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FREEDOM OF NON-ACCOUNTABILITY

Self-regulation in the media in Slovenia



GOJKO BERVAR

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SUMMARY

This study does not aim to be either a manual or a textbook on self-regulation. It was prompted by prejudices arising primarily from the lack of knowledge about self-regulation in the media which is a practice widely spread across the world as well as in Slovenia.

In this study the author presents self-regulation as a part of a wider subject, that is, freedom of speech, arguing that self-regulation does not intrude on this freedom beyond the limits set by democracy, and that, compared to legislative solution, it is a much more friendly way of implementing the principle that one person's freedom is limited by another person's freedom. What is important is that the media are aware of the power they enjoy. The author gives several examples that illustrate where abuse of that unruly power can lead and argues that it is much better if media themselves hold it at bay and thus avert state's interference with an intention of compelling them to do so.

The book recapitulates various views on media accountability and mechanisms reinforcing it, already widely discussed in public. It also looks into the current state of affairs in Slovenia despite the risk that time and further developments in this field may soon cancel out present conclusions. The frame of debate on the establishment of a press council in Slovenia could serve as a useful example for others. The existing Ethics Commission in Slovenia, whose past performance could have paved the way for an elaborate form of self-regulation, unfortunately proved to be an obstacle. The idea about a tripartite press council arose in some a feeling that a press council would be set against the ethics commission itself, even though, to the contrary, it could primarily advance the present work of this commission. The study therefore does not argue that existing ethics commission is needless, but rather points to the ideas about co-regulation that have recently emerged in the EU. They could lead to the shifting of the center, meaning that voluntary self-regulation, which advances media accountability and through it also professional conduct, could be taken away from the media and placed in the hands of users. The protection of professional standards would thus be transformed into the protection of consumer rights.

THE BEGINNING

One night in mid August 2001 a Molotov cocktail landed within the fence surrounding the Italian embassy in Ljubljana, got stuck at the lattice door and did not explode. Two days later, early on Sunday, the police called at the door of an UZI activist (Urad za intervencije- Bureau for Intervention) who had returned from the anti-globalist protest in Genoa just one week previously. They searched his apartment – they behaved correctly, as the activist himself stated – held a “preliminary interview”, and then asked him to take them to UZI’s offices at Metelkova street in Ljubljana (the site of the offices of many non-governmental organizations). However, the problem was that UZI, like many other similar movements, does not have offices. Although now and then UZI activists do hold meetings in “rented” facilities belonging to other NGOs at Metelkova, more often than not they gather in the park in front of the building.

So the police, who approached the matter with due seriousness and even took bloodhounds to the site, could only conclude, once they arrived at the spot, that “official premises” did not exist. They proposed that the UZI activist take a lie-detector test, to which he agreed after they assured him that a negative polygraph result would remove any suspicion. Indeed the polygraph results were negative, presumably dispelling the suspicion that anti-globalists were behind the “attack” on the Italian embassy. And that should have put an end to the affair. But it did not.

Four days after the event the Delo daily featured an article in the Crime Watch section signed by a journalist, an ex-policeman, who obviously had good connections to information sources within the police. In his article he again mentioned the said activist in connection with the Molotov cocktail incident (despite the negative polygraph test results). Moreover, contrary to the code of ethics and Delo’s common practice to use only initials when writing about suspects, including known criminals, this journalist gave not merely the full names of the activist and his friend but also their professions and job positions at the University. The newspaper’s editorial board did not respond to the objections about this obvious media lynching not based on factual evidence. The affair would have probably ended there had not UZI organized a press conference at which the event was described in detail. Shortly afterwards the police held their own press conference, but their explana-

tions were not overtly convincing. The editorial office of Delo, which sent to both press conferences a different journalist rather than the author of the disputable article, apparently concluded that their subsequent report on the event amended the professional mistake in the first article, so they did not apologize for their obvious violation of the journalistic code.

In Slovenia, the struggle for press freedom was already well underway when the country embarked on political changes, in contrast to the situation in other east European countries where this process did not start until the 1990s. Towards the end of the 1980s even the attempts of the ruling power, by that time no longer in control of the media, to influence the media in some way or other were wearing thin, so the media found themselves in a vacuum without a controlling hand or binding obligations. While the government virtually no longer had (or at least no longer used) any instruments of pressure, citizens did not yet have any protection, nor did they have a good understanding of how to make use of available legal options. During the few years just prior to the democratic changes, almost anything could appear in the press unsanctioned – substantive criticism alongside groundless criticism, a lie alongside the truth, an assertion based on facts and a fabrication. Those that were affected never responded; while the government did not react because it was not yet clear what the future had in store, private people did not trust the judicial system, because old habits, more or less precluding success in legal suits against governmental institutions including the media, lingered on. The media turned the situation to their advantage and shook off certain restraints, among them those in place in democratic environments elsewhere. For example, they discontinued the practice of publishing the decisions of the Ethics Commission, which at least at the end of the 1980s reflected ethical concern, rather than political influence. Similarly, editorial boards took the liberty of not publishing readers' letters, thus neglecting their constitutional and statutory obligation.

The change of regime, that is, the replacement of the one-party system with a multi-party system, introduced, ironically, the first restrictions into that world of infinite freedom. Those harmed by media portrayals suddenly realized that their prospects in legal disputes with the media improved. Following several attempts to threaten "old forces" within the press, radio and television, the new rul-

ing power realized that such assaults on the media under the watchful eye of the international public appeared indecent and that new restraints were in fact self-restraints based on models in developed democracies. In other words: it is in the government's interest not to interfere with press freedom, but at the same time the media must be persuaded to adhere to the professional standards of journalism.

Yet the luxury of irresponsible freedom from the end of the 1980s did not exactly stimulate overabundant scrupulousness in applying the criteria laid down by the journalistic code of ethics. Moreover the code itself changed under the influence of the new era – we could say that today it is fully comparable to the codes observed in developed democracies, only that its effective force has been subsiding. Research conducted in 1993 by Manca Košir sought to answer the question of how the requirements of the new journalistic code (the one that is still valid today) were met in practice. The following is a summary of the research results.

There were many examples of incorrect rendering of facts, particularly numerical data, but also of the names, titles and job positions of the protagonists appearing in the news. The times of events were often omitted. Failures to quote information sources were particularly problematic. The requirement that published “facts and evidence” must be truthful was seriously violated, mainly by investigative journalists. In reference to sources of information, expressions such as “one can hear”, “as far as we have been informed”, “reportedly”, “allegedly”, “it is said” were often used. Information was not cross-checked with various sources, and even unverified news often found its way into the press. The requirement that information must be clearly set apart from commentary was ignored on a daily basis. Journalists' or editorial corrections were rare. Many journalists did not respect business secrets. Certain examples gave rise to a suspicion that the means used to obtain information were unlawful or dishonest. The prescribed distinction between editorial content and advertising messages was often disregarded. There were many invasions of privacy, particularly in the areas where the code required “special caution” (for example when reporting accidents or personal tragedies). Many writers did not respect the rule of “presumed innocent until proven guilty”, but proclaimed suspects or defendants guilty even before the court ruling. Breaches of the clause prohibiting publication of groundless accusations, attacks, lies, insults or defamations

were the order of the day. Occasionally the clause prohibiting various forms of discrimination was breached as well, particularly in the area of incitement of friction between nations. In short, Slovenian daily newspapers manifestly violated many precepts of the journalistic code on a daily basis, and the researchers had many reasons for believing that breaches also extended into areas beyond the scope of the research (Košir, Poler, 1996: 20-21).

The leading people within the media companies have attempted to play down these rather chilling conclusions by stating that on the whole the media did observe the journalistic code, but that market competition forced them occasionally to stretch its limits “without causing harm”. To excuse their conduct they argued that the code, such as it was, was not “true to life” and needed revision. The objections came most frequently from the owners and managers of small radio stations and newspapers, who maintained that, owing to limited funds, the part of the code that was most difficult to observe was a stipulation that advertising messages had to be distinct from editorial content. They argued that modest numbers of staff made that requirement almost impossible to satisfy. We must add here that the increasing importance of marketing activities within big media companies has also begun to undermine this principle, so journalists are frequently asked to find sponsors for their professional travel abroad, or entire pages or programs become the product of backstage bargains between editorial offices and customers brought in by sales departments.

Obviously it is high time that professional ethical standards in Slovenia were revisited and users given a guarantee that these standards will be observed. There are two routes to that objective: one legislative and one self-regulating. Slovenian media law, even though extensive, does not interfere with the principles of journalistic ethics, save perhaps for the section referring to the right of reply and right of correction, both being constitutional rights as well. In principle, self-regulation is already in place – through the code of ethics and the Ethics Commission of the Association of Journalists – but adjudications and warnings issued by this body increasingly fail to elicit response. Or, the publishers’ response is languid, while journalists feel offended, a situation which often leads to the affected party’s withdrawal from the association or the trade union. As if such a move could resolve anything!

PRESS FREEDOM AND SELF-REGULATION

A DANGER OF COMPRESSED GUN POWDER

Thomas Paine (1737-1809) once touched the raw nerve of the British Crown, government and Parliament. Even though his formal education was scant, his writings made the hair on the heads of the authorities stand on end. In 1774 he sailed to America where Benjamin Franklin had helped him to find a job with the Pennsylvania Magazine. It was at that point that his revolutionary nature came into full bloom. In an article published in 1775 he supported the abolition of slavery, but he first infuriated the British government with the pamphlet entitled *Common Sense*, which appeared under a pseudonym, in which he advocated the independence of the American colonies from the Crown. Today Paine is seen as a man who strongly influenced the Declaration of Independence. But the patience of the British judicial system became exhausted with publication of the text entitled *Rights of Man*, which went through several editions between March 1791 and February 1792. In this text Paine supported the French Revolution and analyzed the origins of people's dissatisfaction in Europe. So the English prosecutors decided that it was time for Paine to appear in court. At that time he was on his way to France, where he was even elected to the National Convention (but was imprisoned in 1793 under Robespierre, because, free-thinker as he was, he voted against the execution of Louis XVI). The trial has been vividly reconstructed by John Keane in his book *The Media and Democracy*.

"On a drizzly mid-December morning in 1792, Thomas Paine, citizen extraordinary and author of Rights of Man, was brought to trial in absentia at the Guildhall in London, charged with propagating 'seditious libel'. A 'special jury' had been hand-picked for this occasion. According to reports, the jury members, all plump, wealthy and respectable men, were filled with icy hostility towards Paine. The recent revolutionary events in France had left them in a state of deep shock. Probably their noses could smell the blood of the September massacres; their brains were pressed by thoughts of the King's coming trial; and their ears still echoed with the cries of plebeians storming the Bastille and the taunts trailing the King's slow march from Versailles to the Tuileries.

The charge against Tom Paine was introduced to the court by the Honourable Spencer Perceval (who seventeen years later was to become Prime Minister of England). Paine was described as a traitor to his country, as a drunken roisterer who had actively supported both the American and French Revolutions and who had vilified Parliament, king and the precious settlement of 1688. The courtroom hushed. Perceval began: 'Thomas Paine late of London, ... being a wicked, malicious, seditious, and ill-disposed person ... and most ... seditiously and maliciously ... contriving and intending to ... traduce and vilify the late happy revolution providentially brought about ... under ... His Highness William, heretofore Prince of Orange, and afterwards King of England ... did write and publish ... a certain false ... seditious libel of and concerning the said late happy revolution ... and ... our present Lord the king ... and ... the parliament of this kingdom, entitled Rights of Man, Part the Second.'

Shortly after Perceval's summary of the charge, Thomas Erskine, Attorney General to the Prince of Wales, rose to his feet to defend Tom Paine. Erskine's task was virtually impossible. The prosecution and jury were deeply hostile, and even before the trial had begun Erskine himself had been pilloried throughout the Tory press as a Paineite and fellow traveler of the French Revolution. But Erskine was renowned as a brilliant legal mind. He was also an eloquent orator who liked to deliver long addresses. This one on 18 December 1792 was no exception. It lasted more than four hours. Each word was recorded painstakingly by Joseph Gurney, the principal shorthand writer in London at that time, and the whole text was later published in several editions, which are today deposited in the vaults of the British Library.'

¹ *The Celebrated Speech of the Hon. T. Erskine in Support of the Liberty of the Press* (Edinburgh, 1793). All page numbers in the text refer to this edition.

Summarized, Erskine's argument was that the charge of seditious libel against Paine was unjustified because it violated a key principle of the British constitution – the principle of the liberty of the press. Erskine attacked the view, defended by Sir William Blackstone and Chief Justice Mansfield, and by Tory writers like Jonathan Swift and Dr Johnson, that Parliament is always the sovereign power. Erskine criticized the principle of the sovereignty of official state politics. He came close to accepting the First Amendment to the United States Constitution (15 December 1791), which specified that "Congress shall make no law ... abridging the freedom of speech or of the press." In matters of publishing, Erskine argued, Parliament's power is limited by the right of individuals freely to speak and to publish their views. Each individual naturally requires the oxygen of publicity. The government of citizen's

tongues, brains and eyes is inadmissible. Liberty of the press is an imprescriptible natural right, given by God. It cannot be infringed by any earthly power, and certainly not by corrupt governments, wanting to save their own skins. The right to a free press is a political trump held by individuals against government. "Every man", Erskine emphasized, "may analyze the principles of its constitution, point out its errors and defects, examine and publish its corruptions, warn his fellow citizens against their ruinous consequences" (p.13). Erskine went farther. Echoing Paine, he implied that all individuals are duty-bound to respect their fellows' natural right of free expression. And he denied that the free exercise of this natural right by means of a free press would lead to rebellion and disorder. Civil disputes conducted in ink would not end in bloody civil war. On the contrary, rapacious governments are the prime cause of civil disorder, whereas government based on public discussion among citizens with a conscience is naturally peaceful, if noisy. A free press, like the spear of Telephus, could heal the wounds it inflicts upon the body politics: "Let men communicate their thoughts with freedom, and their indignation fly off like a fire spread on the surface; like gunpowder scattered, they kindle, they communicate; but the explosion is neither loud nor dangerous: keep them under restraint, it is subterranean fire, whose agitation is unseen till it bursts into earthquake or volcano" (pp.46-7)

These arguments left the jury cold. The prosecution rose to reply, but Mr Campbell, the foreman of the jury, interrupted to explain that he had been instructed by his brother jurors to save time by delivering an immediate verdict – of guilty." (Keane, 1991: 2-5)

The audience hissed the verdict and Erskine's carriage was "hauled manually through the narrow streets, amidst loud applause" (Keane, 1991: 5).

Censorship was born virtually simultaneously with the invention of the press. As early as 1501 Pope Alexander VI issued a decree ordaining that printers were obliged to send one copy of each new edition to Church officials, who had to examine carefully all printed matter in order to prevent potential dissemination of heresy. Punishments for the failure to observe this rule ranged from fines to exclusion from the religious community.

The first public manifesto in support of greater press freedom is held to be Milton's *Aeropagitica*, in which the author opposed the then requirement, which had been ordained by proclamation of the King in 1534, that all publishers had to obtain a license for work and, if they wanted to keep it, they had to be careful about what came out of their printing shops.

Indeed John Milton did not propose any revolutionary step, but he did maintain that impertinent publications should be banned by Parliament only after they had been published. Milton's opposition to fore-censorship became a landmark in the struggle for press freedom, but licensing and censorship were not abolished until 1695.

In the American colonies, later the United States of America, freedom of the press advanced more slowly than one would expect on account of a new society that was not oppressed by the struggle for power between the aristocracy and the bourgeoisie. There the milestone was the defense by Andrew Hamilton in the process against the journalist and editor of the *New York Times Journal* Peter Zenger who was accused of disgracing the ruling power. Hamilton's defense was based on the precedence of respect for truth over every kind of interest of the state or government, and he won the case.

