carry out inspections; they can protect the rights and interests of trade union members in a broad spectrum of labor issues and they can file appeals in compliance with procedures set forth in statutes to defend workers' labor, professional, economic and social rights. Nevertheless, the list of trade union rights stipulated in the Labor Code is not a comprehensive one.

Journalists' copyrights are protected by the Law on Copyrights and Related Rights. Literary works (including articles), audio and video productions, photos and work produced by similar methods, translations, adaptations and any other remakes, compilations and databases are eligible for copyrights.¹² The Broadcast Code provides for the observance of copyright and related rights while translating programs by broadcasters.¹³ Legislation provides for property rights to information and for intellectual property rights. The electronic press has related rights concerning interpretation and satellite and cable television programs. News programs are, however, not subject to copyright as they do not have a creative character.¹⁴

11 Law No. 245 of 21/07/2006 *On the Creation and Operation of the National Board for Consultations and Collective Bargaining*, and Branch and National Boards for Consultations and Collective Bargaining.

12 Article 6 p. (2) of the *Law on Copyright and Related Rights No. 293-XIII of 23./11/1994*.

13 Article 18, p. (1) of the *Broadcast Code (No. 260 of 27/07/2006)*.

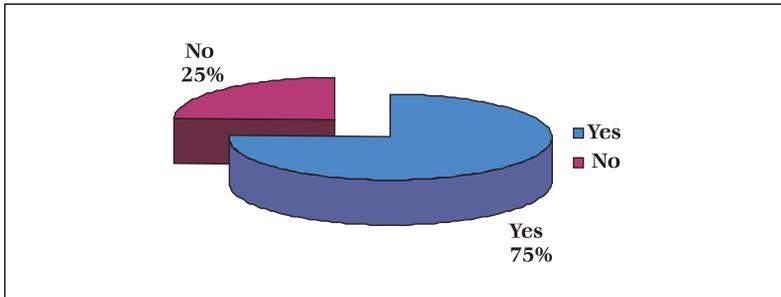
14 Article 7 p. (1) of the *Law on Copyright and Related Rights No. 293-XIII of 23/11/1994*.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

According to the ILO office in Moldova, the provisions of national labor legislation correspond to generally accepted international standards, but often there appear problems with their implementation. The analyses conducted for this report showed that violations of journalists' labor rights do take place in many outlets in all types of media.

There are series of problems related to concluding individual employment contracts. Three fourths of those surveyed said that they had an individual employment contract (Figure 2); 62% said that the contract protected them against unwarranted sanctions and dismissal, but 33% said the opposite and 5% said it was difficult to answer the question. Many media outlets violate the rule for concluding individual employment contracts in writing. This is due to the fact that before the new Labor Code came into force, contracts were concluded either in oral or written form. Since the Code, even amendments to contract clauses must be in writing and signed by the employer and the worker. Nonetheless, some editorial offices continue to make oral agreements, for example, for amending job descriptions.

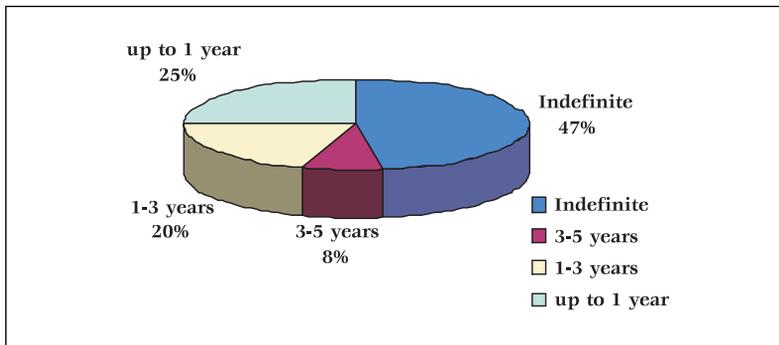
Figure 2: Journalists with Individual Employment Contracts



It is a common practice to conclude fixed-term employment contracts even though the requirements specified in labor legislation for doing so

are not met (Figure 3). Thus some outlets conclude the same contracts with permanent workers that they do when employing temporary substitutes for workers who are absent for lengthy periods or for persons hired to execute certain specific, finite tasks. The Labor Code prohibits concluding such agreements if the purpose is to avoid granting the rights and guarantees to workers who should have indefinite employment contracts. When the fixed-term contract expires, the employer may easily get rid of a worker. In many cases, such contracts influence workers who fear losing their jobs if they are not loyal to management.

Figure 3: Length of Individual Labor Contracts



Not long ago, a Chişinău district court examined a labor dispute between a Chişinău newspaper and a correspondent of that newspaper.¹⁵ The correspondent was dismissed on the expiration of the fixed-term employment contract. The court concluded that the dismissal was illegal because the contract was in breach of the Labor Code as there were no grounds for concluding a fixed-term contract. The correspondent had faithfully performed all tasks set by management and had prepared articles in a timely fashion. Taking into consideration the nature of the job and the working conditions, it could not qualify as temporary work. Furthermore, a fixed-term contract was not in the correspondent's best

¹⁵ The information on this labor dispute was obtained during the interview and by reading court documents.

interests, but he had no choice as the administration insisted on it. In compliance with the court judgment, the newspaper was obliged to restore the correspondent to the same position, to pay him compensation for his forced absence from work and to adjust the employment contract to comply with the law.

A related problem is the content of the contracts. According to a representative of a private radio station and publication, "Many journalists have problems because the duties set out in their contracts are not concretely specified. For instance, in the contract that they have concluded with the employer, as a rule, the topics the journalist should specialize in are not stipulated nor are the volume and genre of articles, topics and programs."

Many breaches are also committed when establishing probationary periods. Probationary clauses should be stipulated in individual employment contracts, but many media outlets do not include them, or they conclude contracts after the probationary period. According to current labor legislation, if a probationary clause is not expressly stated in the contract, then it is understood that the worker was hired without a probationary period. During the interviews, we were also informed that the management of a private periodical required a probationary period for a worker under the age of 18; that is strictly prohibited by the Labor Code.¹⁶

Another problem with probationary periods is that they can be misused. A representative of a private TV channel said, "As far as I know, there's a common practice to employ people with so called probationary periods the duration of which vary. The employers make so many very difficult demands during probation that they can easily say good bye to the worker even without paying the full salary due. This situation is especially true for the lower and medium levels of technical workers and for auxiliary staff."

¹⁶ Article 62 of the Labor Code.

When asked how often employers violated their labor rights, the answers indicated there was a great deal of divergence between the provisions of the Labor Code and the way they are applied in practice in the media sector (Table 1). Two respondents also said that they knew of cases of age discrimination; similar cases were cited in the study “A comprehensive assessment of media needs in Moldova” carried out by the IJC.¹⁷

Table 1: Frequency of Violations of Labor Rights

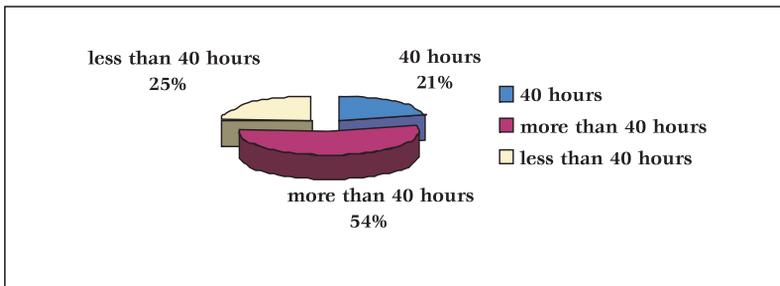
Violations	Yes	No	Sometimes	I don't know
Payment of wages	11%	40%	32%	17%
Working conditions	26%	42%	30%	2%
Duration of the working day	23%	32%	28%	17%
Rest time	23%	39%	30%	8%
Annual paid holiday	25%	50%	21%	4%
Work not stipulated in the employment contract	25%	39%	30%	6%

Two thirds of the respondents (66%) worked on the premises of the employer; the rest worked at home. Many cited the lack of properly equipped work stations and modern computers. In all, 59% of the respondents decided where they would work. More than half (54%) mentioned that the duration of the working week exceeded 40 hours (Figure 4). In 58% of cases, the decision on when to work was made by the employer, not by the journalists. The participants mentioned cases of long working hours, their distribution during the week and loss of week-ends and annual paid holidays. A journalist in public media said:

¹⁷ *Independent Journalism Center and Centre for Sociology and Gender Studies. (forthcoming). “A comprehensive assessment of media needs in Moldova.”*

Some editors and media managers do not understand the nature of the work of a journalist. For instance, they utilize the notion of output rate generally recognized in labor legislation, but it is absurd to take such an approach toward journalists as their jobs are directly related to creativity. That means that work may be created only if there's an inspiration when the journalist has free time or is even at home. It's impossible to create something strictly within the framework of the regulated time a journalist should be at a desk. Sometimes journalists may not create anything during an entire week, but after that they write a series of articles in one day.

Figure 4: The Duration of the Work Week



According to the Labor Inspectorate's report for 2006, 40% of violations of labor legislation involved paying wages. This was true for media outlets too. In January and February 2007, the average monthly wage in Moldova according to the National Bureau of Statistics was 1971 lei (around 119 euros) which was an increase of 22% over the same period in 2006.¹⁸ The Ministry of Economy and Trade, however, stipulated that in 2007 the average wage should be 2015 lei. In addition, 88% of the respondents said that the wages they received were not enough for the work they did; only 12% were satisfied. The participants also were asked to compare their incomes with the average wage in July 2007 (2048 lei) when the survey was carried: 56% said that their incomes were lower; 21% were higher and 23% were the same. Table 2 has a breakdown by media type, position held and work experience. Similar results were obtained in the study "A comprehensive assessment of media needs in

¹⁸ National Bureau of Statistics. "Social and Economic Situation of the Republic of Moldova in January-September 2007." <http://www.statistica.md/>.

Moldova” carried out by the IJC for 60 Moldovan electronic and print media outlets.¹⁹

Table 2: Wages by Media Type, Years of Experience and Position in 2007

		<i>Less than 2000 lei</i>	<i>2000 lei</i>	<i>More than 2000 lei</i>	<i>No pay</i>
Area of Activity	Newspapers/ magazines	52%	19%	22%	7%
	News Agen- cies		100%		
	TV	56%	31%	13%	
	Radio	33%	20%	27%	20%
Years of experi- ence at the insti- tution	Less than 1 year	50%			50%
	1–5 years	59%	15%	19%	7%
	6–10 years	35%	29%	24%	12%
	11–15 years		57%	43%	
	More than 21 years	71%	29%		
Work Experi- ence in media in general	1–5 years	80%	5, %	15%	
	6–10 years	30%	20%	30%	20%
	11–15 years	9%	55%	27%	9%
	16–20 years		40%	40, %	20%
	More than 21 years	57%	29%	7%	7 %

¹⁹ *Independent Journalism Center. Op.cit.*

Type of institution	Public	70%	17%	13%	
	Independent	32%	30%	24%	14%
Position held	Director/ Editor-in-Chief	20%	33%	27%	20%
	Deputy Director/ Deputy Editor	33%	33%	33%	
	Director (Chief) of the Department	43%	14%	29%	14%
	Photo Journalist	50%	50%		
	Reporter/ Correspondent	61%	21%	15%	3%

Respondents were asked if their wages were set and paid in the proper way: 75% said yes, 17% said no and 8% said partially in the proper way. In addition, 78% were covered by medical and social insurance, 14% were not and 8% couldn't answer the question. Official and unofficial data about wages are conditional however, as government agencies do not have complete information and people often do not want to talk about their salaries. Thus in the IJC study in 2007, 97% of media representatives said that their wages were paid properly.²⁰ A private media manager said:

²⁰ *Ibid.*

Let's look at things in a real way. If my accounting was totally transparent, where would I get money to pay wages? The state cares only about completing the budget and not about creating conditions for developing the economy and the activity of independent media. We pay a portion of wages under the table, and the rest in the proper way with due contributions to the social and medical insurance funds. Soon, however, we plan to start paying full wages in the proper way. Before, workers used not to think about social guarantees. They were interested only in getting money and did not care about the way it was done—through a payroll or under the table. Now there's another tendency. Consumer credits are very popular, and in order to get such a credit one must present a wage certificate. More than that, the workers care about payment for sick leave and the way their pensions will be calculated when they retire.

According to the study of 100 media workers representing 38 media outlets including news agencies, TV and radio, newspapers and magazines and independent journalists by the Association of Journalists-Economists and the Committee for Freedom of the Press in 2005 with technical support from the independent sociology and information service Opinia and financial support from the Eurasia Foundation, 84% of the journalists were not satisfied with the way their social and economic rights were protected, and only 14% were satisfied with their relationship with their employers. The most frequently violated rights were of working conditions, the duration of the work day, holidays and remuneration.²¹

Respondents were asked what measures would be taken if they committed an error, a breach of professional ethics or a violation of the work contract (Table 3). In all, 38% stated that as a rule their employers did not apply sanctions unless breaches were spelled out in labor legislation or in the employment contract. There were cases when financial sanctions were applied to journalists because their work did not correspond to the editorial policy of the media outlet.

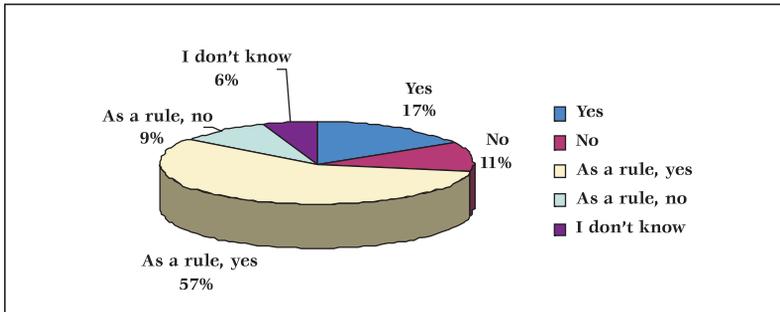
²¹ Association of Journalists-Economists. 2006. *Worker-Employer Relationships in Mass Media: The Law and Reality. A Guide for the Journalists.*

Table 3: Measures Taken by Employers when Employees Commit Errors

<i>Measures taken</i>	<i>Yes</i>	<i>No</i>	<i>Sometimes</i>	<i>I don't know</i>
Financial sanctions(deductions from wages, honorariums, bonuses)	26%	55%	17%	2%
Official reprimands (simple or severe)	44%	49%	7%	0%
Dismissal	9%	53%	30%	8%

Most respondents had no complaints regarding the observance of their copyrights as 74% stated that they were always protected or were protected as a rule (Figure 5); however, there was confusion about who owned the copyright to work they had been assigned by their employers. According to the legislation, the right belongs to the author, but it is transferred automatically to the employer with whom the author has concluded an employment contract. This can, however, be changed by including a cause to that effect in the contract. Some copyright violations occur during editing. Usually, a journalist finds out that an editor made changes only when the article appears in press or is broadcast. This is a direct violation of the legislation on copyrights. Journalists have the right to demand seeing articles after corrections and editorial review and prior to publication as they may decide to remove their names from material that has been significantly altered. A news agency employee said:

There's a rule in our company according to which any communication of an informative character is not subject to copyright, but often the process of gathering news involves even bigger efforts and costs than the preparation of analysis, for instance. At the same time, managers do not take into account the fact that if the news event is reproduced in the form of a report that in addition to the information also supposes an original approach, then such work should be subject to copyright.

Figure 5: Protection of Copyright

One of the journalists interviewed talked about the right to a by line, a pen name or to remain anonymous. In practice, newspapers very often indicate the authors' names in a general list, so it is impossible to determine who actually wrote what. According to the legislation, authorship should be clearly indicated. A journalist working for a private media outlet said:

The right to a by line is a very important right for journalists as many prefer signing their work with a pen name. It is not a secret that not only in our country, but also worldwide, there are cases of illegal persecution of journalists because of their publications. I wanted to include a stipulation in my employment contract concerning what name would be more appropriate to use for future publications, but unfortunately the employer did not accept my proposal.

Freelance journalists in Moldova work for different types of media outlets. Very often they are prominent journalists who gather unique information, produce competitive articles, get exclusive interviews or obtain the rarest photographs and then sell them to media outlets. They may work independently, or they may get orders for articles from employers with whom they have concluded civil contracts. These can be temporary employment contracts or agreements or contracts for specific assignments. The legal status of such agreements depends on their content. If upon concluding a civil contract with a media outlet the worker becomes a staff member, then their relationship is subject

to labor legislation. The worker is then entitled to social guarantees and benefits such as sick leave, annual paid holidays and others that a worker who has concluded a fixed-term (civil) contract is not entitled to.

According to statements made by the managers of some media outlets, very often there are difficulties in regulating the working time and responsibilities of freelance workers. On one hand, freelancers are not subject to the internal regulations of the outlet that invited them to work, but on the other hand, the work they provide has been specifically requested and must meet a deadline. In order to avoid any conflicts, the contract should clearly stipulate all departures from legislation norms regulating the specific type of contract.

The questionnaire included an open question on the most serious problems in labor relations in media. The following items were mentioned:

- low pay;
- some media outlets pay wages totally or partially improperly;
- difficult economic situation in the country;
- journalists lack motivation (including financial motivation) in their work;
- lack of moral stability and unprofessional attitude that makes journalists dependent on employers' will and not on society's needs;
- poor organization of work in media outlets;
- employers demand overtime work and work during days off;
- employers dictate the topics of publications;
- pressure from authorities and employers;
- employers who had not worked before in media do not understand journalists' work;
- no optimal working conditions and modern technical equipment that journalists need;
- lack of individual employment contract that provides salary clause, mandatory annual paid holiday and other social guarantees;

- insufficient legislative provisions for social guarantees for journalists;
- employers do not always observe the provisions in the individual employment contract;
- shortage of young journalists in regional media;
- lack of a body to solve problems between journalists and employers efficiently;
- lack of support and protection from professional and trade unions;
- lack of solidarity among journalists.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

The Moldovan Constitution prohibits censorship stating that, “The mass media may not be subject to censorship.”²² In addition, the Press Law says, “Any kind of censorship of periodicals and news agencies and interference in their activity related to the preparation and distribution of information is prohibited,”²³ and the Broadcast Code states, “Any censorship of TV and radio communication is prohibited.”²⁴ Unfortunately, in practice, these prohibitions do not deter the current system that limits the freedom of the press, so many national and international media researchers and managers of various legal protection organizations agree that there is censorship and self-censorship in Moldova.

During the interviews, cases of informally making recommendations by telephone calls from state authorities on the way specific events should be reported were mentioned. This constitutes direct interference with the editorial policy or content of publications or programs in public and sometimes even private media outlets. Informal censorship also includes “friendly pressure” from policy makers when they ask journalists not to publish certain items or vice versa, when they ask them to adopt a specific point of view on an issue. Information and advertising have been withheld from media outlets that are not perceived as loyal to the government. Instead, the advertising of public companies is placed

²² Article 34, part (5) of the Constitution of 29/07/1994

²³ Article 19 of Law No. 243 of 26/10/1994

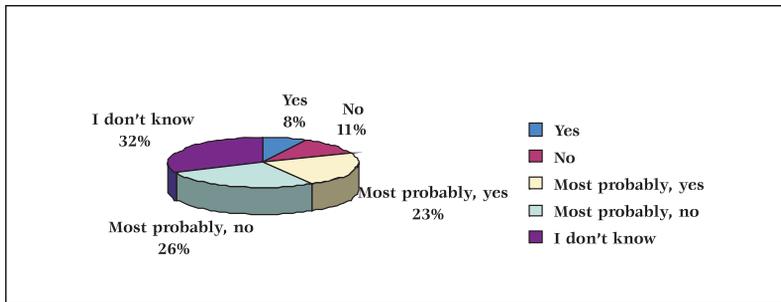
²⁴ Article 8, p.(2) of the Broadcast Code (No. 260 of 27/07/2006).

exclusively in “loyal” outlets. Both journalists and NGO representatives cited cases of abuse of regulatory and control functions directed against a certain media outlet that were nonetheless legal. One example was manipulating contests for issuing licenses to broadcasting companies in order to support political allies and deprive independent or opposition media. Another was selective fiscal, labor or other inspections on outlets “on which pressure needed to be put.”

Most of the respondents acknowledged cases of abuse of the legislation on defamation due to the existing dependence of the courts on the executive branch and to the fact that they are corrupt. In spite of the fact that in 2004 the offence of slander was eliminated from the Penal Code, there’s still a tense situation in this area. One of the most efficient means of putting pressure on the media is the threat of a suit for millions of lei in compensation for damage caused.²⁵ Notwithstanding existing international practices, the plaintiffs request not only denial of facts but also of opinions.

When asked if they would have to pay damages if they were sued in court, 31% said yes, 37% said no and 32% did not know what their employers would do in such cases (Figure 6).

