



## **FIRST ACADEMY ON MEDIA LAW IN SOUTH EAST EUROPE**

Under the auspices of the Regional Cooperation Council  
and with support of the Friedrich Ebert Foundation,  
the OSCE Representative on Freedom of the Media,  
and the OSCE Mission to Bosnia and Herzegovina

Implemented by  
ARTICLE 19: Global Campaign for Free Expression  
and the European Association of Public Service Media in South East Europe

**Zagreb, 3-8 June 2012**

**FINAL REPORT**

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## INTRODUCTION

The First Academy on Media Law in South East Europe took place in Zagreb from 3 to 8 June 2012. The event brought together media law practitioners from all of the countries of the region as well as international organisations. Held under the auspices of the Regional Cooperation Council and with support of the Friedrich Ebert Foundation, the OSCE Representative on Freedom of the Media and the OSCE Mission to Bosnia and Herzegovina, and implemented by ARTICLE 19: Global Campaign for Free Expression and the European Association of Public Service Media in South East Europe, the Academy aimed at safeguarding media freedoms by enhancing regional cooperation and by building capacity of media lawyers to use the best national media laws and practices in the region in line with international and European media standards.

The Academy sought to respond to common challenges concerning media freedom in the region. As members of the Council of Europe and participating States of the OSCE, the states in South East Europe have already incorporated into their legislation many of the European media standards, also in view of their integration with the European Union. However, these developments have not been fully matched by proper implementation of legal provisions or a corresponding evolution of attitudes. Legislators and media regulators tend to copycat diverse Western laws and institutions. They are relatively tame and often lack sufficient political will and confidence to act timely and effectively when European standards leave room for different solutions at a national level. Furthermore, the legislative efforts are not followed by monitoring and assessment of the implementation of the laws. Finally, although legislators and media regulators cooperate at European level, the best regional practices from neighbouring countries with similar media markets and environments are underestimated.

The idea of the Academy rests on three assumptions. The first assumption is that the good practices in one country can serve as a model or inspiration for reforming the media regulation in the other countries in the region. The second assumption is that media lawyers and law practitioners in South East Europe share many fundamental challenges and therefore can share and learn from each others' experiences. The third assumption is that building a network of media lawyers and law practitioners with a common strategy is one of the ways to successfully address the challenges which the media in South East Europe face today.

The Academy provided a unique opportunity for media experts from Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Greece, Kosovo\*<sup>1</sup>, Montenegro, Moldova, Romania, Serbia, Slovenia, the Former Yugoslav Republic of Macedonia and Turkey to meet, exchange ideas and seek solutions to common issues concerning freedom of expression and media freedom. The participants – practicing media lawyers, legislators, members of media regulators and self-regulatory bodies, and academics – represented every country in South East Europe. During the sessions of the Media Academy, the participants updated their knowledge on media standards, increased their awareness of the best practices in media regulation in the region, and formulated conclusions for legal reforms based on the best practices in the region.

Hido Biscevic, Secretary General of the Regional Cooperation Council; Josip Popovac, President of the European Association of Public Service Media in South East Europe/Director General of the Croatian Radio-Television; and Nina Suomalainen, Deputy Head of the OSCE Mission to Bosnia and Herzegovina gave the opening speeches. The opening plenary was then continued by statements from Hendrik Bussiek, media expert from Germany, Boyko Boev, Senior Legal Officer at ARTICLE 19 and Malgorzata Anna Kowalczyk, Policy Officer at the Directorate General for Information Society and Media, European Commission.

The opening speeches were followed by general presentations on media standards and the experience with their implementation in the region. In his presentation, Vuk Cucic, Assistant Lecturer at the University of Belgrade, reviewed the case law of the European Court of Human Rights concerning the media freedom in South East Europe. Boyko Boev, Senior Legal Officer, talked about recent standard setting activities of the UN and the Council of Europe presenting the recently adopted UN Human Rights Committee's General Comment No. 34 concerning the rights of freedom of opinion and of freedom of expression and the new Declaration of the Committee of Ministers of Council of Europe on Public Service Media Governance.

The first day of the Academy was followed with discussions on thematic issues. This year's Academy aimed to stimulate discussions and an exchange of information about public service media remit, media pluralism, media law and responsibility. The countries in South East Europe face common challenges and need to improve their laws and practice.

The thematic discussions lasted for three days, whereby every day the participants examined a separate theme. The sessions started with an introduction of the relevant standards and presentation of the recent developments in the area. This was followed by 5-10-minute presentations by the participants who outlined challenges and positive aspects of the legal framework and practice in their countries relating to the theme of the day. In order to facilitate their preparation for the sessions and ensure uniformity of the structure of the presentations, the organisers prepared questionnaires which were sent to the participants before the start of the Academy. The country presentations were followed by group discussions and further exploration of the issues. At the last

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<sup>1</sup> \*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

session of the day, the groups presented their conclusions for media law reforms based on the best practices in the region.

The last day of the Academy's agenda included several closing presentations. Vuk Cucic talked about his experience as a coach of the student team from the University of Belgrade, which in 2011 won the international finals of the Monroe E. Price International Media Law Moot Competition at Oxford. He advocated for holding regional rounds of the media law competition and explained how moot courts can be used in media law and policy training. In the last presentation of the Academy on Media Law, Andris Kesteris, Principal Adviser on Civil Society and Media at the European Commission's Directorate General for Enlargement, focused on the importance of media law in the EU enlargement context and explained the ways that media freedom issues are linked to the EU accession process.

