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The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, in regard to the letter sent by Mr. David Kaye, Special Rapporteur on the promotion of the right to freedom of opinion and expression, dated 23<sup>rd</sup> January 2018, has the honor to transmit the response received from the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurance of its highest consideration.

Geneva, April 12<sup>th</sup> 2018



OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS

*Geneva*

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Bosnia and Herzegovina  
Ministry of Human Rights and Refugees

**A response to a questionnaire of the Special Rapporteur on the promotion of the right to freedom of opinion and expression regarding resolution 34/18**

**The Special Rapporteur invites the State to provide information about legislative measures, administrative regulations, judicial decisions and other policies and measures that impose obligations on social media and search platforms and/or platform users to remove, restrict, or otherwise regulate online content**

As part of international human rights law, rights and freedoms are enshrined in Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which provides that 1. Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article does not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. Since the exercise of these freedoms carries with it duties and responsibilities, it 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.

Article 19(2) of the International Covenant on Civil and Political Rights provides that everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries special duties and responsibilities. It may therefore be subject to certain restrictions, but these may only be such as are provided by law and are necessary:

- (a) for respect of the rights or reputations of others;
- (b) for the protection of national security or of public order (ordre public), or of public health or morals.”

The domestic legal framework for the protection of freedom of speech and freedom of the media in Bosnia and Herzegovina is included in the Constitution of Bosnia and Herzegovina and entity constitutions and legal regulations.

Article II (Human Rights and Fundamental Freedoms) of the Constitution of BiH determines Bosnia and Herzegovina and both Entities ensure the highest level of internationally recognized human rights and fundamental freedoms. The catalogue of human rights enumerates *inter alia* freedom of expression. Freedom of expression provisions are also included in the Constitution of the Federation of Bosnia and Herzegovina (Article II/A2) and the Constitution of the Republika Srpska (Articles 32 and 34).

The Entity Constitutions determine that the Constitutions ensure the highest level of internationally recognized human rights and fundamental freedoms, that citizens are equal in freedoms, rights and duties, including *inter alia* freedom of speech and the press and freedom of thought, conscience and conviction; that they are equal before the law and they enjoy equal legal protection irrespective of their race, sex, language, national or social origin, religion, education, financial standing, political or other conviction, social status or any other personal circumstance.

The Statute of Breko District of BiH („Official Gazette of Breko District of BiH“ 17/08, 39/09) determines *inter alia* that everyone is entitled to the enjoyment of all rights and freedoms guaranteed under the Constitution and laws of Bosnia and Herzegovina, the Statute and laws of BD, without discrimination of any kind. Paragraph 1 of Article 17 (Public Information) determines that all BD institutions respect freedom of information.

Freedom of expression is defined in the Law on Communications of BiH (“BiH Official Gazette” 75/06), where the sector of broadcasting and telecommunication is defined as “a sector that guarantees the protection of freedom of expression and opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality”. We should note here the Communications Regulatory Agency as an independent authority with executive powers having a possibility of sanctioning the media if they violate provisions related to electronic media.

The Council of Ministers of Bosnia and Herzegovina requested the Ministry of Human Rights and Refugees of Bosnia and Herzegovina to coordinate activities with the Ministry of Justice of Bosnia and Herzegovina and the Ministry of Security of Bosnia and Herzegovina and prepare A Report on the Freedom of Speech and Media Freedom Situation in Bosnia and Herzegovina.

With a view to complying with a conclusion of the Parliamentary Assembly of BiH, the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, in coordination with the Ministry of Justice of Bosnia and Herzegovina and the Ministry of Security of Bosnia and Herzegovina, put together the Report on the Media Freedom Situation in Bosnia and Herzegovina in accordance with a conclusion reached by the Council of Ministers at the 72nd meeting held on 7 September 2016.

After the Council of Ministers adopted the Report (19 October 2017), the Report was considered at the 48th meeting of the Joint Commission for Human Rights of the Parliamentary Assembly of BiH held on 21 December 2017.

Further, the Report was adopted at the 55th session of the House of Representatives of the Parliamentary Assembly of BiH held on 31 January 2018 and a thematic meeting on the Freedom of Speech and Media Freedom Situation in BiH was held on 9 March 2018 .

From the Report on the Freedom of Speech and Media Freedom Situation, we are providing the information relating to court decisions relating to the freedom of opinion and expression.

Table 1: An overview of cases adjudicated in favour of journalists registered by the Free Media Help Line

9 final judgments or 15% were rendered in favour of journalists, 7 judgments ordered payment of monetary compensation to journalists (BAM 200-500.00); two judgments were issued under CPC in favour of journalists, ordering damages (BAM 600-1500.00) and one case was disposed with an order for public apology to a journalist who was the victim of attack.

In 13 cases or 22% investigations were not conducted or evidence was lacking for judicial institutions' acting.

5 cases or 8.4% were referred to the prosecutor's office or the court to carry out additional actions, where the police conducted investigations and transmitted documentation to the HJPC of BiH and / or the court for further action.

14 cases or 23.7% were filed by the police or judicial institutions.

10 cases or 16.94% were filed by Free Media Help Line.

8 cases or 13.55% involved a misdemeanour, and not a criminal offense.

In 9 cases or 15,25% Free Media Help Line expects information or request for more information.

It takes 3 to 6 months from the incident to start an investigation by the police.

**It takes 2-2.5 years to render a final judgment in cases involving journalists.**

Statistics obtained by the BiH Ministry of Human Rights from the "BH Journalists" Association

Table 2. Cases registered by the media related to violations of media freedom and the rights of journalists

Media outlet	Number
FTV	15
BHRT	7
Nezavisne novine	3
Dnevni Avaz	3
RTV Mostar	3
RTV Alfa	3
BN TV	2
Capital.ba	2
Tačno.net	2
Start magazin	2
Total:	42

Statistics obtained by the BiH Ministry of Human Rights from the "BH Journalists" Association

Table 3. Statistics on defamation lawsuits against journalists / media / provided by courts and the media for the period 2013-2016

Case status	Number
Closed cases	12
Pending cases	74
Resting case	1
Archived	3
Total:	90

Statistics obtained by the BiH Ministry of Human Rights from the "BH Journalists" Association

Regarding the regulation of audio-visual media content, in the period 2014-2016, CRA received and processed a higher number of complaints relating to potential "hate speech" in the programs of providers of audio-visual media services. A violation of "hate speech article" was found only in one case and a fine in the amount of BAM 4,000.00 was imposed on the television station, while a television station received a written warning due to violation of anti-discrimination provision. In the remaining cases there were no grounds for prosecution for violation of "hate speech article" and they were closed in regular proceedings.