Figure 6: Would You Be Obligated to Pay Damages if Your Outlet were Sued



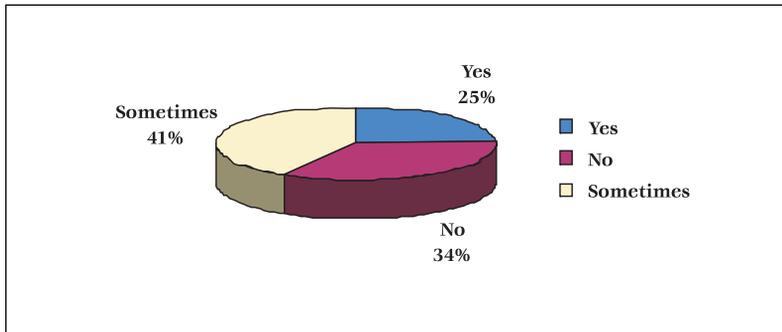
²⁵ Articles 16 and 1423 of the Civil Code (No.1107-XV of June 6, 2002) do not provide a maximum for compensation for non-pecuniary damages entitling the court to decide at its own discretion.

Under these circumstances, there's self-censorship when editors or media outlet owners refuse to publish or broadcast articles for fear of being taken to court. The journalists in one private TV station stated that they have to practice self-censorship on current political issues if they want their programs to be broadcast without any problems. A journalist working in a public outlet said:

As a result of pressure on journalists and the appearance of self-censorship, we have the situation when many media organizations simply do not refer to topical issues, and there are fewer journalistic investigations. By avoiding discussions on the most topical issues, journalists and editors more and more frequently direct themselves toward general informational items not worrying about too much control on the part of authorities.

Three quarters of the respondents decided what topics they would cover themselves; in the rest of the cases the employer was the person entitled to select the topic. Two thirds of those interviewed (66%) said that they either constantly or intermittently felt that their working relationships imposed a certain censorship on them or that they practiced self-censorship as a result of these relationships (Figure 7). One third of the respondents (34%) felt they were really not independent.

Figure 7: Does Your Working Relationship Impose Censorship



Actually, the situation has improved when compared with 2003 when according to a survey of journalists by Acces-info Center, 81% stated that

hidden censorship existed in Moldova and 14% said direct censorship did. The journalists mentioned the president's office (53%), Parliament (45%), the Government (42%), political factions (42%), shady economic entities (24%) and the Information and Security Service (23%) as contributors to censorship.²⁶

Based on the interviews, a journalist's right to professional independence with respect to internal editorial policy often is limited in Moldova. When asked if their employment contracts had clauses on non-observance because of ethical principles and for protection if the editorial policy of the media outlet changed, 74% said no. This includes the right to refuse to prepare and publish material that runs counter to personal convictions; the right to express opinions and assessments in signed articles and the right to remove a by line if the content of the article in the journalist's opinion was significantly changed during editing.

There are different forms of censorship inherent in both public and private print or electronic media organizations, but respondents referred to the most obvious cases in public television and radio and in newspapers that previously had been public but that were now private. To protect their interests, public officials and leading political forces often offer financial support to these entities directly from state funds²⁷ as well as privileges in gathering information. The end of state management did not eliminate censorship in its broad sense or regarding the editorial staff. This is the conclusion independent experts came to in the study "The Broadcast Code of the Republic of Moldova: Analyses and Comments" financed by the Soros Foundation.²⁸ When speaking about the financing of the national public television and radio broadcasting

26. *Freedom of Expression and Access to Information Promotion Center. 2003. "Mass Media and Legislation: Analysis. Opinions. Proposals"*

27. *Beginning in May/June 2005 the Government no longer owned the newspapers Moldova Suverana and Nezaivismaya Moldova. Nevertheless, it was stated in many independent reports that these national newspapers continued to cover the activities of governing bodies in a mainly positive way. At the end of 2006, the Government adopted the decision to assign 376,800 lei from the reserve fund for Moldova Suverana and 81,300 lei for Nezaivismaya Moldova as "one-time financial aid" to pay off debts to the publishing house. The same practice also took place during 2007.*

28. "The Broadcast Code of the Republic of Moldova: Analyses and Comments". 2007. Available at: http://www.soros.md/programs/mass_media/mass_media_subprog_3/en.html

institution, the former state-owned company Teleradio-Moldova, the experts concluded that the outlet was vulnerable and that there was a potential threat that public authorities would use financial tools to influence it. According to them, the independence of the editorial policy of Teleradio-Moldova in the area of personnel creativity lacked a clear and sound legislative basis which could result in hampering the activities of journalists and other creative persons at this institution.

In addition, European institutions including the Parliamentary Assembly of the Council of Europe (PACE) have numerous times in recent years called on Moldovan authorities to, “stop practicing censorship on television programs and ensure all opposition political parties, both parliamentary and non-parliamentary, real access to discussion programs.”²⁹ In its last report on Moldova, PACE again drew the attention of authorities to these issues. More than that, PACE experts stated that the electoral campaign during the local elections in June 2007 proved once again that the press in Moldova was not free.³⁰ According to data provided by various studies carried out during this electoral campaign, journalists could not take advantage of some of their rights including expressing their own judgments and opinions. The biased coverage was confirmed by Coalition 2007, a group of NGOs that independently monitored the campaign in the media.³¹

The annual report “Freedom of Press in the World” in 2006 by Freedom House stated that in Moldova, media outlets, including private ones, continued to practice censorship and that many journalists avoided controversial issues as it could cost them their jobs or even lead to a court case.³² Furthermore, according to data provided by the Moscow-based Media Law and Policy Institute that analyzed legislation on mass

29 Resolution No. 1280 (2002) On the Functioning of Democratic Institutions in Moldova (adopted by the Parliamentary Assembly of the Council of Europe on the 24 April 2002).

30 Honoring of obligations and commitments by Moldova. PACE Report of September 14, 2007. <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11374.htm>

31 See the website of the Civic Coalition for Free and Fair Elections “Coalition 2007”: <http://www.alegeri.md/en/2007/coalition2007/>

32 Information from the website of the Freedom House Organization. Freedom of Press. Country reports. Moldova <http://www.freedomhouse.org/template.cfm?page=107&year=2006>

media in former Soviet Union countries in 2006, the level of media freedom in Moldova leaves much to be desired, although it is above average (8 points out of a possible 13).³³ The latest reports on the situation in Moldova done by the European Commission and international and national NGOs also state the need to continue implementing democratic reforms.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

The legal status of trade unions is determined by the Law On Trade Unions No. 1129 of 19/10/2000. According to this law, trade unions are, "...public organizations, uniting on a voluntary basis natural persons having the same interests including those related to the type of their activity, and created with the view to protect the collective and individual professional, economic, labor and social rights and interests of its members." The law sets general provisions for the activities of trade unions, the procedures for creating and registering them, basic rules, guarantees and consequences for breaches of legislation.

According to the respondents, improving the efficiency of journalists' trade unions in Moldova has been widely discussed during recent years. The Union of Journalists of Moldova (UJM) was created in 1957 and currently has about 1500 members. Among them there are employees of newspapers, TV and radio stations, news agencies, advertising agencies and other related organizations. In compliance with its statutes, UJM is independent from local authorities, employers, political parties and movements and other public associations. Among its purposes and objectives are protecting the rights and interests of media workers, improving journalists' professional standards and contributing to the development and consolidation of the freedom of expression and transparency in the media.

In June 2007, UJM became an associate member of the MediaSind Trade Union in Romania that is a branch of the International Federation of

³³ *Comparing Mass Media Legislation in the CIS and Baltic Countries (year 2006)*. Moscow Media Law and Policy Institute. <http://www.medialaw.ru/exussrlaw/a/2006t.htm>

Journalists in compliance with national legislation, international pacts, agreements and conventions of which Moldova and Romania are parties. MediaSind and UJM agreed to cooperate, coordinate and synchronize their activities to protect the professional, economic and other rights and interests of their members and to share experiences in protecting and promoting professional standards. According to information provided by UJM, in the future its members should have the same rights to pensions as media workers in the European Union, and membership cards will comply with the EU standards thus giving them the right to obtain various privileges stipulated for journalists in European countries; however, some UJM members said that currently there's no practical mechanism for realizing these guarantees. At the next UJM congress, according to information provided by its management, the organization will change its name to the Union of MediaSind Journalists of the Republic of Moldova.

The National Confederation of Trade Unions has 32 branch centers and about 7000 individual organizations. Currently in Moldova, there are 650,000 trade union members; however, only a small number of Moldovan journalists are members of the cultural trade unions of the National Confederation. The staff of six newspapers are associated including *Moldova Suverana* (21 members), *Săptămîna* (28 members), *Capitala* (17 members), *Florile Dalbe* and *Noi* (11 each) and *Alunelul* (with 9). The administration of the Press House (Casa Presei) has 30 members. The protection of the labor, professional and economic rights of the media sector offered by the National Confederation is insufficient, and a collective labor agreement has not yet been signed.

In all, 17% of the respondents were members of trade unions, but none of them provided a positive answer to the question concerning the efficiency of union activities, nor were they sure that the trade union would be able to ensure them protection if their rights were violated. Two complaints that were expressed during the interviews were the lack of democracy in the trade union and the fact that discussions were on

issues of interest only to the members. One respondent stated that the trade union, "...is no longer a creative organization uniting journalists in spite of political sympathies and nationality, a place for creative discussions and mutual support between the journalists."

The majority of respondents could not provide any examples of trade unions successfully and appropriately helping their colleagues when their rights and interests needed protection. They mentioned the participation of UJM in the events at the end of 2006 concerning the privatization of the municipal media outlets *Antena C* and *Euro TV Chisinau* which at that time had around 100 workers. The leadership of UJM circulated a declaration supporting the workers and condemning their dismissal as violations of legislation. UJM also picketed the Parliament building to attract the attention of the authorities to a series of problems including the closure of the weekly paper *Accente* and the arrest of one of its journalists.

During the past several years, many times and at different levels the idea of creating a new democratic journalists' trade union that would work efficiently, creatively and correctly from a political point of view has been discussed. Two years ago the Association of Journalists-Economists and the Committee for Freedom of the Press jointly managed a project discussing the need for and opportunities to create a journalists' trade union with the financial support of the Eurasia Foundation. These organizations produced draft statutes of a new trade union that were discussed by journalists, trade union activists and media employers. The draft was revised to incorporate the opinions of the project participants. The intention was to establish the new trade union within two years with 2000 members, but for a number of reasons this was not possible. The intention to create a branch trade union in Moldova that would protect ethics and professional dignity was also expressed by the League of Professional Journalists, an organization created in 2002 to unite press workers and protect their interests in court and in negotiations with authorities.

According to the results of the study conducted by the Association of Journalists-Economists, about 80% of Moldova's journalists considered it

necessary to establish a journalists' trade union.³⁴ A similar percentage expressed that opinion in this study. During the interviews, the respondents constantly expressed the need to create a professional union for media workers that would be able, in case of need, to protect its members' rights and ensure them a sufficient level of support.

The National Confederation of Trade Unions also tried to create labor courts in Moldova, but this proposal was not supported by the Ministry of Justice due to financial reasons and because of the need to review existing labor and judicial legislation. A representative of the National Confederation of Trade Unions said:

The creation in the Republic of Moldova of labor courts will provide us the opportunity to solve labor disputes between workers and employers in an objective way. A judge who examines penal cases cannot be competent in labor disputes too. The judges for labor courts should be appointed by the Ministry of Justice, trade unions and employers' associations. These courts will not allow employers to influence workers during litigation and will provide an opportunity to deal with employers that do not observe legislation. In addition, this will also reduce the time it takes to resolve labor disputes that currently last for several months, although according to the law they should not exceed 40 days.

VII. CONCLUSIONS AND RECOMMENDATIONS

One of the main problems detected in this study was the lack of correspondence between rules stipulated in labor legislation and their application in the media field. Frequently the rules stipulating that individual employment contracts and the terms of their validity must be in writing are violated, and there are many problems related to breaches of the rules on work and rest time. Another main problem is the lack of sufficient remuneration for work performed by journalists due primarily to the unstable economic situation in the country.

In a number of cases, there was no systematic examination of the practical implementation of labor legislation for the media or of complex legal regulations for difficult problems. A comprehensive analysis of the

³⁴ *Association of Journalists- Economists. Op cit.*

entire complex of laws regulating different domains of labor relations and accurate forecasts of the economic, social, political and other consequences following the adoption of laws are also lacking. When writing legislation, there is still no efficient mechanism for taking the opinions of interested parties into consideration. Moreover, there are no clear definitions for determining the conditions necessary for enacting laws or for the legal, financial and organizational resources needed to ensure that laws are properly implemented. Finally, there is no effective control by competent state bodies and trade unions of the practical implementation of labor legislation and no efficient monitoring of the application of these laws. Establishing who is responsible for the non-observance of laws is of the utmost importance. While creating mechanisms to do so, NGOs that are interested should be involved in the dialogue too.

It was absolutely obvious from this study that respondents in all categories did not clearly understand their labor rights. Often, their opinions were contradictory, and sometimes in responding to questions they contradicted their own previous statements. Many media workers actually were not informed about international and national legislation. This lack of legal knowledge in addition to a series of other factors often led to factual distortions of legislative information and to committing errors in the text of editorial statutes.

At present, there are no protective mechanisms against abuses from media managers. Also, there is no tendency to organize trade unions, and the managements of many outlets do not welcome their creation as they could destabilize the situation. In spite of the frequency of violations, journalists very seldom try to protect their labor rights, including going to court even though those who do as a rule win their cases. Taking this into consideration, it would be useful to study the opportunity to create special courts for examining labor disputes.

As the situation currently stands, media managers do not have to conclude contracts regulating copyright and do not have to assume any liability for using work; all the conflicts in the absence of any contract stipulations

are solved either by appealing to the conscientiousness and principles of the authors (the principles very often are influenced by their positions of dependency) or by simply paying authors who are not pleased additional honoraria. Recently, however, authors have had the opportunity to make choices, and step by step the level of their legal awareness has improved. They more and more actively manifest their intentions to protect their interests which in the long run will lead to a substantial decrease in the number of violations of copyrights on the part of management.

Another important issue is eliminating media control by the state, various methods of censorship and self-censorship by journalists who often set internal limits while determining how freely they can realize their right to freedom of expression in reporting political and other events. As a result of censorship, not only are democratic principles degraded, but also there is an increased lack of trust by society both in media and in the authorities themselves that intensifies an unwelcome attitude toward the state. While there are plenty of articles in the legislation on media that generally define guarantees for independence and freedom, there are no clearly defined mechanisms that would help to ensure those guarantees. The study also showed that the absolute majority of the respondents wholeheartedly wanted and needed to make journalism independent, and they did understand that the editorial policy of a media outlet may easily be combined with the principle of creative independence.

The majority said there was a need to create a journalists' trade union in Moldova that would act in an efficient, democratic way and that would be able to protect their labor, social, professional and other rights and interests. On the other hand, some of the journalists were skeptical about collective actions and did not think that they represented an entity. As a result, the proposal to create a branch trade union would benefit from many positive comments, but it will meet a number of obstacles during implementation. At the same time, according to the journalists it would be worth a try if as a result they obtain positive changes, and it would be good to start discussing and taking measures designed to solve this issue.

If such a structure were created, there would be opportunities to implement organizational measures that would improve the way the interests of media workers are expressed and to offer them assistance in solving labor disputes and in training leaders.

It seems that the most reasonable approach to finding a solution for the existing situation is to adopt a series of measures that would include developing training for students and journalists on their legal rights and the legislation in force and conducting educational workshops for media workers including journalists, editors and publishers. There is also a need for the conscious re-orientation of media management to observing labor legislation and statutes. First of all, improving the level of legal awareness both among the journalists and media management would be needed; NGOs, competent public authorities, trade unions, lawyers and attorneys specialized in the field should be involved. During this awareness raising, attention should also be paid to a review of the statutes of media outlets including individual employment contracts to make them fully comply with existing labor legislation.

There are stable and positive tendencies regarding the majority of issues considered in this study. Generally, respondents agree with ongoing processes. Media workers are ready for a new and higher-level relationship with employers that involves forming a united body that would be able to defend their interests and creative independence and at the same time solve accumulated problems and settle conflicts in a civilized manner.

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Montenegro

by Petar Komnenic

I. ABSTRACT

Currently, journalists are mostly a cheap work force in Montenegro, aware they must not anger their almighty employers. Labor relations are spelled out in the labor law of 2004, but a new law has been drafted to overcome the difficulties with implementing the current legislation that guaranteed too many rights to employees and gave employers little flexibility. Under the current law, collective contracts are possible, but in privately owned media outlets there are none. Journalists conclude individual contracts with employers, but those contacted for this study refused to discuss them. In general, private employers tend to violate labor rights by reporting only minimal salaries and by not specifying working hours and vacations in contracts. The public company Radio and Television of Montenegro, on the other hand, has a collective contract with its employees that specifies salaries, working hours, vacations and conditions for dismissal that include over staffing; many of its workers have recently been made redundant. Because journalists' labor rights are basically unprotected, they feel financially insecure and fear unemployment which exacerbates self-censorship.

Lack of awareness regarding the need for trade unions is one of main problems in Montenegrin media. The six journalists' associations and unions exist in name only and could not provide any data on their activities or their members. Collective contracts and unifying the media community to fight for labor rights and protection at work will reclaim security and achieve normal working conditions.

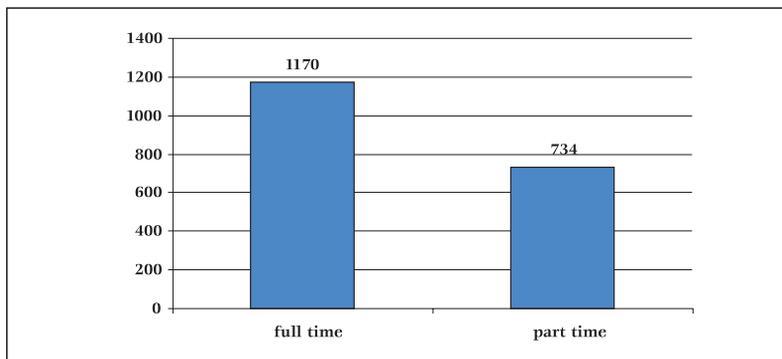
II. OVERVIEW

Until now, there has been only one quantitative analysis in Montenegro of the employment of professional staff in the media. This analysis, first

done in 2002 and again in 2004 by the Montenegro Media Institute, is the only document that can be used to form a picture of the employees hired in Montenegro's media and to gain an overview of the various types of employment relationships they have with their employers.¹ This survey included 115 active media outlets in the country: dailies and periodicals, radio and television stations, on-line media, news agencies and correspondents' offices of media whose headquarters were situated outside Montenegro. The largest number of actively working media were the 45 print outlets (42%) followed by 43 radio stations (40%), 15 television stations (14 %) and 4 online media outlets (4%). There was only one news agency, and there were seven correspondents' offices. According to this report, there were four daily newspapers, three weeklies, eight bi-weeklies and 13 monthly papers. Research indicated that another 21 publications of various types were issued periodically.

According to this study, there were 1,944 professional staff of which 1170 were full time and 734 were part time (Figure 1). It was noted, however, that part-time employees could work for two or more media companies simultaneously, so it was quite possible that some were counted more than once in the total.

Figure 1: Total Number of Media Professionals Hired in Montenegro in 2004

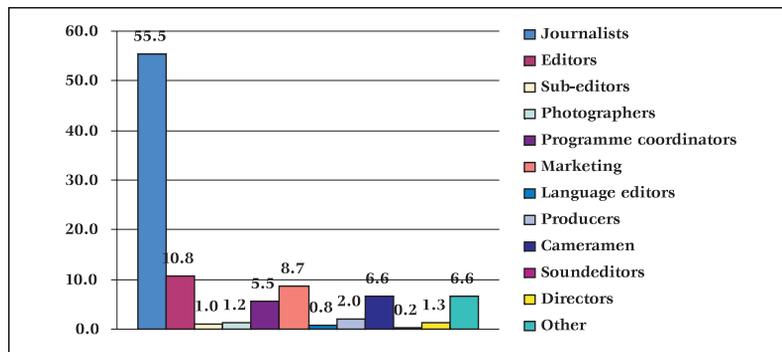


¹ "Quantitative Analysis of Montenegrin Media", Montenegro Media Institute, 2004, <http://www.mminstitute.org/files/Quantitativeanalysis%20ofMontenegrinmedia.pdf>

Of the professionals hired, 31% worked for radio stations, 30% worked for print media and 30% worked for TV stations. This was a change from 2002 when there were 3,403 professionals: 1986 full-time employees and 1435 part-time workers. That year radio stations employed 25% and television stations hired 27%.

In 2004, the largest group of full-time or part-time professionals was journalists at 56%. The second largest group was editors at 11% followed by employees in marketing services at 9%. The rest were employed in administration and in various auxiliary services (Figure 2).