## **1. THEMATIC SESSIONS**

### **1.1. PUBLIC SERVICE MEDIA REMIT: STANDARDS, DILEMMAS, AND REGULATION**

The discussion on the public service media remit aimed to identify the challenges for public service media (PSM) in the region and propose changes of the definition and the conditions for fulfilment of the remit in terms of governance and financing. The sessions focused on the existing standards relating to the public service media remit and the dilemmas for legislators, regulators and PSM managers in South East Europe.

In their presentations and in the discussions the participants addressed the following questions:

- Which bodies have competence to define the public service media remit in your country?
- In what legal form is the PSM remit defined?
- What are the key elements of the remit?
- How does the governance structure of the public service broadcasting ensure the fulfilment of the remit?
- Is the migration of PSM to digital media environment ensured through their remit?
- How does the funding model of PSM contribute to the fulfilment of the remit?
- What are the mechanisms for PSM's public accountability and the assessment criteria for the fulfilment of their remit?

The participants of the Academy observed that in the new digital era, the PSM in South East Europe face several common challenges:

- they have to transform fully from state to public service media, operating in a broader and more interactive media landscape;

- they must compete with other players – such as big commercial broadcasters, and internet service providers, who play an increasingly important role, while ensuring that PSM remit is observed and not negatively affected;
- they must preserve their independence and resist political and business influence;
- they suffer from unstable and inadequate financial backing and as a result are often unable to fulfill their role, as defined in their remit, and migrate to the digital media environment.

The following observations and conclusions were made regarding the definition of the remit, the PSM governance and financing.

### 1.1.1. Definition of the remit

#### *Standards*

The Academy participants noted that according to European standards<sup>2</sup>, public broadcasting should be:

- a forum for pluralistic public discussion and a means of promoting broader democratic participation of individuals;
- a reference point for all members of the public, offering universal access;
- a factor for social cohesion and integration of all individuals, groups and communities;
- a source of impartial and independent information and comment, and of innovatory and varied content with high ethical and quality standards;
- an active contributor to audiovisual creation and production, and greater appreciation and dissemination of the diversity of national and European cultural heritage.

Public service media (PSM) are called upon to “promote the values of democratic societies, in particular respect for human rights, cultures and political pluralism; and with regard to its goal of offering a wide choice of programmes and services to all sectors of the public, promoting social cohesion, cultural diversity and pluralist communication accessible to everyone”.<sup>3</sup>

The public service remit is important for several reasons: it justifies the existence of PSM and legitimises state aid to public service broadcasting. At the same time, it determines the governance

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<sup>2</sup> See Council of Europe Recommendation Rec(2007)3 on the remit of public service media in information society, Council of Europe Recommendation Rec (96) 10 on the guarantee of the independence of public service broadcasters, the EU Amsterdam Protocol of 1997.

<sup>3</sup> See Council of Europe Recommendation CM/Rec(2007) 3 of the Committee of Ministers to member states on the remit of public service media in the information society.

structure of PSM and funding as well as serves as the basis of public accountability and participation in PSM operation.

### *Situation in South East Europe*

The Academy participants made the following observations regarding the definition of the remit of the PSM:

- Provisions on the remit of public broadcasting exist in the legislation of the member states;
- In all countries in the region Parliaments formulate the PSM remit. In Croatia the remit of the Croatian Radio and Television is further elaborated in an agreement signed by the broadcaster and the Government;
- Although the remit follows the European standards, some laws give it less prominence than it deserves. Likewise, most laws and PSM internal regulations fail to underline the importance of the remit for the operation of PSM including for programme and financial planning (for example, the relevant laws in Romania, Bulgaria and Bosnia and Herzegovina). Article 1 of the Broadcasting Act of Slovenia is a positive example of how to give prominence to the public service media remit;
- Public discussions regarding the remit of PSM are not held in the region except in Croatia, where the Croatian Radio and Television carries out public consultations before signing the Agreement with the Government;
- The public is not familiar with the remit, role and accountability of PSM;
- Sometimes PSM neglect their special remit and behave like commercial broadcasters focusing on entertainment programmes;
- Annual reports of PSM only invoke the public service media remit but do not give substantive evidence of how the remit has been fulfilled in terms of quality, and the costs thereof.

### *Conclusions:*

The participants made the following conclusions regarding the definition of the remit of the PSM:

- the remit which formulates the broad vision and mission of the public broadcaster should be part of the broadcasting law passed by parliament;
- the remit should allow for dynamic developments and allow the broadcaster to adapt to new technologies and demands;
- details of the remit should be developed in a strategy document to be adopted by the supervisory body of the public broadcaster;

- in cases where the legislation is reviewed, this remit should be developed with broad public consultation (e.g. public hearings, roundtables);
- the remit (both in the law and the strategy) should be a public document widely distributed;
- the provisions in the remit should be used as benchmarks for the performance of the public broadcaster in official structures and the public at large.

### 1.1.2. Public service governance

#### *Standards*

The participants of the First Academy on Media Law noted that according to European standards<sup>4</sup>, member states should adopt the mechanisms safeguarding the independence of public service media organisations that are vital for the safeguard of their editorial independence and for their protection from control by one or more political or social groups. These mechanisms should be established in co-operation with civil society.

#### *Situation in South East Europe*

The participants of the Academy observed that in the whole region:

- public broadcasters are governed by supervisory bodies which, in most cases, do not represent the viewers and listeners in the countries. Good examples include the possibility for civil society organisations to nominate members of the PSM bodies in Montenegro, the Former Yugoslav Republic of Macedonia and Albania as well as the open competition for membership in the management board of the Macedonian Radio-Television.
- relevant professional expertise for the members of the supervisory bodies and management of the PSM is not required and for that reason they are often not familiar with the mandate of a truly public broadcaster and do not know how to enhance it through their job;
- the system of appointment of PSM governing bodies is open to political interference because nominations are not always made by the public or experts but are made exclusively by politicians;
- legal safeguards against conflict of interest are weak. Exceptions are the existing PSM laws in the Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina (with a tendency of weakening), Croatia and Montenegro;
- public participation in the definition and the monitoring of the fulfilment of the public service media remit is not encouraged. Exceptions are the Program Council of the Slovenian PSM and Ombudsman for PSM viewers in Kosovo inasmuch as they are the voice of the viewers and listeners with respect to the PSM governance.