Erskine's defense of Tom Paine paved the way for the fundamental concept of human liberties in Great Britain, and liberty of the press in particular. A government which believes that it can restrain public expression of dissatisfaction over its conduct, runs the risk of having to deal with an even stronger outburst of dissatisfaction once it reaches the saturation point. The sooner the government realizes that public control over the power it enjoys prolongs its own life, the more successful it will be in the struggle for power, assuming of course, that it takes place within a democratic framework. The supervisory role played by the media helps governments enhance their capacity to face challenges, to remain fit for competition, and to purify their own organisms and replace all rust-eaten parts of the mechanism whose malfunction has come to light through public control. A truly free press thus stems from the recognition that airing caused by the media is indispensable, and from the free decision (not the good will) of politics to not just allow press freedom but protect it as well.

Erskine's "theory" that gun powder cannot do much harm as long as it is scattered around in the open, but becomes dangerous once it is compressed and limited to an over-tight container, has been confirmed through several historical incidents, most recently by the events at the end of the 1980s – the eruption of dissatisfaction in the countries of the socialist block and subsequent collapse of socialist regimes. The lack of supportive democratic structures within these regimes inevitably led to their downfall

when they were confronted with the political crises that swept through the entire eastern block in the wake of the economic breakdown. The media, as a supportive structure of a democratic regime, could have functioned for decades as an outlet for dissatisfaction if only they had been free. But their slavish devotion to the socialist regime had actually undermined its stability in the long run and they collapsed along with the system. It is worth noting though that those media that recognized early the need to assume a different and critical role, and accordingly reinforced their professional standards before the catastrophic failure of the communist regime, survived and retained their power even after the regime crumbled to pieces.

In addition to keeping the government in fear that temptations to abuse power will be brought to light, the supervisory role of a free press also ensures a greater or lesser balance in electoral competitions. Politics based on democratic rules of the game should have a vested interest in a free press that pries into its every move, for the simple reason that this ensures a more or less equal starting position for each contestant in the next election race. This and not some inner drive to play honest is the reason why a democratic government chooses of its *own free will* (if not with pleasure) to acquiesce to public control over the media. It reduces (but does not remove) the pitfalls that endanger all political groups which, blinded by the temptations of power, might lose the ability to identify the demarcation line between the lawful and the unlawful.

NATIONALLY CONSCIOUS MEDIA

Yet the position gained by the press through its new freedom is at least in some respects similar to that held by the government. The power to influence the fate not only of the government but of citizens as well, through written or spoken words and through pictures, gives rise to the same temptations as those experienced by the rulers. The European Convention on Human Rights treats this issue in Article 10 (the only one dealing with freedom of expression).

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

In the 1990s we all had the opportunity to see how easy it is to abuse media power, even to take pleasure in it, and toy with life and death, emotions and passions. An example was furnished by Milošević’s regime, which through the guidance of the media first triggered nationalist euphoria, and then, thanks to careful manipulation, sparked the war in ex-Yugoslavia. But the case in point was not simply a slip brought about by the overwhelming sense of power – it was an alliance between the ruling power and the media. One could hardly say that those media were free, but it turned out that editors and journalist working for Serbian media honestly believed that the importance of the goal justified their “nationally conscious” conduct, and that “slight deviations from professional standards” could not really do any harm to journalism. And, even more importantly, people in the media actually enjoyed their power to provoke, through conscious manipulation, reactions of a kind not imaginable under normal circumstances. The ruling power took full advantage of this tidal wave of media self-satisfaction. When towards the end of the 1990s Milošević’s regime collapsed and the media looked back on themselves, they realized that the policy of manipulation that had kindled in them such unflagging enthusiasm over the past decade, had destroyed all of their reputation and that at least another decade would be needed to regain even an elementary level of trust among the readers, viewers and listeners.

Another document that deals with the special position of the media and presumes that ethics restrict the temptation to abuse power is Resolution 1003 issued by the parliamentary assembly of the Council of Europe. Among other things it says that “*news organisations must consider themselves as special socio-economic agencies whose entrepreneurial objectives have to be limited by the conditions for providing access to a fundamental right.*” Limitations imply demands for credible

information and honestly expressed opinions dictated by the fundamental right to information. Furthermore, resolution 1003 states that *“Neither publishers and proprietors nor journalists should consider that they own the news. News organisations must treat information not as a commodity but as a fundamental right of the citizen. To that end, the media should exploit neither the quality nor the substance of the news or opinions for purposes of boosting readership or audience figures in order to increase advertising revenue.”* The resolution also warns that *“it would be wrong to infer from the importance of this role that the media actually represent public opinion or that they should replace the specific functions of the public authorities or institutions of an educational or cultural character such as schools. ... This would amount to transforming the media and journalism into authorities or counter-authorities (“mediocracy”), even though they would not be representative of the citizens or subject to the same democratic controls as the public authorities ... Therefore journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen’s fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests”* (The Council of Europe, 1993).

TEMPTATIONS OF POWER. ARE MEDIA IMMUNE?

But let us return to the self-regulation issue. Once the struggle for press freedom was over, that is, once the ruling powers decided to allow the public to hold in check their tendency to yield to the temptations of power, a whole century had to go by before the press actually realized that journalism too benefits from not abusing the power arising from newly gained freedom. The problem here is that governments have always been ready to “extend a helping hand to the media”, apparently because it is only natural since they must protect all citizens. In other words, despite their acquiescence to press freedom, one certainly enforced by social circumstances, governments have taken great care to seize their opportunities for infiltrating the media world, and the mouth-watering idea of having the media under control has never died out in reality.

Only after ww1 did the question arise of how to prevent the power of the media reaching a level of excess ap-

proaching the harmful. For example, the debate within the Commission for Press Freedom in the US, which attracted journalists, experts, and politicians, lasted as long as two years. The conclusion was apparently ambiguous: press freedom must be respected, but limits must be established.

The basic idea was that media people should impose restrictions on themselves, of their own free will. This concept of self-regulation presupposes minimal incursions of the ruling power limited to extreme situations in which the most vital public interests are threatened. Media people should make this choice freely and accept norms. They should do it in order to be able to respect the principle that those who have easier access to the means of public communication and use them more often than others must feel a proportionately higher degree of responsibility for their social performance (or non-performance).

As Serbian communicologist Mirosljub Radojković says, it is clear that the nature of ethical norms in journalism and the principle of self-regulation (i.e. free will) exclude the interference of the state. In many other cases involving human rights, state's protection is welcome. For example, the state is obliged to guarantee the right of property, the right to a life worthy of human dignity and so on, but in the case of communication the logic is reversed (...). As far as the media sector is concerned, the interference of the state is limited to legislative tasks. Legislation should cover those issues that are not treated by journalistic codes and issues that cannot be sanctioned by way of these codes (Radojković, 1999: 12-13).

The recipe that keeps the state away from the media and simultaneously raises media awareness that they are duty-bound to protect professional standards, was first invented by the Swedes. In 1916 Sweden adopted the first version of the code of ethics in journalism. In the same year the press companies established the Press Council. It was not coincidental that the press council was established in 1916. During WWI certain newspapers joined the propaganda war and thus heavily damaged the reputation of the press. France, Great Britain and Russia used to pay huge sums to newspapers that favored the Allies in an attempt to counter the pro-German press. The circumstances obviously called for reorganization and professionalization of the press. (Jigenius, 1998).

Self-regulation is not self-censorship. Self-censorship is prompted by a fear of influential people and of the ruling

power which leads journalists to remove unpleasant parts of their texts beforehand in order to avoid informal pressure that might ensue. Self-regulation, on the other hand, is a conscious move agreed upon by people working for the media; its purpose is not to evade the potentially negative effects of published articles, but to reinforce the journalistic fortress thus enabling the profession to develop firm ethical rules. The basic professional standards to which media have arrived by common consent and without the interference of the state are primarily a protective element rather than a sanction on or a hindrance to press freedom (even though it is not rare that individuals suing some media company fall back on these standards). By reaching agreement on the issue of what constitutes the basis of journalistic writing and publishing, the media reinforce rather than weaken their position.

Since the media live off the money brought in by their users, it is of course necessary that users should trust them. In a way, the press, radio and television, and lately also the Internet, assure their users that everything they offer is truthful with the standards applied when checking information being a warrant. The president of the American Radio-Television News Directors' Association wrote that the rights arising from the First Amendment (including the rights of broadcasters) come from the people. If the media cease to serve the people or if the people believe that they ceased to serve them, these rights will be imperiled. (Godsey, 1981: 32).¹ Trust in the credibility of the mass media is a basic condition for the success of those media or, in the language of economy, for good sales figures. That is a motive that should (and largely does) encourage owners and the management of the media to stick to self-regulation.

The French media analyst Claude-Jean Bertrand from the French Institute for the Press, the most frequently quoted author today in relation to self-regulation issues, prefers to avoid the term "self-regulation". In his view the only relevant concept is the quality of the media. Good media offer

¹ It would be wrong to think that media accountability was not discussed in the US. Edmund B. Lambeth writes that in the 1980s the members of the Society of Professional Journalists held lively debate on the code of that society, especially on the punishment of violators of the code. In 1985 they rejected, but two years later nevertheless adopted a new, very mildly formulated obligation, according to which the Society should encourage journalists to adhere to the tenets of the code, and newspaper companies and broadcasters to assume responsibility for the participation in the formulation of the code in agreement with their employees. (Lambeth, E. B., *Committed Journalism*).

credible information; they do not manipulate people and do not sacrifice truth in the struggle for profit. What do the quality media look like? In Bertrand's view, quality media are those that focus on their public service role:

- Media that primarily serve the citizens and only then advertisers, shareholders and owners.
- Media that offer information to all civil society groups in attractive formats.

Media are certainly better now than they have ever been, globally, but even in industrial democracies, media are not as good as they need to be for civilized society to survive.

So the basic question in every country, at every level, should be: how can media be improved. Answers differ.

In the US they believe that freedom i.e., the market, will do the job. And what is the result? Most dailies are like municipal bulletin boards with advertisements accounting for 60% of the content and the mass of material bought from the press agencies. The decadence of the US media (just think of the Simpson trial and the Levinsky case) has brought an end to the US model of journalism.²

In Latin countries, says Bertrand, it is believed that the task will be accomplished by legislative framework backed up by the judicial system. An example of this attitude is furnished by the French blanket law on the press from 1881 that goes into extensive detail. However, regional newspapers in France, which account for three fourths of all newspapers sold in France, are very average in quality. As for the French electronic media, a series of laws on radio and television has been adopted since 1945, but all have turned out to be unsuitable save for the 1982 law by which the state renounced its monopoly over radio and television and left these to market forces.

Obviously the market is indispensable but quality cannot be secured by the market alone. Legislation is also needed (even in the US they have repeatedly fallen back on laws), but it cannot secure quality either (look at developments in the Soviet Union). And on top of that, both the market and the legislative framework may prove to be extremely dangerous. It is at this point that the need emerges for a third force – media ethics. Note that I used the term media ethics, which is not the same as self-regulation.

² Claude-Jean Bertrand at the International Press Institute conference, Vienna, October 1999

Social communication is too important to leave it to professionals only. After all, freedom of expression and freedom of the press belong to all people. Ethical conduct implies good service to the public – that is the basic requirement. And through good service to the public journalists gain the support they need in order to resist political and commercial pressure. Public opinion polls have shown that the public can feel when the media play tricks on or exploit them. It's not important whether this standpoint is justified or not, what counts is that leaving social communication to professionals only is dangerous from the political point of view. If democracy is to survive, a suitable remedy must be found. One solution that could bring the media to recognize the need for ethical principles is not self-regulation but media accountability (Bertrand, 1999).

Claude-Jean Bertrand therefore does not place confidence in self-regulation ("I am against self-regulation" said he explicitly at the 38th Journalistic Evenings session at šKUC Gallery in Ljubljana). In his opinion, a system should be established that would reinforce the accountability of the media, indeed one whose discrete individual components are already in place.

BERTRAND'S MEDIA ACCOUNTABILITY SYSTEM (MAS)

Claude-Jean Bertrand maintains that parts of the Media Accountability System (MAS) are all non-governmental activities aimed at bringing the media to recognize the needs and wishes of the public. Furthermore, such activities furnish the media with methods for establishing to what extent they actually meet the needs of the public. A MAS thus operates through individuals or groups, as a short-term or a long-term process.

According to Bertrand, interest in media ethics began to increase in the 1990s across the whole of Europe. Virtually all European countries adopted codes of ethics, mainly on the initiatives of trade unions or press councils, but never under external pressures.

A media accountability system includes a number of useful approaches that operate continually to effect ethical corrections to a journalistic conduct. At least some of these approaches can be made into a matter of the editorial responsibility. The following is how Marjan Sedmak summarized them in *Media, ethics and deontology*. Among

the ‘musts’ of the newspaper business are:

- Error correction columns.
- “Pro and contra” sections dedicated to public debate on important social issues.
- Readers’ letters, mail-boxes, open telephone lines, and in the information era also e-mail options; these enable instant response to the objections of readers, listeners and viewers.
- Questionnaires addressed to persons who appear in reports with the purpose of establishing the accuracy and honesty of reporting; such questionnaires are used by Rio de Janeiro’s GLOBO.
- “In-house” criticism, internal groups, desk meetings, commissions for the evaluation of content (as introduced by the Japanese daily newspapers in the 1920s with the intention of detecting potential violations of journalistic ethics within a newspaper).
- Reports on the state of the media, that is, a watchful eye that monitors developments in the media field; regular columns or broadcasts dealing with the subject of mass media.
- Quality control through round table discussions or workshops dedicated to hot topics of media policies.
- In France, for example, an association of journalists who are shareholders in the company for which they work (e.g. Le Monde), known as a *société de rédacteurs*, is in place; a less frequent form is a “*société de lecteurs*”, an association of readers who are shareholders in a newspaper company.
- Associations of users (of the press or broadcasting services).
- Public opinion surveys.
- Citizens’ panels dedicated to media issues and round table discussions with the participation of journalists and readers.
- Media monitoring.
- An ombudsman who works for the editorial office and is paid by a publishing or a broadcasting company to handle complaints from the public.
- An “ethics coach” who should be part of the editorial office staff working as a consultant, in a role similar to that of language editors.
- A representative of the public should be included on editorial boards.
- A “liaison officer”, an intermediary between the media and those professional groups with which the press often comes into conflict (e.g. the judicature, the police, or medical experts).
- Local press councils where representatives of local news-

papers meet representatives from local public life.

- Regional and national press councils whose task is to discuss violations of ethics and to protect freedom of the press.
- Publications dealing with the mass media, domestic and foreign.
- And the crown, codes of professional deontology, ethics commissions and press councils (Sedmak, 1996: 58-59).

A quick glance suffices to see that these are self-regulating approaches. They are a matter of free choice, not a result of political or financial pressures, and by opting for them the media show their readiness to increase their responsibility. At this point it seems appropriate to stress again that the readiness of the media to make regular checks on their own conduct, with or without the help of the public's representatives, is not mere altruism but a position into which they are forced by the simple fact that the commodity they sell on the market must be good. News that turns out to be a fabrication, a lie or frivolous information discourages readers from buying again from the same producer. We should be aware that, with all due respect to dignified ideas about the mission of the journalistic profession, the chain involved here is very simple: product – salesman – buyer, even though the media product (i.e. information) is apparently impalpable. The repeated offering of a low quality product eventually repels even those buyers that may have been enticed by attractive packaging. And this brings us close to Bertrand's view that the issue at base is not self-regulation at all but the quality of the media, which, however, cannot be attained if not checked in cooperation with the users. Internal quality control that is carried out by insiders is good, but checking it in cooperation with the users is even better.

Claude-Jean Bertrand further concludes that even in those European countries where journalistic ethics is under the strictest control, the situation is far from being ideal. However, he also points out that European press councils are MAS institutions in which the old continent can take justifiable pride. Almost half of the total number of press councils in the world are located in Europe – of 18 west European countries, 13 have press councils, or 15 if Cyprus and Turkey are included. The total number of all bodies of this type (which are genuinely independent in their work) is 34.

According to Bertrand, the “avant-gardism” of the old continent stems first from the fact that press freedom has

come to prevail in Europe, then from the fact that European media are not entirely permeated by commercial influences, as are, for example, the American media, and that in the main they still perpetuate the idea of the media performing a public service (Bertrand, 1999).

CODES OF PROFESSIONAL ETHICS AND SANCTIONS

LET IT HANG!