Figure 2: Professional Employees in Media by Job Held in 2004



III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

Salaries, security in the work place, employers' obligations, the duties and obligations of employees and methods for resolving conflicts at work are regulated in the existing general labor law though changes are expected in the near future. The labor law in force is relatively new; it was adopted four years ago and amended three years ago.² According to this law, contracts may be concluded for permanent or for temporary employment, and the employee who is permanently employed has the same contractual rights, duties and obligations as a temporarily employed worker.

² Labor Law, Official Gazette of Montenegro, No. 43/03 and 79/04.

There are several types of collective work contracts defined by this law. The branch collective contract refers to employees hired in a specific field of work and clearly specifies coefficients based on which salaries are calculated in addition to employees' rights and responsibilities. Each company also has the possibility of instituting its own collective contract which would apply at the corporate level and which has supremacy over other more general collective contracts. The company's collective contract is a product of bargaining between trade unions and management, but it may not specify fewer rights or less favorable working conditions than those set out in the labor law. Another possibility is concluding individual labor agreements. At this level, everything is left to the skillfulness and resourcefulness of job candidates and their negotiating abilities to work out the best possible labor rights and conditions with their future employers.

The existing labor law, the critics claim, is a product of socialist heritage that in practice does not match reality: employees do not have the necessary security, nor does it offer employers flexibility. Critics claim that it has proved that excessive security is no security at all because it specifies such a high level of security that it is impossible to implement in practice. The extent of security the law offers in theory to the employees is best demonstrated in Article 94 which states that an employer may not fire an employee who is an "alcoholic or a drug user" or who causes incidents or physical fights at the workplace, but can only punish such an employee with a fine. In such a situation, critics claim, employers are forced to consciously circumvent the law and avoid contractual obligations. Thus employees have rights on paper, but very few in reality. In short, opponents believe this law was based on a false premise—protecting workplaces instead of workers. Those employees who come to work only to meet the formal condition of being present at the workplace are the ones who benefit.

Due to all the criticism, in December last year the Government of Montenegro, the Union of Employers and the Trade Union of

Montenegro signed a national three-party agreement committing themselves to drafting a new labor law by the end of 2007. A draft of this law has been prepared and public debate is under way. The Trade Union has offered numerous criticisms on the draft currently supported by the Government and Union of Employers. The Association of Trade Unions of Montenegro, the second national union organization, also opposes the draft, questioning the authority of the employers' organization. Both trade union organizations have claimed that rights of employees are seriously violated in the new draft; nevertheless, the Government is planning to turn this draft into a bill. The Trade Union points out that work contracts for indefinite periods of time under the new draft "shall not be the rule," and claim that this type of contract would eliminate the possibility of collective bargaining and enable employers to fire employees without paying them severance pay.

"The new Draft would provide the employers with the possibility to loan employees to each other and to fire staff without previous disciplinary procedures. At the same time, it would reduce the amount of severance pay from 24 to 6 months of minimum wage," said the Union's secretary general Srdja Kekovic. The final wording of the new law has not been determined yet.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

In Montenegro's privately owned media there are no existing collective contracts or the basic awareness of the need for trade unions. Media professionals have therefore been forced to conclude individual work contracts with employers, striving to specify their individual rights and obligations. This research revealed that both employers and media professionals hired by privately owned media are reluctant to discuss these issues. It was impossible to get insight into contracts as the journalists we contacted refused even anonymously to discuss their labor rights, responsibilities and the nature of the contracts they had signed.

The existing labor law states that work contracts, apart from the usual

general data on employer and employee, must contain relevant data regarding workplace location, duration of working hours and work schedule, amount of salary, bonuses and other remuneration from the employer for job-related tasks, duration of holidays, contract duration for contracts for definite periods of time and procedures for contract cancellation of contracts for indefinite periods of time. Contracts should also define the tasks and responsibilities of the employees at work and regarding their work, as well as other data both employer and employee consider relevant in establishing labor relations. However, employment contracts for media are often very short and basic, and even when the form is proper, obligations do not meet the criteria specified and employers tend to violate the guaranteed rights of media professionals.

These contracts often involve fictitious salaries that are most often paid in cash. Only minimal amounts are entered in the contracts enabling the owners of privately owned media to avoid the legal obligations they have to the state to pay full tax and insurance for their employees. All of this, obviously, has a direct impact on the status and financial security of those who consciously accept work in such conditions. This is also the main reason the majority of reporters avoids discussing these issues and why it is almost impossible to obtain information that is more specific.

Length of holidays, overtime work and employers' responsibilities with regard to employees are rarely specified in these contracts, while those employed by the media are often forced without complaints to carry out all of their employers' directions and demands in order to receive even their basic wages.

The lack of collective contracts in privately owned media also has other negative consequences for the profession. There are no norms or criteria regulating the kind of education necessary to perform the work of a journalist or to be hired for a specific position on an editorial team. Boris Darmanovic, President of the Association of Young Journalists of Montenegro said:

The main problem is that there is no professional organization, nor have the journalists themselves seriously dealt with this issue. No one has tackled this issue, and as far as I can see, no one will. If the journalists themselves do not initiate this, why would employers do so? They cannot be expected to work against their own interests. When there is no pressure, they are the ones who set down the rules as they find appropriate.

In privately owned companies, the most problematic attitude is the one toward trainees— staff with whom employers sign contracts for definite periods. They are mostly young, inexperienced individuals with or without education who accept poor conditions in order to get media jobs and gain some experience.

It is a common practice among employers to keep trainees for months in conditions approaching slavery and when their dissatisfaction peaks, they are free to fire them since they do not have any contractual obligations toward them. Then they simply replace them with a new, fresh workforce that will be treated in exactly the same manner.

In contrast to privately owned media companies in Montenegro, public outlets regulate labor rights and relations through collective contracts and acts. The Board of the public company Radio and Television of Montenegro accepted a collective contract in May 2007 that had been negotiated between the company's trade union and the management.

This contract provides for prior testing of work skills as a special working condition defined in accordance with a related act. According to this provision, testing is performed in front of a commission consisting of three members who must possess at least an equal level of education as the candidate whose skill is being tested. This document also provides a probationary period that enables an employee's immediate supervisor to test his/her skills on the job. Once the probationary period is completed satisfactorily, the supervisor informs the general director who makes the final hiring decision.

The collective contract also defines the status of trainee who, after the

probationary period expires, must take a special test in front of the commission to determine whether the conditions for the renewal of the employment agreement have been met. The contract also contains detailed conditions under which an employee may be transferred to a different position with the same employer or sent to work abroad.

Employees' working hours are also specifically addressed. According to the collective contract, employees may work continuous daily hours, or their hours may be divided in two daily parts or they may work in shifts. Working schedules within overall working hours are determined by the general director who may authorize another employee to perform this duty. Distributing working hours is done in such a manner as not to allow the average total working hours of an employee to exceed the total working hours per year, though working hours may not be fewer than 35 per week. Deviations from this rule are possible only in extraordinary situations when it is necessary to complete a task for which the duration could not have been estimated correctly at the outset and if its interruption would cause harm to the business. Employees may not work more than seven continuous days without their consent.

Employees have annual vacations of a minimum duration guaranteed by the general and branch collective agreement. The employees are also entitled to paid leave for marriage, child birth, death of a family member and moving. The contract also provides for unpaid leave for up to 30 days.

Employees' salaries consist of the agreed amount for work performed, salary increases and bonuses based on results achieved, as well as salary remuneration. Salaries for work performed are determined in accordance with the basic salary for specific job positions and results achieved. The basic salary is determined by multiplying the minimum wage and the coefficient determined by the collective contract: the minimum wage is determined through negotiations between the trade union and the employer. The amount of the minimum wage is revised at least once every six months at the national level. Trainees' wages amount to 80% of

the minimum wage for the position the trainee is being trained for. This collective contract also defines to what extent employers may increase employees' wages for work on night shifts, during holidays, on weekends and overtime work.

Disciplinary actions and the responsibilities of employees who violate labor rules are also defined. Apart from unprofessional reporting, this contract also prohibits media professionals from performing the same type of work for another employer without the company's consent while employees are obliged to follow the company's code and program principles.

The collective contract allows for dismissing employees when there is over staffing and in those situations when certain components of the company are being closed. Rationalization has been ongoing, and the company, which has had problems with over staffing for years, is now down to approximately 700 employees. This was one reason for establishing a parallel new trade union in this company that challenges the legitimacy of the existing trade union, accusing its officials of not acting on behalf of the employees but in accordance with the employer's and state's directions.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

Unregulated labor relations and rights of professionals employed in Montenegrin media companies greatly influence their professional results. Their labor rights are unprotected and therefore they feel constant financial insecurity and fear of unemployment. Due to the fact that their futures depend on their relationships with their employers and their good will, journalists are often the recipients of unprofessional suggestions that influence the quality of their journalism and their coverage of topics.

In such situations, truth and public interest are often victims of powerful financial lobbies that control not only state-owned media but also a

number of privately owned media companies. Aware that their existence directly depends on the employer and that they do not have any formal back-up which in case of a conflict they might use in court, journalists employed under general and vague employment contracts feel constant insecurity.

This feeling is exacerbated by the knowledge that if conflict arises, their profession would not back them up, since in Montenegro, especially in privately owned media companies, trade unions *de facto* do not exist. Journalists' organizations and associations virtually do not function and cannot provide support in situations such as these.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

The main problem in Montenegro is the absence of regulations for this specific branch of industry and an overall lack of interest in them, in addition to the inefficiency of journalists' organizations and trade unions that should defend, at least in principle, the rights and interests of people hired in Montenegrin media.

There are several journalists associations in Montenegro that by definition unite members of this profession and represent their interests. These are the Association of Professional Journalists of Montenegro, the Montenegro Journalists' Association and the Association of Young Journalists. The results of this research show that these organizations exist in name only and are not even able to provide data on their activities and members. Attempting to obtain relevant data, we contacted the heads of these organizations. None has data on the number of people employed by the media in Montenegro, the status of employed media professionals, types of contracts concluded between staff members and employers or on problems that the employees in media are faced with while performing their work. In fact, the heads were taken aback by the questions posed admitting that since the organizations had been established, they had never dealt with these issues.

We also received the same response from the Association of Independent Electronic Media (UNEM), the Association of Printed Media (MONTPRES) and from the Independent Trade Union of Montenegrin Journalists which was obliged to initiate meetings of journalists employed in private media companies and start a public debate on issues regarding the work status and position of media professionals.

“We do not have these data available, nor have we ever tried to conduct similar research. The fact is that most journalists' associations are not functioning and that, especially in private media companies, there is no general awareness of the importance of workers unions' associations,” admitted UNEM's coordinator, Ranko Vujović.

These organizations that in practice mostly serve as additional employment opportunities for their managers, long ago stopped organizing meetings with the managerial structures in media where these key issues would be discussed. Therefore, they lack legitimacy, and a direct consequence is the absence of relevant documentation that would specifically regulate labor rights in media companies.

VII. CONCLUSIONS AND RECOMMENDATIONS

Lack of awareness regarding the need for trade unions represents one of the main problems in Montenegrin media. That lack and the fact that no functional journalist's association or union exists in Montenegro that could lobby for the interests of the profession has created an environment of total insecurity for media professionals. This is especially true in privately owned media companies where journalists are forced to participate in unequal individual negotiations with more powerful employers and finally to sign contracts that do not even guarantee their basic rights.

This situation was additionally strengthened by destructive political processes during the past two decades that ushered in the virus of political divisions infecting journalists and their associations. Media employers are benefiting from the results since in an environment of professional

discord with trade union networking they can easily fight for their interests and keep their employees under control.

In public media where collective contracts exist on a company level, the situation is not much better since those media outlets are still objectively under the political patronage of the current government and are making irrational business moves and suffering huge losses. It is logical that such a situation affects employees' livelihoods who already make minuscule wages and live in fear that any day they might be labeled as "surplus staff."

Collective contracts and unifying the media community to fight for labor rights and protection at work is the only way to reclaim security and to achieve normal working conditions. At the moment, journalists are mostly a cheap work force in Montenegro, aware they must not anger their almighty employers.

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Romania

by Mihaela Mihis

I. ABSTRACT

This report is based on 27 interviews and 80 completed questionnaires from journalists and managers working in radio, television, print press, press agencies and online press. The most important law is the Labor Code passed in 2003. There is also a collective labor agreement in force in the media sector, but it is not strictly observed. Most journalists thought they were underpaid for the work they did. Duties should be clearly indicated and defined in a job description attached to a contract, but in practice, many journalists are obliged to perform activities not listed.

The most frequent labor violations are vacations that are too short and work weeks that are longer 40 hours but for which they do not receive the compensation they are entitled to. Also, to avoid taxation, private employers outside Bucharest frequently use two contracts: one for the minimum wage and a side agreement (or agreements) for the rest of the salary on which no benefits are paid. This is not good for employees in the long run as it affects their health and pension benefits and may preclude them from getting bank loans. Employers can also rescind the side agreements without dismissing the employee thereby drastically reducing wages.

Direct censorship is rare, but indirect censorship exists. Conscience clauses are rarely included in contracts.

Freelance journalists are a relatively new concept; they generally do investigative work or work for international organizations. They are responsible for paying all their own social insurance and pension contributions. Trade unions are powerful and efficient in public media, but membership is low in private institutions, and employers have been known to dismiss employees who join them. While journalists' knowledge of their rights has improved, their lack of solidarity perpetuates employer abuses of their working hours and copyrights.

II. OVERVIEW

For this study, 27 interviews were conducted with journalists and managers working in radio, television, print press, press agencies and online press, and 80 questionnaires were analyzed. A significant recent event in Romania was the publication of the *Employee Rights Guide for Journalists* in 2005 as part of the project FreeEx Romania: Press Economic Issues. The project was coordinated by the Press Monitoring Agency, the Center for Independent Journalism and the Association for the Protection and Promotion of Free Expression and was financed by the European Union. The guide aims to improve the knowledge of journalists regarding the rights guaranteed them in labor legislation and to define their relationship with their employers. It explains how journalists can establish unions when they feel the need to do so. The protection granted by a trade union or professional organization should contribute to strengthening professionalism and to including conscience clauses in contracts with employers in order to improve the quality of Romanian journalism. Since the guide appeared when the first collective labor agreement in the media sector was under negotiation (2005–2006), another purpose for its publication was for journalists to be aware of the necessity to be actively involved in their professional community and to understand the benefits of belonging to a trade union.

A collective labor agreement for media was negotiated and signed by representatives from trade unions and from employers' organizations. The trade unions were represented by MediaSind while employers' organizations were represented by The National Union of Romanian Employers and Romanian Media Employers (ROMEDIA).

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The most important law is the Labor Code passed in 2003. The Code contains 13 chapters: General Provisions, Individual Labor Contracts, Working and Rest Time, Remuneration, Labor Health and Security, Professional Organizations, Social Dialogue, Collective Labor Agree-

ments, Labor Conflicts, Labor Inspection, Legal Liability, Labor Jurisdiction Final and Transitory Provisions. The new Code sought to regulate all the basic provisions in individual labor agreements for all categories of employees and employers as comprehensively as possible. Provisions in European legislation were taken into consideration when the Code was drafted, so it is completely harmonized with the *acquis communautaire*.

In addition to regulating in detail entering into, executing, cancelling, amending and terminating individual labor contracts, there are chapters regulating collective labor relations in principle from which secondary legislation has been drafted that regulates collective labor relations in detail. Examples include Law 54/2003 regarding trade unions, Law 130/1999, as republished, regarding collective labor agreements and Law 168/1998, as republished, regarding labor conflicts.

The Code addresses new types of employment including that with limited contracts, temporary labor, part-time work, working at home and on-site apprenticeships. It also added clauses on mobility, lack of competition and confidentiality to individual agreements and specified damages to be awarded if parties failed to comply.

In accordance with European norms and with international labor laws, the Labor Code strictly regulates terminating labor agreements in a specific chapter on dismissal. Employees cannot be arbitrarily dismissed, but the economic interests of the employer are also protected. In organizations without trade unions, employees have the right to be collectively represented by members of their choosing who are protected under the law just as trade union leaders are by International Labour Organization (ILO) legislation.

Sanctions for journalists are strictly regulated by the Labor Code. In principle, no disciplinary sanctions may be applied without an investigation during which the journalist can defend his/her actions or statements; that defense must be considered in the final decision. The law establishes what sanctions may be applied if disciplinary regulations are violated:

- a) warning in writing;
- b) suspension of the individual labor contract for a period that may not exceed 10 working days;
- c) demotion with a corresponding decrease in remuneration for a period that may not exceed 60 days;
- d) reduction in base salary of 5–10% for 1–3 months;
- e) reduction in base salary of 5–10% and/or of the management allowance for a period of 1–3 months;
- f) cancellation of the individual labor agreement.

Moreover, the law on employers' liability offers greater protection to journalists. The law stipulates that no salary may be withheld without either the approval of the journalist or a court order to that effect. Therefore, if a journalist causes material damage to the employer, according to the law the employer may not withhold any salary to cover the cost of that damage without either permission in writing from the journalist or a court decision on the value of the damage incurred and the means by which it shall be covered (usually in small amounts withheld monthly from the salary). Furthermore, the employer is liable to indemnify an employee who incurs material or moral damage while performing the obligations stipulated in the labor contract or in respect thereof.

As stated previously, in 2005, a collective labor agreement for 2005–2006 was negotiated and executed for the first time in the media sector which was one of the few sectors that did not have such an agreement. Negotiations for this agreement started with the minimum rights established by the Labor Code and other subsequent legislation. In 2006, a new collective labor agreement was concluded for 2007–2008. The provisions are binding on all employees in media. Negotiating a collective labor agreement is mandatory for companies with more than 21 employees; however, no clause in an agreement may contain any provisions contrary to or offer less protection than the minimum established for the sector by the Labor Code.

The normal duration of the working day is 8 hours or 40 hours per

week. Maximum working hours shall not exceed 48 per week, including overtime. A lunch break and rest time during the working day must be at least 30 minutes long and are to be included as paid working time. The right to perform work after hours and within limits that protect the employee's health and security and the right to vacation are guaranteed under the law and cannot be waived. Employers and employees may establish more favorable agreements on working hours and vacations in the collective labor agreements in light of industry norms.

For journalists, working hours include activities both in the office and outside of it including:

- performing basic duties;
- attending meetings and press conferences;
- covering sporting, cultural and entertainment events;
- finding sources and information;
- traveling to events;
- investigating and researching.

Overtime work and work on free days and legal holidays shall be compensated at the rate of 100% of the basic salary. Employees who work a minimum of three hours during the night shall benefit either from a reduced work day of seven hours without any decrease in salary or from a 25% increase in the basic salary for each hour worked at night.

The vacation time allotted to each employee is subject to the length of service and shall be between 21 and 27 working days.

The collective labor agreement for the media sector stipulates that the minimum salary for employees is the equivalent of the national minimum gross salary plus 25%. The national minimum monthly wage established by the national collective labor agreement for 2007 is 440 lei, i.e. 2.59 lei/hour. The minimum monthly wage in the media sector (at least for 2007) is therefore 550 lei.

Remuneration must be negotiated in collective agreements for each

company according to the duties specified in job descriptions and to the level of professional training. Also, employees in media are entitled to the following salary increments by law:

- length of service: 5–25%;
- special working conditions: 10%;
- overtime: 100%;
- work on free days and legal holidays: 100%;
- night work: 25%;
- fidelity: 25%;
- danger pay: 200%;
- relocation: 5% .

If the salary is based on output and the employer fails to publish/broadcast any material whose form and content was accepted, the journalist shall receive full pay for the product. This does not apply if the product was not accepted.

In all cases where an individual labor contract is terminated for reasons not imputable to the employee, the employer must provide 20 working days notice. If the employee does not receive 20-days notice, he/she has the right to compensation equal to one month's basic salary payable on the termination date of the agreement. During the 20-day period, an employee has the right to be absent 4 hours/day to find another job without any cut in salary or loss of other rights.

Journalists have the right to do the following without suffering any consequences whatsoever:

- to refuse to write, to prepare or to participate in the preparation of an article whose content contradicts actual legislation or the moral obligations of a professional journalist (conscience clause);
- to refuse to disclose information sources;
- to freely and publicly express personal opinions in respect of events or persons while at the same time observing the moral obligations of journalists.

A journalist has the right to refuse to sign an article that was amended by an editor, final reviser, or by any other person on the editorial staff if it differs from the initial version submitted by the journalist or if the edited text is contrary to the opinions and beliefs of the journalist. If an editor significantly revises material and the journalist is unable to advise the audience that this has occurred, the editor may publish/broadcast such material only without the journalist's signature. A journalist also has the right to request the publication/broadcast of material without a signature if he/she has objective reasons for that request.

Starting in 2006, the collective labor agreement for media included a moral code for journalists as an annex. Journalists must observe this code, and employers may use provisions in it to their benefit by citing a breach of the code as justification for disciplinary sanctions or even dismissal. The defense a journalist can mount against such accusations is very limited taking into consideration that the provisions of the code are very general and vague such as, "The journalist is liable to state the truth," when the "truth" can be established subject to the editorial policy of the media institution.