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<sup>4</sup> Ibid.

## *Conclusions*

The participants made the following conclusions regarding the governance of the PSM:

- Civil society groups should nominate members to the supervisory bodies of the PSM;
- Representation of public broadcaster workers in the supervisory bodies should be considered;
- The appointments should be staggered to guarantee continuity;
- Members of the supervisory bodies should be protected against the possibility of arbitrary dismissal.

The public service broadcasting laws should:

- specify the criteria for nominations into supervisory bodies, which should require relevant media and media management expertise and good moral standing of the candidates;
- ensure that PSM content reflects also the interests of minorities.

A qualified majority for the approval or appointment of members of supervisory bodies in parliaments should be considered to avoid the danger that the parliamentary majority alone determines the composition of the body.

As the main responsibilities of the supervisory bodies are to defend the independence of the public broadcaster and to determine whether the management of the public broadcaster is fulfilling the broadcasting remit/mandate in the public interest, it is concluded that:

- programme and financial plans are published and debated in public by all stakeholders before adoption by the supervisory body;
- the broadcasting remit is used as a benchmark for the assessment of the performance of the broadcaster;
- the supervisory body delivers annual reports to the public/parliament;
- the supervisory body establishes public advisory committees to keep in touch with the people they represent.

Capacity building programmes should be developed for office bearers in public broadcasting organisations to help them ensure efficient management and observe the remit of the PSM.

### **1.1.3. Financing of public service media**

## *Standards*

The participants of the First Academy on Media Law noted that according to European standards<sup>5</sup>, states should define ways of ensuring appropriate and secure funding of public service media from a variety of sources – which may include licence fees, public funding, commercial revenues and/or individual payment – necessary for the discharge of their democratic, social and cultural functions.

## *Situation in South East Europe*

The participants of the First Academy on Media Law observed that:

- in most countries in South East Europe public broadcasters are funded by a mix of sources with licence fees being mostly the main source of income. However, the funding models are not stable and predictable and therefore allow for political interference;
- due to unpredictability and delayed provision of budget, PSM cannot plan their operation effectively and in medium and long terms. A good example is Croatia, where the PSM funding is predictable because the legislation sets the license fee as a percentage of the average net monthly salary;
- PSM budgets are determined without taking into account the public service media remit, the inflation and the need of innovation and transition to digital environment;
- The cycle of planning, monitoring, evaluation and reporting of PSM budgets is not sufficiently transparent.

## *Conclusions*

The Academy participants made the following conclusions regarding the governance of the PSM:

- The financing of PSM should be determined in accordance with the remit of the PSM. This calculation should form the basis for the determination of the amount of the licence fee and/or state subsidies;
- The licence fee should be inflation-indexed and be open to adjustments due to unforeseen additional needs;
- The collection procedures for licence fees need to be strengthened; where- necessary and possible, tax revenue service could be tasked with this duty;
- Special projects such as the migration of PSM to digital broadcasting, programmes for Diaspora abroad, digitalization of PSM archive or parliamentary transmissions should be financed by the state;

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<sup>5</sup> Ibid.

- Expenditure of the public broadcaster should be audited by the State Auditing Office or an independent body.

## 1.2. MEDIA PLURALISM

The discussion focused on legal guarantees for media pluralism. The sessions addressed the challenges of monopolies and the need for anti-concentration legislation and control; the transparency of media ownership and the justification and opportunities of state aid to print and broadcast media.

In their presentations and discussions the participants addressed the following questions:

- Which institutions (regulatory or self-regulatory bodies) conduct monitoring and control on media concentration in your country? How is the monitoring and control carried out?
- How is the transparency of media ownership ensured in your country?
- Is state advertising and state aid to print and broadcast media regulated in your country?
- Does your domestic law ensure pluralism of media content?

The participants agreed that the situation in South East Europe is a reminder that the simple number of media outlets is not sufficient for media pluralism. Quantity does not lead to quality. The key problem is that the media fail to play a robust role in helping to promote and maintain democracy and acting like a public watchdog. Following the process of privatisation and the end of state media ownership, the media market in the region is overcrowded. In this situation, the media industry has difficulties sustaining itself and remains partisan or highly commercial and vulnerable to editorial influence. The parallel existence of legal and illegal broadcasters in some countries (Serbia, Albania, for example) creates unfair competition and distorts the advertisement market. Media pluralism is further affected by the control by a handful of advertising agencies of the advertising money. State advertisement is used to ensure media support for the government. Due to lack of foreign investors or the withdrawal of international media companies, local media is in the hands of non-media investors who are using the media to pursue their economic and political interests. Moreover, in many cases media ownership is not transparent. This prevents citizens and regulators to know who owns or controls media outlets. Public service broadcasters are prone to political and business pressures and influenced by specific political interests. The current economic crisis has exacerbated the situation of minority media.

### *Standards*

The participants noted that according to European standards<sup>6</sup>, states should adopt laws to guarantee and promote media transparency and media pluralism. They are also obliged to evaluate on a

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<sup>6</sup> See Council of Europe Recommendation No. R (94) 13 on measures to promote media transparency, Council of Europe Recommendation No. R (99) 1 on measures to promote media pluralism; Council of Europe Recommendation CM/Rec (2007) on media pluralism and diversity of media content.

regular basis the effectiveness of measures to promote pluralism and/or anti-concentration mechanisms and revise them when necessary in light of economic and technological developments.

