

# Labor Relations in the Media in South Eastern European Countries

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## I. General Context and Relevance

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

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

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

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<sup>1</sup> ILO. 2004b. p. 6

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

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

<sup>4</sup> Bašić Hrvatinić, Petković. p. 37

<sup>5</sup> Ibid. p. 33 (The OSCE report contains similar observations.)

<sup>6</sup> EFJ. November 5, 2007

Experts note that “social conditions of work within the media industry influence the quality of work and professionalism of journalists and other media professionals”<sup>7</sup> and that in “such a sensitive activity as journalism, it is actually the stability of the employment relationship, together with the related economic stability, which can contribute significantly to the effectiveness of independence and autonomy in the exercise of this profession.”<sup>8</sup> Country reporters in this study confirmed that the more precarious<sup>9</sup> and insecure the position of journalists as workers, the less chance that they will withstand pressures and defend ethical codes, freedom of information, the right of the public to be informed and other prerequisites for the media and journalists to fulfill the role ascribed to them in democratic societies.

## **Trends in Labor Relations and Labor Policies**

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

The evident pursuit of flexibility in labor relations, downsizing outsourcing, subcontracting and a shift to new types of work organization present individual workers with a higher level of social and economic risks, worsened by the fact that legislative frameworks have not been coping with the evolution of labor markets and have not been ensuring satisfactory social protection. There is a need to rethink labor and social policies and the enforcement of legislation since those precariously and informally employed now “occupy a grey area where basic employment or social protection rights may be significantly reduced, giving rise to a situation of uncertainty about future employment prospects and also affecting crucial choices in their private lives (e.g. securing accommodation, planning a family).”<sup>14</sup> In terms of legal regulations, the debate focuses on the distinction between “typical” and “atypical” employment which is the result of the disintegration of the standard employment relationship.

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<sup>7</sup> Bašić Hrvatin, Petković. p. 37

<sup>8</sup> EFJ. 2003. p. 6

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

<sup>10</sup> See Supiot for a thorough insight into those changes.

<sup>11</sup> Commission of European Communities (CEC). 2007b. p. 5

<sup>12</sup> CEC.2006a. p. 7

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

<sup>13</sup> ILO. 2007. p. 35

<sup>14</sup> CEC. 2006a. p. 8.

According to the European Foundation for the Improvement of Living and Working Conditions, there is an important gender dimension to the debate on atypical work as men are disproportionately represented in standard employment relationships and increasing numbers of women in the labor force work under atypical conditions.<sup>15</sup>

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

In 2006, the European Commission (EC) launched a Green Paper aimed at modernizing labor legislation and encompassing new forms of organization of work.<sup>19</sup> In its response, the European Parliament (EP) argued that any form of employment, “whether non-standard or otherwise, should carry with it a core of rights regardless of the specific employment status, which should include: equal treatment, workers’ health and safety protection and provisions on working/rest time, freedom of association and representation, collective bargaining, collective action, and access to training.”<sup>20</sup> Following public consultation, the Commission identified a “demand for improved cooperation, more clarity or just more and better information and analysis in a number of areas such as: the prevention and combating of undeclared work, especially in cross-border situations; the promotion, development and implementation of training and life-long learning to ensure greater employment security over the life cycle; the interaction between labour law and social protection rules in support of effective employment transitions and sustainable social protection systems; the clarification of the nature of the employment relationship to promote greater understanding and facilitate cooperation across the EU; the clarification of the rights and obligations of the parties involved in subcontracting chains to avoid depriving workers of their ability to make effective use of their rights.”<sup>21</sup>

Overall, debates in EU institutions have been evolving around the concept of “flexicurity” defined as “an integrated strategy to enhance, at the same time, flexibility and security in the labour market,”<sup>22</sup> but there has been strong criticism, especially from the trade unions, that

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<sup>15</sup> Atypical work in EIRD

<sup>16</sup> Perulli. p. 76

<sup>17</sup> CEC. 2006. p. 10

<sup>18</sup> Ibid.