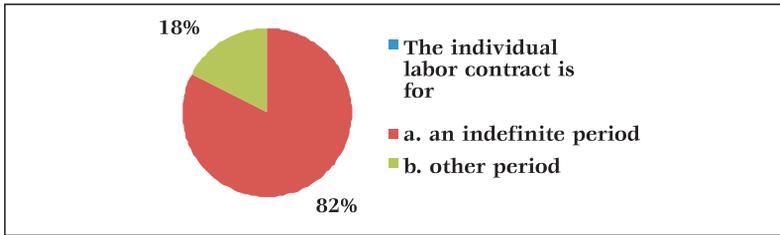
Romania has created special sections/panels for resolving labor conflicts. Under the new regulations, such trials are presided over by a panel of two judges and are conducted by two legal assistants, one representing the employer and one the trade union. The main purpose of such panels is to quickly resolve disputes.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

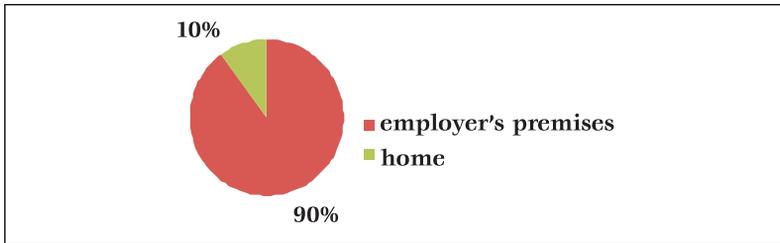
Although the legal framework offers a great deal of protection to journalists, in practice its application differs from one media institution to another.

JOURNALISTS TYPICALLY HIRED

Usually, individual labor contracts follow the standard government model. Most are concluded for an indefinite period (Figure 1).

Figure 1: Length of Journalists' Contracts

Journalists generally work on the employer's premises (Figure 2).

Figure 2: Where Journalists Work

The duties of a journalist are included in the job description that is attached to the contract. Normally, these duties must be clearly indicated and defined. In practice, however, many journalists are obliged to perform other activities. There was a case in one company in which journalists were obliged in turn to make final copy edits of the publication although this duty was not mentioned in their job descriptions. The final copy editor is the person who makes all grammatical corrections. Clearly, not all journalists have the necessary resources to do that, so in order not to be sanctioned for errors, journalists who could make final copy edits agreed to do this task for their colleagues in return for payment.

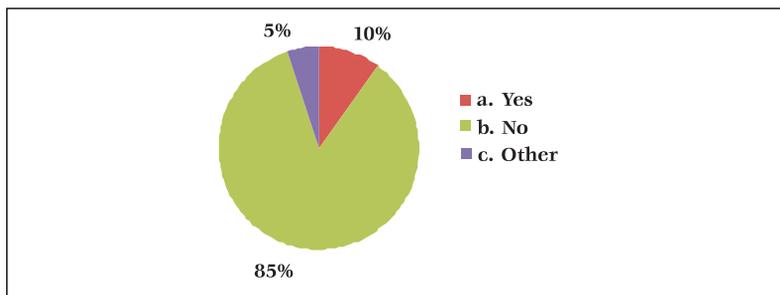
Another abuse committed by employers is making continued employ-

ment contingent on obtaining advertising clients, another task not specified in the job description. In certain cases, the employer further stipulates that the client must be of a value sufficient to cover the salary and taxes of the journalist.

Equally detrimental to employees is that fact that many employers are turning the confidentiality clause into a non-competitive clause by not allowing journalists to collaborate or work with any other publication while under contract and for up to five years following the termination of the contract. Such agreements were also entered into with journalists without contracts who had only copyright agreements or service agreements. In all cases, such agreements create obligations for the employees only and not for the employers, and they provide only for damages payable by the employee for breaching the contract. In the labor agreement of one commercial television station, the talented journalists or “stars” of that respective channel have a contract clause whereby they are liable to pay the employer a huge amount if they wish to rescind the agreement prior to the normal termination date. One journalist said that, “Lack of a clear definition in the labor agreement or in internal regulations of an exclusivity clause gives birth to abuses from the employer.”

Although there is a conscience clause in the collective labor agreement, it is included in only a few individual labor contracts (Figure 3).

Figure 3: Does Your Contract have a Conscience Clause?



In many cases, salaries have at least two components: revenues stipulated in the contract (salary) and those pursuant to a copyright agreement (copyright allowance). In most cases, a journalist's basic salary is 130 lei per week (the equivalent of 45 euros), which is slightly above the average salary in the country. To supplement that salary, copyright agreements are entered into. Basically this is due to a practice in media companies in which employers try to avoid paying taxes to the state. A journalist may therefore enter into several agreements for the same activity: a contract and "side" agreements. For example, behind any commercial television station there are two or more companies controlled by the same shareholders. The reporter works for television station "X" under an individual contract with one company— usually for the minimum wage—and at the same time also enters into another agreement —a copyright or civil contract—with the second company for the balance of his/her salary. Usually these copyright agreements have very general clauses with rights in favor of the employer. For example, many agreements can be terminated on the initiative of the employer without any reason and without prior notification. Few copyright agreements involve genuine negotiations and few provide for the salary increments due to employees.

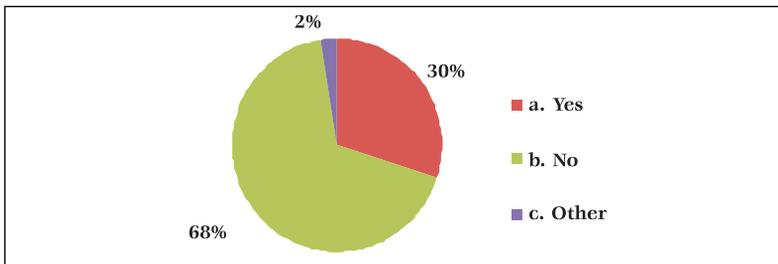
Apparently, everything is legal and both parties are contented: the employer pays less tax and the employee has a decent income. Very few journalists, however, understand that the income from side agreements does not offer them any social insurance, health insurance or pension benefits. "Journalists working in the private sector are deprived of pension rights as long as in the labor book only the minimum salary is recorded. Moreover, for this reason, they may not be granted bank loans."

Moreover, this practice is a genuine weapon with which to discipline journalists. There was one case in a television station where reporters and camera operators objected to their working conditions (e.g., extended hours and dismissals). These protesters were immediately dismissed and their copyright agreements were rescinded. Following trade union intervention, the employer cancelled the dismissals keeping their contracts in

force but refused to conclude new copyright agreements. The protestors then resigned as their salaries had been effectively reduced by two thirds.

Most journalists said their salaries were inadequate, so many take additional jobs in order to ensure a decent living standard (Figure 4).

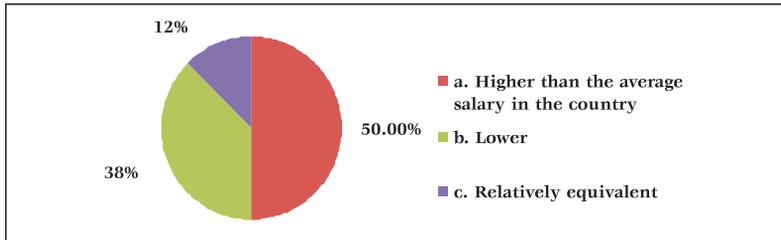
Figure 4: Is your Salary Appropriate for the Work You Do?



There are two categories of journalists from the remuneration point of view: the mob, paid with minimum salaries recorded in the labor book, and the aristocrats who receive indecently huge salaries compared with the former category, but also compared with the quality and quantity of the work they perform. Their salaries are justified only because the aristocracy is formed of the employer's agents in the organization, those who impose the view point of the employer in choosing and writing on topics. This circumstance also leads to another major problem in the Romanian media, irrespective of distribution, that negatively affects the level of professionalism: low salaries invite low levels of professionalism and compliance with the owner's interests to the detriment of any public interest in correct information. It is a vicious circle that cannot be broken.

Exceptions to the dual payment scheme are journalists employed with public media outlets (ROMPRESS, Romanian Radio, Rador, TVR) as well as the journalists working for commercial television stations or big newspapers in Bucharest. In general, journalists working in Bucharest enjoy higher salaries (Figure 5).

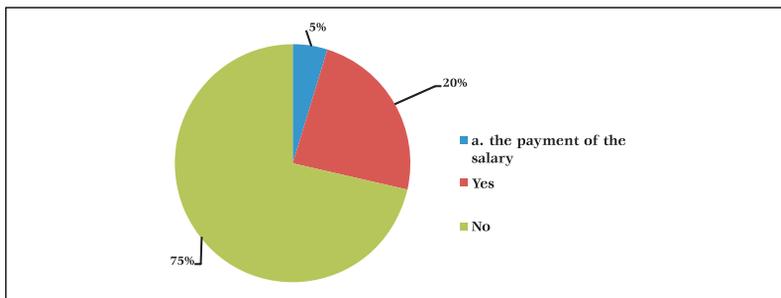
Figure 5: The Salaries of Journalists Working in Bucharest relative to the National Average

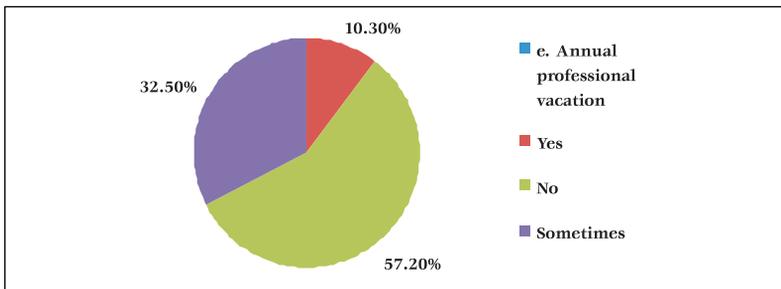
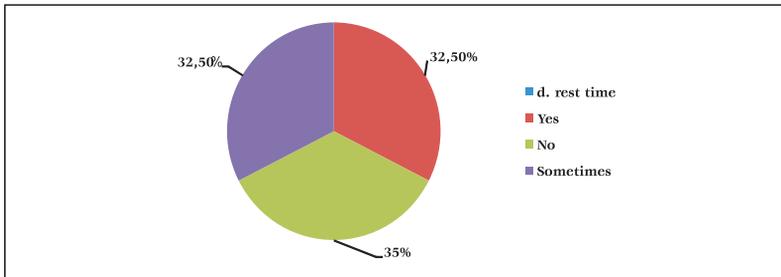
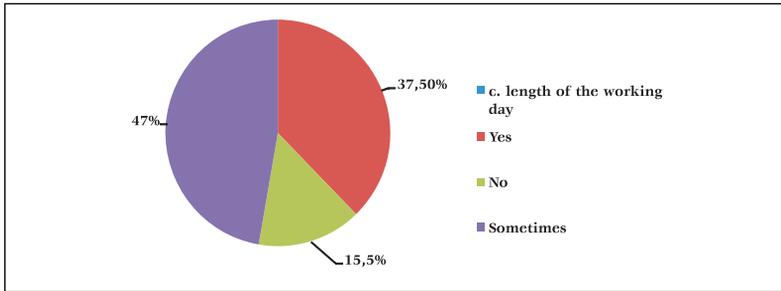
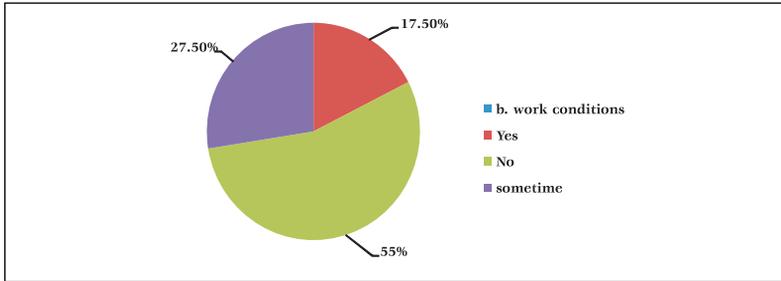


When asked about violations of their rights, most journalists said they occurred in terms of length of working day and rest time and not so much for payment of salaries or working conditions (Figure 6). A journalist with a great deal of experience said:

Journalists are among those professionals whose rights are severely breached. Since I've been working in the media, although I have the right to a 25-day holiday, I have never been allowed to take more than 20 days. Moreover, more than half of my salary is earned illegally. Nobody speaks about medical leave and holidays or official feast bonuses not to mention overtime payment. The problem is that most editorial offices in the country are staffed by people with no power over employers. The paradox is that we stigmatize those failing to observe other people's rights, but we are unable to defend ours. This is why after 10 years in the media, and I've done a lot, from reporter to producer, I am thinking very seriously of leaving. I want to be respected as a human being and as a professional!

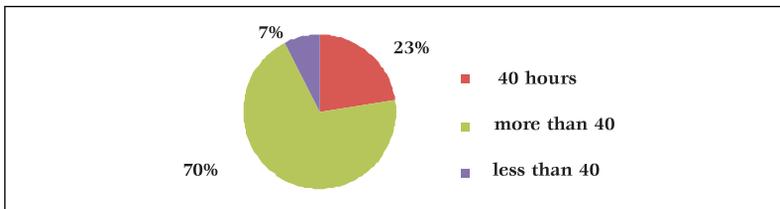
Figure 6: Does Your Employer frequently Violate your Rights?





The best situation for journalists is in public institutions where the Labor Code is observed, but even in these institutions there are cases in which journalists work more than eight hours in order to finish the activities of the day. It is also possible that a journalist may leave before the compulsory eight hours are completed, so the employer and employees agree on a flexible working program. In a radio station belonging to a multinational company, however, no journalist could work more or less than eight hours. The schedule was conceived in such a way that if someone left early the show could not be broadcast, and if someone wanted to stay overtime it wasn't possible because the second shift journalist had arrived so there was no physical space available. In most private mass media institutions, journalists cannot work according to a strict schedule, as it is almost impossible for them or for photographers to let their employers know that eight hours have elapsed and they are finishing at that very moment, so most work more than 40 hours a week (Figure 7).

Figure 7: What is the Real Length of Your Work Week?



During the discussions, one journalist complained “Overtime work or work under difficult conditions is not compensated. Our leaders have abusive behavior and make absurd requests regarding topics.” Another journalist said that the most inconvenient thing is, “...the exploitation of journalists who are forced to work more than 40 hours per week without any payment for overtime. Rest time is merely observed. Journalists receive leave only on paper, but in fact they benefit only partially. “There was a case where following a labor inspection an employer was obliged to pay each employee for two extra hours per day when it was proved that the employees had worked overtime.

There were many cases in which after the termination of a contract a journalist went to court to get payment for extra hours, for night work or length of service increments. In a majority of cases, the court decided in favor of the journalists and the companies had to pay three years of retroactive salary rights pursuant to the collective labor agreement.

In a discussion with a representative of a commercial television station about the real work time for journalists, he admitted that journalists work between 12 and 14 hours per day and even during the night, but as compensation he allows them to take one or two days off every two to three weeks to pay bills and fulfill other obligations that can be done only during normal working hours (9:00–15:00).

Regarding rest time, the legal provisions are also breached as in most cases journalists work sporadically on Saturdays and Sundays. Moreover, the salary increment stipulated by the Labor Code is not paid. Practically speaking, Saturday and Sunday work is deemed normal for journalists which is a flagrant breach of the Code. The same is true for legal holidays. Again, journalists do not get compensatory time off in the 30 days following the legal holiday nor are they paid double time.

Even annual vacation leave is not always observed. Frequently holiday leave is stipulated in the contract as the minimum in the Labor Code. i.e., 20 working days and not 21 working days as stipulated by the national collective labor agreement that applies to all media employees in the country.

Another serious issue is that journalists fail to take the entire vacation leave stipulated in their contracts. Usually they take 10–15 days of leave and are promised the balance as soon as possible. In practice, however, these promises are not kept and they are not paid for unused days. In fact, the Labor Code stipulates that only if the contract is terminated can monetary compensation be offered for leave not taken.

Regarding disciplinary sanctions, in public institutions those stipulated

by law are closely observed, and there are disciplinary commissions that include one trade union representative. As the law is very strict and makes sanctions difficult, public institutions often resort to changing journalists' duties to unimportant ones or to ones that are difficult to fulfill to punish them. Another way to get rid of a journalist is the apparently legal tactic of terminating the contract because of staff restructuring. Although such dismissals are possible, the Labor Code stipulates that staff restructuring should have a "real and serious cause." In many cases when journalists challenged staff restructuring in court, they won the cases and the court obliged the employers to re-employ them and to pay their back salaries.

Commercial television stations and major newspapers notify journalists in an official letter about any sanctions to be applied. In this way, the journalists can challenge the sanction in court. Nevertheless, sanctions in the form of withholding salary are frequent, and there were even cases when the sanction was dismissal without cause. Unfortunately, the majority of journalists accept salary withholding as a normal sanction without receiving any official letter in this respect.

Although the law offers increased protection to journalists who have contracts with their employers, it was found that journalists are reluctant to go to court to protect their rights. The fewest abuses were found in public institutions in which trade unions are active. In most cases, journalists claimed their rights only upon terminating their contracts and did not protest as long as they were employed. Even though the law has eliminated the possibility for an employer to withhold money from the salary in order to recover damages caused by a journalist, this still happens in media organizations. Employers have also been known to deduct the value of damaged equipment from employees' salaries even if the damage was not their fault. A similarly unlawful procedure is forcing employees to sign notarized guarantees for the equipment they need to do their jobs. This cannot be required of journalists with contracts.

Ultimately, the employer is responsible for damages caused by the jour-

nalist. When the institution is obliged by court decision to pay indemnities to third parties due to the publication of injurious material by the journalist, in most cases journalists are not liable to refund the amounts paid though there have been cases when journalists were obliged to pay and cases when the institution failed not only to support a journalist sued for calumny but in addition made statements against him/her.

As for labor disputes, only a few isolated cases of protests have been recorded, and no media strikes have yet occurred. Probably the lack of group solidarity and the failure of the small protests of some journalists to get results have caused a lack of trust or even fear to resort to protests when the rights granted by labor legislation are breached. Employers' techniques to suppress revolt vary from termination of contracts to rescinding copyright agreements to attempts to corrupt the journalists' leaders.

A case in point occurred in a commercial television station when the news reporters' trade union protested against the intention of the employer to re-organize the department. The employer's reaction was to terminate the reporters' contracts and to rescind their copyright agreements. After pressure and talks between the trade union and management, the employer cancelled the dismissal decisions but refused to reinstate the copyright agreements thereby greatly reducing the reporters' salaries. They were thus forced to find new jobs. It is clear that after witnessing the results of that small revolt, no other journalists in that station will protest a breach of his/her rights.

There have been, however, cases when journalists have made a mass protest against the abuses of the employer and have all left the company and subsequently established a new media institution.

In the interviews, journalists enumerated the most serious problems they face as the following.

- Employers interfere in the decisions of the editorial staff and

exert strong pressures from outside interests (political, commercial). There is a lack of communication between employers and journalists in respect of the editorial line. Moreover, there is a lack of communication with the marketing department about readers' profiles, public trends and what is expected. Journalists are merely told what to write with the justification that, "this is what people ask, for," "this is read," or "we know better what is of interest."

- The most serious problem is that leaders do not consult editorial teams when programming schedules are drafted. All sorts of major decisions regarding editorial policy or of interest to the company are made without consulting the employees.
- There are strict divisions between the management of media companies and editorial offices, and the administrative hierarchy is complicated and excessive. Criteria that are not appropriate are used to evaluate employees.
- There is no incentive system for editors who are instead encouraged to remain anonymous which is very frustrating for professionals. The most "burning" sanction is the total indifference toward everything they do, good or bad.
- Part-time employees often work full time. There is a lack of trade unions, salaries are small, there is censorship under a threat of dismissal and there is no conscience clause.
- There is a lack of professional training for working journalists.
- Professional performance evaluations and salary levels are subjective. Promotions are also often awarded on subjective criteria.
- The lack of real competition in the market gives employers a monopoly so they can set low salaries and harass employees who quit.
- Loyalty based on personal relationships or patronage is often rewarded over competence. Decisions on programming and salaries are also made based on friendship, kinship or personal relations rather than on professional criteria and competence.

- Initially, women are relatively better off than men in matters regarding remuneration and assignments. The ratio of women to men in the media is overwhelmingly in favor of women in entry-level jobs, but this ratio changes in middle management where men dominate which indicates serious, systematic discrimination against women.

ATYPICALLY HIRED JOURNALISTS (FREELANCERS)

Freelancers are a relatively new phenomenon in Romanian media. Investigative journalists in particular choose to work without a contract with an employer. Romanian freelance journalists also frequently work on projects financed by international funds and belong to the Global Investigative Journalism Network or to another similar international organization. Some freelancers are involved in training students and journalists in Romania and elsewhere.