### *Situation in South East Europe*

The participants made the following observations regarding the legal safeguards for media pluralism in South East Europe:

- The constitutions in South East Europe except in Kosovo\*<sup>7</sup> do not mention media pluralism;
- State responsibilities to support media pluralism are not set out by law in any country in the region except Slovenia;
- There are no special laws on media pluralism. The special law on transparency of ownership and against media concentration, which is currently being prepared in Serbia, is commended as a good example of regulation aiming at media pluralism;
- The measures of media pluralism are included in different laws in all countries. However, these measures are not harmonised with each other. Moreover, it is necessary to review the compliance of the existing provisions on media pluralism with European standards;
- There are no special laws or policies on transparency of media ownership in the region, although the non-transparency of media ownership is a significant problem. Where provisions on transparency of ownership exist they relate to broadcast media only. Consideration should be given to ensure transparency of ownership of both print and broadcast media. A good example is the Electronic Media Act of Croatia, which requires that electronic media publish in the Official Gazette data on holders of stocks or shares of more than 1% of the capital value. Similarly in Slovenia holders of 5% of the media capital should be included in the mass media registry. In Montenegro, there are clear rules on broadcasters' ownership change notification to the independent media regulator and a requirement that the ownership structure change of more than 10% should be made with the approval of the independent media regulator;
- Regulatory agencies fail to oversee the implementation of ownership restrictions. In some cases this is due to political interest. In other cases the instruments for control and restriction of concentration are ineffective. There is a need to secure public accountability of regulatory agencies and in particular how they ensure media pluralism;
- Competition authorities mostly do not carry out *ex ante* test for new players in the media market;

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<sup>7</sup> \*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

- Competition authorities examine media concentration issues by applying general as opposed to special competition rules. Good practices exist in Albania, Croatia and Slovenia where special rules on regulation of media competition are applied. Another good example is Montenegro where the independent media regulator carries out *ex ante* and *ex post* control;
- In some South East European countries (for example, Moldova) media outlets are owned by off shore companies. This type of ownership makes it impossible to determine the physical beneficiary of the offshore company, i.e. the owner of the media. A positive regulation on media ownership by offshore companies is article 58 of the Electronic Media Act of Croatia, prohibiting domestic legal person, whose founders include also foreign legal persons registered in countries in which, according to those countries' regulations, it is not permissible or it is not possible, to determine the origin of the founding capital, from participation in a public tender for a broadcasting license;
- State advertisement is not subject to regulation and is used for political control. A possible good solution is the ban on state advertisement in Kosovo. In addition, the regulatory authorities should cease their practice to excessively populate the broadcasting media market with new players;
- While in many Western countries the media receive state aid through reduced VAT or other tax benefits or through direct state subsidies, no state aid schemes are in place for print and broadcast media in the region. Croatia and Slovenia are the only good exceptions in this respect;
- Regulatory bodies in South East Europe do not conduct reviews and monitor content pluralism on their own initiative. The laws do not provide for cultural and geographical pluralism;
- Political pluralism remains a problem because the laws do not regulate how politicians get access to the media and do not require a fair presentation of political views.

### *Conclusions*

The Academy participants made the following conclusions regarding media pluralism:

- The independence of media regulatory authorities should be legally ensured, preferably by requiring that all members are nominated by civil society organizations and the public and elected by a two-thirds majority of the parliament;
- The independent authority should assess concentration of media ownership and cross-media ownership and be entrusted with powers to collect data, monitor and analyze data of media ownership and report to the public on the media ownership situation;

- Numerical limits on media ownerships and other rules, for example the requirement to apply a public interest test in cases of mergers of media outlets, should be adopted to ensure fair competition in the media sector;
- Competition protection authority should implement the ownership rules under transparent and clear criteria, procedure and timelines for the print media. As for the broadcast media, these should be done by the independent media regulator;
- A public database on media ownership should be created. It should include information on the media outlets address, responsible persons, key stakeholders or share owners with more than 1% capital/shares;
- The content pluralism should be supervised by an independent regulator;
- The independent regulator should use the licensing system to develop diverse and qualitative media content in each geographical region and cultural pluralism through provisions regarding languages, and requirements for original production;
- State should provide aid for marginalized and minority groups/institutions for their broadcasting projects, there should be an independent body in charge of state aid for media projects;
- Incentive tax measures such as a lower VAT should be given to print media and media projects contributing to media pluralism;
- The legislation should ensure transparency of media funding and ownership, including ownership by offshore companies;
- Online media should be self-regulated, however, the ownership of online media should be transparent;
- State advertising should be regulated by the independent authority; whereby public bodies should be obliged to publish on their websites annual reports on the funding spent on media advertising and public relations activities with clear data on service providers and amounts allocated;
- Political pluralism should be ensured through a precise set of regulations which includes equal and non-discriminatory access to the air time, and balanced representation of different political views. In all the programs, access to the advertising and political debates should be equal;
- PSM should report annually on their contribution to media pluralism especially addressing accessibility, diversity, impartiality, as well local content, vulnerable groups, fair and proportionate representation of different political, economic and social entities.

### 1.3. MEDIA LAW AND RESPONSIBILITY

The discussion focused on the legal safeguards for freedom of expression in cases of defamation; the right of reply and protection of journalistic sources. The sessions addressed the quality of the legal framework for seeking responsibility of journalists and the media. In addition, the effectiveness of the judicial protection for freedom of expression was discussed.