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

<sup>20</sup> EP. 2007

<sup>21</sup> CEC. 2007c. p. 10

<sup>22</sup> CEC. 2007a. p.11. According to the European Commission, “flexicurity policies can be designed and implemented across four policy components: (1) flexible and reliable contractual arrangements (from the perspective of the employer and employee, of “insiders” and “outsiders”) through modern labour laws, collective agreements and work organisation, (2) comprehensive lifelong learning strategies to ensure the continual

the EC is biased against the protection and stability of jobs and that the core idea seems to be giving companies more freedom to dismiss workers.<sup>23</sup> Current trends in labor markets and policies pose serious challenges to trade unions that have been finding it very difficult to organize and represent the fragmented labor force.<sup>24</sup> Journalists' unions are no exception facing, "the crisis of organising, recruitment and defence of union rights."<sup>25</sup> EFJ has highlighted the need for the unions "to review their current structures and strategies for organising to take account of the changing nature of work, ownership structures and employment relations within the industry."<sup>26</sup>

## **Precarity in the Media Industry**

The media as a part of the cultural industry have been at the forefront of many socio-economic changes outlined by various organizations.<sup>27</sup> That fact has some serious implications regarding the quality of the service they provide to the public. ILO notes that many media and entertainment workers are employed on short-term contracts or through subcontracting: "Their lack of continuity in employment, often combined with the so-called 'independent' employment status, can mean they are locked out of social security schemes and have limited access to benefits such as paid holidays, maternity protection, and safety and health protection."<sup>28</sup> The majority of respondents in a recent global survey of the media industry<sup>29</sup> reported that the major form of employment relationship had changed in their countries in the last five years, and the main trend was away from collective bargaining and toward deregulation and individual negotiations/individual contracts. Journalists' organizations also reported that the average rate of pay for journalists had either decreased or significantly decreased in real terms over the past five years.

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adaptability and employability of workers, particularly the most vulnerable, (3) effective active labour market policies that help people cope with rapid change, reduce unemployment spells and ease transitions to new jobs; (4) modern social security systems that provide adequate income support, encourage employment and facilitate labour market mobility. This includes broad coverage of social protection provisions (unemployment benefits, pensions and healthcare) that help people combine work with private and family responsibilities such as childcare." (CEC. 2007a. p. 13)

<sup>23</sup> See, for example European Trade Union Confederation. June 27, 2007

<sup>24</sup> According to Liddle and Lerais (Bureau of European Policy Advisors (BEPA), n.d.), trade union density has fallen in the last decade – in Britain and Germany by about a quarter; in Italy and the Netherlands by over 10%. It more than halved in the New Member States. Only in the Nordics has the union density been maintained. Authors point to the huge issue for the trade unions in how they make themselves relevant to employees in private sector services and small and medium sized businesses and among young workers.

<sup>25</sup> EFJ. October 7, 2007

<sup>26</sup> Ibid.

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

<sup>28</sup> ILO. 2004a. p. 98

<sup>29</sup> IFJ.2006

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

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

While freelance journalism has existed for as long as the media themselves have, the first remarkable rise in the number of freelancers in occupations connected with the mass media occurred as early as the 1960s and 1970s.<sup>33</sup> Traditionally however, “this form of employment relationship involved a limited number of all journalists: generally those who both chose to be self-employed and were experienced enough to be confident of their ability to gain better conditions as freelancers than as employees.”<sup>34</sup> That has changed as, “media companies have increasingly become more reliant on freelance journalism, implementing a strategy characterised by transnational media expansion, de-verticalisation and de-concentration of firms and flexibilisation of organisational structures in order to quickly adjust to volatile and ever-changing demands.” That means that “freelance contractual arrangements extend to a greater number of press workers and to journalists who do not show the above-mentioned combined features—such as young people who are starting to work as journalists or older journalists made redundant in reorganisation processes.”<sup>35</sup> In such circumstances, it has become common to speak about “fake,” “false” and “forced” freelancers and to observe that the share of “true” freelancers of the total number of journalists who work outside of the scope of a traditional employment relationship (and therefore, of the protections of labor legislation) has been on decline.

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

In spite of some specifics of the region, those general observations are also valid for south eastern European (SEE) countries where conditions are further aggravated by the fact that many journalists who have been forced into freelancing (for the major part fake freelancing

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<sup>30</sup> Ibid.

<sup>31</sup> EFJ, 2003, p. 7

<sup>32</sup> IFJ, 2006, p. VI

<sup>33</sup> Perulli, p. 109

<sup>34</sup> EFJ, 2003, p. 4

<sup>35</sup> Ibid.

<sup>36</sup> Ibid., p. 7-8

<sup>37</sup> EFJ, November 5, 2007

that is in fact disguised employment<sup>38</sup>) have no possibility to legally settle their status and are therefore completely excluded from social protection schemes.

The SEENPM research addressed all journalists and labor relations in the media in general, but the issues of outsourcing (particularly to those who are economically dependent on one organization but not permanently employed by that organization) and the general insecurity of labor relations had to be underlined at the outset of the review since new (and in many cases illegal) ways of organizing work are decreasing the bargaining power of employed workers<sup>39</sup> and undermining the position of all journalists. SEENPM research confirms the warnings already cited: that the public has many reasons for concern about the conditions in which journalism is performed and about the service it can provide in such conditions.