Although most of their revenue is from foreign-financed projects, freelancers also collaborate with certain major media institutions in Romania under civil or copyright agreements. They in effect sell their completed products to the media institution. Generally, freelancers choose what they write about and do not work on the premises of the employer. The journalist's sole obligation is to hand over the material on the date specified and under the conditions established by the agreement. In this case, the freelance journalist has neither the rights nor the obligations of a journalist working on an individual contract.

Likewise, the freelancer does not receive health insurance, unemployment benefits, or pension contributions from the employer. Instead the freelancer is obliged by law to enter into individual agreements with the relevant authorities and to pay them directly. Freelancers must also declare their incomes with the fiscal authorities and pay income tax.

The major drawback for atypically hired journalists is the lack of copyright protection. Frequently freelancers sell articles and assign the copy-

right to the buyer for a limited period, but the material is often copied by the buyer without authorization. Such breaches of copyright are usually not challenged as the journalists have neither the time nor the desire to go to court.

Freelancers do not have the right to organize a trade union. According to the law, affiliation with a trade union is possible only for journalists who have entered into an individual labor contract. Freelancers may, on the other hand, organize professional associations such as non-government organizations (NGOs).

Journalism students and young journalists can also be atypically hired. Most of the important media institutions regularly employ students on probation for one to three months without remuneration. Many are subsequently hired by the organization when their probationary periods are completed. One radio station sponsors a contest every summer and offers five scholarships and eventual employment to journalism students.

In the print media especially, many journalists between 18 and 30 years old are employed as they are better able to cope with the intense work and demanding hours. Many of them are also employed on probation for one to three or more months without a contract or a salary though they receive a small stipend. In one case a journalist started work at the age of 14 which is two years younger than the legal age for employment. Despite the fact that the employers published numerous articles by the journalist during their two years of collaboration, they refused to offer a contract and instead promised employment after graduation. This is a violation of the journalist's rights as there was a legal labor relationship.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

At present there is no direct censorship in mass-media institutions, and cases in which material proposed by a journalist is rejected by the editor-in-chief or by another representative of the employer because it contra-

dicts the editorial policy of the institution are rare. Before accepting employment, journalists acquaint themselves with the editorial policy of the employer. Although it may not be definitively stated, it can be gleaned from the nature of the publications or broadcasts produced. More information on editorial policy is available on the Web site created in 2006 (www.mediaindex.ro) that lists the owners of media institutions and their economic interests.

Though direct censorship does not exist, indirect censorship does. This occurs when pressure from interest groups succeeds in removing a show from the broadcast line up, or when a journalist from the capital is “promoted” to a regional post, or when contracts are terminated or when offices are restructured and positions are eliminated. Although the employer does not directly state that the material produced by the journalist or the journalist’s behavior prejudiced the interests of the institution or of groups connected with the institution, the employer’s actions suggest that this was the case. In the words of one journalist:

The journalist is obliged (or worse decides by himself in consideration for minor favors) to create material that does not match reality or that presents only certain aspects thereof. Censorship and the interference of certain interest groups appear often in editorial policy (censorship based on business partnerships). A tendency of political groups to dictate editorial policy has been noticed. Moreover, employers may censor—directly or indirectly—when subjects affect their business interests. In certain media institutions, more journalists seem to make moral compromises for material favors. In the private sector, journalists are compelled to create material in compliance with the interests of the owners. It is most serious that some agree to distort reality. In private organizations, labor agreements fail to protect journalists who are sometimes made redundant without explanation even if they haven’t done anything wrong.

Indirect censorship is harder on journalists working regionally because when an influential person in the region decides a journalist is undesirable, no outlet in the region will offer him/her employment.

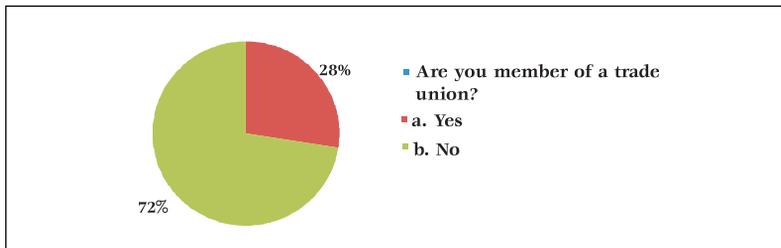
Regarding public institutions, their activities are regulated by the law passed by Parliament that stipulates that journalists must be impartial.

However, there have been cases—especially during or before election campaigns—when public television and radio stations were accused of directly or indirectly favoring a certain political group.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

Trade union membership among the media employees surveyed was low (Figure 8).

Figure 8: Trade Union Membership in the Media



Though various media trade unions exist, very few represent journalists; rather, the majority represent employees performing auxiliary jobs like stenographers, drivers or electricians. Only the trade unions in Romanian Radio Broadcasting and Romanian Television (public stations) really represent journalists; these trade unions are indeed both powerful and efficient. Consequently, these trade unions have for many years negotiated collective labor agreements that offer rights and protection against employer abuse.

Journalists' reluctance to join or to set up trade unions is based on the following:

- the opposition of employers to such associations;
- lack of trust in the persons appointed to manage the trade unions (they could become tools of the employer) and lack of confidence in the union's efficiency;
- lack of solidarity among journalists;

- the concept that journalism is independent and journalists must compete.

The opposition of employers has taken various forms from dismissal to restructuring departments and downgrading positions and offering lower salaries. Unions are therefore sometime established in secret. There was a case when an employer found out about the existence of the trade union six months after it had been established. Its members were threatened with dismissal if they did not voluntarily resign their memberships. The departments of those who refused were subsequently restructured and their jobs were made redundant. When the trade union federation with which this trade union was affiliated intervened, the conflict was resolved and the trade union was accepted by the employer.

Journalists are aware, however, that they have little chance of succeeding on their own in making employers observe all their rights and that chances of success are greater when their rights are defended by a well organized trade union. A possible solution identified during the interviews with journalists is to setup a regional trade union (e.g., in a city) and affiliate it with the trade union federation for media. This would be preferable to setting up trade unions in individual companies as it would offer more anonymity, and managers would not have to negotiate directly with their own employees.

In the opinion of most of the journalists surveyed, the greatest support trade unions could offer would be free legal assistance, during both individual negotiations with employers and potential labor disputes, and financial assistance especially when journalists are fired because of membership in a trade union. In the opinion of one journalist:

Trade union activity is feeble, though it becomes more intense during elections. At the moment, we hear of trade unions on Christmas and Easter. The unions should act and should have a clear, unified opinion. The unions should find a way to force employers to observe the rights of employees. The creation of an internal body of journalists is necessary in order to promote professionalism and to sanction moral transgressions.

VII. CONCLUSIONS AND RECOMMENDATIONS

Journalists' knowledge of their legal rights has improved in recent years, and journalists have started to use the law to defend their professional interests with their employers, including going to court. Journalists' salaries have also grown not only due to the growth of the economy in general but also due to the efforts of NGOs and of trade unions. The collective labor agreement in force provides journalists with a legal framework to defend their rights with employers. Journalists more frequently request trade union intervention when their rights are breached and are often successful in getting favorable court decisions.

Trade unions should make their presence felt more and should be more involved in defending journalists' rights. It is true that a first step was made with the collective labor agreement, but efforts must be accelerated and new solutions must be found to ensure the greater application and observance thereof. In this respect, the trade unions should have direct communications with their members and should react strongly against any abuse by employers that has a negative influence on the work of journalists. It would be useful for unions to organize courses and seminars for journalists presenting not only their rights but also the means to defend those rights.

The current trend of media institutions is to downsize which does not improve journalists' working conditions. The most burning issue for journalists is that of actual working time. The long work weeks and the stress of their jobs drive many from the profession. Furthermore, the only really secure jobs are in the public sector.

It would be useful to include a course on labor laws in the curriculum for journalism students so they are aware of their rights and obligations. The Press Monitoring Agency organized such a seminar for journalism students during which the young journalists expressed their fears that if they demanded their rights they would lose their jobs and have trouble

finding others considering that media institutions are downsizing and employers are organized.

The lack of solidarity among journalists and the currently weak trade unions mean it will be some time before a Romanian journalist can work under normal conditions with a decent salary and a personal life outside of office hours.

VIII. BIBLIOGRAPHY AND ADDITIONAL READING

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Serbia

by Lidija Kuzundzic and Dejan Kozul

I. ABSTRACT

The sample for this research was comprised of typically employed journalists and freelancers in the print media, radio, television, news agencies and on-line media. Questionnaires were filled out by 122 participants from 101 media outlets, trade unions and journalism associations. In addition, 30 interviews were conducted with representatives of all media types. This study also included an analysis of the legislative framework and surveys in Serbia, a comparative analysis of local legislation and the best practices and regulations in the European Union (EU) and a comparative analysis of data from previous surveys, polls and information collected.

Although legislation is mostly harmonized with EU standards, violations are frequent and enforcement of the law is hindered by the lack of transparency in media ownership as well as the judicial system's disinterest and inefficiency in prosecuting those who violate the law and the basic principles of the journalistic profession.

A total of 28% of participants did not have any kind of contract with their employers, but 60% said individual employment contracts did not protect employees from unjustified punishment or dismissals. One of the greatest problems is the fact that contracts usually specify that the base salary of journalists is the minimum wage. The rest of the salary is often paid in cash which means that no social and health insurance benefits are paid on this amount. More than half the participants worked longer than 40 hours per week, and 44% felt that their author's rights were not protected. Most of the participants (52%) claimed that censorship or self-censorship affected their work to a certain degree.

Most of the participants were not members of any trade union, and only

8% thought that union membership would protect their rights. There is no single collective agreement for all the media in Serbia. According to the information from trade unions and professional associations, most media outlets (especially private ones) do not have any collective agreements. There are only a few cases in which collective agreements provide a greater degree of protection than the Labor Law.

II. OVERVIEW

The sample for this research was comprised of typically employed journalists and freelancers in the print media, radio, television, news agencies and on-line media. Questionnaires were filled out by 122 participants from 101 media outlets, trade unions and journalism associations. The following selection criteria were taken into account in defining the sample:

- type of the media outlet;
- participants' employment status (typically employed or freelance);
- geographical distribution and reach of the media outlet (national or local).

To provide a comprehensive overview, journalists' and photographers' organizations/associations and media trade unions were included in the research sample. The selection was made according to the following criteria:

- number of members of the organization/trade union/association;
- type of activity/support offered by the organization/trade union/association to its members in the area of employees' rights and status.

Participants were classified into two basic groups. The first and largest group is comprised of the media outlets. Participants were classified into subgroups according to media type:

- print media—64 participants from 50 media outlets;
- radio—24 participants from 21 media outlets;

- TV—18 participants from 17 media outlets;
- news agencies—6 participants from 4 agencies;
- on-line media—5 participants from 5 media outlets.

Table 1 shows the geographical reach of the media group.

Table 1: Geographical Reach of Media Outlets and Organizations

%	<i>national</i>	<i>local</i>
PRINT MEDIA	74%	26%
TV	24%	76%
RADIO	40%	60%
NEWS AGENCIES	75%	25%
ON-LINE	100%	0%
TRADE UNIONS	100%	0%
ASSOCIATIONS	100%	0%
total	62%	38%

The second group, consisting of the national non-government organizations (NGOs), was divided into following subgroups:

- trade unions – 2 representatives;
- associations – 3 representatives from both journalists' associations and the photographers' association.

The interview sample consisted of 30 participants, all of whom accepted our invitation to be interviewed. The sample breakdown is as follows:

- 4 journalists from the print media;
- 3 TV journalists;
- 4 radio journalists;
- 3 news agency journalists;

- 2 on-line journalists;
- 2 trade union representatives;
- 2 representatives from journalists' associations;
- 10 freelance contributors and freelance journalists.

Researchers conducted personal, focused, centered interviews to allow interviewees to express their observations, opinions and proposals as freely as possible to achieve the most comprehensive overview of labor relations in the media. This study also included an analysis of the legislative framework and surveys in Serbia, a comparative analysis of local legislation with the best practices and regulations in the EU and a comparative analysis of data from previous surveys, polls and information collected in this research.

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

The right to work is a basic right of citizens and is guaranteed by international charters and standards,¹ the Constitution of the Republic of Serbia and the Labor Law. Several other laws are relevant for the media, namely the Public Information Law,² the Broadcasting Law³ and the Law on Advertising.⁴

Certain areas related to journalism specifically regarding labor rights and obligations of employees in the media are defined by collective agreements, employment contracts and rulebooks on organizing media

1 The right to work is a basic right of a citizen and is guaranteed by international documents and standards, especially: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Cultural Rights, the European Convention on Human Rights and the European Social Charter Resolution 1003 of the Council of Europe defines the ethical principles of the journalistic profession at the level of European Union in a manner described in the feasibility study "Establishment of Self-Regulatory Body – Print Media Council in Serbia." Also, the functioning of the media is defined by numerous declarations, conventions and recommendations by the Council of Ministers of the European Union pertaining to the freedom of expression, media freedom, right to privacy, pluralism, media concentration, transparency, media ownership etc.

2 The Public Information Law (adopted in 2003) http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?t=Z&Id=84#

3 The Broadcasting Law (adopted in 2002) http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=45&t=Z

4 The Law on Advertising (adopted in 2005) http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=274&t=Z

companies while the members of professional associations and trade unions are also bound by the provisions of the Serbian Journalists' Code⁵ and its statutes.⁶

Although the legislation itself is mostly harmonized with EU standards, violations are frequent. The reasons lie in the attitude that the interests of the owners, political parties and economic groups are more important than truth in reporting. Additionally, enforcement of the law is hindered by the lack of transparency in media ownership as well as the judicial system's disinterest and inefficiency in prosecuting those who violate the law and the basic principles of the journalistic profession.

The Constitution of the Republic of Serbia guarantees human and minority rights and freedoms.⁷ The following is explicitly guaranteed:

- right to work—Article 60;
- right to organize a strike—Article 61;
- right to associate—Article 55;
- freedom of expression—Article 46;
- freedom of the media—Article 50;
- right to be informed—Article 51.

Article 21 of the Constitution forbids any form of discrimination. Participants were asked the following question, "Does your employer violate your rights against discrimination (e.g., sexual, national, racial)?" Around 8% said "no," 18% felt some form of discrimination, whereas 74% of the respondents did not answer the question. Discrimination appears to be hidden (journalists who did not answer the question during the survey, admitted to feeling various forms of discrimination). During the interviews, most of the participants recognized discrimination on the basis of sex, age, financial status, education, professional skills or political affiliation, but they seemed unwilling to discuss it.

⁵ *Serbian Journalists' Code (adopted in 2006)*, <http://www.nuns.org.yu>.

⁶ *Statute of NUNS* <http://www.nuns.org.yu/dokumenta/index.jsp> and *Statute of UNS* http://www.unsonline.org/index.php?page_id=53

⁷ *The Constitution of the Republic of Serbia, adopted on November 8, 2006*, http://www.parlament.sr.gov.yu/content/lat/akta/ustav/ustav_1.asp

The Labor Law⁸ regulates rights, obligations and duties related to work and employment. This law pertains to workers⁹ in the territory of Serbia employed by a domestic or foreign physical or legal person as well as to employees forming an association to work abroad. This law does not have provisions dealing specifically with journalists nor with the status of freelance journalists and freelance contributors in the media. They don't even have a legal possibility to form trade unions because the Labor Law takes into consideration only typically employed persons.¹⁰

The law also defines criteria for terminating employment.¹¹ The employer is required to deliver a written warning to the employee and the relevant trade union (if the employee is a member of the union) and must give the employee at least five working days to respond to the claims made in the warning.¹² The decision about dismissal must cite a justifiable cause for termination of employment. Dismissal cannot be justified by a temporary inability to work, maternity leave, military service, affiliation with a political organization or a trade union, ethnicity, social origin, religion or any other personal characteristic of the employee¹³ although it often happens in practice.

Additional protection from dismissal is given to the members of employees' councils, staff representatives on managerial and supervisory boards, to presidents and to appointed and elected representatives of trade unions.¹⁴ If employment is terminated, the employer is obliged to pay all outstanding salaries, benefits and other income due,¹⁵ and the period of notice cannot be fewer than 30 days.

⁸ *Adopted in 2006*

⁹ *"For the purpose of this law, an employee is a physical person employed by the employer."* Article 5 paragraph 1, *Labor Law, Official Gazette of the Republic of Serbia, issues 70/01 and 73/01.*

¹⁰ *"Trade unions, for the purpose of this law, are autonomous, democratic and independent organizations of employees, freely associated in order to represent, improve and protect their professional, labor, economic, social, cultural and other collective and individual interests."* Article 6 paragraph 2. *Ibid.*

¹¹ *article 176. Ibid.*

¹² *articles 179-181. Ibid.*

¹³ *article 183. Ibid.*

¹⁴ *article 188. Ibid.*

¹⁵ *article 186. Ibid.*

If it turns out that the dismissal was against the law, the employee has the right to get the job back if desired. The law stipulates that the employer can be punished by a fine in the amount of 1,000–5,000,000 dinars (60–12,000 euros) for violations of the law.

The Labor Law specifies that rights, obligations and duties related to employment are also regulated by collective agreements, employment contracts and statutes. These contracts may not contain provisions that grant employees less protection of their rights or less favorable work conditions than the Labor Law does. Still, it often happens in practice. Also, this kind of contract must be signed by the employer and by representatives of all trade unions in the media outlet. This is not always the case.

There is no single collective agreement for all the media in Serbia. According to the information from trade unions and professional associations, most media outlets (especially private ones) do not have any collective agreements. There are only a few cases in which collective agreements provide a greater degree of protection than the Labor Law, while changes in the ownership structure of the media usually result in violations of the collective agreement or in the employer pressuring trade unions into modifying the existing agreement and making it less favorable for employees.

Work statutes or employment contracts as the law stipulates regulate rights, obligations and duties related to employment as follow:

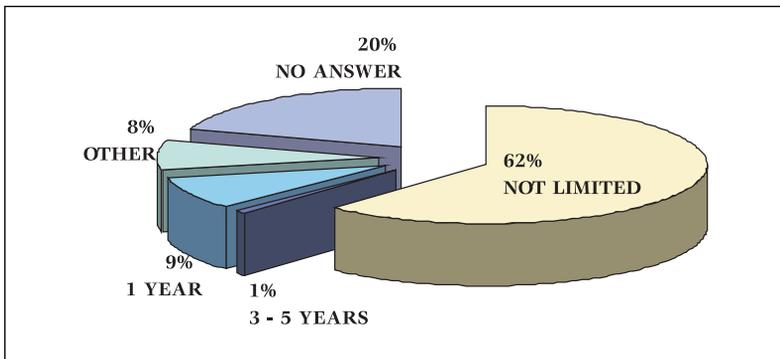
- if there is no trade union in the company or if there isn't any representative trade union or if no contract of association was concluded in accordance with the law;
- if no participants in the collective agreement initiate negotiations for conclusion of a collective agreement;
- if participants fail to agree on a collective agreement within 60 days after the beginning of negotiations;
- if the trade union within 15 days after the delivery of the invita-

tion for negotiations on the conclusion of a collective agreement does not accept the employer's initiative.

The work statute is prepared by the managerial board or by the director if the employer does not have a board. If the employer does not have the status of a legal person, the work statute is prepared by the employer or a person authorized by the employer. Employment contracts can be concluded for a fixed term (most often 3, 6 or 12 months) or permanently and must be made in a written form before the start of employment.

The legal framework also envisions the possibility of a period of probationary work that cannot last longer than six months. Employers most frequently violate the law by using this form of employment instead of concluding a contract for employment.

Figure 1: Period of Time of Individual Contracts



Of the journalists surveyed, 62% of those with contracts said they were for an indefinite period of time (Figure 1). The Labor Law states that temporary employment must become permanent employment if the employee continues working for at least five working days after the expiration of the contract for temporary employment.

To what degree do individual employment contracts protect employees from unjustified punishment or dismissals? Around 60% of participants said they don't, 26% considered themselves protected, 6% gave different answers (e.g., they felt unprotected because judicial proceedings usually last for years) while 6% didn't answer.

IV. IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

Although the Labor Law offers good solutions for typically hired employees as well as freelance workers, during the interviews with participants it was obvious that not a single media outlet fulfils its obligations as specified by the law. It was disturbing that 28% of participants did not have any kind of contract with their employers (Table 2). In these cases money is usually paid to someone else's account or is disbursed in cash. Many journalists prefer this arrangement because sometimes even contracts are not a guarantee that money will actually be paid. "Working conditions are satisfactory, and I like this kind of arrangement," says a camera man at a private TV station who's been working as a freelancer for years. He added, "There were cases when I had a contract with a TV station but had to wait more than a year to be paid for my work. In the end, I had to go to court."

Table 2: Do You Have an Individual Contract?