The participants addressed the following specific questions in their presentations:

- How is defamation regulated in your country? What are the biggest challenges at present related to defamation cases?
- How does your domestic law safeguard the right of journalists to protect their sources? Have there been any recent cases where these rights were violated? Are there any challenges in this area and if so, what is the response to them?
- How does your domestic law safeguard the right to reply?
- What is the level of journalists' awareness of legislation against discrimination and how can it be improved?
- What are the professional norms and values in reporting on ethnicity/religion and what has to be done to strengthen journalism standards when reporting on ethnicity and religion?
- What are the examples of journalism practice that could be usefully elucidated in order to breakdown prejudices, tackle discrimination, endorse common values and provide independent and trustworthy information?

#### *Standards*

The participants noted that according to European standards<sup>8</sup>, states should consider decriminalisation of defamation and as a minimum abolish prison sentences for defamation, define precisely the concept of defamation and ensure safeguards for freedom of expression in defamation cases. States should also implement in their domestic law guarantee for the right of journalists to protect their sources of information and ensure that individuals have an effective possibility for correction, without undue delay of incorrect facts relating to them, whereas at the same time states should protect the media from disproportionate interference with their freedom.

#### *Situation in South East Europe*

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<sup>8</sup> See Council of Europe Recommendation 1814 (2007) and Resolution 1577 (2007) of the Parliamentary Assembly. Towards decriminalisation of defamation; Council of Europe Recommendation Re (2004) on the right of reply in the new media environment; Resolution (74) 26 of the Committee of Ministers on the right of reply – position of the individual in relation to the press (Res(1974)026); Council of Europe Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information.

The participants made the following observations regarding legal safeguards for defamation cases, the right of reply and protection of journalistic sources in South East Europe:

- Defamation is still a crime in most countries. However, there have been positive reforms leading to decriminalisation of defamation (Bosnia and Herzegovina, Moldova, Romania, Montenegro) and to bringing criminal provisions in line with European standards (abolishment of imprisonment for defamation in Albania, Croatia, Bulgaria and Serbia; in Croatia plaintiffs are required to prove that defendants made defamatory statements with the sole purpose to defame them. The special Law on Freedom of Expression of Moldova can be commended for introducing a comprehensive list of safeguards for freedom of expression in cases of conflict with other rights and legitimate interests);
- Some criminal laws prescribe very high fines for defamation (Bulgaria, Greece);
- Judges do not follow the method established by the European Convention of Human Rights (ECHR) for assessment of the facts in defamation cases;
- Judges lack guidance on how to determine civil compensations in defamation cases and as a result there is a risk that they can grant claims for excessively high compensation which can lead to bankruptcy of media outlets. Positive practice exists in Bosnia and Herzegovina where courts use the provision on the right of reply in the law against defamation and instructs complainants to go to the Press Council first;
- Civil laws provide only for financial compensation for defamation and do not consider other remedies for reputation, such as the right of reply. Turkey is a positive example as far as judges may request an apology instead of financial compensation;
- Courts are not required to take into account whether plaintiffs in defamation cases have invoked their right of reply. A positive exception is the Serbian Draft Law on Public Information which obliges judges to consider whether the right of reply has been used;
- Defences in defamation cases - except the defence of truth - are not legally recognized;
- Self-regulatory bodies can examine complaints for defamation but people are not familiar with this competence or rarely turn to self-regulatory bodies for remedies in defamation cases;
- In most countries, the right of reply is defined in broadcasting laws only; therefore it is unclear whether it applies to print media. Greek law is commended for the short time limits for requesting and granting the right of reply: in cases of broadcasting material, the reply should be made within 20 days; in this case, the broadcaster should broadcast the reply within 2 days. The regulation of the right of reply in the Media Law of Montenegro was

commended as it applies to both print and broadcast media and for setting clear rules for effective exercise and protection of this right in relation to the media.

- The provisions on protection of confidentiality of sources are not in line with European standards;

### *Conclusions*

The participants made the following conclusions regarding media law and responsibility in South East Europe:

- Defamation should be decriminalized. Alternatively, criminal laws should be reformed to include safeguards for freedom of expression;
- Judges should take into account whether plaintiffs have involved the right of reply before when deciding upon a complaint of defamation;
- Special laws on defamation should be adopted including safeguards for freedom of expression;
- Judges should receive training and apply the approach established by the European Court of Human Rights in deciding defamation cases;
- The regulation of the right to reply and the right to protection of journalistic sources should be brought in line with the Council of Europe standards. At the same time, protection of journalistic sources should go hand in hand with responsibility of the media.

## ANNEXES

### **I. AGENDA**

3 June 2012

Arrival of participants

**19:00 Welcome Cocktail**

4 June 2012

#### **OPENING**

9:30 - 10:00	<b>Registration of participants</b>
10:00-10:20	<b>Opening speeches</b>  - Josip Popovac, President of the European Association of Public Service Media in South East Europe - Hido Biscevic, Secretary General, Regional Cooperation Council - Nina Suomalainen, Deputy Head of the OSCE Mission in Bosnia and Herzegovina  Moderator: <i>Dinka Živalj</i>
10:20 – 11.00	<b>Introductory remarks</b>  - Hendrik Bussiek, Broadcasting expert from Germany - Boyko Boev, Senior Legal Officer, ARTICLE 19 - Malgorzata Anna Kowalczyk, Policy Officer for International Relations, Audiovisual and media Policies Unit, Directorate General for Information Society and Media, European Commission  Moderator: <i>Marija Nemcic</i>
11.00– 11.30	<b>Coffee/Tea Break</b>
11:30 - 13:00	<b>Warming up</b>  Introduction of the participants and presentation of the objectives of the Academy  Moderator: <i>Boyko Boev</i>
12:30– 14:00	<b>Lunch Break</b>