“Jimmy is 8 years old and a third-generation heroin addict, a precocious little boy with sandy hair, velvety brown eyes and needle marks freckling the baby-smooth skin of his thin brown arms.” Thus begins a heart-breaking article by Washington Post Journalist Janet Cooke, for which she received a Pulitzer Prize in 1981. Two days later she had to admit that she invented the eight-year old addict and his story. No ethical code is needed here to conclude that her conduct was professionally intolerable.

But how would Slovenian journalists and publishers react if they were confronted with a story of the kind described by Edmund B. Lambeth in his book *Committed Journalism*.

“In Michigan City, Indiana, an assistant principal of a high school – call her Joy Calder – was arrested and charged with shoplifting. It was alleged that she put a \$15 ham in a handbag and failed to pay the cashier for it. The initial decision by Ray Moscovitz, then editor of the Michigan City News Dispatch, was to print a separate story rather than list it routinely among the police news items. Rationale: a role model, one who, in fact, was responsible for disciplinary matters in the school, has been charged with violating the law. The community needed to know about such events.

A sensitive reporter who knew Calder well wanted to verify with Calder herself whether the theft had occurred. If it had, he wanted to explain why the newspaper had to publish the story. During the reporter’s visit, Calder said her shame was so great that she would commit suicide were the incident published. After a brief conversation, she grabbed her coat and left the reporter, who was struck by the depth of her depression. Moscovitz felt what many humans feel when faced with such moral dilemmas: a need for more information. Friends of Calder told Moscovitz that they had heard the suicide “rumor” too, which was enough to convince Moscovitz that Calder would indeed commit suicide.

When the New Dispatch asked school authorities about the episode, they had not yet heard of the arrest of their assistant principal. They suspended her. Moscovitz recalled: “We could not, of course, ignore the story for ever, but decided we would not print until we were sure Calder was emotionally well. A week went by, and calls to the paper

began as word of the arrest spread around the town of 37,000. We were called, among other epithets, nigger-lovers (Calder was an African American, and so was the reporter who visited her).

Twenty days after her arrest, Calder, having recovered emotionally, resigned at a school board meeting. The News Dispatch reported the shoplifting incident in the body of the school board story. She was convicted and sentenced to twenty to thirty days of community service. "A sidebar on her resignation, I felt, was not necessary and could cause her additional emotional harm," Moscovitz wrote.

Moscovitz's reading of the facts led him to believe that an immediate story would have caused Calder irreparable harm, an emotional harm so intense that Calder would have tried to kill herself. Truth telling was not avoided but postponed. In the weighing and weighting, the immediate avoidance of grievous harm took precedence over the immediate telling of the news. Moscovitz defied both those who charged he was covering up and those who wanted him to print nothing" (Lambeth, 1992: 39-40).

First of all, note that years after the incident, a genuine one which ended in court, not a fabrication, Lambeth does not use the real name of the offender. The reason is that the publication of her story in a book, which is a commodity more temporally durable than a newspaper, could have caused harm to her reputation even after she endured punishment for the offense which she never repeated. It could have reopened old wounds and perhaps exposed this woman to mockery once again. Now think of the example from the beginning of this book – the Slovenian journalist did not display any such sensitivity when writing about people whose offense was never legally established.

The Calder case actually opens a series of questions, the first of which is, whether the decision about what to publish should be left to a journalist's discretion. Undoubtedly, a journalist could rely on the code of professional ethics as a mainstay in such cases, if only because it offers a mental framework within which to perform. But that precisely is the point – the code is just a framework that does not dictate or prohibit anything; it is not a manual offering journalists, publishers or editors solutions to each individual situation. If Moscovitz the editor happened to interpret the professional standards perfunctorily, he would have published the news immediately, since on a small-town scale Calder ranked as a public figure. And all media codes treat public personalities differently from private people

who surface publicly through some accident, a conspicuous episode or some similar occurrence, but otherwise they are lost in the crowd. However, Moscovitz was of the opinion that the circumstances turned the public personality Calder into someone as vulnerable as any other ordinary person who is thrust under the embarrassing limelight of the public eye, so he suspended publication of that item of news. This example shows that the code of professional ethics should be read with a generous eye to surrounding circumstances. But this does not mean that codes are either needless or useless.

JOURNALISTIC CATECHISM

Journalists' views on the professional code range from rejection to reluctant acceptance to wholehearted approval. Those who approve of the rules written down in this way believe that it is better to have a framework that is clear to everyone, a code that represents not only a punitive hand looming over the heads of the authors but also a protection, because a journalist who adheres to ethical principles may always refer to such a code when compelled to defy foul play.

In 1995 the University of Tampere carried out research that covered 26 members of the Council of Europe and observers in this institution. Among other questions they sought to answer was a question of how and on whose initiative the codes of professional ethics in these countries were adopted. They established five variants, here summarized according to Miroljub Radojković:

- Countries in which codes were adopted by journalists or journalists' associations; there were 18 countries in this group (including Slovenia, Г. В).
- Countries in which codes were adopted by press councils. Five European countries belong in this group: Austria, Luxembourg, Turkey, Germany and Great Britain.
- Countries in which codes were adopted by journalists, their associations and publishers (owners) of the media; that is, two parties – employers and media employees. This group includes Belgium, Norway, Greece and Sweden.
- Only in Denmark was the code adopted by journalists, their association and the state in unison.
- The fifth option is the one found in The Netherlands and the Czech Republic, where the association of journalists took over the last version of the Declaration of Principles on the Conduct of Journalists of the International Federa-

tion of Journalists – IFJ (from 1986). The translated text is used as their own code. (Radojković, 1999, 15-16).

In Slovenia, the code of ethics was adopted by the general assembly of the Association of Journalists in 1991 and later confirmed by journalists' trade union as their own professional code, through which they also acknowledged the authority of the common ethics commission. This code is a collection of selected precepts from several codes observed across Europe, but the most influential was the code of the German press council. Even one decade after its adoption most journalists as well as independent experts agree that the code represents a good foundation for the reinforcement of professional ethics and that it has not eroded over time.

A special group that discussed this code agreed that it needed to be improved only in some particulars that have proved to be a needless hindrance. One such rule stipulates that "an interview is impeccable only after the interviewee confirms the final version". However, practice has shown that some interviewees exploit this rule to add new facts or opinions not included originally, or to delete excessively audacious statements before they give the green light for the publication. This creates a singular blockade not arising from a journalist's negligence but from an interviewee's vanity or self-censorship. Another stipulation that is too broadly conceptualized is the one describing a journalist's duty to protect business secrets. But on the whole, the code passed the test of time.

MUNICH DECLARATION

Even though the first codes of media ethics appeared as early as the 1920s, many present codes (especially in Eastern Europe) have been decisively influenced by the Munich declaration which was adopted in 1971 by representatives of trade unions and journalists' associations from six member states of the then EEC. It is interesting that today this declaration is little known in countries from which its signatories came. However, it deserves to be reproduced here in full owing to the weight of influence it had on later codes.

PREAMBLE

The right to information, to freedom of expression and criticism is one of the fundamental rights of man. All rights and duties of a journalist originate from this right of the public to be informed on events and opinions. The journalists' responsibility towards the public excels any other responsibility, particularly towards employers and public authorities. The mission of information necessarily includes restrictions which journalists spontaneously impose on themselves. This is the object of the declaration of duties formulated below. A journalist, however, can respect these duties while exercising his profession only if conditions of independence and professional dignity effectively exist. This is the object of the following declaration of rights.

DECLARATION OF DUTIES

The essential obligations of a journalist engaged in gathering, editing and commenting on the news are:

1. To respect truth whatever be the consequences to himself, because of the right of the public to know the truth.
2. To defend freedom of information, comment and criticism.
3. To report only on facts of which he knows the origin; not to suppress essential information nor alter texts and documents.
4. Not to use unfair methods to obtain news, photographs or documents.
5. To restrict himself to the respect of privacy.
6. To rectify any published information which is found to be inaccurate.
7. To observe professional secrecy and not to divulge the source of information obtained in confidence.
8. To regard as grave professional offences the following: plagiarism, calumny, slander, libel and unfounded accusations, the acceptance of bribes in any form in consideration of either publication or suppression of news.
9. Never to confuse the profession of journalist with that of advertisement salesman or propagandist and to refuse any direct or indirect orders from advertisers.
10. To resist every pressure and to accept editorial orders only from the responsible persons of the editorial staff.

Every journalist worthy of that name deems it his duty faithfully to observe the principles stated above. Within the general law of each country, the journalist recognises, in professional matters, the jurisdiction of his colleagues only; he excludes every kind of interference by governments or others.

DECLARATION OF RIGHTS

1. Journalists claim free access to all information sources, and the right to freely enquire into all events conditioning public life. Therefore, secrecy of public or private affairs may be opposed only to journalists in exceptional cases and for clearly expressed motives.
2. The journalist has the right to refuse subordination to anything contrary to the general policy of the information organ to which he collaborates such as it has been laid down in writing and incorporated in his contract of employment, as well as any subordination not clearly implicated by this general policy.
3. A journalist cannot be compelled to perform a professional act or to express an opinion contrary to his convictions or his conscience.
4. The editorial staff has obligatorily to be informed on all important decisions which may influence the life of the enterprise. It should at least be consulted before a definitive decision on all matters related to the composition of the editorial staff, e.g. recruitment, dismissals, mutations and promotion of journalists, is taken.
5. Taking into account his functions and responsibilities, the journalist is entitled not only to the advantages resulting from collective agreements but also to an individual contract of employment, ensuring the material and moral security of his work as well as a wage system corresponding to his social condition and guaranteeing his economic independence.

ONE CODE FROM THE ARCTIC TO ANTARCTICA

There have been proposals to lay down a common European media code based on the fundamental principles observed across the board, and simultaneously to introduce a common European media ombudsman that would act under the auspices of the Council of Europe. Although it is true that a hard core of European journalistic principles shared by all professionals across the continent does exist, such proposal nevertheless has countless pitfalls. In smaller, closely-knit communities certain principles have different practical implications than when exercised on the national level (remember the Calder case). Indeed the idea about the common media code in Europe has come not from the media but from political circles. One reason is the fact that with the flourishing of the tabloid press the private lives of politicians have become increasingly less private. Yet think of the failed attempts to reach an agreement on how to apply some ethical standards to the texts appearing on the

Internet. They only prove how difficult it would be to bring general European principles into phase.

Even more problematic would be the realization of the idea of drawing up a global media code. The following is the view of Lord Wakeham, the former Chairman of the British Press Complaints Commission.

“Since its establishment in 1991, the UK Press Complaints Commission (PCC) has always acknowledged the wisdom of sharing information and ideas with counterparts from abroad. The merits are obvious – not only can efforts be shared to encourage self-regulation of the press where it is lacking, but a network of like-minded bodies can be useful in staving off attempts to undermine the freedom of the press to regulate itself (...)

This was the philosophy of the World Association of Press Councils (WAPC) when it was first created in 1992. Its constitution talks of maintaining and promoting a free press and encouraging the institution of press councils, worthy principles that found enthusiastic support from the PCC. You might have thought, however, that after eight years there would be some evidence of the practical implementation of such aims. Sadly, there is not.

Far from helping to promote self-regulation of the press, WAPC has come very close to discrediting the whole idea. It has the potential to become a hindrance to the very thing it claims to cherish – freedom of the press. There are numerous reasons for this.

First, it has become sidetracked by the impractical and dangerous idea of trying to get its members to agree to a Global Code of Journalistic Ethics, possibly to be overseen by a World Press Council. Common sense dictates that such ideas cannot work and they are even contradictory to WAPC's own Kuala Lumpur Declaration, which states that self-regulation should be based on local cultures. But more importantly, such dangerous plans are likely to discredit the idea of self-regulation in the eyes of legislators and those who might be thinking of starting genuine press councils. There is a further argument too – that if a World Code of Ethics was created then authoritarian governments, abusing its terms, could easily use it as an excuse to repress freedom of expression.

The second thing that has discredited WAPC is that, despite its stated aims, there are few examples of it promoting self-regulation elsewhere. (...)

Thirdly, the membership of WAPC now includes several press councils which are not independent and are from countries which do not

enjoy a free press. wape excuses their inclusion on the grounds that it can use their membership to promote press freedom in these countries. Yet there is no evidence that this policy has worked. There is a further danger – the inclusion of statutory bodies, which are instruments of the state, tarnishes by association the concept of the truly independent press council.

For all these reasons the PPC found its membership of WAPC increasingly incongruous and resigned its membership in February this year” (Wakeham, 2000).

THE BACKBONE OF CODES

A systematic comparison of existing codes (we shall limit ourselves to European codes only) nevertheless reveals a number of common traits and shared principles. Radojković divides them into six groups.

1. Accountability to the public/citizens

Usually this principle is described as follows: information must be truthful, diverse and plural; sources must be verified; mistakes removed; decisions by the press council must be respected and published.

The second aspect of this principle involves the clarity and non-ambiguity of information, which is achieved by separating facts from opinions, and news from comment.

Furthermore, this principle includes a demand to respect the wishes of the public by supporting democracy, enabling the exercising of the right to express opinions, to comment, to criticize (criticism by citizens), and the right to public opinion.

The responsibilities of journalists who have the power to mold public opinion are treated separately. Discrimination against specific social groups on the basis of race, gender, nation or religion is prohibited.

2. Accountability to information sources and news mediators

This principle is described in terms of fair gathering and publishing of information. The requirements are mainly formulated to the effect that the means used in information gathering must be fair, publishing rights and quotation rules must be respected, embargo must be observed, the right of the information source to check the credibility of informa-

tion and correct it if necessary before publishing must be taken into account, and insults and libels are forbidden.

The second aspect is the protection of the integrity of an information source. The following formulations are commonly used in connection with this: respect for privacy, respect for business secrets, special sensitivity when reporting criminal offenses, and respect for the principle of “innocent until proved guilty”.

3. *Accountability to the state*

European codes mention this only in brief, which is in line with the trend to reduce the role of the state in public communication. The two most frequent formulations are “respect for law” and “protection of certain vital national interests specified in the constitution”.

4. *Accountability to the employer*

For Slovenian journalists, who leaped into the transition process directly from the self-management system in which they regarded themselves as employers, this principle remains *terra incognita*. But we should add that this value, or norm, has not been fully elaborated in other European codes either. Only a few codes recognize this norm, which they describe along the following lines: journalists must not exploit their position to gain benefits for themselves; they must respect agreed rules of the working place; they must not sell their product to more than one publisher. However, explains Radojković, in Serbia it is precisely this principle that has been capturing attention lately. Many young journalists openly admit that they endeavor to become presenters or column editors precisely in order to gain certain advantages like trips abroad, gifts, shares from advertising etc. One feature of unregulated privatization has been the absence of rules regulating job positions or work relations. Moonlighting has spread beyond imaginable limits. Few journalists have been offered work contracts, and the rules are dictated by employers.³

5. *Protection of professional integrity from external interference*

Judging by the frequency of appearance and the extent to which it has been worked out, this principle is the sec-

and most important in the European codes. It represents a defense mechanism, or self-regulation, which enables journalists to distance themselves from those who threaten their professional freedom.

The first aspect pertains to general rights and prohibitions. Journalists must not accept bribes or other privileges; they have the right to express their journalistic opinion freely and to do research. Freedom of criticism and access to all information sources can also be included here.

The second aspect implies protection from the ruling power, one among the traditional enemies of press freedom. European codes thus stipulate that journalists must combat censorship; decline interference of the government with their work, and have the right to protect their information sources. The protection of an information source occupies an important place high on the scale of professional values, since it is the only way to obtain exclusive information. However, this often clashes with the right of the state to prevent criminal offenses and to prosecute criminal offenders, so legislators take great care to spell out in detail the cases in which journalists are allowed not to disclose their information source, and those in which the source must be disclosed or even reported to the police (for example, when a journalist learns that a criminal or terrorist act is being prepared).