## **II. A Review of International Treaties, Directives and Recommendations**

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

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

The first instrument that needs to be highlighted, however, is the *Universal Declaration of Human Rights*, adopted and proclaimed by the United Nations on 10 December 1948. The declaration established a number of rights related to work and to labor relations as basic human rights. Other articles are indirectly relevant, but the most prominent ones are articles 23 and 24. Article 23 guarantees everyone the right to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment and to equal pay for equal work without any discrimination. Furthermore, everyone who works has the right to just and favorable remuneration ensuring for oneself and one's family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection. The right to form and to join trade unions is also specifically guaranteed as a human right. Article 24 grants everyone the right to rest and leisure including a reasonable limitation of working hours and periodic holidays with pay.

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

<sup>39</sup> For supporting arguments, see Muehlberger and Supiot.

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

## International Labour Organization

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

International labor standards are drawn up by ILO constituents either as conventions or recommendations. ILO member states are required to submit any convention adopted at the International Labour Conference to their national competent authorities for the enactment of relevant legislation or other actions, including ratification, whereby a state accepts the convention as a legally binding instrument. Recommendations, on the other hand, serve as non-binding guidelines.<sup>44</sup> International labor standards have been developed in numerous areas, for example regarding freedom of association, collective bargaining and industrial relations; equality of opportunity and treatment; tripartite consultations; labor administration and inspection; employment policy and promotion; employment security; wages; working time and social security among others.<sup>45</sup>

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

- *Freedom of Association and Protection of the Right to Organise (No. 87)*: It sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization and it stipulates that workers’ and employers’ organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority and that they shall have the right to establish and join federations

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<sup>41</sup> ILO. 2005. p. 8

<sup>42</sup> Ibid. p. 10

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

<sup>44</sup> ILO. 2005. p. 20

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

<sup>46</sup> ILO. 2005. p. 15

and confederations which may in turn affiliate with international organizations of workers and employers.<sup>47</sup>

- *Right to Organise and Collective Bargaining* (No. 98): This convention stipulates that workers enjoy adequate protection against acts of anti-union discrimination including requirements that a worker not join a union or relinquish trade union membership for employment or dismissal of a worker because of union membership or participation in union activities. It further states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations with a view to the regulation of the terms and conditions of employment by means of collective agreements.<sup>48</sup>
- *Equal Remuneration* (No. 100): Ratifying countries must ensure the application of the principle of equal remuneration for men and women for work of equal value; the term "remuneration" is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the workers' employment.<sup>49</sup>
- *Discrimination (Employment and Occupation)* (No. 111): Discrimination is defined as any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Ratifying states have to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination in these fields. This includes discrimination in relation to access to vocational training, access to employment and to particular occupations and terms and conditions of employment.<sup>50</sup>

The ILO's governing body has also designated another four conventions as "priority" instruments because of their importance to the functioning of the system of international labor standards. One of these is the *Labor Inspection Convention of 1947* (No. 81).<sup>51</sup> Another important convention in the context of the SEENPM study is the *Termination of Employment Convention* (No. 158) that stipulates reasons for termination that cannot be considered valid including those based on union membership or participation in union activities, filing of a complaint against an employer, race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin and temporary absence due to illness or absence from work during maternity leave.<sup>52</sup>

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

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<sup>47</sup> Ibid. p. 28

<sup>48</sup> Ibid. p. 28-29

<sup>49</sup> Ibid. p. 35

<sup>50</sup> Ibid. p. 36

<sup>51</sup> Ibid. p. 16

<sup>52</sup> Ibid. p. 49



Recommendation 198<sup>53</sup> states that employment or labor laws seek, among other things, to address what can be an unequal bargaining position between parties in an employment relationship, and that there are “difficulties of establishing whether or not an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application.” According to this recommendation, some contractual arrangements can have the effect of depriving workers of the protection they are due, and it is important to establish who is considered a worker in an employment relationship, what rights the worker has and who the employer is. The recommendation further states that difficulties in establishing the existence of an employment relationship may create serious problems for those workers concerned, for their communities and for society at large and offers a set of guidelines for national policy makers and for those implementing and supervising the implementation of legislation.

Some key points are the following.

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

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<sup>53</sup> ILO. 2006

<sup>54</sup> Those indicators might include (a) the fact that the work is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability or involves the provision of tools, materials and machinery by the party requesting the work; (b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work or absence of financial risk for the worker.