14:00 -15:30	<p><b>Review of European Court of Human Rights' judgments concerning media freedom in South East Europe</b></p> <p>Presentation: <i>Vuk Cucic, Assistant Lecturer at the University of Belgrade</i></p> <p>Moderator: <i>Boyko Boev</i></p>
15:30 – 16:00	<b>Coffee/Tea Break</b>
16:00 – 17:30	<p><b>New media freedom standards: overview of the recent standard setting activities of UN and Council of Europe</b></p> <p>Presentation: <i>Boyko Boev, Senior Legal Officer, ARTICLE 19</i></p> <p>Moderator: <i>Boyko Boev</i></p>
17:30	End of Session

5 June 2012

#### **PUBLIC SERVICE MEDIA REMIT**

09.30 – 11:00	<p><b>Introduction of standards on the public service media remit</b></p> <p>Presentation: <i>Hendrik Bussiek</i></p> <p>Moderator: <i>Boyko Boev</i></p>
11:00 – 11:30	Coffee break
11:30 – 13:00	<p><b>Domestic regulation and policy relating to public service media remit</b></p> <p>Presentations by the participants on the regulation in their countries of origin</p> <p>Moderator: <i>Boyko Boev</i></p>
13:00 – 14:30	<b>Lunch</b>
14:30 – 16:00	<p><b>Strengthening the public service media remit</b></p> <p>Group work</p> <p>The participants will be divided into two groups. The group will discuss the models of regulation of public service media remit in the region and will propose conclusions for legislative reforms based on the best practices</p>
16:00-16:15	<b>Coffee break</b>

16:15 – 17:00	<b>Strengthening the public service media remit - continuation</b>  Group work
16:45 – 17:30	<b>Media reform conclusions</b>  Presentations by working groups  Moderator: <i>Boyko Boev</i>
17:30	<b>End of sessions</b>

6 June 2012

## **MEDIA PLURALISM**

09.30 – 11:00	<b>Introduction of relevant standards on media pluralism</b>  Presentation: <i>Elda Brogi, Ph.D.</i> <i>Researcher - Centre for Media Pluralism, Robert Schuman Centre for Advanced Studies, European University Institute</i>  Moderator: <i>Dinka Zivalj</i>
11:00 – 11:30	Coffee break
11:30 – 13:00	<b>Domestic regulation and policy relating to media pluralism</b>  Presentations by the participants on the regulation in their countries of origin  Moderator: <i>Dinka Zivalj</i>
13:00 – 14:30	<b>Lunch</b>
14:30 – 16:00	<b>Safeguarding media pluralism</b>  Group work  The participants will be divided into two groups. Each group will discuss the models of regulation of media pluralism in the region and will propose conclusions for legislative reforms based on the best practices
16:00 - 16:15	<b>Coffee break</b>

16:15 – 17:00	<b>Safeguarding media pluralism - Continuation</b>  Group work
16:45 – 17:30	<b>Media reform conclusions</b>  Presentations by working groups  Moderator: <i>Dinka Zivalj</i>
17:30	<b>End of the sessions</b>
20:00	<b>CONCERT OF JAZZ ORCHESTRA HRT</b>

7 June 2012

### **MEDIA LAW AND RESPONSIBILITY**

09.30 – 11:00	<b>Introduction of relevant standards concerning media responsibility</b>  Presentation: <i>Alexander Kashumov, Attorney-at-Law Head of Legal Team, Access to Information Programme, Bulgaria</i>  Moderator: <i>Boyko Boev</i>
11:00 – 11:30	<b>Coffee break</b>
11:30 – 13:00	<b>Domestic regulation and policy relating to defamation, the right to reply and the protection of journalistic source</b>  Presentations by the participants on the regulation in their countries of origin  Moderator: <i>Boyko Boev</i>
13:00 – 14:30	<b>Lunch</b>
14:30 – 16:00	<b>Improving the regulation on defamation, the right to reply and the protection of journalistic sources</b>  Group work  The participants will be divided into two groups. Each group will discuss the models of regulation of media responsibility in the region and will propose conclusions for legislative reforms based on the best practices
16:00-16:15	<b>Coffee break</b>

16:15 – 17:00	<b>Improving the regulation on defamation, the right to reply and the protection of journalistic sources - Continuation</b>  Group work
16:45 –17:30	<b>Media reform conclusions</b>  Presentations by working groups  Moderator: <i>Boyko Boev</i>
17:30	<b>End of the sessions</b>
19:00	<b>OFFICIAL DINNER</b>

8 June 2012

## **CLOSING**

9:30 - 10:30	<b>Moot Courts as a Means of Media Law and Policy Training</b>  Presentation: <i>Vuk Cucic, Assistant Lecturer at the University of Belgrade</i>  Moderator: <i>Dinka Zivalj</i>
10:30-11:00	<b>Importance of media law in EU enlargement context</b>  Presentation: <i>Andris Kesteris, Principal Adviser on Civil Society and Media, Directorate General for Enlargement, European Commission</i>  Moderator: <i>Dinka Zivalj</i>
11.00– 11.30	Coffee/Tea Break
11:30 - 13:00	<b>Closing Session/ Wrap up</b>  Moderator: <i>Marija Nemcic</i>
12:30– 14:00	<b>Lunch Break</b>
	<b>DEPARTURE</b>

## II. LIST OF PARTICIPANTS

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<sup>9</sup> \*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

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### III. SPEAKERS' BIOGRAPHIES

#### **Alexander Kashumov**

*Attorney at Law, Head of legal team of Access to Information Programme*

Alexander Kashumov has been working in the access to information, freedom of expression and other human rights area since 1997. Since 2002 the legal team of Access to Information Programme has given legal advice in more than 4.000 cases of journalists, citizens and NGOs and represented more than 220 court cases. As a member of working groups on legislation reforms Kashumov has prepared over 50 comments, statements and analyses.