The next element is protection of journalists from employers, marketing services or sponsors. This indicates that susceptibility to money temptations has been acknowledged as threatening journalistic independence. In line with this recognition these codes mention that journalists may refuse to fulfill the task as a matter of conscience; to refuse to carry out work that collides with the ethical code or a request that is contrary to editorial policy.⁴ The last mentioned formulation is especially interesting when viewed from the perspective of the media market regulated by law. Any journalist has the choice of opting for a medium with

3 Miroljub Radojković speaks about the situation in Serbia. Certain phenomena that are typical of the Serbian media scene have not had such a drastic character in Slovenia fortunately. However, some of them, for example, free-lance journalistic work without contracts, paying minimum wages to employees, particularly temps, are not unknown in Slovenia either. On the other hand, compared to Serbia, the situation in Slovenia is completely different when it comes to personal gains. I'd not dare say that such practice does not exist, but a much more acute problem is the fact that owners or management boards compel journalists to find sponsors for projects or travels abroad. In the smaller companies journalists are even asked to perform marketing tasks along with journalistic ones.

4 In Slovenia this is partly arranged by the media law.

whose editorial policy he/she agrees and to quit if a medium changes the editorial policy. This is harmonious with the idea of pluralism of editorial policies and competition in this field.⁵ Of course, if such a media market does not exist, or does not operate freely, freedom of choice is ruled out. In connection with this, European codes mention the right of a journalist to earn an honest living and the right to take decisions.

European codes hence specify that journalists must combat the concentration of ownership (even though their options with respect to this are actually negligible) and that they must be consistent in respecting the principle of distinction between the advertising and editorial content in newspapers or broadcasts.

6. Protection of the status and unity of professional journalism

The journalistic codes insist on the unity of journalists, a condition which improves their negotiating position and potential for defense.

The fundamental rule is the protection of journalistic status. This involves a duty to defend the profession, to respect the code of journalistic ethics, and a view that combining the journalistic profession with other professions is unacceptable. According to Radojković, the last mentioned principle could not be observed in local circumstances (in Serbia during Milošević's rule, G. B.), and it is very likely that during a period of struggle for survival it could not be applied.

The second element is solidarity, that is, avoidance of plagiarism, respect for copyright laws, a common consent to observe the rules of honest competition and respect for the professional organization to which a journalist or a publisher belongs (Radojković, 1999: 17-20).

RADIO AND TELEVISION: A LAW OR A CODE?

The electronic media code is a story in its own right. One reason is the simple fact that the influence of electronic media is considerably larger, since they reach a wider audience than the printed media. In addition, their effect, particularly that of television, is immediate, and also much

⁵ This is another issue that is in Slovenia addressed by the media law, which stipulates that the programming concepts (content) should be a part of the contract signed by the journalist.

stronger than that of an article published in a newspaper. The French philosopher Pierre Bourdieu uses the example of the students' strike in 1986 to describe where this can lead. This example illustrates how journalists, despite their good intentions, innocence and gullibility may produce effects which nobody wanted and which could have catastrophic consequences, once they yield to their own interests, assumptions, personal categories of perception, and subconscious expectations. In this case their memories of May 1968 were still vivid, so journalists were anxious not to overlook another potential "year of 1968". But in reality, they were adolescents with no fully developed political views, who did not know exactly what to say, so they selected a public relations representative (undoubtedly the one that was most politically involved), so everybody started to perceive them as serious. This way also television, which endeavors to be a means of monitoring the reality, turned into the means of creating a new reality. We are approaching the world in which television describes, or rather prescribes, the social reality. Television has been acquiring an infinite control over access to the worlds of social and political existence (...) Those who still believe that protest alone can be sufficient, without counting on television, risk to foil their projects. It has been increasingly important to organize protests for television itself, meaning protests that will attract attention of the television people, because only through being shown on television and owing to its power these protests will attain their full efficiency (Bourdieu, 1996:37)

Broadcasting legislation has already spelled out in meticulous detail the rules in the broadcasting field. In Slovenia, for example, the Broadcasting Act prescribes a complaints body in the form of the Broadcasting Council. However, the professional standards in broadcasting, which are in some cases set down by special codes, while in others journalists are advised to adhere to general codes applicable to the print media, are still within the competence of television companies which may choose to adopt them or not. Yet these internal codes could hardly be considered forms of self-regulation, primarily because in private companies they are shaped under the strong influence of the owners, sometimes even enforced, with journalists having no other option but to conform. On the other hand, it is true that a wise employer will not insist on anything that is in conflict with professional standards, since this could

result, as I have already pointed out, in the loss of credibility leading to gradual erosion of audience's trust, and eventually to its switching to other media once their disappointment becomes too profound. A short-sighted enforcement of non-ethical rules must end, therefore, in the loss of profit.

It is also necessary to make a distinction between the codes observed by public service broadcasters and other codes. Given the public broadcasters' "mission" and their independence from the imperatives of capital (which still does not mean that public broadcasters should not compete with the commercial media for the viewing shares or that they should not derive a part of their revenues from advertising), it is not sufficient for their information to be balanced only, but the audience must be presented with diverse information in order to be able to form an opinion. The codes of public (or national) radio and television companies are considerably more extensive and worked out in greater detail than those of private companies or those applied to the print media and stipulated by national self-regulating bodies – ethics commissions or councils.

For example, the RTV Slovenia code is significantly wider than the code of The Association of Journalists, even though the Ethics Commission of the Association may use its own, less specific code to treat complaints about violations of standards in radio or television programs. RTV Slovenia's code, which was drawn up by a diverse group, rests on models taken from the most developed democracies. The editor in chief of the news program at RTV Slovenia Uroš Lipušček, has written extensively about it. *"The basis for this collection of standards were documents or codes observed by certain highly reputed institutions and organizations from this area, for example, programming standards that have been used by the BBC for the past 50 years, then those observed by the Canadian CBS, then resolutions by the Council of Europe, the journalistic code of the Washington Post and Le Monde, and the codes observed by other public television stations and members of the EBU. These standards by no means introduce any form of censorship or narrow the scope of journalism. On the contrary, the application of these standards will, on the one hand, force our journalists to adhere to the highest international standards, and on the other, they will defend both journalists and editors against pressures exerted by political parties or pressure groups. The code will, of course, come to life only through consistent application (Lipušček, 2000).*

In my opinion, the code-design team at RTV Slovenia, of which I have been a member, has not been especially

fortunate as regards the ultimate product. Although the final text includes many of my proposals, I think that such as it is, the code points in the wrong direction. Rather than safeguarding professional integrity, it has been increasingly used as a screen shielding editors from the accusations of politicians and political parties. Certain parts of the code — for example the clause that each interview with the prime minister must be followed by an equally long interview with an opposition representative — confirm what I said earlier — that instead of trusting the editor to choose whether or not to present the opposite view, the decision is enforced by the code. One may justifiably ask what the editors are expected to decide on if not the programming policy. Another proof that concealed motives lay beneath the supposed protection of professional ethics came to light when they easily yielded to the requirement of journalists that they remove the demand that the journalist must disclose the identity of an information source at the editor's request. The protection of the information source is an important safety valve in the relation media-politics or media-judicature, but it cannot be applied inside the media company. Leaving the editor in chief outside the “initiated” circle not only narrows the range of checking options (editors in chief may have their own sources) but inevitably leads to the worst possible solution — a refusal of the editor to publish information when left without the possibility of checking whether the source is credible. And precisely this has proved to be the most significant issue. The editor in chief at RTV Slovenia demanded that the code should allow him to refuse to publish information if a journalist refused to disclose the information source. So instead of both sides, that is, journalists on the one and editors on the other, working together to publish an exclusive story within the shortest time possible, the journalists have to bite their nails over whether or not to trust the editor in chief, while the editor in chief must be concerned with how to avoid criticism about censorship if he/she refuses to publish information.

By introducing an internal ombudsman, RTV Slovenia's code also opened a debate on whether the observance of professional standards within the national television company should be monitored by a collective body or by one person. The ex-constitutional judge Matevž Krivic, who was also an active partner in debates about media law, holds that an ombudsman is not the best solution. “*In this respect*

our “translators”, unfortunately, departed from the British, who since 1997 have had the Broadcasting Standards Commission (a merger of previously separate bodies for complaints and standards), which may publish its conclusion if a complaint is found to be justified. The envisaged competences of our future “guardian of professional standards and principles of journalistic ethics” would not be far from this, yet it is quite unacceptable to entrust such a difficult and delicate task to one person. More than ten years ago, in the collection of papers entitled *Varstvo človekovih pravic* (Protection of Human Rights, *Mladinska knjiga*, Ljubljana, 1987), I wrote about the mechanisms in some European public television companies which as early as then provided for the public and affected individuals practical implementation of their right to objective and impartial information. The mechanism includes various types of commissions and councils with which the affected person could file a complaint about any specific report. This is the most efficient method of eliminating both intentional and unintentional bias in reporting. Until this becomes a part of our legislation, our public television could introduce such a mechanism through the RTV Council prescribed by its statute (...). The RTV Council should select several people (renowned media and legal experts, journalists and other public figures) who have earned the public’s trust through their previous public activities, and entrust them with this function on behalf of the public, while the statute should prescribe that editors are obliged to realize the decisions of this body. This body should have authority to ask for corrections or similar measures in more serious cases, or, in less serious cases, to intervene by criticizing the mistakes. Since during the past ten years concern for political impartiality in reporting has been entirely neglected, in the initial phases we should be especially careful that this new type of “institutionalized” criticism does not become too sharp or inconsiderate towards journalists in a way that would lead them to write insipid and uncritical articles in fear of such criticism. Perhaps it would be wise to introduce a one-year moratorium or a trial period during which this body would operate discreetly as a consulting body, rather than publish its decisions which could be painful for journalists. During this period it would gradually shape the criteria for its own work, so journalists and editors would get used to them before they become fully public. On the other hand, even such discreet methods of operation would discourage the worst violations – and after one year, or sooner if need be, this body could begin to submit to the RTV Council reports on how editors in chief fulfill promises they gave at the time of their appointment (Krivic, 2000).

BY HOOK OR BY CROOK

Since self-regulation is based on the principle that participants must accept it by common consent, it is clear that in general sanctions for failing to respect the agreed rules cannot be drastic. On top of that, there is always a possibility that an individual will bring a civil suit⁶ against a publisher, editor or a journalist, so sanctions should not be duplicated on the level of self-regulation. After all, the purpose of self-regulation is not sanctioning but warning.

In addition, sanctions arising from self-regulations are intended to punish the media and not journalists. They carry primarily moral weight, even though some press councils use penalty fees as well.

Below are some of the forms of sanctions prescribed by the codes of certain press councils and other self-regulating bodies.

The first is a VOLUNTARY DECISION TO PUBLISH A NOTICE THAT THE CODE WAS VIOLATED. In this case the codes usually insist on the prominence and speed of publication (if possible in the first edition following such a ruling). This is further reinforced by the requirement that other media should also carry such a notice, even when the violator publishes it in its own publication.

If the complaint is assessed as justifiable, the German press council, for example, has at its disposal four instruments of various degrees of rigor: the mildest is advice, the next is a warning i.e. a non-public reprimand (in this case, the purpose of discretion is to avoid causing harm to the victim) and finally a public reprimand that must be published in the newspaper that violated the code. This obligation arises from a special statement that has been signed by 90% of the German press companies and (with few exceptions) they also meet this requirement. The press council also processes complaints against the media companies which have not signed this statement, and if a complaint is upheld, it is published by all other signatories.

Certain countries use more rigorous sanctions, say, PENALTY FEES. The purpose of such a fee is to bring violations to the attention of the public rather than to incur a financial loss to the media company. The money collected

⁶ Some of the self-regulatory bodies require from complainants to sign the forms by which they state that they will not bring a civil suit. The ethics commission of the Association of Journalists also observes the rule that its members can decide not to process a complaint as long as a legal action concerning that matter is not concluded.

through penalty fees is used for the operation of the press council, which is, in any case, financed by the media themselves, meaning that a fee payer merely reduces slightly the contributions paid by others.

The most severe sanction is used by Italy's "Order of Journalists", which is authorized to *REVOKE THE LICENSE* of a journalist – in other words, it can place a life-long ban on performing the journalistic job. Less severe but still unpleasant is the solution used in Slovenia where the press ethics commission can propose that the offender should be *EXCLUDED FROM THE ASSOCIATION OF JOURNALISTS*. As we shall see later, many journalists left the association of their own will in an attempt to diminish the weight of decisions taken by the Ethics Commission.

WHY DO WE NEED THIS?

A media accountability system, no matter what form of appearance it assumes, is a system of self-restriction even when adopted voluntarily. It has been invented because it has become obvious that users do not trust media which do not respect the fundamental principles of truthfulness, ethics and professional standards. However, users do not turn their back on the chosen newspaper or a broadcaster overnight – a decision to switch to another publisher or broadcaster may be long delayed by force of habit, so the consequences of non-professional conduct are usually apparent only in the long run. This leads many publishers, editors and journalists to believe that the stories about ethics and self-regulation are primarily a trick whose real purpose is to enable politics or capital to exert control over the media. In their opinion, the market is the only criterion for measuring professionalism, because it is the readers and the viewers who sanction obvious failures to provide truthful information, as well as deceptions and low quality writing. In accordance with such an understanding, they see many flaws in the various forms of *MAS* and ethical codes in particular.

These considerations, as presented by various authors, were summarized by Vesna Laban (Laban, 2001: 26).

- Although most journalists agree that self-regulating norms are needed, their views about the professional code vary. The supporters of the code maintain that nothing besides written rules can guarantee that moral judgments would not be subjected to individual interpretations. With the

norms written down also other employees within the profession may know what is expected from them. On the other hand, opponents of the code see it as a restriction, as a kind of self-censorship, a shift away from independence and autonomy which are prerequisites for press freedom. They argue that codes are generalized and lacking in accuracy and hence not useful when resolving an ethical predicament involving several variants or shades of meaning.

- Journalists from developed democracies, where suits against media or media people are frequent, have in particular expressed their fear that these codes could be used in legal actions against them to prove breaches of professional obligations (Vidic 1996: 52).
- Some critics also hold that a code is nothing else but a list of wishy-washy prohibitions and utopian aspirations. Indeed in many codes it is possible to detect formulations that appear meaningless unless accompanied by an explanation. For example, “the task of a journalist is to speak the truth” (it sounds pleasing but what is the truth?). In addition, some maintain that codes reflect the picture of the world as favored mainly by well-paid, male graduate journalists from developed urban environments, while they do not address the subjects pertaining to women, the poor, ethnic minorities and the like.
- According to UNESCO data, 60 countries have very democratic codes – among them even such countries as South Korea. The South Korean code in particular is often cited as an example of how large can be the discrepancy between what has been written down and the actual moral conduct of journalists (Splichal, 1988: 620).
- What is the point of a code if it does not take into account the distribution of power? Clauses forbidding journalists to accept tasks that are in conflict with ethics are not so rare. But the individual can follow this rule only with difficulty, especially in times of recession – only a top journalist can afford to turn down an attractive job offer for the sake of the rules of conduct.
- Some also think that the real world is too complex and situations too varied to always apply general rules, while it is equally impossible to create special ones for each individual case. Naturally, since the rules are loose, codes are meant to offer general guidelines only, meaning that much depends on one’s own judgment and on the particular situation.
- Some opponents of self-regulation, especially older journalists, hold that self-regulation is just a guise intended to

refresh the image of the media in the eyes of the public and thus to delude it.

- Fear that the state could use the mechanisms of self-control to restrict freedom of speech and establish control over the media is also often present.
- Some insist that good media do not need quality control or media accountability systems. But the fact is that not one medium or journalist is simply good or bad; as a rule, no medium wants to adopt of its own free will any media accountability system, either external or internal. A good example is the British press council, which was destroyed primarily by the unethical popular press – it later accepted the establishment of the Press Complaints Commission but only because it feared that Parliament could enforce its own form of self-regulation (Bertrand, 1997a: 147-150).

I can remember that at the Dublin meeting of the European press councils in 2001 Lord Wakeham confirmed the story that the motive for the establishment of the Press Complaint Commission was a fear that Parliament could interfere with media ethics through legislation. At the beginning of the 1990s he was a minister in John Major's government and headed the group that was expected to propose a new solution on the basis of recommendations by Sir David Calcutt's board that conducted an Inquiry into Privacy and Related issues (this board proposed the establishment of a special system of legal control over the press). Wakeham's group examined the situation and concluded that a solution recommended by Sir David Calcutt and his board could have had grave consequences and that such an arrangement could mean the end of the century-long established principles of a free press.