%	Yes	No
PRINT	67%	33%
TV	72%	28%
RADIO	83%	17%
NEWS AGENCIES	50%	50%
ON-LINE	100%	0%
TRADE UNIONS	100%	0%

ASSOCIATIONS	67%	33%
total	72%	28%

Generally speaking, media workers were not aware of the rights that the law provides. For a country in transition like Serbia, when it comes to labor rights, we can say that they are still in an early phase. Laws exist but are ignored. Even media professionals themselves are not concerned with this situation. Attempts to achieve improvements usually led to dismissals as is illustrated by the following statement given by a former daily newspaper journalist:

At the moment I'm in the middle of a court dispute with my former employer where I worked for four years. I was dismissed as an example to others because I dared to demand payment of social and health insurance contributions and outstanding salaries in violation of formal provisions of the law (e.g., a statement, required periods). This dispute is already in its third year, and there is still no end in sight.

The existence and quality of individual employment contracts, except in the case of large media companies that have their own trade unions (mostly public service media that haven't been privatized yet), are only a formality. There are no media outlets that have included specific job descriptions into their employment contracts. Contracts are usually standardized. They specify working hours in a week (40), but fail to mention overtime work or author's rights (Table 3).

Table 3: Are Your Author's Rights Protected?

%	<i>Yes</i>	<i>no</i>	<i>as a rule, yes</i>	<i>as a rule, no</i>	<i>I do not know</i>
PRINT	9%	34%	30%	17%	9%
TV	6%	44%	27%	0%	22%

RADIO	33%	25%	8%	8%	25%
NEWS AGENCIES	50%	17%	17%	0%	17%
ON-LINE	20%	0%	0%	40%	40%
TRADE UNIONS	0%	0%	0%	50%	50%
ASSOCIATIONS	0%	67%	0%	33%	0%
total	16%	32%	22%	14%	16%

Research proved that more than half the participants worked longer than the specified work time, while 44% of them felt that their author's rights were not protected. Due to the nature of the profession, it is difficult to calculate the number of working hours. A fairly small number of employees (17% of typically hired employees, 21% of all employees) replied that their weekly work time was exactly as specified while most of them (52%) worked more than 40 hours (Table 4).

Table 4: How Many Hours Do You Work per Week?

%	40	more than 40	fewer than 40	no answer
PRINT	23%	48%	27%	2%
TV	17%	72%	11%	0%
RADIO	33%	54%	13%	0%
NEWS AGENCIES	50%	33%	17%	0%
ON-LINE	0%	60%	40%	0%
TRADE UNIONS	50%	0%	50%	0%
ASSOCIATIONS	33%	67%	0%	0%
Total	26%	52%	21%	1%

One of the greatest problems is the fact that contracts usually specify that the amount of the base salary of journalists is the minimum wage allowed in the country, i.e., 11,500 dinars (140 euros). Although many journalists are required to have a university degree, most of them are registered as workers with only a primary or high school education. When that is the case, employers pay less tax and insurance and nobody is regulating it.

The rest of the salary is most often paid in cash which means that no social and health insurance benefits are paid on this amount. The situation is even worse because it often happens that even the minimum wage is not paid regularly as was the case for a journalist from a private daily newspaper:

Since 2003, when I was hired, I was paid only pension insurance until the first quarter of 2005. Regarding social insurance, we haven't been paid anything since January and even our health cards are not valid any more. If we get sick, we have to pay for it ourselves.

Individuals can discover the fraud only after they are dismissed or leave the company as happened to another daily newspaper journalist:

We cannot find out whether the employer is really paying our social and health insurance. There were cases when people discovered only after leaving their companies that they had been cheated for years. If the employers decide to pay these amounts, it's usually reserved only for the people who are close to them.

This practice is widespread in our media. The Independent Journalists' Association of Serbia (IJAS) made several requests to the Ministry of Labor demanding increased numbers of inspections in the media in order to solve this problem. A source from the Association reported as follows:

They told us in the Ministry that they are not able to solve the problem. They were sending inspectors, but the situation is unchanged. They suspect that media outlets find out the schedule of inspections and remove the people who are working without a contract.

The situation is better in the media with foreign capital. These publishers are major players in Europe, and this kind of violation of the law is unacceptable to them. A participant from an NGO dealing with the media said:

I have to admit that the situation is better in the media with foreign capital, especially WAZ or Ringier. These are serious investors who carefully analyze their purchases and their obligations. Domestic investors just buy a media outlet at an auction, pay what's due to the government, and that's it. Foreign companies factor in such things like investment plans and collective agreements. Of course, they are also more advanced developmentally.

Public service media, new media and independent media, on the other hand, tend to pay better salaries and benefits. Public media are funded from the government budget, and public service media (Public Service Broadcasters of Serbia and Vojvodina) are funded by TV licence fees. Since the money for salaries is guaranteed in advance, it is not necessary for them to register only minimum wages. New media have managed to attract employees only by fulfilling all legal requirements and paying salaries that are mostly above the national average of 27,700 dinars (340 euros). This situation was confirmed by a journalist who works in one of the newly established private TV stations that won a national frequency. The main problem of the independent media is that they are tightly controlled by the government. Inspections are more frequent than elsewhere, and the slightest mistake can discredit them.

Our payments are always done to regular accounts, and vacations must be announced in advance. All formalities are covered. We have to operate this way because it is very important for independent media to work in accordance with the law. Otherwise, that would make us a target for attacks.

On-line media constitute a separate group when it comes to contracts and payments. This type of media is underdeveloped in our country and incapable of attracting many advertisers. Since they have small revenues and large support costs, they are often unable to meet their contractual obligations. They don't have many employees aside from their owners.

Journalists work on a voluntary basis waiting for this kind of media to achieve the status it has in more developed countries.

According to information from IJAS, almost 60% of their members (around 2,600) are not regularly employed. The situation in the Journalists' Association of Serbia is similar as 40% of their members (around 3,000) are not either. Those without regular contracts are either freelance contributors whose duties and obligations are not different from typically hired employees or temporary workers who are often called freelancers. In most cases, these people are young journalists acquiring necessary skills. When hiring new, young workers, media companies usually put them on probation for a month.

Many media outlets require their workers to serve for a trial period that can last for several months during which time contributors perform the same amount of work as regular employees. These young workers are not aware of their rights, which makes them a perfect target for exploitation. A long-time freelance worker says:

Freelance workers in my TV station are horribly paid. Their only benefits are a mobile phone and a number they can use for work. The pay is so low that they are often forced to pay a part of their phone bills which are sometimes larger than their pay. This is absurd, and it will scare young people away from the profession.

Generally speaking, freelance contributors are paid less than regular employees. Legislation is one of the problems because the same net salary is taxed almost 100% more. Even experienced journalists have similar problems like the one noted by a journalist in a weekly newspaper:

While the average salary in Serbia amounts to 340 euros, freelance workers receive 8,000 dinars (less than 100 euros) for a month's work and several articles in each issue.

Freelancers have seen some improvements in the last two or three years as the number of media companies that do not offer contracts

has decreased, especially in Belgrade. Nevertheless, social and health insurance contributions are one of their greatest problems. As is the case with regular employees, they are paid a minimal wage and the rest of the money is paid in cash, but freelance workers do not have health insurance unless they are registered with the Employment Bureau, so they must pay for health services. Unless they have some kind of verbal agreement with their employers, they are not able to take annual leave. Companies that allow them vacations usually allow shorter ones, and they are unpaid because they are not productive during this period. Women are especially affected by this as one of our participants describes:

Women have many temporary assignments. When they get pregnant they lose everything. Journalists are generally underpaid which is a form of systematic discrimination. I have been thinking about doing all these jobs while pregnant. That's physically impossible.

Freelance workers are especially vulnerable to the employer's right to refuse to publish/broadcast an article/photograph/report. These are often commissioned research projects that may be offered to various parties as one informant explained:

You do a job without a contract because you think everything will be all right. Then they explicitly tell you that they are satisfied, but they don't publish the article. And they don't pay you, explaining that it's their policy not to pay for unpublished articles. It is entirely possible that they gave the same assignment to several journalists and then chose the best article. That's nothing more than slavery or prostitution.

The only advantage of freelancing is the possibility of working for several different companies though some regular employees are allowed to do the same provided they don't publish their work in competing media outlets. Due to low salaries, many media employees need the extra income.

Freelancers are also victims of discrimination in society. Although many of them have regular salaries just like typically hired employees, they

are not allowed to enjoy the benefits offered by commercial banks like applying for loans. Many freelance workers are also concerned about periods when they are unable to pay their social and health insurance contributions.

V. CENSORSHIP AND SELF-CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

When asked the question, “Do you feel that your work relations impose a degree of censorship or self-censorship on you?” most of the participants (52%) claimed that censorship or self-censorship affected their work to a certain degree. Around 45% gave a negative response, while 3% offered no answer (Table 5). Table 5 also breaks responses down by type of media.

Table 5: Censorship and Self-censorship by Media Type

%	<i>yes</i>	<i>no</i>	<i>sometimes</i>	<i>no answer</i>
PRINT	25%	42%	27%	6%
TV	28%	56%	17%	0%
RADIO	21%	25%	54%	0%
NEWS AGENCIES	17%	73%	0%	0%
ON-LINE	0%	80%	20%	0%
TRADE UNIONS	50%	50%	0%	0%
ASSOCIATIONS	0%	67%	33%	0%
total	23%	45%	29%	3%

Privatization in Serbia is still incomplete. Many media outlets, especially those in the provinces, still depend on municipal budgets, i.e., on political-managerial agencies of local governments. Most of them do not have the large volume of advertisers available in the commercial media, so marketing revenues are negligible. An experienced journalist from

a local public TV station claims that actual marketing is almost non-existent in his station and describes the current situation:

One of the duties of the marketing department is to follow the president of the municipality around each time he decides to visit a pig breeder. It doesn't matter if the visit happens after regular working hours or not; you have to run a story on it. And it's always the top story in our news, regardless of its utter irrelevance. Such pressure is humiliating to our profession and negatively impacts the quality of information available to the public.

Aware of this fact, local politicians do everything in their power to use the media for political purposes. Every change in local government results in changes in the top-level management of the media outlet. New editors are hired, often without any previous experience in journalism. Their main professional quality is affiliation with ruling political parties as another journalist from a local TV station recounts:

Editorial positions are reserved for active party members in ruling coalitions at the municipal level. Political selection and obedience are more important than competence.

Journalists in public service media who are critical of the government have been fired or prosecuted. Although in the spring of 2006, the Republic Broadcasting Agency revoked the license of BK TV that was blatantly using the media in favor of the owner's political party, this phenomenon is still widespread in Serbia. Freedom of expression is most obviously infringed during election campaigns when the media are openly biased in favor of the ruling parties.

There are other, more subtle ways to pressure public service journalists as described by an NGO employee:

You are not allowed to advance professionally, regardless of your skills. The editor, who was chosen for his obedience, would give you more difficult assignments, reduce your salary or place you in an unsatisfactory workplace. Very soon, we will reach a situation when editors will be unable to differentiate between good and substandard work.

Investigative journalism is very rare in Serbian media. Almost no one

does research unless it is a part of a political directive. The profession is reduced to the simple transfer of information, a lot of which is irrelevant. The print media do more research, but it's still tied to political pressures. The low level of journalists' general education is also a problem according to the same NGO source:

Journalists are often incapable of finding information and worse yet, they don't know how to use it. Although their basic literacy is unsatisfactory (even incorrect terms are often used), such journalists are considered adequate for the public service media. Some people were removed from their positions after October 5, but they came back with a vengeance. We have the same editors as during Milosevic's rule, and they are exerting the same kind of censorship. They are perfectly aligned with the owners and precisely follow their orders. The same situation prevails in all media outlets. There are no independent media.

The prevailing type of pressure in the private media is owners interfering with the editorial policy. Owners often require journalists not to make negative reports on their clients and explicitly forbid the mention of people or companies opposed to the owner. As a journalist from a private TV station says, "Today, censorship is carried out by an unnamed group of businessmen. If you mention a tycoon in your report, his public relations service will react."

During the interviews, TV journalists recounted directions to modify a marketing spot and disguise it as editorial content to satisfy clients' interests without violating the Law on Public Information which specifies the time allowed for advertising and marketing during news programs. These situations often cause conflicts between journalists and owners as pointed out by one of the journalists from a private daily newspaper, "That's a text book example of a violation of journalistic ethics that occurs regularly with marketing texts camouflaged as journalistic articles."

This phenomenon is also present in newspapers with large circulations. One of the journalists says that his daily newspaper is full of advertising text in a journalistic form. There are also media outlets whose owners

engage in additional business activities. Their journalists point out that in these cases owners use the media for promoting these businesses.

The personal interests of employers and sometimes of editors often have higher priority than the journalistic code of ethics. Owners do not hesitate to use the media to settle an old score with someone. This is confirmed by a participant from an NGO:

The employer called in my editor-in-chief (who's now got his own newspaper) and asked him, 'How could you allow this person to show up in the paper?' The editor asked him why, and the owner said, 'Do you know that this woman owes me 10,000 marks?' My editor said he didn't know, and what had that got to do with anything? Then the employer said sarcastically, 'OK, then give me a list of all people who owe you money and who are not allowed to show up in your paper.'

Serbia has not been immune to the problems characteristic of all countries in transition, i.e., political and economic interests are often intertwined in the media especially in the provinces. This is the case in one of the local TV stations:

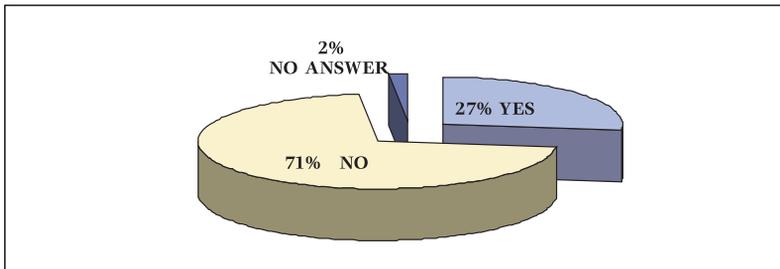
The owner used to be very close to a local ruling party. He's now distanced from them and has a very good relationship with a party from the other end of the political spectrum which is now ruling the town. He's connected to the city's Urban Planning Office that's funding the station, so we often have to report on the activities of the director of the office, even if he's only opening a street section or something like that. And he cooperates with the health secretariat because his additional business is centered around pharmacies and medicines.

VI. JOURNALISTS' TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

Existing information about the number of journalists in journalism trade unions is incomplete. It is estimated that around 6,000 journalists belong to the Independent Media Union,¹⁶ while the Trade Union of Serbian Journalists has fewer than 1,000 members.¹⁷ Most of the participants were not members of any trade union as is shown in Figure 2.

¹⁶ *The Independent Media Union was established in 1991.*

¹⁷ *The Trade Union of Serbian Journalists was established in 2002.*

Figure 2: Trade Union Membership of Survey Participants

Journalists are deeply divided over their affiliation not only with journalists' associations but with trade unions as well. The Independent Media Union is close to IJAS. This division, which has political connotations, adversely affects the position of journalists and the protection of their rights. Trade unions don't have the influence necessary to coerce owners and employers into adopting a single (nationwide) collective contract. The lack of a strong trade union is of a great advantage to employers, journalists believe, since they are most often left on their own.

Certain private media owners feel so empowered by the lack of strong trade unions and by the inadequate enforcement of laws and regulations that they often threaten journalists with dismissal at the slightest hint of a desire to form such organizations. In the words of a participant from a local private media outlet, "The owner clearly said that everyone who tries to form a trade union will be fired." Nevertheless, his opinion of the existing trade unions is unfavorable because as he says, "The existing unions are not successful in carrying out their missions. They don't have a special union section nor any idea how to deal with journalism and the media which have their own specifics."

Previous experience proves that trade unions are successful in protecting the labor rights of journalists mostly in the public service media. Unfortunately, freedom to form trade unions is guaranteed only to typically

hired employees.¹⁸ Freelance workers are excluded from any type of agreement achieved in a media outlet. A journalist from a weekly newspaper described the situation:

This is completely absurd, especially having in mind that most of the people working in editorial offices are hired as freelancers and are exploited. Freelance and part-time workers are precisely those who are most in need of such protection in assignments performed with a contract or after a verbal agreement. That's where I need protection from trade unions.

Trade unions have had and still have an important role in public service media that have been or will be privatized. Collective contracts with municipalities signed before the change of ownership require the new owners to accept them. That has often been difficult as confirmed by a member of a trade union who's now struggling to successfully negotiate with the municipality and conclude a collective agreement:

A trade union in our media company was formed at the end of March 2006. At the moment, more than half the employees are members of the union. Until recently, we have had 45 employees and 27 members. Now we have the same number of employees, but only 22 members. Several important members left the radio because of constant pressure. We are often threatened with dismissal, and they keep telling us that everyone who works in the station will be fired after privatization.

Another participant claims:

At the moment when the last individual contracts were being signed, a trade union didn't even exist. We know that individuals were given salaries outside the Labor Law. We have managed to force a pay raise and were promised a collective contract, but a year has passed and it hasn't happened yet. Up to the moment when a representative office of the Independent Media Union was formed, everybody was saying that buyers were lining up to buy the radio. Those alleged buyers were mostly people who had no connection with the media whatsoever. After the trade union was established, rumors about purchase ceased, and then everyone talked about how nobody would want to buy us.

¹⁸ *"Employees have a right to freely organize trade unions, without approval, after a registration." Article 206, Labor Law of the Republic of Serbia.*

Trade unions have a negligible influence within private media outlets. In the words of one participant:

Unfortunately, it's (influence) is at a very low level. Most of us, especially older ones, are members of the Independent Media Union and the only thing they have achieved for us is the fact that for national holidays we get paid 150% of the usual daily wage. Generally, most people are not aware of the importance of the trade union, but it's the union's fault as well because they do not represent nor stimulate the newspaper in any way.

In one case, a journalist lost her job despite the fact that the legal criteria for regular employment were met¹⁹ in accordance with the employment contract that had already been concluded several times.²⁰ When the participant tried to protect her rights, the blame was put on her:

After the Managing Board was informed about the situation they said, 'What are we going to do? Her position is in the statute, and we can't fire her because she'll sue us.' Then they reduced my salary. I had no choice at all. The company's legal counselor said that it was possible to ignore this, but that the same situation would happen again after six months. The law was violated as well as their own statute that explicitly stated that my position was professional—which the legal counselor interpreted as regular employment. The president refused to hire me because she had never agreed to conclude a contract for regular employment with me. I was told to quit my job and find some way to work. I was offered an alternative in another association where I would have worked in the trade union. After that, they would have hired me again after the expiry of the contract. So they wanted to play something like ping-pong with me every six months. It all seemed too uncertain to me. I doubted that it could work properly. I was told again that my position would be canceled if I didn't quit. So I decided that it was better to be a technological surplus than to quit because I wouldn't get any severance pay or even a few months' allowance from the employment bureau. Then the board discontinued my position.

The degree of dissatisfaction with trade unions' efficiency in protecting the rights of journalists is shown in the Table 6. Only 8% of respondents thought membership would protect their rights while 57% did not answer the question.

¹⁹ *Temporary employment shall become permanent employment if the employee continues working at least for five workdays after the expiry of the contract on temporary employment.* "Article 37 paragraph 4 Labor Law of the Republic of Serbia.

²⁰ *a new employment contract was prepared every 6 or 12 months in this case.*

Table 6: If You're a Member Will the Union Efficiently Protect Your Rights?

%	Yes	no	Sometimes	other	no answer
PRINT	8%	17%	8%	8%	59%
TV	6%	17%	17%	0%	61%
RADIO	13%	33%	4%	8%	42%
NEWS AGENCIES	17%	0%	17%	0%	66%
ON-LINE	0%	20%	0%	0%	80%
TRADE UNIONS	0%	0%	0%	50%	50%
ASSOCIATIONS	0%	33%	0%	0%	67%
total	8%	20%	8%	7%	57%

Mistrust was exacerbated by several cases when trade unions sabotaged good individual contracts. A participant from a daily newspaper claims:

We were receiving canteen coupons. Then the trade union protested because we could not choose a place to eat. They wanted us to receive money instead of coupons so that we could choose where to eat. Now we don't have coupons, no canteen, and no public transportation tickets either.

Aware of their own mistakes and the general situation in journalism, one of the trade unions representatives came to the following conclusion:

I am not satisfied with what we've done, but taking into account the previous situation, we have achieved a lot. We have started from scratch and now we have something that we should have had before beginning our activities. Journalists are still not aware of the role of trade unions—they often fail to see the difference between professional and legal issues. They demand that we intervene in the sphere of their professional rights, which we are not allowed to do.

VII. CONCLUSIONS AND RECOMMENDATIONS

The results of the research have shown a great degree of dissatisfaction with journalists' socio-economic position, with the inadequate enforcement of legal provisions and measures and with frequent violations of their basic labor rights by media owners and employers.

Young journalists and freelancers proved to be the most threatened categories of workers. Unlike their regularly employed colleagues, they are usually paid less for the same amount of work, often without health insurance benefits, paid travel expenses and even a work contract. With the goal of achieving better protection and exercising the right to work as a fundamental civil right of media workers in Serbia, the following measures are recommended.