Apart from access to information he represented cases in the area of freedom of expression, personal data protection and other human rights before national and international tribunals including the European Court of Human Rights.

Kashumov is also author and co-author of five books, many reports, articles, handbooks. He is a renowned lecturer and trainer on freedom of information, freedom of expression, personal data protection, and anticorruption and has taken part in a number of international conferences, seminars, meetings. Since 2006 Kashumov has been a member and deputy president of the Ethic Commission on Electronic Media. In 2008 Alexander Kashumov was named "Attorney of the Year" by the Bulgaria-based Legal World magazine.

#### **Andris Kesteris**

*Principal Adviser on Civil Society and Media, Directorate General for Enlargement, European Commission*

Andris Kesteris was born in Riga, Latvia. At present he serves as Principal Adviser of the European Commission's Directorate General for Enlargement. Before that, from November 2004, he was Head of Cabinet for EU Energy Commissioner, Andris Pielbags. In 1999 to 2003, he was a Chief Negotiator for Latvia's accession to the EU, and afterwards Permanent Representative for Latvia to the EU. His professional experience also includes position of the Latvian Ambassador to Germany; *Chargé d'Affaires* at the Latvian Embassy to Austria; Head of Latvian Delegation to OSCE in Vienna; Head of European Division at Latvian Foreign Ministry where he was elaborating and defining Latvia's interests in relation to the EU, NATO and European countries; Desk Officer in European Department in Latvian Foreign Ministry, where he was preparing speeches for the Latvian Foreign Minister; and Lecturer in Political Science at the University of Riga.

#### **Boyko Boev**

*Senior Legal Officer, ARTICLE 19*

Boyko Boev is a legal expert on media regulation, public service media, defamation and transparency of media ownership, he provides legal input to ARTICLE 19's media development projects. He has analyzed the compliance of media laws from more than 20 countries from Europe, Middle East, Africa, Latin America and Asia with international law and freedom of expression standards and has conducted numerous trainings on media law for judges, lawyers, journalists and free media campaigners. Mr. Boev has been a legal counselor for journalists and victims of human rights in court proceedings in Bulgaria and before the European Court of Human Rights.

In 2010, he wrote the chapter on public service media governance in *Future or Funeral, A Guide to Public to Public Service Media Regulation in Europe*. He is also a co-author of *Public Service*

*Media for Human Rights*, an issue paper, commissioned by the Council of Europe Commissioner for Human Rights in 2011.

### **Hido Bišćević**

*Secretary General, Regional Cooperation Council*

Hido Bišćević took office as the first Secretary General of the Regional Cooperation Council on 1 January 2008, following the appointment by the South East European Cooperation Process (SEEC) Foreign Ministers in Zagreb on 10 May 2007. He was reappointed to the post on 22 June 2010 at the Istanbul meeting of the SEEC Foreign Ministers. A Croatian diplomat, Bišćević previously served as the State Secretary for Political Affairs of the Ministry of Foreign Affairs and European Integration of Croatia (2003-2007), Ambassador to the Russian Federation (1997-2002), Assistant Minister for Foreign Affairs (1995-1997), Ambassador to the Republic of Turkey, accredited to the Republic of Kazakhstan and the Republic of Uzbekistan (1993-1995), Ambassador and Adviser to the Foreign Minister (1992), and Head of Department for Asian and Arab Countries (1992). As the SEEC Coordinator during the Croatian Chairmanship-in-Office in 2006/2007, Bišćević actively participated in bilateral and multilateral forums in South East Europe (SEE) and intensively co-operated with the Stability Pact for South Eastern Europe.

Before joining the diplomatic service, Bišćević was the Editor-in-Chief of the *Vjesnik* daily (1990-1992) and Foreign Affairs Editor at the same newspaper (1985-1989). He served as foreign affairs correspondent, columnist, journalist and diplomat with assignments and wide experience in European affairs, South Eastern Europe issues and relations, Euro-Asian relations, international security and Euro-Atlantic co-operation. As a journalist, observer, envoy and diplomat, he participated in numerous international conferences and events.

Bišćević is author or co-author of several books, including, *EU for YOU - Functioning of the EU* (Croatian Edition 2006, with Wolfgang Böhm and Otmar Lahodynsky), *Strategy of Chaos*, on the start of dissolution of the former Yugoslavia (1988), *In the Name of Allah*, on the Iranian Islamic revolution (1982), *Blood On the Water*, on the Iraq-Iran war (1988), *Time of Decision - A Palestinian Issue* (1989), as well as of numerous articles and political essays on international security and cooperation. He graduated in International Politics and Journalism at the Faculty of Political Science in Zagreb, Croatia.

### **Dinka Živalj**

*Spokesperson/Head of Media Unit, Regional Cooperation Council*

Dinka Živalj has been a public relations professional for over twelve years. As the first Spokesperson of the Regional Cooperation Council (RCC), Živalj is responsible for designing and implementing the organization's communication strategy. She leads all the RCC communication activities, aimed at promoting mutual cooperation, European and Euro-Atlantic integration, and development of South East Europe. Živalj advises the RCC Secretary General and staff on all public relations and media priorities, and implements relevant actions towards the stakeholders, including general public, media, governments, public officials, civil society, international organizations, business community, etc.

She previously served as Head of Press and Public Information of the OSCE Mission to Serbia (2006-2008), Spokesperson/Media Development Officer of the OSCE Presence in Albania (2003-2005), as well as with the public affairs office of the OSCE Mission to Croatia (2000-2003).