ETHICS COMMISSIONS, OMBUDSMEN, PRESS OR MEDIA COUNCILS

MIRROR, MIRROR ON THE WALL, WHO IS THE
FAIREST OF THEM ALL?

Dublin's Westbury Hotel is situated just off Grafton street near the big flower stand. Grafton Street is a pedestrian area crowded with small shops and bars, simply the type of street you expect to find in such a part of town. Since Dublin has at least two town centers, the one to the north of the Liffey river and the one to the south, Grafton Street can be regarded as the heart of the south, historical part of Dublin. In its immediate vicinity is Trinity College, housing the Book of Kells – one of the most beautifully illuminated medieval manuscripts.

Westbury Hotel perfectly fits into its surroundings and although the building is of more recent date, it has become suffused with the cachet of old-fashioned dignity. The doorman with an inevitable top hat, quiet music in the foyer – all of this compels even loud American tourists to lower their voices below the usual pitch. In 2001 this respect-inspiring environment was the site of the third meeting of the Alliance of Independent Press Councils of Europe – AIPCE. Its founding meeting had been held two years earlier in the historical hall of the British Law Society in London. The London meeting, at which the network of independent press councils was established, also set down the only requirement: a member of the AIPCE must be a self-regulatory body completely independent from the government. No other rules have been ordained – no leadership, no president; the activities of the AIPCE are coordinated by the press council that has been designated to host the next meeting. So, the Irish press council had been the coordinator from the previous meeting until 2001.

Half a year earlier another body had a meeting in Bangladesh i.e. the earlier-mentioned World Association of Press Councils – WAPC. Its form is much more rigorous; there are more rules; it has a president, appropriate boards, and representatives for individual continents. But the most important element – independence, is missing.⁷ The lack of independence can be traced in the letter by Basher Khan, the secretary of the Bangladesh's press council, to Claude-

⁷ Lord Wakeham's criticism of WAPC can be found in the chapter dealing with the code of professional standards.

Jean Bertrand, who probably has the most complete overview of the operative self-regulative bodies in the world:

Dear Sir,

With reference to your E-mail dated 8th Feb. 2002 I inform you that the Bangladesh Government has appointed Mr. Justice Md. Mozammel Hoque Member of Parliament, as Chairman of the Bangladesh Press Council. So I request you to kindly Change the name of Mr. Justice Habibur Rahman Khan Vice President of WAPC and insert the name of Mr. Justice Md. Mozammel Hoque in place of Mr. Justice Habibur Rahman Khan.

With regards.

Sincerely yours,

(M.A. Basher Khan)

Secretary, Bangladesh Press Council⁸

Formally, this world association of press councils with rigid organization does not demand from its members the most important component: independence from the ruling power. But self-regulation is not possible without such autonomy. What it boils down to in the absence of autonomy is obvious interference from the state under the guise of the abused title of the “press council”. Therefore, looked at from the perspective of fundamental democratic principles, the group gathered around WAPC is strange, and indeed, it is not numerous.

But let’s return to the Dublin meeting of the AIPCE. The environment was interesting enough already for the simple reason that AIPCE members first met in a country which until then had not had its own press council but was preparing to establish it. The Irish legislation, particularly the part that refers to insults, and even more importantly its use in court proceedings, actually began to oppress the media with increasingly more severe damage suits. Frank Cullen explained this at the London conference on self-regulation:

“Irish libel laws serve neither to protect the individual’s reputation and good name nor to encourage a free and vibrant press, which is the cornerstone of any democracy. Under the present legal system, if an individual feels that he or she has been libeled, it can take up to three years from the date of publication of the offending article to the hearing of the action. Delays of this magnitude do little to restore a

⁸ Taken from e - correspondence between the author and C. - J. Bertrand, 2002

person's good name. Our last survey shows that, based on average daily circulation, libel costs newspapers annually almost £4 for every copy sold. (...) Of course, the main problem associated with laws dating back so many years is that the media world has changed out of all recognition in the intervening period. Irish media is therefore operating within a defamation framework that is discriminatory, inequitable and wholly out of date" (Cullen, 1999).

It was during the Dublin meeting that a proposal for amendments to the law that protects good name and honor reached the Irish Parliament. Irish newspapers indeed lobbied in Parliament for fast adoption of these amendments, but they simultaneously had to conclude that in countries with press councils damage suits are not as frequent.

As a matter of fact, it has often been established that people do not really like to sit in courts, but in the absence of other instruments that could be used to rehabilitate their name after being unjustly labeled by the media, they have no option but to go to court. Their main concern is their honor and reputation in the eyes of neighbors, rather than damage compensations, and the court used to be the only institution that could bring newspapers to admit their mistakes. But such justice is costly, and above all, it is slow – the delayed court ruling actually reopens old wounds and rekindles the attention that may have subsided by then.

The Parliamentary Assembly of the Council of Europe, in its resolution 1003 refers to media ethics and recommends the establishment of bodies entrusted with ensuring respect for professional ethics.

"(36) Having regard to the requisite conditions and basic principles enumerated above, the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions.

(37) In order to supervise the implementation of these principles, self-regulatory bodies or mechanisms must be set up comprising publishers, journalists, media users' associations, experts from the academic world and judges; they will be responsible for issuing resolutions on respect for ethical precepts in journalism, with prior commitment on the part of the media to publish the relevant resolutions. This will help the citizen, who has the right to information, to pass either positive or negative judgment on the journalist's work and credibility.

(38) *The self-regulatory bodies or mechanisms, the media users' associations and the relevant university departments could publish each year the research done a posteriori on the truthfulness of the information broadcast by the media, comparing the news with the actual facts. This would serve as a barometer of credibility which citizens could use as a guide to the ethical standard achieved by each medium or each section of the media, or even each individual journalist. The relevant corrective mechanisms might simultaneously help improve the manner in which the profession of media journalism is pursued.*" (The Council of Europe, 1999).

Commenting on this resolution, Manuel Nuñez Encabo said that ethical principles in journalism call for the adequate mechanism that enables control of their implementation. Some media codes in the past were not realized owing to the absence of adequate control mechanisms. Government's control mechanisms are ruled out in this case, since codes by definition reject sanctions imposed by external bodies or institutions. Therefore, mechanisms of self-regulation or self-control must be used instead. Press councils and press complaints commissions that were introduced in some countries prove that there is still room for improvements.(Encabo, 1996: 77-78).

The group that gathered in the Westbury Hotel that October in 2001 included representatives from various self-regulatory bodies. Among them Italians, from a system where violations of professional ethics are dealt with by the tribunal of the journalistic "order" authorized to place a life-long ban from the journalistic profession on any person who has committed a serious violation; then representatives from Slovenia, where adjudications are within the competence of the journalistic ethics commission; then Swedes, who recognize both the press council and a press ombudsman as being responsible for the protection of human rights; Germans, who have a bipartite press council composed of journalists and publishers only; Britons whose Press Complaints Commission is the product of an agreement between publishers, journalists and the public.

Which model is the best? Even though attempts have been made to consolidate the self-regulation area, or to create a kind of ideal model that should be approached by all members, most self-regulative bodies today would readily argue that a uniform model would be risky. Swedish media ombudsman Pär-Arne Jigenius says that an attempt to transfer any specific model into a different social environment

would be a forcible move. It was precisely the fear that powerful EU bureaucracy would make an attempt to enforce a uniform media code and a uniform model of self-regulatory bodies, perhaps even a supra-national press council, that triggered the initiative to establish the Association of Independent European Press Councils. Today it closely monitors every attempt of European bureaucracy to lay down the rules for the journalistic profession or to shape a uniform model.

SELF-REGULATION! AH, THAT'S NOT FOR US...

The view that self-regulation is a measure applied to tabloids, while “serious journalism” does not need it, is often harbored by politicians, public figures, and people involved in the entertainment industry, as well as journalists working for reputable media companies. Digging into private lives, paparazzi-style chasing of famous people, millions paid for the nude pictures of royal family members, the first exclusive images of newborn princes and princesses – there have been attempts to present these things as excesses restricted to the tabloids. For them everything would be much easier if they left the “normal” press alone. Although it is true that professional lapses are most easily made by tabloids, because ethical norms there often cave in under the weight of profits promised by higher circulations, tabloids are a reality and it is precisely their most severe critics (politicians, movie and pop stars and the like) who mount the publicity ladder with their help. People who take advantage of such media for their own promotion must come to terms with these same tabloids occasionally poking into their bedrooms. Of course, what is implied here is not that tabloids are exempt from the requirements of professional standards, but that they must be able to differentiate between cases in which it is allowable to stretch these standards, because a public personality is involved, and cases in which it is unacceptable. Since royal family members do not divorce every day, and since the most popular singers do not publicly take drugs or beat their partners often enough to fill the pages of the newspapers that live off such events, these newspapers turn to the masses in search of newsworthy stories. As a result, individuals making up the masses attract public attention through personal tragedies, when they come in conflict with the law, or reap an unexpected profit. That is the point at

which the tabloids take the ethical test: will they know how to rise above revelling in a person's misfortune? Will they manage to remain within the limits of good taste? How much sensitivity can they demonstrate when reporting human tragedy? Will they protect children?

Journalists working for these media will tell you that what they offer are stories in the first place – stories is what people want to see, hear and read, because that is what they understand, rather than the politics offered by other media.

Without yielding to moralization about the supposed “corruption and greed of tabloids”, it is possible to conclude that they too fulfill the task of information provision so long as they adhere to fundamental ethical and professional standards. As for myself, I'd like to add that I would prefer to see people taking them as a supplementary rather than the sole source of information, but things are as they are. After all, most people who read such newspapers watch television as well, meaning that the range of information becomes broader, if only moderately (I'd rather not discuss here what sort of information they actually have if the choice of television programs is of similar type).

Whatever the case, the experience of self-regulatory bodies in Europe shows that citizens' complaints about the articles in the “yellow press” are not disproportionately greater in number than complaints over “serious press” or radio or television programs. This statement must nevertheless be relativized by pointing out that the legal departments of tabloid papers are much more skillful in handling press complaints and that their success often discourages potential complainants.

However, we should add that even ethical codes allow for tabloid-flavored treatment of public figures whose private lives may have influence on the public good, provided, of course, that such treatment remains within the framework of fundamental standards and ethical imperatives.

SLOVENIA: WE WOULD, IF IT IS PAINLESS

MEDIA OR PRESS OMBUDSMAN

Although the Swedish self-regulatory model is the oldest one, it is also unique. Sweden does not have just a press ombudsman, but also a press council to which those who think that the ombudsman has not well understood their case may turn.

Jernej Rovšek, a deputy of the human rights ombudsman in Slovenia, was among those who wrote about the possibility of introducing the institution of the media ombudsman. He first drew attention to the confusion arising from the fact that the title of ombudsman is also used to denote institutions which have nothing to do with the ombudsman. This is especially widespread in the US where an ombudsman may be, say, a person handling consumer complaints in a department store, and where not much attention is paid to the European tradition and etymology of this name. As a result, in certain countries, for example, New Zealand, the term “ombudsman” has been protected by law. To use it one needs to obtain the consent of the parliamentary ombudsman. In Slovenia, the term “varuh”, corresponding to the English “guardian” is used as a synonym for ombudsman and as a title for the human rights ombudsman/guardian, and it is probably too late to reverse this. But it is not good that the terms “ombudsman” and “guardian” are also used for subjects which do not have any connection with the genuine ombudsman institution. Therefore it is advisable to make a clear distinction between various guardians appearing in the public sphere, which can be instituted on the basis of the law and Article 159 of the Slovenian Constitution, and between other civil initiatives which often use this name without proper grounds (Rovšek, 2000).

What Rovšek has in mind here is undoubtedly the profusion of ombudsmen in Slovenia which is likely to result unless we take measures to prevent it. For example, poor functioning of control mechanisms in the field of medical services gave rise to the initiative to introduce an ombudsman in this field; consumers would like to have their own ombudsman; we even have a self-proclaimed civil society human rights ombudsman, while the code of ethics at RTV Slovenia also calls for an ombudsman. It is precisely the

last mentioned example that clearly shows that those who proposed such a position were not well informed about what actually to expect from an ombudsman – even months after the implementation of the professional standards at the public broadcaster's organization, no attempt has been made to find a person for this position.

“A characteristic of every ombudsman is that it is not a regular complaint body nor is it a substitute for other national bodies or channels of complaint. The ombudsman steps in where there is no other regular complaint channel available or when such a channel is not sufficiently effective. This means, in other words, that the public sector should always offer the possibility of filing a complaint, but if it is not effective or the individual is not satisfied with it, he/she may turn to the ombudsman. The ombudsman is an effective instrument primarily because it is a faster, cheaper and more friendly body from the perspective of the individual. Many make a mistake when they endeavor to institute an ombudsman to circumvent regular, efficacious channels of complaint. In my opinion, this is also partly true of the newly proposed medical service ombudsman, a position for which it is not clear to which segment of the health protection institutions it actually belongs. But there is no doubt that this proposal was made with the intention of compensating for the absence of effective channels of complaint in the health protection field (...) In some examples special guardians are proposed to watch over the respect for ethics or violations of various codes of professional conduct. Usually, these are bodies of particular professional organizations that watch over the implementation of the written or non-written ethical rules within such an organization. Therefore, a supervisory body or a “guardian” of this kind is merely a representative of the profession in question, and as such it is responsible for the protection of that profession's reputation. Examples are the bodies of, say, the organizations of lawyers, notaries, medical workers or journalists. Such bodies are usually not held in high repute and they quickly compromise themselves, because they are not independent external supervisors but are primarily concerned with the protection of the reputation of that particular profession. The number of measures taken against insiders who are in breach of rules says all. Most people have not yet realized that any profession earns the reputation through open confrontation with the mistakes within its own ranks, and by publicly admitting that a mistake has occurred, rather than by concealing it while at the same time creating an impression that the treatment of complaints has been “professional” and “autonomous”. The impression could be improved only through the mandatory inclusion of the representatives of consumers and civil society in these bodies.

Unfortunately many see special ombudsmen as good solutions, even in the areas in which civil society should act. But what is at work here is the realization of particular interests and promotion of particular social groups in the eyes of the public and of the state bodies. This is especially obvious with initiatives for guardians of children's rights, women's rights, disabled people, old people and the like. Initiators see it as an easier way to reach the public and state bodies when realizing interests of these groups, which are often quite legitimate. This could as well be called lobbying, an act that is carried out through representatives in parliament, civil and non-governmental organizations. Special guardians for the protection of those interests would be too costly and inexpedient for the state (Rovšek, 2000).

The deputy human rights ombudsman in Slovenia points out that an ombudsman inside a media company, as found in the US, is not a genuine ombudsman. Rather than protecting professional standards it is a move with commercial motives.⁹ He further doubts that the press council, as a collective body, could be efficient enough. *"I arrived at this conclusion also through my experience on the Council for the Protection of Human Rights and Basic Freedoms, which was one such collective body. Individual complaints can be analyzed and treated professionally only on a case-by-case basis, while a collective body can only decide that somebody is "guilty" or deserves "sanctions" based on such individual analysis, or can deal with more general issues. Therefore, I propose that the media ombudsman should be structured as follows: a press council, composed of the representatives of owners, the journalists' association and civil society, should appoint the media ombudsman to investigate particular violations of citizen rights on the part of the media. Individual cases would be treated on the ombudsman's own initiative or on the initiative of the person who was harmed. The ombudsman would decide autonomously on the basis of the ethical code. The decisions should be respected by the media and published. If they deemed such a decision controversial, they could turn to the press council for a final*

⁹ Contemporary self-regulatory bodies in the US are usually established on the local or regional level, or within the company, but not on the national level as well. According to Rovšek, their work is much dependent on the owner of a medium, meaning that they are not voluntary bodies, so I do not pay special attention to in-house media ombudsmen. In the US, media ombudsmen are private institutions and they are subordinated to the owners. It is true that this type of ombudsman is also known in Europe, for example in newspaper and electronic media in Great Britain, France, Ireland, Italy, The Netherlands, Spain and Switzerland. The code of the Slovenian national television company also prescribes that a special guardian should check whether the code rules are respected. However, at the time of writing this study that guardian has not been appointed yet, while its tasks have been transferred to the RTV Council which is in conflict with its fundamental role of a managing body.

decision. That is roughly how the media ombudsman in Sweden operates. The only question that remains open, and to which I myself do not have an answer, is how to include all media and all journalists in this system (Rovšek, 2000).