- Create a single register of freelance contributors and freelancers (a database with several levels of authorization) to be updated regularly. In order to make this register useful, it must contain not only basic data about journalists, photographers etc., but also data that would give users a general idea about working conditions in specific media companies (average pay, actual duration of probationary work,²¹ benefits etc.). Professional journalists' associations or media photographers' associations might be the implementers of such a project.
- Organize an intensive lobbying (marketing) campaign to raise the level of awareness and education of media workers (especially freelancers) about protecting their rights (including authors' rights) and the actual situation in the media. Faculties should be included in the campaign, especially the Faculty of Political Science, as well as other faculties that are in any way connected with journalism.
- Convince colleagues and the public about the benefits of trade unions and inform them about the situation in the media. The underlying intention is to create a powerful trade union capable

²¹ *The Danish Journalists' Association has proven to be efficient and economical. The Trade Union of Serbian Journalists was established in 2002.*

of coercing owners and employers into signing a single collective agreement that would offer a greater level of protection to media employees than is provided the Labor Law. Such a union would also be able to secure work contracts that would substantially protect the interests of freelancers and provide them with the same benefits as permanently employed journalists. This idea could be propagated by trade unions, professional associations, NGOs and institutions active in the education of journalists, photographers or political analysts.

- Put greater pressure on labor inspectors and other similar services in order to improve the implementation of existing legal solutions.
- Modify existing legislation to a) ensure the transparency of media ownership and remove the inability to identify the owner as an excuse for inadequate enforcement of existing laws and b) provide trade union protection to freelancers.
- Establish a Media Council within the Ministry of Culture and the Media. Although both associations managed to agree on the Journalists' Code, only this Council would have the influence to ensure adherence to the Code. In this way, pressures on journalists by editors and employers to violate the Code will be diminished. Within the Council, it will be necessary to create separate councils for print and electronic media in order to allow better control.

VIII. BIBLIOGRAPHY AND ADDITIONAL READING

No surveys have been conducted in Serbia that exclusively focused on the socioeconomic status or protection of journalists and other media workers as part of labor laws. The following studies by the International Federation of Journalists (IFJ) and the European Federation of Journalists (EFJ) were used during the preparation of this report:

- Working Time in Journalism (journalistic sector)²²
- European Best Practice Survey: Working Conditions of Journalists in the Print Media²³

²² Klehm, Michael, research: *Working Time in Journalism: A Comparative Analysis by EFJ Unions, EFJ, Brussels, Belgium, January 2001*

²³ Klehm, Michael, *European Best Practice Survey: Working Conditions of Journalists, IFJ/EFJ,*

- Freelance Journalists in the European Media Industry²⁴

The first systematic research analysing among other issues the material position of journalists was done in July 2002. The Independent Journalists' Association of Serbia in cooperation with the Strategic Marketing Agency conducted the survey "The Position of Journalists in Serbia in 2002." In 2003, the Media Center Belgrade conducted the poll, "Position of Journalists in 2003—Business, Politics, Ethics and Journalism." The latest research "Journalists and Journalism as Seen by Citizens of Serbia" was presented to the public in July 2007.

Broadcasting Law, adopted in 2002 http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=45&t=Z

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Public Information Law, adopted in 2003 http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?t=Z&Id=84#

Serbian Journalists' Code, adopted in 2006, <http://www.nuns.org.yu>

Statute of NUNS, <http://www.nuns.org.yu/dokumenta/index.jsp> and
Statute of UNS, http://www.unsonline.org/index.php?page_id=53

Slovenia

by Iztok Jurančič

I. ABSTRACT

Key sources for the preparation of this report were comparative overviews and analyses of legislation, relevant press conferences and other public events, documentation and reports of the Slovenian Union of Journalists, a survey and analysis of the position of freelance journalists, systematic analyses of contractual relations between media publishers and journalists and analyses of the market and ownership prepared by the Peace Institute.

A comparative overview and cross analyses of key legislation point to a deficit in regulating the work of freelancers, as the majority of stipulations of general and specialized legal acts regulate only the contractual relations of the regularly employed. The legal position, security and rights of freelance journalists are at a much lower level than those of the regularly employed, even when they work for the same media outlet and their tasks and professional obligations are the same. It can be stated both with regard to freelance and to regularly employed journalists—and partially also for media publishers and the media themselves—that systemic and institutional exposure to various pressures is considerable, i.e., when the journalist's role as an agent of the public is in question, legislative and self-regulatory mechanisms for protecting the independence and autonomy of the media and journalists from the government and owners are insufficient or nonexistent. As a result, general risks and exposure in labor relations that include losing work or employment because of expressing one's opinions are greater in journalism than in some comparable professions.

II. OVERVIEW

The new Employment Relationship Act that regulates individual contractual relations between workers and employers entered into force on

1 January 2003, and the Collective Agreements Act has been in force since May 2006. Until 2003, individual and collective labor relations were predominantly regulated by one legal act. The major novelty of the new Employment Relationship Act was the intention of the legislature to regulate only those employment relationships that are established with a contract between a worker and an employer. Likewise, the Collective Agreements Act limits collective negotiations to representing the interests of workers with regular employment only. The gap will become unbridgeable if the employers' side does not show the will and interest to regulate the position of freelance journalists as well. That can be a handicap in the future, as the already very bad legal situation of freelance journalists will deteriorate further when the validity of the collective agreement for professional journalists expires. From the perspective of a professional journalists' union, the gap in legislation restricts the right to freedom of association and collective representation of freelance journalists.

The Collective Agreements Act will radically change the model of collective negotiations and social dialogue in Slovenia. In April 2009, the validity of all those collective agreements that were concluded with employers' associations with mandatory membership will expire. Until 2006, membership of business enterprises in the Chamber of Commerce and Industry of Slovenia was mandatory, so there are practically no collective agreements that would not have been negotiated and signed by the Chamber. In June 2006, the Chambers of Commerce Act was adopted introducing voluntary membership. That was followed by a lengthy reorganization and transformation of the main business association. On the basis of voluntary membership in the Chamber of Commerce and Industry of Slovenia, the Association for Print and Media—the signatory of the collective agreement for professional journalists on behalf of the employers in the private sector—has also been transformed into the Chamber for Publishing, Book Selling, Graphic Industry, Radio and TV Media. If social partners do not demonstrate sufficient will and interest to conclude a new collective agreement for professional journalists, the

existing one will expire at the same time as all others, i.e., in April 2009, and trade unions will have to renegotiate the content of collective relations that can be settled within the minimum standards established by the Employment Relationship Act.

Trade union membership is influenced by the oligarchic and highly concentrated structure of the media market and by trends in the journalistic labor market. Public RTV Slovenija employs about one half of all workers in the media industry. Its TV department has only one genuine competitor at the national level. In print, the strongest competition exists among three publishers of national dailies. The market share of RTV Slovenija, measured by revenues, is 34%, the share of the three major national publishers of print media and one TV operator is 38% while regional and local publishers take 28% of the media market. In total, there are over 400 publishers publishing about 1200 media titles. Those that predominant in the market do not publish more than 100 media titles in total.¹

III. LEGISLATION REGULATING LABOR RELATIONS IN THE MEDIA

Freedom of association in trade unions is a constitutionally guaranteed right. Slovenia has ratified all key International Labour Organization conventions on collective negotiations and trade unionism as well as all other relevant conventions on regulating working conditions. They are therefore a part of the internal legal system.

Media publishing and public interest in the field of information in the private and public sector are generally regulated by the Mass Media Act. It entered into force in May 2001, replacing the previously valid Public Media Act. Specialized media legislation is the RTV Slovenija Act that regulates the operations of public radio and television. It was entirely revised in 2005, and the new version entered into force in November of that year. Among the laws that regulate civil contractual relations, a

¹ *Media for Citizens* (Brankica Petković, Sandra B. Hrvatinić, Lenart J. Kučič, Iztok Jurančič, Marko Prpič, Roman Kuhar; Peace Institute, Ljubljana 2006).

particularly important one for freelance journalists is the Copyright and Related Rights Act, with regard to the general code of obligations.

Among the collective agreements with general validity, the Collective Agreement for Publishing and Book Selling concluded in 2000 has been used in the media industry. It regulates minimum standards in relations among the employers and the employed in the sector. The Collective Agreement for Professional Journalists concluded in 1992 is generally valid for publishers employing journalists. In principle, a general provision guarantees equal economic rights for both employed and freelance journalists.²

The Mass Media Act defines a journalist more broadly than the Employment Relationship Act defines a worker. According to media legislation, journalists are not only those who are regularly employed, but also freelance journalists registered with the Ministry of Culture (that grants so-called “independent journalist” status).³

There are also some conflicts in legislation arising from general definitions of the rights and duties of an employee in the Employment Relationship Act and the responsibilities and duties of a journalist according to the Mass Media Act. The latter has imperfections especially in regulating professional conflicts that cannot be solved merely by applying labor legislation among editorial departments and publishers as well as within editorial departments. State institutions— media inspectors and the Directorate for Media—have been inefficient in their supervision of the enforcement of the Mass Media Act. If its stipulations are breached, there are no legal sanctions to impose.

EMPLOYMENT RELATIONSHIP ACT AND SPECIFICS OF THE MASS MEDIA ACT

Among the general provisions of the Employment Relationship Act, a

² *Collective Agreement for Professional Journalists*, (Official Journal RS 31/1991; entry into force: 4.1.1992), article 2

³ *Mass Media Act*, (Official Journal RS 35/2001, entry into force: 26.5.2001; changes and amendments: Official Journal RS 69/2006, entry into force: 24.6.2006), article 21. and 22.

particularly relevant one for workers/journalists is the prohibition of discrimination on the grounds of political or other convictions when entering into an employment relationship throughout its duration and with regard to the termination.⁴ An employment relationship is defined as a relationship between a worker and an employer whereby the worker is voluntarily included in the employer's organized working process in which he or she in return for remuneration continuously carries out work in person according to the instructions and under the control of the employer.⁵ In the case of journalists, their autonomy and personal responsibility for expressing opinions and standpoints is regulated by the Mass Media Act.

When the elements of an employment relationship exist, it is explicitly prohibited to carry out work on the basis of civil law contracts.⁶ In the case of disputes between a worker and an employer regarding the existence of an employment relationship, it is assumed that when the necessary elements are there, the employment relationship exists. Those provisions are of great importance for freelance journalists who in fact perform work as per the description of an employment relationship but who are remunerated on the bases of civil contracts. According to the Mass Media Act, the program concept of the media in question is a part of the employment contract.⁷ The program concept is therefore one of the elements that a journalist/worker has to be familiar with to fulfil contractual and other obligations.

The Employment Relationship Act stipulates the mandatory constituent elements of an employment contract. Among the more important ones are the stipulations on the duration of an employment relationship, daily or weekly working time and the organization of working time, the amount of basic wage and other compensation, the components of a worker's wage, payment period and payment day, annual leave

⁴ *Employment Relationship Act, (Official Journal RS 42/2002; entry into force: 1.1.2003), article 6.*

⁵ *Employment Relationship Act, article 4.*

⁶ *Employment Relationship Act, article 11.*

⁷ *Mass Media Act, article 17.*

and length of periods of notice. In relation to the Mass Media Act that protects the autonomous expression of opinions and standpoints in the public interest, it is important that journalists' contracts include the title of the position or information on the type of work for which the worker is to conclude the employment contract, including a brief description of the work he or she should carry out pursuant to that contract. Specifically, the Mass Media Act prohibits any deterioration in the working position of a journalist that is a consequence of expressing opinions and standpoints.⁸ This provision can be enforced only if the contract clearly defines what editorial department the journalist works for and what his or her position in that department is. Because of the responsibilities of the profession as they are defined in the Mass Media Act, a very important provision for a journalist/worker in the Employment Relationship Act is the one requesting that individual contracts refer to collective agreements (therefore also to the collective agreement for professional journalists) binding the employer and/or employer's general acts stipulating the worker's conditions of work.

Remuneration for work on the basis of an employment contract is a wage, and the employer must respect the minimum set by law or by the relevant binding collective agreement. The total wage is composed of the basic wage, the wage for job performance and extra payments. Remuneration for a performance is a constituent element of wages if laid down by a collective agreement or an employment contract. The worker is entitled to extra payments for conditions related to working time (e.g., night work, overtime, Sunday work, work on statutory holidays and free days, remaining on call, unevenly distributed working time). Those payments are to be specified in the collective agreement as is extra payment for years of service. The employer must reimburse workers' expenses for meals during work, for travel expenses to and from work and expenses the worker incurs when performing certain work and tasks on business travel.⁹

⁸ *Mass Media Act, article 21.*

⁹ *Employment Relationship Act, from article 126. to 140.*

The Employment Relationship Act refers to collective agreements with regard to working hours as well. Full-time work must not exceed 40 hours a week. The statute and/or a collective agreement may stipulate working time of fewer than 40 hours a week; however, full-time work cannot be less than 36 hours a week. In accordance with a European directive, overtime work is limited to a maximum of 8 hours a week, 20 hours a month and 180 hours a year. Daily, weekly and monthly time limitations may be regarded as an average limitation over the period stipulated by the law or a collective agreement and may not exceed six months. The law or collective agreement also regulates the cases in which the worker is obliged to perform overtime work at the request of the employer. Annual leave in each calendar year may not be less than four weeks; the collective agreement or the employment contract can specify a longer period.¹⁰

With regard to disciplinary sanctions, an employer may only admonish a worker: other sanctions are possible only if they are laid down in a collective agreement.¹¹ These sanctions are important as the employer can claim that there has been a serious breach of work duties that can result in the termination of an employment contract. In the disciplinary procedure, the employer must allow the worker a defense and if required by the worker, the employer must notify the relevant trade union about the procedure and the violation. The employer must deal with the written opinion from the trade union regarding the procedure within eight days and express his or her standpoint in respect of the statements.

In case of employment disputes, the law guarantees judicial protection before a competent labor court within 30 days from the expiration of the time limit stipulated for the employer either to fulfill obligations or to cease violations. Another possibility is arbitration for settling individual labor disputes that may be stipulated in the collective agreement. In such cases, the collective agreement must lay down the composition, the procedure and other relevant issues.

¹⁰ *Employment Relationship Act, from article 141. to 153.*

¹¹ *Employment Relationship Act, article 175.*

COLLECTIVE AGREEMENT FOR PROFESSIONAL JOURNALISTS

The valid collective agreement for professional journalists upgrades the Employment Relationship Act with minimum standards for employment contracts. The introductory provision binds the signatories to enforcing the Declaration of Munich on journalists' rights and duties. Its principles (among them informing the public above all other duties and interests) are to be specified by the employer or in individual journalists' employment contracts.

The provision on personal validity incorporates not only the regularly employed but also freelance journalists and students studying to become journalists.¹² The important provisions of the collective agreement that upgrade the minimum standards enacted by law are typical journalists' posts, terms of employment and minimum basic salaries, working hours and their organization, annual and recreational leave (a maximum of 40 days in total), professional training and the protection of trade union representatives.

The tariff part of the collective agreement stipulates the constituent elements of a wage in the same manner as the law and sets the scale of minimum wages for typical journalists' posts. The collective agreement stipulates significant supplements to the basic salary, the most important one being 0.5% for each year of service and 0.2% for length of service. In addition to the standards of the collective agreement, some major media publishers pay supplements for length of service for the same employer, normally 0.2% for each year of employment. Journalists also receive supplements for working certain shifts (night, overtime, holidays and Sundays) that are set at 150% of the hourly rates for regular work. The collective agreement contains other relevant provisions regarding remuneration such as a jubilee reward, the amount of assistance paid by the employer in certain cases and a provision that prohibits decreasing the wages of journalists who are over 50 years old. The collective agreement also stipulates reimbursements of work-related costs: meals, transporta-

12 Collective Agreement for Professional Journalists, Article 2.

tion to and from work and costs for business traveling. The collective agreement expressly states that the remuneration for freelance journalists is a set gross amount that should be comparable to that paid for the work of the regularly employed. According to the collective agreement, freelancers are also entitled to the reimbursement of material costs.¹³

As for protecting the public interest and professional autonomy, the collective agreement stipulates that the manager/employer must obtain the opinion of the editorial staff when appointing editors and defining basic concepts.

REGULATIONS ON THE STATUS OF FREELANCE JOURNALISTS

A systematic overview of legal sources that regulate the position of freelance journalists reveals a fragmented, incoherent and inconsistent regulatory framework. The general Civil Code only regulates rights and duties with regard to fulfilling contractual obligations but not their content.¹⁴ The Copyright and Related Rights Act is more favorable for freelance authors than for regularly employed journalists as the latter transfer all the authors' material/economic rights to the employer for 10 years after the completion of a copyrighted work, unless the contract (either employment contract or a collective agreement) states otherwise. Theoretically, the position of freelancers is more favorable since they keep their economic rights unless they specifically transfer them to the publisher. Without specific agreements, it is assumed that they transfer only the minimum scope of rights which in principle means only the right to one-time publication. In the case of unwritten, unclear or in any way problematic transfers of economic rights, the principle *in dubio pro autore* is enforced, meaning that the court would rule in favor of the author.

In practice, the situation is rather different. An overview of a number of contracts showed that authors well protected legally are frequently in

¹³ *Collective Agreement for Professional Journalists*, articles 56., 62., 64. and 79.

¹⁴ *The Strike of Journalists (Domen Horvat; Faculty of Law, University of Ljubljana, diploma work, 2005)*

a position in which they cannot negotiate, and their clients force them into signing unfavorable, many times even illegal contracts.¹⁵ Long-term, widespread illegal contractual practices of publishers can represent a great legal risk. If it comes to an avalanche of law suits, they could affect stock prices of private publishing companies and the operations of public radio-television RTV Slovenia.

The new Personal Income Tax Act has been enforced since 2005. One of its purposes is to eliminate tax evasion in copyrighted works. Specifically, it has become a general practice of employers to conclude civil contracts when actually an employment relationship exists thus making journalists into de facto freelancers. Therefore the tax legislation introduced a distinction between the so-called dependent and independent contractual relationship, and the dependent work is taxed in an equal amount as the work of the regularly employed. Enforcing those stipulations is expected to encourage publishers to regularly employ their de facto freelance journalists.

In November 2005, a special committee for the interpretation of the collective agreement established by two signatories, namely the Slovenian Union of Journalists and RTV Slovenia, adopted binding interpretations of general stipulations regarding freelance journalists and the scope of their rights. The interpretation is thereby an integral part of the Collective Agreement for Professional Journalists and Freelancers that does not explicitly distinguish between the (scope of) rights of regularly employed and freelance journalists. It stipulates that the remuneration for freelance work has to be defined in a special contract, that the conditions of pay cannot be worse than those of the regularly employed and that freelance journalists are also entitled to reimbursement for expenses related to the preparation of commissioned/copyrighted works. The committee for interpretation concluded that the provisions of the collective agreement limit the free will of contractual parties by requiring them to take account of remuneration for a comparable, regularly

15 Regulating the Freelance Status in Journalism (Jasmina Potokar Rant; Faculty of social sciences, University of Ljubljana, research of individual contracts relationships, diploma work, 2006)

employed worker (for example with a comparable level of education and description of work duties) as a minimum standard when setting the remuneration for work performed by freelancers. Remuneration for freelancers has to be proportionately adjusted to the scope of the work commissioned. A freelancer is also entitled to the reimbursement of actual costs arising from fulfilling the commission and the cost of transportation and meals which can be included in the lump sum contract. A freelance journalist is also entitled to an annual leave bonus; however, since that right is derived from the right to annual leave of the regularly employed journalists, the bonus has to be contained in the tariff or the contract price itself in the amount received by a comparable regularly employed worker.

IV. THE IMPLEMENTATION OF THE LEGISLATION IN PRACTICE

First, it must be stated that there is a relatively big gap between legislated norms and actual practice. The greatest breaches of labor legislation occur with regard to freelance journalists who in fact work as employees. In contractual relations with freelance journalists, breaches of the Copyright and Related Rights Act are the rule rather than the exception.¹⁶ The contractual relations of the regularly employed are predominantly in line with the Employment Relations Act and the collective agreement for professional journalists, while their professional duties and responsibility to the public in numerous cases contradict the provisions of the Mass Media Act.

Following an examination of actual practice, we can confirm the general conclusions of international studies regarding the implementation of EU directives in new member states. It can be stated for Slovenia that the labor law directives are integrated in its legal system even better than in those of some older members. When considering the implementation of and respect for the regulations, however, the situation is much worse. The most important reasons for that are the poorly staffed and uncoordinated inspection services (tax, labor and media) that have the authority

¹⁶ *Regulating the Freelance Status in Journalism*, Jasmina Potokar Rant

to supervise the implementation of legislation. Slovenian courts rule on individual cases in about one year, which is the EU average, but in many cases that period is still too long as the actual situation of the individual plaintiff deteriorates in the meantime due to lax inspection services. Pressure from civil society organizations to realize the legal rights of the employed is relatively weak. On average, trade union membership represents about 44% of the employed work force. The professional journalists' trade union organizes about 40% of the regularly employed journalists, which is comparable to the average of other members of the International Federation of Journalists. The share of freelance journalists in the trade union is significantly lower: according to estimates of the total number, only 17% are union members.