Živalj holds MAs in English Language and Literature, and Latin Language and Roman Literature from the Faculty of Arts and Social Studies in Zadar, Croatia. She is finalizing the post-graduate studies in international political and economic relations at the Faculty of Political Science in Zagreb, Croatia.

**Dr. Elda Brogi**

*Researcher at the Centre for Media Pluralism and Media Freedom in Robert Schuman Centre for Advanced Studies, European University Institute, Florence*

Before joining the Centre for Media Pluralism Dr. Brogi was working at the Law Department of the European University Institute in relation to Mediadem project (European Media Policies Revisited: Valuing & Reclaiming Free and Independent Media in Contemporary Democratic Systems) and also was working at the Media Integration and Communication Centre, Florence University. She holds a master degree in Law (University of Florence) and a Ph.D. in Constitutional Law and General Public Law (La Sapienza University, Rome). Dr Brogi is admitted to law practice. She is a Contract Professor of Communication Law at the University of Florence and was a Contract Professor of Information and Communication Law at the University of Macerata, Italy and at the Master in Multimedia Content Design program of University of Florence. Since 2011, she is also lecturer on freedom of the press, privacy, press and media crimes, and intellectual property rights educational courses conducted by the Tuscan “Ordine dei Giornalisti” (Institutional Association of Journalists for the Tuscany Region).

Dr Brogi has been working also as parliamentary assistant and consultant on Constitutional and Media Law issues both at the European Parliament and at the Italian Parliament. Since 2007, she runs the web review Teutas.it – Law and Technology Journal [www.teutas.it](http://www.teutas.it)

Dr Brogi has been participating in many European and Italian research projects: she was principle member for the Italian unit of the European Project “ECCE - European Certificate on Cybercrime and Electronic Evidence” (coordinated by Cybex, Spain-JPEN Program), she obtained a CNR grant support "Promoting research in 2004 for young scientists" for the project "The audio-visual industry as a tool for the integration of European cultures. The European policy, national policies for the audio-visual sector. The role of public service broadcasting in the promotion of European works. New technologies and cultural diversity”; in 2004, she coordinated the European CARDS project "Support to the reform of Serbian Media Legislation towards EU standards and strengthening of legal and technical skills of media professionals under the CARDS program of cooperation for the Balkans”, and she has been participating in many projects of national interests on media law funded by the Ministry of Education in Italy. Dr Brogi is author of many publications on Constitutional and Media Law.

**Hendrik Bussiek**

*Broadcasting Media Expert*

Mr. Bussiek is public broadcaster by training, profession and conviction. He worked as reporter, editor, moderator, correspondent (foreign and national) for various public radio stations in Germany. Mr. Bussiek headed a public radio station in Berlin and was later a consultant on media development and media reform projects. In the South Pacific region, including Australia and New Zealand, he built up a news agency. In Southern Africa he has been and still is involved in major projects to transform state broadcasting into public broadcasting, in South Africa in particular. In South East Europe he was a media reform consultant for civil society groups in Montenegro. For the past few years he worked as a media consultant also in several countries in the Middle East.

## **Nina Suomalainen**

*Deputy Head of the OSCE Mission to Bosnia and Herzegovina*

Master of Political Science Nina Suomalainen was born in the municipality of Valkeala in South-Eastern Finland. In 1993 she received a degree of Master of Political Science (M.Pol.Sc.) in the Åbo Akademi University in Turku, majoring in International Law and minoring in Economics.

Suomalainen has extensive international work experience from several tasks in the EU, the UN and OSCE since 1993. Her tasks included working at the UN Development Programme (UNDP) office in Latvia, as an Advisor to the OSCE High Commissioner on National Minorities, in the OSCE Field Operations Mission to Bosnia and Herzegovina and the OSCE Office for Democratic Institutions and Human Rights in Warsaw. Since 2005 she has also held a permanent position at the Finn Church Aid, which is the largest development NGO in Finland, working on development policy and advocacy.

Suomalainen holds 19 years of experience in managing capacity and institutional development and human rights protection and promotion in post-conflict and development contexts. The countries where she has been involved in include Bosnia and Herzegovina, other countries in South Eastern Europe and the OSCE region, Rwanda, Haiti, Sierra Leone, Liberia, Cambodia, Bangladesh.

Besides activities in international relations as well as national and municipal politics, Suomalainen is an active amateur musician, playing alto saxophone, flute and singing and having studied for a professional degree in music technology and studio recording. She is also a keen outdoor person, taking time for walks with her novascotian retriever dog and skiing in winter.

## **Vuk Cucic**

*Assistant Lecturer, Faculty of Law, University of Belgrade*

Mr. Cucic graduated from and earned his master degree at the Faculty of Law of the University of Belgrade. Within the *Erasmus Mundus External Cooperation Window Project Basileus*, funded by the European Commission, he was on a 10-months PhD exchange at the Ghent University, Belgium. He is working as an assistant lecturer for Administrative Law since 2008. Before that, he worked at the Belgrade branch of the Austrian law firm Schoenherr.

Since 2011 he coaches the Belgrade Law Faculty team for the *Monroe E. Price International Media Law Moot Court Competition*, the most renowned moot court competition in media law, which takes place in Oxford each year. In 2011, as a fellow of *Internews Network*, international organization for media development based in California, he participated at a two-week *Annenberg/Oxford Summer Institute in Global Media Policy*, organized by the Programme in Comparative Media Law and Policy at the Centre for Socio-Legal Studies of the University of Oxford and The Annenberg School for Communication at the University of Pennsylvania.

In 2012, he was a member of the working group formed by the Serbian Ministry of Culture, Information and Information Society in charge of drafting new Law on Public Information [*Zakon o javnom informisanju*].