Another supporter of the institution of the media ombudsman is the former president of the ethics commission Zoran Medved, who holds that the situation in Slovenia is not yet ripe for a press council. *“The press council would be much easier to establish if, following the example of RTV Slovenia, most of the media in Slovenia adopted their own professional standards and journalistic principles, which is not anything unusual in developed countries. If most media were obliged to observe such common standards or ethical principles, the job of the press council would be easier when having to decide what is right and what wrong. But we know that such an agreement does not exist for the time being, that the struggle for market shares is bitter, and that it would be illusionary to expect that the media would consent to self-regulation as long as their fate is in the hands of market forces exclusively. Accordingly, it could be a good approach to first consider the institutionalizing of the media rights ombudsman in Slovenia, who would act independently and would be able to assess with the help of its own expert services and experts from universities, or experts from the media themselves, the situation on the media stage and draw attention not only to moral or professional slips but also to violations of the law, then issues not adequately treated by the legislation and the like. Our experience with the human rights ombudsman may help here. (Medved, 2000).*

The idea of institutionalizing the media ombudsman would indeed resolve one of the first problems encountered by the group that endeavored to promote the idea of a press council – the problem of how to fund such a body. Those who are supposed to make up such a body – journalists and publishers and the public’s representatives they appoint – should take care that the press council be adequately funded if it is to be truly independent. The ombudsman, on the other hand, is usually established by law, so it is funded by the state. But there is a catch there. Even when appointing the human rights ombudsman, the political engineering was at work. The law prescribes that the proposed candidate must receive two thirds of all votes in parliament. The law-makers may have honestly believed that such a rule would force parliamentary parties to reach agreement, but their naiveté became obvious from the first attempt to ap-

point a human rights ombudsman, when there was a real vote trading behind the curtain. In the case of the media ombudsman, which is an area highly attractive for politics, one can expect an even more lively trade in votes. It could easily happen that the ultimate choice would be a far cry from the precepts of self-regulation. The only element of free choice (of the media to submit themselves to public control) would be the standards themselves, but even so it is questionable whether politics would be satisfied, given that standards were formulated without its influence.

Those who are familiar with the principles of operation of the National Assembly in Slovenia cannot but doubt that an ombudsman law, no matter how carefully worded, would be able to furnish all elements of independence. Those with longer memories will recall that when passing the law on the human rights ombudsman, deputies to the National Assembly made attempts to place a number of obstacles particularly with regard to the ombudsman's access to defense ministry sources, that is, the sector in which one could expect the greatest number of complaints because of the repressive nature of that body, similar to that of the police. On that occasion parliamentarians nevertheless decided not to restrict the ombudsman in dealing with violations of human rights in the area of defense, but it could have easily happened that amendments to the law reversed this. There is no guarantee that a law on the media ombudsman would not be distorted at the stage of the parliamentary procedure, in such a way that a favorable solution to the problem of funding could have serious consequences for the content. On top of that, there is no guarantee that the media ombudsman and his/her fellow workers would really defend media autonomy; such an institution could quite easily turn into an ordinary complaints-handling body concerned with the defense of the users of media services, but this, however, cannot be its sole purpose.

The Swedish model treated by Rovšek seems to be an ideal solution. The existence of both the ombudsman and the press council resolves some problems that could arise from a one-sided solution. The issues of journalists' and media accountability would be treated by the collective body (press council) that would include journalists and publishers. That body could act as a supreme complaint authority, and in addition, thanks to the fact that the majority of operative tasks would be carried out by the ombudsman's office, it would be able to devote itself to

difficult and controversial cases with all due meticulousness and professional breadth. In addition, on the basis of the ombudsman's conclusions, the press council could take initiatives at the legislative level, and could act as a moral authority on issues related to the media. Undoubtedly such a combination of the media ombudsman and the press council would most closely approach the principle of self-regulation, because the council would be a higher complaints authority and would be able to reject the ombudsman's opinions if they proved to be unsuitable as a result of the ombudsman's financial dependence on the government.

JOURNALISTIC ASSOCIATION VS. CHAMBER

Josip Broz Tito, the late president of ex-Yugoslavia, died in 1980. The war in Kosovo broke out one year later and triggered events that eventually led to the disintegration of the state. As far as Slovenia is concerned, it was the time when the previous style of media reporting, which was imposed by the omni-present Communist Party began to give way, even though another ten years had to pass before the state completely eased its pressure on the media. One person credited with ending the news blockade during the Kosovo events was the former journalist, and later head of Tito's cabinet, Jože Smole. As president of the then supreme body of RTV Slovenia, the RTV Assembly, he supplied journalists with detailed information on the developments in Kosovo. The Yugoslav Communist Party initially adhered to the old formula that unpleasant events do not exist as long as the news about them is not spread, but Smole's public appearances in Belgrade set an example, so they dropped that practice and allowed the news to leak into the public arena – of course, it was still accompanied by appropriate ideological comments. Smole was by no means a political opponent, rather he was a 'party soldier', but he was among the first to realize that the Communist Party could survive only if it slowly loosened its grip while still overseeing the process and if it conceded to political competition once it felt ready. And it slackened the reins really slowly – the early 1980s were characterized by several more attempts to tighten the noose around the neck of the media – but the grip was increasingly weaker.

The satirical journal *Pavliha* was one among those that found themselves with such a noose around its neck. Its editor in chief Bogdan Novak took seriously the principle

of satire that arrows must be aimed at the highest targets, so just two weeks after he assumed his new post, he had to face pressure from the ruling party and that thanks to an innocent story. The economic crisis pestering post-Titoist Yugoslavia was responsible for a general wave of economy measures that compelled Ljubljana town officials to start the heating season later than usual. While apartment blocks were freezing cold, the Central Committee offices were cozily warm, as Pavliha revealed. The first reactions to Pavliha's writing were languid – several “court journalists” spoke up for the Central Committee and thus showed that politicians were grumbling with dissatisfaction. But Novak did not stop there. The next story was about the legendary character Erazem Predjamski who built a new castle with citizens' contributions, which was an obvious allusion to the house built for the powerful retired politician Ivan Maček with money collected for the cultural center in Ljubljana, Cankarjev Dom. The patience of politicians was worn down through three features. The first was a cartoon showing a cricket singing “I work like a Negro” while surrounded by diligent ants. The important detail was that only the black ants were working, while the red ants (an allusion to communists) followed the example of the cricket. Even more commotion was caused when the journal published the names of party officials who had bought cars from a local producer under unusually favorable terms, with a note that the full list was soon to follow. But the straw that broke the camel's back was a picture of a member of the territorial defense unit holding a sling, with the caption reading that it was a secret weapon of the Yugoslav army, which in the 1980s was among the prohibited subjects. It is true that politics did not directly participate in settling the score with Pavliha and its editor in chief, but everybody knew that political godfathers were behind numerous meetings with the editor with the aim of persuading him to admit his mistake. Since Novak could not be swayed into admitting the supposed mistake, they started to pave the way for his replacement. The founder of Pavliha was the Association of Journalists in Slovenia, but initially its management board was not exactly enthusiastic about carrying out the required execution. It seems that the ‘removers’ of Bogdan Novak thought that the management board of the association could be softened if individual articles received a negative opinion from the ethics commission. The latter convened early in 1984, but definitely failed

to provide a pretext for Novak's replacement. Perhaps Bogdan Novak was not entirely satisfied with the commission's statements, given that he later objected to them, but neither did 'executors' receive what they expected to hear. The statement by the commission was accompanied by a special warning:

"The Ethics Commission holds the opinion that this is a special journalistic genre which should be maintained and cultivated and, if satire is good, it should be supported and protected. A genre such as satire is inherently uncompromising and therefore cannot be opportunistic. As such it is especially exposed to criticism and sharp reviews. But this also means that the author of a satire has special responsibilities. Even though newspaper satire is given a wider framework, it still has the obligation to respect the truth, respect people and give accurate information, as does the information provision sector as a whole and all employees in this segment. It is precisely sensitivity as regards the truth and protection of human integrity that lends power to satire to resist oppression when it is rightful (Novak, 1991: 222).

Obviously, the ethics commission, then presided over by Kristina Lovrenčič, ignored the hints that came from politicians and demonstrated a considerable measure of independence not only from politics but from the management of the association of journalists as well. The latter subsequently replaced Bogdan Novak without the help of the ethics commission, which proved that political rulers of the time still held the reins to a certain extent.

In contrast to similar bodies in former socialist countries, the Slovenian ethics commission displayed a sufficient degree of autonomy not only in 1984 but earlier as well, with the extent of autonomy varying depending on current members and presidents. Yet it is precisely the statement issued in connection with the Pavliha case that may be considered a landmark, because after that the ethics commission never lapsed into ideology when assessing journalists' supposed violations, but used primarily professional standards which paved the way for future adjudications. The subsequent presidents of the commission, Mojca Drčar Murko and Slava Partljič, further reinforced the autonomy of this body by strictly adhering to professional standards as the only criterion observed in controversial cases. It can therefore be said that the ethics commission outstripped the professional association (Association of Journalists) in

the struggle for media freedom and thus accumulated plenty of moral capital. It gained importance during the period of political changes when new political forces tried to impose the thesis that the victory of political pluralism is a sufficient guarantee of freedom of the press. The practice showed that the opposite was true. Certain political parties believed that Slovenian journalists were used to hiring themselves out to the government, and that they only needed to be re-directed to new masters. Yet they were wrong in at least two respects. First, journalists who used to meet loyally the ideological needs of the previous regime were few, while the majority (those not reporting on daily politics) performed their jobs in accordance with the professional standards valid in democratic environments. The events of the second half of the 1980s awakened in most journalists the urge to resist external pressures, and they kept the feeling alive after the inauguration of the multi-party system, when the ethics commission, which certainly was the central player in the struggle for the autonomy of journalism, became saddled with complaints against journalists. But it continued to adhere to professional ethics. This has taken the wind out of the sails of those who wanted to use it as an instrument against unwelcome journalists, this time for different political reasons.

It turned out that the moral capital accumulated by the ethics commission during the 1980s later had an unusual effect in new circumstances. While in the 1980s journalists expected from it protection in the face of political pressures, they now saw it as a fortress of the profession that was to provide a refuge regardless of how they behaved. The following is how one member of the ethics commission commented on a certain case: *"He made so many mistakes that we could not help him even though we tried very hard."* Instead of protecting the reputation of journalism while simultaneously pointing out to journalists that they themselves had to defend it through professional performance, its members were frequently overwhelmed by the feeling that a fellow journalist should be defended at any cost. This wrong understanding of the role of ethics commission is one important reason why a different form of self-regulation should be considered in Slovenia, by which I do not mean to suggest that the ethics commission has become redundant.

The Slovenian ethics commission for journalists deals with alleged violations in both the print and electronic media. In this respect it resembles the Estonian press coun-

cil and also the tribunal of the Maltese journalistic club. An example of a unilateral solution is the Italian “Order of Journalists”, except that its decisions, as already pointed out, are much more decisive for the future career of journalists than, say, the adjudications of the Slovenian commission. The Italian Order, which was founded by the professional association of the Italian journalists and comprises 19 regional Orders, is a strictly formal organization. One needs to have a license to become a member, and a journalist may obtain it after 18 months of training on the job and after passing a certification test. The mainstay of this organization is the Italian constitution, which entitles the national (and regional) Orders to adopt disciplinary measures against journalists who violate professional and ethical norms. The most severe punishment is revocation of the license to perform the job of a journalist and deletion from the register of journalists, which in effect means the end of the journalist’s career. If such a decision is reached at the regional level, the affected journalist may complain at the national level, while the ultimate authority is the court.

The inclination towards a journalistic organization based on rigid principles, which would resist external pressures owing to its legal organizational form, could have been observed in Slovenia recently. Yet hardly anyone has considered the pitfalls of such an organization. My article for the winter 2001 issue of the *Media Watch* journal was intended to shed some light on how much such an organization could in fact contribute to the reputation of the journalistic profession and where the power of journalistic reputation actually lay. *“Some time ago I participated in the round table discussion on whether journalists in Slovenia should establish a journalistic chamber/board. The argument that was most frequently used by the supporters of that idea was that such a body would take care about the reputation of the journalistic profession. But in what does the reputation of journalism consist? Is it an aggregate of the reputations of individual journalists? Or does it rest on the level of fees or salaries paid to individual journalists? Or is it a fear of investigative journalism felt by certain individuals that makes up that reputation, or respect that the ruling power should feel for journalists’ work? If reputation is primarily measured using the money-yardstick, then a union is a faster way of achieving it – the stronger the trade union, the higher the salaries for journalists. But I doubt that journalists aspire to that sort of reputation, because reputation of the profession is most dependent on how people perceive journalistic work and how strongly they believe that the journalistic profes-*

sion is needed and that media truly perform tasks that serve the common good. Reputation is created primarily through the trust of users. The readers, listeners and viewers choose which journalist or editorial policy they will trust and why. Since they often cannot provide an answer to the question why they have more trust in one journalist than in another, they reply in general terms, to the effect that "he/she is honest, I can trust him/her". Further investigation would perhaps reveal some other elements, say, journalistic courage, skillful wording, impartial treatment of all involved in a story, or a rarely expressed belief that "he/she thinks the same as I do". Yet what lies at the basis of the relation between the newspaper, radio or television and the users is trust which can be created only through the credibility of a newspaper. It includes the above-mentioned honesty (accuracy and balance in reporting, non-partisanship) which is detected by an impartial judge" (Bervar, 2001). Those journalists who have at least a partial knowledge of the Slovenian media stage and know how mature the Slovenian Parliament is, would probably be cautious when deciding on the journalistic chamber/board. After all, the alliance with one kind of politics in order to bring another one to respect journalism is a double-edged sword.

In the above-mentioned article I avoided supporting either the ethics commission or the press or media council. In my opinion the establishment of the press council will not do away with the ethics commission, but it would assign it a different, more appropriate role. The weak points of the unilaterally organized ethics commission are given below.

- Its adjudications are primarily directed against journalists. Journalists who are not members of the Association of Journalists do not recognize professional ethical rules as binding, while its members circumvent ethics commission's adjudications by simply leaving the association. Sandra Bašič Hrvatin wrote: "Three journalists who were invited to the session of the ethics commission refused to cooperate, with one of them saying that he "simply forbids some ethics commission to discuss him"" (Bašič-Hrvatin, 1999).
- Neither the adjudications of the ethics commission nor the code of the Association of Journalists is in any way binding for other players in the Slovenian media space. Vili Einspiler, the current president of the ethics commission, has commented on this as follows: "This is a real deficiency. Responsibility for a publication or violation of the code cannot be assigned to any other intermediate level standing between the editor in chief and a journalist who signed the article. For example,

it may happen that something has been 'messed up' by a copy editor, but he/she cannot be brought to the ethics commission; the same goes for intermediate editors. We have already discussed this, that the code should be amended to that effect" (Einspiler, 2002). And what about the attempts of employers and owners to influence editorial content? Who is to judge their interference with the texts that may neglect ethical principles for the sake of profit?