THE STATUS OF TYPICALLY EMPLOYED WORKERS

According to trade union reports, with regard to contractual obligations, the most common violations of law and of the collective agreement occur in regulating the duration and organization of working time, and the amount of the annual leave bonus is in many cases lower than that set by the collective agreement.¹⁷ Instead, the employers set it according to the minimum in the law. Other provisions of the tariff part of the professional collective agreement are violated less frequently. In line with the collective agreement, the minimum basic gross wage for a reporter has been set at 1035 euros since August 2007, and for the most demanding work of the head of editorial department at 1863 euros corresponding to a net amount of about 745 euros for the former and 1341 euros for the latter.¹⁸ The basic wage set in the collective agreement is the minimum wage; in practice, bigger private publishers of daily papers are the ones that remunerate their journalists at the highest rates.

The wage standards in the collective agreement are low as the last revision of basic wages was concluded in 1994. Since then, journalists' wages have been adjusted only to the inflation rate. According to the journalists'

¹⁷ See, *Recommendation for Minimum of Common Standards in Working Contracts*, (Slovene Union of Journalists, February 2007)

¹⁸ *Salary Reports in Media Companies*, (Slovene Union of Journalists, archive)

trade union reports on journalists' wages, they are from 15-40% above the minimum set in the collective agreement for those working for bigger private publishers of national dailies. In medium-sized private media, at the public radio-television station and at the national press agency, basic wages are at the minimum levels of the collective agreement. Trade union wage surveys, predominantly matching information provided by the employers, show that the average journalists' gross wage in June 2007 was 1930 euros which is 52% above the average wage per employee in Slovenia. In bigger media outlets, wages were higher. The average in June was 2052 euros, while the average wage in smaller media was 1591 euros. Average gross wages for radio journalists were 1391 euros, for TV journalists 2155 euros and for print 2247 euros. The average was higher in national media, i.e., 2011 euros in June, while the average wage of journalists working for regional and local media was 1508 euros. In public media, the average journalists' wage was 1597 euros, and in private media it was 2283 euros.¹⁹

Official statistics are not reliable due to deficiencies in the registration of publishers and in media registers. Analyses of the market have shown that of the total of 75 radio stations that are registered with the Ministry of Culture (as the Mass Media Act stipulates), 16 are not registered for RTV activities at all with the Agency of the Republic of Slovenia for Public Legal Records and Related Services; about half of the 52 TV operators fall within the same category. That is important for it points to a group that most likely violates the media law. It is very probable that they also massively violate collective and individual labor standards, as many local media operate without a single employee. There are 18 such operations in the above-mentioned total number of radio stations and 11 such TV stations. About one half of the total of 127 private RTV stations employ only managers, so it can be concluded that about two thirds operate exclusively by hiring freelance journalists.²⁰ Major media publishers have been leading in that respect, practicing a very restrictive employment policy and for many years barely replacing retired or redundant workers. The share of freelance journalists in the labor

¹⁹ *Ibid.*

²⁰ *Media for Citizens*

market has therefore rapidly increased. According to the latest statistics, 1635 people were employed as journalists in 2006 and 350 were registered as freelance (independent, self-employed) journalists. The journalists' associations estimate that there were at least 400 more freelance journalists working for the media without registering their status.²¹ The share of freelancers in the Slovenian media market is thereby comparable to that of bigger, developed markets since it has exceeded 30% of all professional journalists. The organization of freelancers in professional trade unions has not, however, been following those trends. The Slovenian Union of Journalists has 744 members of whom 614 are regularly employed (83% of all employed journalists) and 130 are freelancers (17% of the estimated number of freelance journalists). Membership is concentrated in major media where the level of union organization is relatively higher: in the biggest five companies, 61% of employed journalists are members of the trade union. Adding the independent journalists' trade union *Dnevnik*, the second biggest publisher of print media, 44% of all employed journalists are members of a trade union. The total number of journalists employed by publishers with trade union organizations is 1134 (membership level is 62%).²²

Reports from the major media outlets point to a deterioration in collective negotiations and social partnerships in the past year and a half. The employers—also under the influence of the new labor legislation—terminate the dialogue as soon as trade unions propose strengthening their rights and establish dialogue only when they attempt to weaken or abolish rights. In the name of cost cutting, publishers have been terminating contractual relations with journalists who were in fact employees but who performed work on the basis of civil law.²³

A sample of about 100 employment contracts revealed that nearly all major media have excessively emphasized the duties stipulated in the Employment Relations Act while the obligations and rights of the profes-

21 *Attacking the Journalism with Capital* (Neva Nahtigal, Peace Institute, Slovene Association of Journalists and Slovene Union of Journalists, working paper for round table, Ljubljana 2004)

22 *Salary Reports in Media Companies*, (Slovene Union of Journalists, June 2007)

23 *Slovene Union of Journalists archives*

sion defined by the media law are referred to only indirectly or not at all. Employment contracts generally contain the mandatory provisions laid down in the labor law, but those that should be included according to the media law are frequently missing: the general and introductory provisions do not refer to the specific regulations and codes that are binding for the profession (the Mass Media Act, the Declaration of Munich, the Slovenian Journalists' Code of Ethics); definitions of working post and tasks do not contain the media outlet that a journalist works for or the editorial department when bigger media are in question; contracts do not contain the program concept and job descriptions do not specify the area in which the journalists work. Employment contracts should contain these basics as it is impossible to enforce the rights and duties of journalists without them. Stipulations of the Mass Media Act are of particular importance in that respect, stating that the program concept shall be a constituent part of employment contracts. Journalists may not have their employment terminated, their pay reduced, their status on the editorial board changed or their position demeaned in any other manner as a result of expressing opinions and standpoints in accordance with the program concept. In the framework of these legal and other professional standards, a journalist is personally responsible for the consequences of his or her work and therefore the above-mentioned conditions should be defined in the employment contract, also in accordance with European Union Directive 91/533/EGS.

The conscientious objection clause contained in the professional code of ethics is not included in the employment contracts, and there is no severance pay if the clause is enforced. Those deficiencies have been most obvious, and in the past year and a half, the trade union's legal services have predominantly been needed for legal disputes in employment relationships.²⁴ Some cases taken to court to establish the legality of sanctions for expressing opinions and standpoints have not been concluded. The protection of journalists from changes in editorial policies is not functional at this point.

²⁴ *Report on Professional Autonomy. Techniques of Controlling the Media in Slovenia, (first report, Slovene Union of Journalists, October 2006)*

THE STATUS OF ATYPICALLY EMPLOYED WORKERS

It became evident when amending the tax and labor legislation that the numbers of de facto and forced freelancers were massive, and neither tax nor labor inspection had been efficiently overseeing the implementation of the new stipulations. A number of civil contracts analyzed still revealed a typical inequality between the obligations and the rights of freelance journalists.²⁵ On one hand they have the same responsibilities as those that arise from employment contracts, but on the other hand, the financial, economic and other obligations of their employers are considerably less than those for the regularly employed according to individual and collective standards.

On the basis of surveys and the massive cases discovered²⁶ of concluding illegal civil contracts with freelance journalists, it can be estimated that nearly two thirds of freelance journalists have been forced into that status. RTV Slovenia has been the greatest violator of the provision of the Employment Relationship Act that prohibits employment by civil contracts when there are elements of an employment relationship. The Court of Auditors revised royalties and other payments by RTV Slovenia in 2004 and established that at least 482 associates had continuously worked for the public station under civil contracts and had received monthly remunerations greater than 626 euros. The auditors examined the content and volume of their work and established that in half of all cases, elements of an employment relationship were obviously present and that violations of the Employment Relationship Act were very likely in an additional 36%.²⁷

In his analysis of the actual position of freelance journalists in comparison with those regularly employed, Gašper Lubej²⁸ emphasized the following key differences:

25 Regulating the Freelance Status in Journalism, Jasmina Potokar Rant

26 Auditors report on annual financial statements, estimate from the Slovene Union of Journalists archive, (Court of Audit of the Republic of Slovenia)

27 Auditors Report on Annual Financial Statements, (Court of Audit of the Republic of Slovenia)

28 Position of Freelance Journalists in Slovenia (Gašper Lubej; Faculty of social sciences, University of Ljubljana, diploma work, 2003)

- freelancers receive lower pay for the same work and payments are frequently late;
- they have difficulties in covering their pensions and health insurance, fewer possibilities for professional training and cannot obtain bank loans;
- their working time is not limited, they do not have weekends off, and if they cannot work due to illness, they receive no compensation;
- their right to extra pay for working overtime is not stipulated;
- for many, the period of service is not registered as they cannot cover their pension insurance with their incomes;
- they are deprived of all extra payments that the regularly employed receive for years of service and for working demanding shifts.

The Slovenian Union of Journalists conducted a survey among freelance journalists in 2004 that was analyzed by Jakob Južnič.²⁹ He separated the 104 responses into registered and unregistered freelancers. Registration for freelance journalists was introduced by the Mass Media Act in 2001. The main feature is related to pension insurance, namely that it enables journalists to make monthly pension contributions and in fact makes it their obligation to pay them (the minimum rate is slightly above 210 euros). Not surprisingly, the position of unregistered freelancers was worse than that of registered freelancers. Only the combined results for both groups will be presented in this report.

On average, respondents had been in the profession for seven years, and 72% indicated that journalism was their only source of income. The average working time per week was 39 hours, 48% worked for only one client, and 13% worked for two. A total of 26% worked without a written contract. Of those with a written contract, 57% had a one-year contract and 20% had contracts for an indefinite period of time. Of all written contracts in the sample, 57% contained a competition clause, a typical element in employment contracts.

²⁹ *Position of Freelance Journalists in Slovenia (Južnič, Jakob; Peace Institute and Slovene Union of Journalists, Ekoda, March 2004)*

Work was normally negotiated with an editor. Six percent of respondents frequently experienced pressure from their clients regarding the content of their texts, 31% had occasionally, 37% seldom and 27% never. Remuneration for work was a monthly lump sum for 47% of the respondents. One quarter was paid between 420 and 630 euros per month for their work, 25% received between 630 and 835 euros, 12% were paid between 835 and 1045 euros, and only 6% were paid more than 1045 euros. While 70% of the respondents were paid regularly and on time, only 15% indicated that they were suitably compensated. In all, 42% of the respondents received reimbursements for their travel costs, 23% received daily subsistence allowances and only 15% received reimbursements for their phone and Internet expenses. In comparison with regularly employed journalists whose benefits were entirely covered by their employers, only 17% of the freelancers indicated that social security costs were covered by their clients. Overall, 82% of the respondents evaluated their situations as bad, and 64% wanted regular employment.

A quantitative analysis of 66 copyright contracts signed by freelance journalists was conducted last year by Jasmina Potokar Rant³⁰ and presented in her graduation thesis, "Regulating the Freelance Status in Journalism." Her analysis points out serious deficiencies, an extremely low level of protection for authors and above all their weak negotiating positions. For one-time payments, their clients assume all economic rights for unlimited use frequently violating the law while the authors in many cases have responsibilities typical of those working with contracts. As many as 59 of the 66 contracts she examined contained provisions that had been voided by the Copyright and Related Rights Act. Only six contracts specifically defined the economic rights transferred to the publisher, while 21 contained a prohibition for working for other media. Ten contracts stipulated the authors' liability for the accuracy of the information, in 11 cases it was the liability of the publisher, in 4 it was divided between the two parties, and in 37 cases there were no provisions for liability which means that either side could be liable. Only 7 contracts contained a defined scope of work; 54 did not. Remuneration

30 Regulating the Freelance Status in Journalism, Jasmina Potokar Rant

was defined as a fixed fee in 15 cases, and 47 contracts included a provision that the monthly fee could be higher or lower, depending on the scope and quality of work.

V. CENSORSHIP AND SELF- CENSORSHIP AS AN EFFECT OF LABOR RELATIONS

Amendments to the Mass Media Act in June 2006 strengthened the influence of the government by increasing subsidies to expand and diversify the media and by implementing political measures for awarding those subsidies.³¹ Analyses show,³² however, that the state subsidizes the media regardless of economic need. The law and implementing regulations have not been appropriately amended in that respect. In spite of the measures specified, the policy on subsidies is not clearly defined with respect to the public interest and can therefore be in conflict with the regulatory and supervisory functions of the state in the media market. An amended provision³³ providing that subsidies would be used in the public interest to ensure the plurality, diversification and democratic nature of the media proved to be ineffective as many individual cases have demonstrated that subsidies can be used to legitimize the interference of the authorities with editorial autonomy. The RTV Slovenija Act, in fact, reflected the political party structure of Parliament.

Key provisions that define journalistic autonomy in the pursuit of the public interest have remained unchanged: they are deficient, their implementation is difficult and inspections and other forms of state supervision over their implementation have not functioned well.³⁴ Mechanisms for independent arbitration have not been determined either nationally or by publishing companies. Legal measures on editorial autonomy have become impotent since the statutes of companies do not sufficiently define the core competencies of management, editors-in-chief and editorial boards or the rules for organizing editorial departments.

³¹ *Mass Media Act, Article 4a.*

³² *Media Watch Journal No. 27, December 2006, Iztok Jurančič: Poor diversity in media offer*

³³ *Mass Media Act, Article 4a.*

³⁴ *Mass Media Act, articles 18., 19. and 20.*

Between April 2006 and August 2007, the journalists' trade union noted 26 cases of sanctioning and disciplining journalists for expressing opinions and standpoints, a clear sign of weakness in the provisions for autonomy. The Act does not define the degree of autonomy of editorial departments stipulating instead that it has to be defined in the basic legal acts of the publishers. The law does not even provide a minimum framework for implementing autonomy or possible sanctions in case of violations and implies that the publishers will take care of resolving conflicts among their editorial departments and managements and within editorial departments themselves. There are no internal regulations in publishing companies for addressing and resolving conflicts within editorial departments; therefore, the stipulations of the law are mostly declarations, and in practice judicial channels have been the only possibility for resolving them.

For journalists, two stipulations of the Employment Relationship Act have proved to be in conflict with the provisions of the Mass Media Act defining professional principles and guidelines for publishers. The Employment Relationship Act stipulates³⁵ that the worker is obliged to refrain from all actions that in view of the nature of work which he or she does could cause material or moral damage or harm the business interests of the employer. The other provision of the Employment Relationship Act that can be used to silence or formally sanction a journalist is the one on protecting commercial confidentiality.³⁶ It prohibits a worker from exploiting for his private use or from disclosing to a third person an employer's commercial confidentialities as defined by the employer that were either entrusted to the worker or that were learned in any other way. Several cases of abuses of both provisions have been recorded lately.³⁷ They were used in disciplinary proceedings against journalists for expressing their opinions and views. The largest private media publisher (Delo) formally threatened representatives of journalists' organizations with termination of employment claiming they

³⁵ *Employment Relationship Act, Article 35.*

³⁶ *Employment Relationship Act, articles 35. and 36.*

³⁷ *Employment Relationship Act, articles 35. and 36.*

had damaged the commercial interests of the employer by publicly condemning the sanctioning of two correspondents reporting from other countries. The publisher terminated their contracts because they had criticized the government.

The general labor law has become an instrument for directly threatening journalists who have come into conflict with the revised editorial policies introduced in 2005 by the newly appointed management of two state-owned media companies and of several larger private media groups. Replacements of top managers were carried out in institutions that together hold more than 70% of the media market. They were enabled by a high concentration of ownership in the market, dominated by economically strong companies whose principal activity is not publishing. To them, the media are merely a good financial investment and political capital.

Regulation and self-regulation of autonomy in the public interest is more significant in a small and concentrated market than in larger markets with strong competition. It has proved to be deficient and subordinate to the will of owners and the authorities. At the company level, the power of management in relation to editorial departments has been strengthened. Management has appointed new editors-in-chief, in many cases against the will of editorial departments. At the individual level, threats of termination of employment and disciplinary proceedings have jeopardized the stipulations that require journalist to place the interests of the public above obedience to employers. Since the policy on autonomy has not been amended and because the political orientation of the media remains unchanged, practically any expression of opinions and views can be sanctioned by an employer. Basically, the contractual security of journalists has deteriorated.

Individual media companies have also reported frequently informally disciplining journalists for expressing opinions and preventing them from seeking legal protection. Such proceedings have led to transfers, pay cuts and demotions and in some cases to consensual termination of

employment contracts, even though that is prohibited by law. A larger number of cases of censorship have also been recorded such as unauthorised changes in texts, refusals to publish commissioned articles or to publish any material that could be critical of the government.

VI. JOURNALISTS TRADE UNIONS: EXISTENCE AND EFFECTIVENESS

Professional solidarity is relatively strong within and among the media with internal trade union organizations. That became evident during the general journalists' strike in October 2004 organized by the Slovenian Union of Journalists. All employed and freelance journalists working for the media with local trade union chapters took part in the strike that was also joined by some smaller local media. Journalists in those media where there is no trade union, about one third of employed journalists, generally supported the strike in principle but did not join it. The strike was nevertheless a success because journalists drew the attention of the public to the problems in their profession for the first time in independent Slovenia, particularly to the problems of freelance journalists. The strike forced the then representative organization of employers, the Publishing, Printing and Media Association of the Chamber of Commerce and Industry of Slovenia, to start negotiating the revision of the national collective agreement for professional journalists. Negotiations have been in progress since the strike but not without interruptions. The latest has lasted since November 2006 and was caused by the organizational and institutional changes following the dissolution of the chamber with mandatory membership and its reconstitution with voluntary membership. Discussions on the continuation of negotiations with the new chamber are in progress.

Negotiations on wages for the employees of public RTV Slovenia were one of the more successful efforts of the trade union. Negotiations with state authorities lasted for five years within the broader social dialogue on the wage system for all employees of public institutions. As a result, basic journalists' salaries will increase by 20–30% above the standards of the professional collective agreement. The trade union has been far

less successful in adjusting to the conditions in the journalism labor market. Trade union membership has been stagnating for several years³⁸ which can be ascribed to the fact that larger media companies have been assigning the work of regularly employed journalists to freelancers who are much more difficult to draw into a trade union, particularly in the framework of the existing rules of trade union organizations and the existing practices of trade unionism. The transition to new forms of organizing is more difficult under the transitional legislation and because of the internal organizational and financial limitations of the trade unions.

VII. CONCLUSIONS AND RECOMMENDATIONS

Currently, the two most critical issues in Slovenia are the position of freelancers and preserving editorial autonomy both internally in individual media organizations and nationally. Civil society organizations have relatively well-defined goals in both areas, but they will have to redefine their tactics and strategies. The 1240 members of journalists' professional organizations—the Slovenian Union of Journalists and the Association of Journalists—will have to redefine their division of labor and find new ways to cooperate in both critical areas. The division between workers' rights and duties and professional rights and duties that differentiated the two organizations in the past was evidently erased with the introduction of the latest aggressive publishers' policies and the new media policy of the government. The new political and legal constructs of autonomy on the side of the government and the owners have pointed out the deficiencies of the current legislation in protecting the public interest.

To improve the position of freelancers, it is important to enhance trade union membership by promoting the organization of freelancers and enabling systematic, independent representation of their interests in the national trade union and its constituent organizations within individual

38 The share of independent journalists with registered status doubled in six years (to 350 persons) from 10-20% of active professional journalists (without the number of non-registered freelance journalists).

media. The trade union has to continue negotiating the professional collective agreement at the national level, striving for equal conditions for freelancers and for journalists regularly employed. Defining authors' rights and their collective protection are of particular importance. At the level of local trade union chapters, a key aspect is intergenerational and professional solidarity, including the ability to represent freelancers in their relations with publishers. All legal means must be used to ensure employment for all de facto freelancers who wish to be employed. State inspections (labor, media, tax) should coordinate the prevention of illegal contracts with freelance journalists. In that regard, a dialogue on flexible security has to be established to achieve adequate legal protection of freelance status and to enable transfers from one form of contractual relationship to another with self-regulation and specific legislation.

Basic rules for internal freedom and for the responsibility of editorial departments should be agreed upon in the professional collective agreement concluded by journalists' organizations and employers' representatives. At the national level, the law should define implementing an organizational minimum for autonomy and should establish national arbitration for cases when it is not possible to reach bipartisan agreements between publishers and editorial departments to solve internal conflicts. The collective agreement should stipulate basic rights that arise from changes in program concepts that will make conscientious objection clauses and severance pay part of employment contracts. Civil society organizations should systematically monitor and research the state of autonomy. Informing the international and national public is of crucial importance when legislation is violated and supervisory institutions fail to function. Partnerships between the public and politicians are crucial for initiating legislative amendments that should nevertheless be prepared independently by civil society organizations. Journalists themselves can do a lot by informing the public of informal disciplinary procedures and striving for regularity under the law. Their initiatives can sometimes be even more efficiently presented if they are logistically and otherwise supported by civil society organizations only during the second stage.

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