- The ethics commission is not a partner in the debates on the amendments to the media legislation; it is the management of the Association of Journalists instead.
- The understanding that the ethics commission is a trade union body intended to defend individual journalists rather than the professional code of ethics (Vili Einspiler says: "*In fact, internal solidarity could cause harm to journalism in general. It is true that we try to act in such a way as to encourage people not to repeat mistakes, so we might be more lenient in some cases. In short, if there is an alternative between "crucifying" and pointing to a professional mistake, we prefer to issue a warning*" (Einspiler, 2002)).
- Publishers feel increasingly less obliged to publish adjudications of the ethics commission because no force or agreement compels them to do that; a binding agreement could be, for example, one signed by the founders of the press councils.
- Whichever viewpoint one takes, the code of the association of journalists is still the code of that particular association only, and if at some point in the future someone decides that a code on the national level should be established, it might easily happen that it will be formulated without the prevailing influence of journalists. In addition, Slovenia is an exception among countries in transition, where journalists' associations are fragmented. Slovenia has only two major journalists' associations: the Association of Journalists and the Trade Union of journalists. Other journalistic associations in Slovenia are considerably less influential or they were formed primarily to satisfy legal requirements. Such are, for example, regional journalistic societies. Even though they are members of the Association and recognize its code and the ethics commission, they are formally independent in financial matters. But there is no guarantee that this will not change in the future, as completely different forms of association between journalists may evolve owing to particular interests. For example, new associations or unions which might be less observant of the existing code of ethics and might bend its principles to meet the requirements of the owners or the ruling power.

If we arrive at an agreement to establish a press or media council in the future, the present code may serve as a foundation (or the basic document) of the future ethical code, which would be binding for the founders of such a body and would in effect mean that initiative would remain with journalists. The press ethics commission would then still deal with breaches of professional standards, but only within association and only through journalistic articles. The press council, on the other hand, would deal with the media – with them alone, or rather, with complaints about alleged editorial mistakes. This of course does not mean that a journalist would be exempt from further investigation into the reasons that led to a mistake, but that would be an internal issue for the media company itself and the responsibility would be taken on by the editor in chief. In such a case the ethics commission could actually step in to defend a journalist, if employers or editors tried to impute their own mistake to a journalist whom they possibly led to such a conduct, or if the mistake occurred during some subsequent stage of the processing of the author's text (even though, according to the rules of the code, alterations are not allowed without the author's consent,).

PRESS (MEDIA) COUNCIL

By definition a press council is a non-governmental institution and should be an intermediary between the media and the public. According to Daniel Cornu, the tasks of a press council are as follows:

- **IT PROTECTS THE PUBLIC.** It enables anyone who feels affected or shocked by the journalist's portrayal to make a complaint. This is at the same time an opportunity for the public to tell what it thinks about the behavior of the media.
- On the other hand, **IT PROTECTS JOURNALISTS AND THE MEDIA** against potential moves by the ruling power, judicial authorities, or the public itself aimed at establishing unacceptable control over the media. The council further reflects the readiness of professional circles to ensure self-regulation and take on responsibility for their conduct.
- It is an **INTERMEDIARY** between the media and the users. In such a way it meets the demands of society and citizens, and at the same time shows that a legal suit, which nevertheless remains a possibility, is not the only road leading to justice. However, it is still difficult to regard it as a completely

neutral body, as it usually remains closely connected to the professional circles through financial links. In many countries councils do not include representatives of the public.

- Another task of the council is INTERPRETATION OF PROFESSIONAL NORMS. It should be consistent in supporting these norms, and it should enhance and supplement them. A council decides what is good and what not in journalism, similar to a court's decision on justice. Its viewpoints have the weight of adjudications, and many press councils (e.g. in Switzerland or Germany), consistently ensure that the coherence of their viewpoints has a lasting value. (Cornu, 1997: 26-27).

Taking into account the warning that foreign practices should not be uncritically transplanted into the local environment, the majority of pundits would probably agree that the British Press Complaints Commission is very close to what could be regarded as a model. Yet, just like any other ideal, the Press Complaints Commission is not free from flaws either. First of all, because of its genesis. I have already mentioned that after the British press council had been found ineffective, the new Press Complaints Commission did not come to life as a result of good cooperation between journalists, publishers and the public, but because freedom of the press in Britain was threatened by pending legislation that could have curtailed its rights (which, to be honest, have been abused many times). Calcutt's board that made inquiry into privacy and related matters, which was appointed because of increasing incursions of tabloids into privacy, reported: "*Our first recommendation is that the press should be given one final chance to demonstrate that it can put its house in order. Calcutt's own preference from the start was for a tough privacy law*" (Shannon, 2001: 28). It was only that issue which brought together journalists, publishers, and the public, while the ruling power itself did not really fancy meddling in this imbroglio. After all, which ruler would like to be remembered as the gravedigger of the free press?

Sandra Bašić Hrvatin has written about the British Press Complaint Commission on several occasions. "*The Commission is made up of 16 members. Nine of them including the Chairman are independent representatives. Other members are senior editors from various segments of the newspaper and magazine publishing industry. The Press Complaints Commission (PCC) is funded by the newspaper industry which determines the fees paid by each newspaper or magazine on the basis of its circulation. Since its establish-*

ment in 1991, the PPC has dealt with more than 25,000 complaints. In the first quarter of 2000, the PPC processed 556 complaints. In 148 cases it had to conclude that complaints were outside its remit (e.g. issues pertaining to advertisements, breaches of contract, matters of taste and the like). In 220 examples it concluded that complaints related to violations of particular clauses of the code. 118 cases were resolved by conciliation between the affected party and the media in question. The commission analyzed and adjudicated on 20 cases, of which 12 were upheld, and 8 were rejected on the grounds that the code was not breached. The majority of upheld cases pertained to the breach of the first clause of the code (accuracy), then intrusion into privacy, children's protection, intrusion into grief and shock, and reporting on sexual assault victims. In most cases the newspaper, i.e. the editor in chief, apologized or published a correction and an editor's apology. In certain cases the editors personally apologized to the affected party. In cases where the PPC adjudicated, the majority of violations pertained to privacy (justified expectation of the individual that his/her right of privacy would be respected), protection of children or distortion of information (Bašić Hrvatin, 2000).

An encouraging example that should be taken into consideration if we succeed in establishing a more efficient dialogue on the press or media council, is the German press council. It departs from an ideal in that it does not include representatives of the public, a fact that is admitted openly by some of its younger members. Yet it has a long tradition – it was established in 1954 – and since there have not been many objections to its structure, its founders decided that they would cause less harm if they avoided major perturbations. An important reason for this is the fact that the German press council is linked to the legislator at least in one respect: part of the funds for its operation is contributed by the state. Even though under the law the German parliament is not allowed to exert any kind of pressure on the council nor to influence its decisions by changing the portion of the state funds, any essential reorganization would reopen discussion on this form of self-regulation. In my opinion, this is the reason why the Germans are reluctant to change the composition of the council, even though they know that inclusion of the public would increase its credibility. The following is how Lutz Tillmans described the operation of the press council.

“For 43 years now the German Press Council has been defending the freedom of the press and the reputation of the press, supported by the two leading organizations of publishers (The Federal Associa-

tion of German Newspaper Publishers – BDZV and the Federal Association of German Magazine Publishers – VDZ) and the two journalists' trade unions (The German Association of Journalists – DJV and the Industrial Union of Media, Printing and Paper, Journalism and Art – IG Medien). In the interest of supporting freedom of the press, we are committed to observing the main rules of a fair and honest journalism including the keeping of those professional ethical principles. Therefore, press self-regulation seems to be necessary because it is not the legislators' task – whether on a national or on a European level – to correct violations of journalistic fairness and accuracy in the field of professional ethics.

The German Press Council therefore supports its Press Code which was set up by the Council and is continually developed further as rules for the protection of journalistic ethics, to intensify awareness of the necessity for fairness, accuracy and responsibility in the press. For the same reason the German Press Council in 1973 founded the Complaints Commission which continuously takes care of complaints from the public, examines and decides on them on the basis of a procedure corresponding to the aspects and conditions of a constitutional state. On the basis of its extensive rulings (roughly 4,500 complaints since 1985), the press Council actualizes its ethical norms, and through them provides for a permanent dialogue between readers and editors. Independent of this a consumption-critical attitude of the users towards the media contents is being achieved.

For 25 years now the German Press Council has done intensive work on complaints, guided by the rules of the Press Code and the guidelines/recommendations for journalistic work. Its effectiveness in its own ranks is being supported through the so-called "reprimand-obligation-declaration". Roughly 900 publishing houses print the public reprimands which the German Press Council has ruled against their papers within these papers and on-line services. The Press Code generally is being accepted within the press, partly also in broadcasting, here especially in the field of journalistic reports" (Tillmanns, 1999).

And another point at issue is: should we have a media or a press council? The former president of the Association of Journalists in Slovenia, Branko Maksimovič supports the media council, since, in his opinion, radio and television should be subject to the same principles and criteria, and the same review as the press, while, of course, taking into account the specific features of these media (Maksimovič 2000).

Since legislation pertaining to the electronic media is worked out in more detail than laws regulating the printed media, it seems that it would be wise to follow the examples of the countries in which such a body is dedicated to issues related to the press only. In addition, in many countries (including Slovenia), the issues of professional ethics and implementation of laws in the electronic media field are supervised by special, non-governmental bodies if possible, who also have in their hands a rather strong trump card – the option of revoking the radio or television broadcasting license. On the other hand, Slovenia's media market is small, and the records of the ethics commission show that the number of complaints pertaining to the electronic media is not excessive. Pragmatic consideration will further reveal that the burden is smaller if the costs of operation of such a body are shared by several subjects, so the widening of the group to include the electronic media owners seems reasonable. Finally, foreign experience shows that no serious complications arise from the concept combining printed and electronic mass media.

Development trends in the field of telecommunications also speak in support of the general media council. Sooner or later, self-regulation rules will have to be applied to the Internet. Attempts to prohibit certain types of content on the web suggest that pressure to establish better control over Internet content will increase. Since it is clear that the type of infinite freedom currently reigning on the Internet cannot be eternal, and that governments will endeavor to restrict at least the content inciting violence, discrimination or terrorism, the choice will eventually be reduced to two options only: legal restrictions or self-regulation. At the moment nobody has an idea how this could be realized, yet self-regulation considerations attract increasingly wider attention. A common media council could prepare us better for potential future solutions.

On the other hand, we are on the threshold of dramatic advancements in the field of radio and television technologies. New digital and satellite technologies, still expensive but likely to become cheaper over time, already offer several tens of channels more than the analogue technique. With the reduction in prices access to the broadcasting industry will open up for smaller interest groups and local communities. How shall we regulate their entrance into the arena of public information provision –

through prohibitions or through self-regulation? The media council, if introduced early, could get ready in time for these changes, could monitor all developments in this field and make a timely entry into this domain.

FIRST YES, THEN NO

When the team of people, including myself, set down to realize the idea of establishing a press or media council, the circumstances seemed to be favorable. We first checked the climate at the “journalistic days” and did not meet with any serious resistance. It seemed that journalists in Slovenia felt that the council could successfully sidestep some of the problems that dogged the ethics commission, and potential inclusion of the public in such a body did not seem to be disturbing. Encouraged by the support from the ranks of journalists, the group (which did not have any formal authority nor any interest group behind it, save for the civil-society organization Peace Institute), embarked on testing the response of the public. The management board of the Association of Journalists later formally backed the idea, and I was authorized to put the idea into practice after giving a promise to inform them regularly about developments.

As expected, the difficulties surfaced when we began to have talks with publishers. Since we were of the opinion that the idea had no future if we failed to attract the three biggest newspaper publishers in Slovenia (*Delo*, *Večer* and *Dnevnik*), we first asked them for discussion.¹⁰ The first problem we encountered at a very early stage was the question of who were the owners of the Slovenian media. As a matter of fact, during the process of privatization, the mass media companies, save for the public broadcaster RTV Slovenia, were subjected to the same rules as other economic enterprises. Take, for example, the *Delo* newspaper company. “... 40% of the social capital was allocated to the state funds, namely the Pension Fund (10%), the Indemnification Fund (10%) and the Development Fund (20%), while the employees were to become a 60% owner. The internal buyout scheme was: 20% of the property was distributed to the employees, their close family members, former and retired employees in exchange for ownership certificates, 22% was to be sold through the internal buyout, and 18% was to be sold to *Delo*’s readers. (...) The ownership structure of *Delo* essentially changed in the years following privatization. The share of internal owners, originally 60%,”

¹⁰ At that time we considered primarily a press rather than general media council, so we did not hold talks with the owners or managers of electronic media.

fell by one half, while the share of external owners increased – especially through the concentration of the capital of one owner, that is, Krekova družba” (Bašić Hrvatín, 2001:19).

Similar ownership perturbations affected other big newspaper companies and even though it was possible to identify the most powerful owner, the ownership structure was still too dispersed for that owner to have any major influence on the editorial policies of the newspapers published by these companies.

Therefore we decided to talk to the managements of these companies first, rather than to their owners. This was probably the reason why their answers lacked commitment. For example, the fact that we did not encounter any problems when talking to the editor in chief of *Delo* regarding self-regulation, could not be taken as a guarantee that the new president of the supervisory board (at that time *Delo* was awaiting changes in management), or perhaps the majority of owners, would concede to the rules of self-regulation, regardless of the influence of European models.

We left *Dnevnik*, the second biggest publisher, with even fewer assurances. The then director could not see any reason why the company would want to co-finance such a body, arguing that it already had a number of financial demands on its budget which did not bring any benefits. He also added that journalists working for *Dnevnik* at any rate observed the code of ethics.

The management of *Večer* expressed the greatest number of misgivings. They reiterated the fear that such a body would encourage potential complainants to take the council’s decisions to the court. Otherwise the reservations were the same as seen elsewhere: why would publishers finance a body that scrutinizes their work?

Our arguments that experience has shown that the number of complaints against newspapers has decreased wherever the press councils have been introduced, that such bodies have a beneficial influence in the long run on readers’ trust in the newspaper, and through it on sales figures, fell on deaf ears mainly owing to the fact that the three most powerful daily newspaper publishers in Slovenia firmly had in their hands their market shares (and they still do).

And after we hit upon the obstacle within the publishing companies, another one suddenly appeared where we thought the road was open – within the Association of Journalists. In 2001 new people took over the leadership

of the association, and although the management board confirmed at its first session that the talks on the establishment of the press council should be continued, the new president soon indicated that the climate had changed with the introduction of the new management. This also became obvious though his article published in the *Media Watch* journal, in which he gave vent to new fears regarding the national self-regulatory body. The new president of the Association Gregor Repovž compared the intrusion of the public into the field of self-regulation with the case of the RTV Council¹¹ and the National Council of the Slovenian parliament, neither of which could boast efficacy or consistency. According to him, the first danger of the inclusion of publishers' and the public's representatives in the work of the press council was that it would open the door to the interests or lobbyists which until now have not had access to this arena. The reasons for keeping them away were presumably well-meaning and, in addition, such an arrangement presumably secured extra credibility for journalists in the eyes of the public, which he believed was needed. And interests? Would those interests that would be allowed to judge the work of the journalists understand this in such a way? Or would they regard the press council as a potential new channel of pressure and therefore abuse it? So far every such channel has been abused, argued Repovž, and the most disturbing example was RTV Slovenia. Such is experience. The second danger would be created by demolishing the high wall presently separating the management from the editors of the printed media. His own experience and that of other media have confirmed that this wall still exists in most press companies. So, asks Repovž, isn't the press council a good opportunity for the representatives of the publisher company to enter a space until now off-limits for them, if only for reasons of decency? Who can guarantee that they will not take advantage of that opportunity? It is necessary to keep in mind that journalists disagree with publishers on most issues. The two groups oppose each other when it comes to the rights of labor. Undoubtedly, they also stand on opposite sides with

11 According to the law, the RTV Council consists of 25 members. Five are appointed by Parliament, while twenty are civil society representatives and representatives of RTV employees. Voting by secret ballot (now abolished) introduced political maneuvering particularly when resolving human resources management, which is the reason why journalists are skeptical about its work despite the predominance of civil society representatives.

regard to the demarcation line between advertising and editorial content. Recently these issues have been exacerbated. There is no doubt that adjudications of the ethics commission or the press council would acquire more weight if the public participated. But what if the representatives of the public, owing to their insufficient knowledge about the problems or journalistic work, arrive at conclusions contrary to the expectations of the proponents of this idea? If they suddenly realize that the press council provided a good opportunity to settle accounts with journalists? Is there anybody who does not feel at least a bit of resentment towards journalists? (Repovž, 2001).

Repovž's opposition to the press (media) council is very close to the perception of the ethics commission as a fortress of the journalists' union. Its purpose is seen to be the protection of "our people" against wicked capitalists and their toady editors. But he forgets that the influence of the ethics commission is a far cry from what it was during its heyday and that its arguments are utilized only when found convenient by those whom he most opposes, while otherwise they readily ignore them. After all, they are not obliged to act on the ethics commission's opinions. Therefore, the reality is different from the picture painted by Repovž, even quite the opposite – only an agreement between editors and publishers (owners) will secure for journalists more or less firm assurances that they will not be forced to act contrary to ethical principles, and those who can tip the balance on that scale are precisely the representatives of the public. Who among the public will be chosen as a representative, is an issue that may be influenced by both editors and journalists. On top of that, everybody would be obliged to act in accordance with the rules of the ethical code. If, the press/media council were established today, I could not find any reason why the existing code of the journalistic association should not be used as a basis for its operation.

After the changes in the leadership of the Association of Journalists, support for the press council started to fade. Peter Jančič, a journalist working for *Večer* and a member of the ethics commission, was the next to publish his critical comments in the association's newspaper *e-Novinar* (e-Journalist). Since his letter and my reply comprise most of the pro and contra arguments for the establishment of a press council in Slovenia, I will summarize them here even though some consideration may have been mentioned earlier in this book.

In his article entitled *Who is establishing the press council* Jančič writes: "In Slovenia we already have an organization whose purpose is to protect freedom of the press and which tries to ensure responsible and professional conduct of journalists in Slovenia – it is the Association of Journalists. The journalists' trade union has similar goals. The establishment of a press council would not eliminate predicaments or dilemmas of the journalistic community and I doubt that it would improve freedom of the press or the professionalism of journalists.

Recently the journalistic community has not been particularly successful in protecting press freedom, so the government managed to introduce dangerous restrictions through the penal code and media legislations. A new concept of punishing the publishers of confidential information has been implemented, even in cases where the media obtained information through legal channels. These provisions turned the media into the executioners of national politics and guardians of the secrets of the ruling power, which is contrary to the supervisory role they have in democratic societies.

(...) Advocacy of the idea of the press council and readiness to leave the ethical code and the ethics commission to the mercy of self-regulation, not yet tested in this country, is not beneficial for the project of modernizing the organization of the association, which has only started with the changes in the leadership; moreover, it even seems irresponsible. Modern professional organizations try to encourage improvements in the work of journalists through awards for exceptional achievements and sanctions for mistakes. To renounce these functions and give up one of the roles played by this association is neither a reasonable nor a well thought out move.

Furthermore, a serious debate on whether the press council would ensure greater responsibility among the Slovenian media, is not possible at the moment. For such a debate it does not suffice to merely list countries which have this type of institution – indeed a very diverse list – while leaving out those which do not have them. It is necessary to know who has proposed the establishment of such a body, what reasons lie behind the proposal, how much money the initiators are ready to secure, what the intended composition of the council is, which rules it will observe, who its members will be. Those who proposed the idea try to convince us that the idea was born within the journalists' circles and media companies. But there does not exist any serious written proposal which could provide at least approximate answers to the questions stated above, or indicate who the initiator has been. It is not possible to start a serious debate just

like that, hoping that something will come up, that money will be provided and other issues will be settled somehow since at any rate we all supposedly back up the idea. That kind of "self-management" is one of the reasons that the association has not been particularly successful recently. That delights politicians who would like to see the media even more subordinated.

Cooperation of the association of journalists in "self-regulation" appears to be unseemly, if I am allowed to comment on it. It would be reasonable if the political powers conceded the concept of press freedom and did not restrain or determine the media with restrictive legislation. But since Slovenian law-makers decided to ensure accuracy of information and correctness of conduct through a broadly defined right of correction and right of reply, backed up by the judicial system, and to ensure accountability through police-style supervision of and legal actions against journalists who dare pry into the secrets of the ruling power, the idea about additional "self-regulation", which presupposes the participation of civil society, which is usually a synonym for ideologically non-neutral interest groups, seems to me to be a ridiculous and servile waste of time and money" (Jančič, 2001: 5-6).

This article called for a reply, and it received it. It was not a polemical answer but an explanation. One reason I decided on that form of reply was my wish to explain and clarify some issues arising from the lack of knowledge and so avoid potential resentments before establishing a dialog. The following is an abridged version of my answers to some questions and criticism in Jančič's letter.

On untested self-regulation in Slovenia and the irrationality of its introduction

Slovenia is one among only a few countries in transition in which journalists have mainly remained linked through one association and one trade union. Elsewhere the associations fragmented into a number of ideologically and professionally divided smaller journalistic associations, a phenomenon which Slovenia certainly has not eluded for good. The code of the journalistic association and trade union has, precisely because of the wide background covered by the association, a broader social status i.e. it is the code of ethics in public discourse. But the strength of this status has been diminishing and in a sense this is normal, because, whichever point of view we take, this is only the code of a voluntary organization. The purpose of the transfer

of some functions of the ethics commission to the press council is precisely to achieve a position where the code of the association acquires wider social significance and through it – and of course with the consent of the founders of the press council – becomes the basis of the professional ethics that would be binding for all participants, regardless of how many new journalists' associations happen to emerge in Slovenia.

On who proposed the establishment of the press council, the reasons for that, the amount of funds the founder is ready to provide and the composition of the council

The founders of a press council, in its most credible form, are journalists, or rather their associations, publishers and representatives of the public. If the press council is established without their participation, it is not good for the media. Since the practice in Europe has been that journalists and publishers appoint representatives of the public, forming the third component of the council, the initiative obviously remains in the hands of journalists and publishers. And it is precisely this point that is important. In some countries, for example Estonia, where they copied the Finnish model, the method of appointing civil society representatives is similar to ours in the case of the RTV council – members are appointed by churches, consumers' councils, professors of journalism, some NGOs etc. The Slovenian group which has formulated certain proposals and investigated support for the establishment of the press council in Slovenia, drew on the examples of the countries where civil society representatives are nominated by journalists and publishers, so that there would be no means by which some civil society groups (and through them possibly some political powers hidden in the background) could come to influence the media. Yet we must be cautious here. The EU has been preparing a document – indeed it is still in the stage of a non-paper document – which was initiated owing to the lobbying of the association of consumers. In this document the term self-regulation is replaced with “co-regulation” meaning that representation in the third, i.e. the public part of the press council would be regulated either through legislation or through pressure. This is the reason why we should start to feel that the issue is pressing. In countries where the press councils have long been established and have a firm position in society, resis-

tance will be easier and the state will not be able to enforce new co-regulation. But in countries where these issues are still in infancy, or the press councils have been inaugurated only recently, the struggle will be harder.

A press council is therefore reasonable as long as the initiative is in the hands of the concerned party i.e. media people. When and if the state takes matters into its own hands, the fears expressed by Peter Jančič will become justifiable. And if co-regulation works its way through the mills of European bureaucracy and turns from a non-paper document into recommendation or a binding directive/resolution, it is not difficult to envisage how servile Slovenia will be in implementing that instruction from the top.

On funding

As a rule the funds for the operation of a press council are provided by the signatories of the agreement, in most cases the publishers themselves. The Germans, who in the 1950s established their press council precisely in order to avoid its being established by the state, actually succeeded in passing a law prescribing that the state co-fund the council without leaving any possibility for the state to influence the council's operation. The purest form of funding is therefore a cooperation between the publishers who signed the agreement, and possibly journalists.

On the reasons for establishing the press council

All press councils share one fundamental role. They are all complaint authorities in the matter of the ethics of public information provision — just like the ethics commission for the press, except that the targets of complaint are not journalists but the media that published disputable articles. The press council is thus not concerned with the relations between the journalist and the reader, but between the media and their readers — complainants. So is it then reasonable to transfer the functions of the ethics commission to the press council, if they share that fundamental role? Firstly, it is clear from what I said earlier that the matters involved here are not identical. The ethics commission would continue to judge alleged breaches of ethical rules committed by members of the organization, while the press council would be concerned with the media in general. Secondly, we cannot but admit that after the demo-

cratic changes in the 1980s the media companies in Slovenia adopted an ignorant attitude towards the decisions of the ethics commission. They do not publish its decisions and do not react to its warnings. Those who most frequently respond to its adjudications are those that have been “adjudicated” and they do it by resigning membership in the association and accusing the commission of politically motivated conduct. This is actually understandable since they are affected, but the reaction is misdirected towards the association itself.

An agreement on the establishment of a press council is a voluntary act of its signatories, and it is simultaneously an obligation that its decisions will be published. A press council also eliminates the main argument of all those whose complaints were not upheld – that in the case of the ethics commissions for the press one basic rule is at work : dog doesn’t eat dog. The credibility of a tripartite press council removes the rationale for such views.

One reason for the establishment of a press council is certainly the experience of developed democracies. Initiatives in the legislative field have evolved through practice. It has been proved that in some areas the autonomy of the press is especially vulnerable and many existing press councils today act as defenders of the fundamental principles of press freedom. Thanks to their social status they are not burdened in the way trade unions are, being negotiators representing one side only, but they appear as credible partners in a dialogue who cannot easily be accused of bias. That is actually our main point: the task of the self-regulatory bodies (including the ethics commission) is to safeguard professional standards and not to shut their eyes to violations for reasons of solidarity or for the protection of individual journalists.

On which countries have such bodies and whether we intentionally omitted those that do not have them in order to support our idea

If the main deficiency of our approach has been that the list of countries was incomplete, or rather, that countries without press councils were omitted, here is the list of European countries which do have such institutions – and no one will have difficulties establishing which countries are missing: Austria, Belgium, Bosnia-Herzegovina, (Catalonia), Cyprus, Denmark, Estonia, Finland, Germany,

Great Britain, Iceland, Italy, Lithuania, Luxembourg, Malta, Norway, Sweden (has both a press council and an ombudsman), The Netherlands, Switzerland, Turkey. The list obviously does not include countries in transition: Czech Republic, Slovakia, Hungary, Poland, Ukraine, Belarus, Moldova, Albania and the ex-Yugoslav republics with the exception of Bosnia-Herzegovina and Slovenia).¹²

On whether we approached this matter “just like that”

And finally, a few words about the group which took the initiative. Nobody appointed this group; it does not have anybody's authority to act, except the consent (if only partial) of the participants at the last “journalistic days” where self-regulation was discussed, and the consent of the former (and indeed also of the current) management board of the Association of Journalists, who promised that its representatives would take part in it. Therefore, this group has not been given a mandate by anybody nor has it appropriated anything like that. It is not a closed-type unit – any representative of any interest group from within any journalists' or publishers' organization is welcome to join it. It is simply a group of people who became acquainted with the operation of press councils on different levels and presented this idea in Slovenia. Since the group deemed that the beginning of a discussion is usually unproductive without suitable basis, it produced several presentations, organized several panel discussions and prepared some materials/readings.

A special working group, in which people from the association of journalists form the majority, including the chairman of the ethics commission, is concerned with draw-

¹² Added for this book: According to the latest evidence of C.-J. Bertrand (March 2002) the following bodies were operating: mixed press councils with the public's representatives Australia, Bosnia-Herzegovina, Cyprus (Greek part), Chile, Estonia, Finland, Iceland, Indonesia, Israel, South Korea, Latvia, Malta, The Netherlands, New Zealand, Norway, Peru, Sweden, Switzerland, Taiwan, Tanzania, Turkey and Great Britain. In Denmark and India they have non-governmental Councils established by law. In the us, councils are found in Hawaii, Minnesota and Washington dc; in Canada in Quebec, Ontario, Alberta, Maritimes, British Colombia and Manitoba. Spain as a whole does not have a press council, but Catalonia does have it. Press councils composed exclusively of media representatives are found in Germany, Austria and Luxembourg, and members are appointed by publishers and journalists; in Belgium, Italy, and in Slovenia, they are parts of journalists' associations, while in South Africa their members are appointed by publishers only. Several other countries have press councils, but it is difficult to check their operation or independence. These are Ghana, Nepal, Nigeria, Fiji, Thailand, Russia and the Turkish part of Cyprus. In some of the francophone African countries, for example, the Ivory Coast, Benin, Burkina Faso, and Senegal, they use the so-called media observatories which could be compared to press councils, but the shortage of funds and political climate aggravate their development.

ing up a proposal for the (minimal) amendments to the code. In doing this they do not aim to introduce further restrictions but primarily to bring in line all of its parts, since it deals with certain issues in excessive detail, and introduce changes to clauses that have already been cancelled out by practice. The Slovenian code of ethics in journalism is good, as has been confirmed by foreign experts, so there is no reason why a future code of the press council should deviate from the existing one. The future press council would only endow it with a value that transcends the limits of the association.

All decisions and initiatives can only be in the hands of the association of journalists and the trade union of journalists (possibly also editors in chief). The present draft versions need not be the framework for new arrangements. They are simply an encouragement for such a framework to be formulated at some point in the future, perhaps entirely different from the one presently proposed by this group. A press council is not, and must not be, enforced – it can only be the product of an agreement. At any rate, it is not possible to establish it without the common consent of publishers and journalists (Bervar, 2002).

THE END

The absence of any possibility to confront arguments for and against the press council project would be even worse than the rejection of the idea. It would be simply a refusal to take responsibility for the fact that this area is currently in the doldrums.

However, we are ever closer to confronting the idea of co-regulation and through it the idea of the state delegating the representatives of the public. This is exactly what every journalist would like to avoid because of the bad experience with the RTV council. The distorted view that a press council would sap the strength of the association of journalists could be likened to a dialogue of the deaf, while the simple fact is that the journalists' association cannot much longer hold out in the role of the keeper of the seal anyway. In other words, it cannot much longer remain the only guardian of professional ethics, if only for the simple fact that its influence on the owners of the media is negligible and will even diminish in the future. A press or media council, in contrast to the ethics commission, exacts from the publishers their commitment (initially a voluntary consent, but once obtained the commitment is firm) that they will respect the common rules of the profession and its ethics, and these rules cannot be laid down without the participation of journalists. The key word here is *consensus*. Publishers and journalists have to reach it, because the press council cannot be enforced. Once these two parties strike an agreement, they can proceed to talk about how civil society will be represented in such a body. That would lead to a full-fledged body that would not only deal with complaints about the media, but would, together with journalists and publishers, keep an eye on legislation which might become a threat to the freedom of information. Finally, the press council would have legislative initiative.

The current blockade of the progress of the idea about a media/press council is not a catastrophe. We still have the ethics commission for the press which identifies ethical and professional mistakes and draws attention to them. Some problems could be resolved through agreement between journalistic organizations and owners that the commission's warnings will be taken into account and published more regularly than in the past. But this cannot solve some internal problems in the media companies. Among them forcing (if not enforcing) journalists to ignore the

distinction between a text paid for and a text free of charge, abuse of editorial content, trespassing over the limits of privacy for the sake of a story, failing to observe the rule of innocence until proven guilty, frequent violation of the rule arising from the competition for exclusive stories, ignoring the rule that people who are still involved in legal proceeding must be referred to by initials only until their alleged offence is proved. By chance or deliberately, journalists are the first victims of the race for exclusive stories, and next in line are people affected by these stories. Therefore the ethics of public information call for a firmer agreement than the one offered by the association. The British Press Complaints Commission was established when Parliament began to consider how to restrain the excesses of the press. Only then did editors and publishers, who shortly before that dissolved the press council, become convinced that it was better to take things into their own hands inside the media companies. Does that mean that in Slovenia we are going to wait until our deputies to the National Assembly begin to entertain similar ideas?

In short, if obstacles exist, they are not insurmountable. But the future partners will have to sit down and reach an agreement. A new and different self-regulatory body is an inevitability in Slovenia. Whether it will be formed according to the ideas of publishers and journalists, depends on developments on the local political scene and in the EU. Pressure to introduce co-regulation is not yet too intense, but one can expect that it will increase over time. On the other hand, the ruling power's opposition to tabloids will undoubtedly grow, and considerations about how to clip their wings will not touch other media only in passing but will affect them seriously as well. Without a defense body that transcends the limits of the journalistic organization, it will be difficult to resist. And we do not know how much time we still have available.

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