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

## Council of Europe

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

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

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

In contrast with ECHR, ESC is not enforced by a court that accepts individual complaints but by the European Committee of Social Rights that examines mandatory reports of individual states on the implementation of ESC and that can initiate recommendations of the Committee

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<sup>55</sup> European Social Charter, in EIRD

<sup>56</sup> [http://www.coe.int/t/e/human\\_rights/esc/1\\_general\\_presentation/CharterGlance\\_en.asp#TopOfPage](http://www.coe.int/t/e/human_rights/esc/1_general_presentation/CharterGlance_en.asp#TopOfPage) (States that ratify the Charter have to accept at least five of the seven core articles of the Charter: the rights to work, organize, bargain collectively, social security, social and medical assistance, rights of the family to social, legal and medical protection and the protection of migrant workers.)

of Ministers. The special protocol of 1995 established an additional system of collective complaints.<sup>57</sup>

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

## European Union

An important document, although its legal status is that of a mere political declaration, is the *Community Charter of the Fundamental Social Rights of Workers*, constituted with a special declaration adopted by the member states in 1989.<sup>59</sup> The fundamental social rights of workers are defined in 30 articles clustered under the following headings: freedom of movement; employment and remuneration; improvement of living and working conditions; social protection; freedom of association and collective bargaining; vocational training; equal treatment for men and women; information, consultation and participation for workers; health protection and safety at the workplace; protection of children and adolescents; elderly persons; disabled persons and member states’ actions (implementation). As noted by the European Foundation for the Improvement of Living and Working Conditions, the Charter “contributed to the launching of initiatives in employment and industrial relations policy which produced a number of Directives during the 1990s,”<sup>60</sup> and it “anticipated much of the potential of the fundamental individual employment rights in the Charter of Fundamental Rights of the European Union adopted in Nice in December 2000.”<sup>61</sup> The latter specifically referred to the Charter of Fundamental Social Rights thus making it possible for the European Court of Justice to use it “as an interpretative guide in litigation concerned with social and labour rights;”<sup>62</sup> the subsequent Treaty of Lisbon retained that reference.

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

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

- freedom of assembly and association (Article 12 stipulating “the right of everyone to form and to join trade unions for the protection of his or her interests“);
- freedom to choose an occupation and right to engage in work (Article 15);

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<sup>57</sup> COE, 1995

<sup>58</sup> European Social Charter in EIRD

<sup>59</sup> The United Kingdom acceded to the Charter in 1997.

<sup>60</sup> Community Charter of the Fundamental Social Rights of Workers in EIRD

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

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

- non-discrimination (Article 21 prohibiting discrimination on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation);
- equality between women and men (Article 23 requiring equality in all areas including employment, work and pay),
- workers' right to information and consultation within the undertaking (Article 27);
- right of collective bargaining and action (Article 28 including protection of the right to strike action);
- protection in the event of unjustified dismissal (Article 30);
- fair and just working conditions (Article 31 including the "right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave");
- reconciliation of family and professional life (Article 33);
- social security and social assistance (Article 34).

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

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

Other relevant directives include but are not limited to (1) the Council directive (CD) supplementing measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (91/383/EEC); (2) CD 1999/70/EC concerning the framework agreement on fixed-term work concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)<sup>65</sup>; (3) CD 97/81/EC concerning the framework agreement on part-time work

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<sup>64</sup> Employee, in EIRD

<sup>65</sup> A fixed-term worker is, "a person having a contract of employment or relationship entered into directly between an employer and a worker, where the end of the employment contract or relationship is determined by

concluded by UNICE, CEEP and ETUC<sup>66</sup>; (4) CD 76/207/EEC on the implementation of the principle of equal treatment for men and women regarding access to employment, vocational training and promotion and working conditions along with Directive 2002/73/EC of the European Parliament and of the Council amending CD 76/207/EEC; (5) CD 2000/78/EC establishing a general framework for equal treatment in employment and occupation; (6) CD 93/104/EC<sup>67</sup> concerning certain aspects of the organization of working time along with Directive 2000/34/EC of the European Parliament and the Council amending CD 93/104/EC and (7) CD 94/45/EC on the establishment of a European works council or a procedure in community-scale undertakings and community-scale groups of undertakings for the purposes of informing and consulting employees.

### III. The Main Problems in the Region

As a rule, labor relations in the media have been rather non-transparent and poorly researched, but all over the SEE region, there is a clear correlation with the major trends in the media in the rest of Europe: jobs are ever more precarious and there are major problems with the social, legal and professional security of journalists and other media workers.<sup>68</sup> Researchers reported that labor codes defining basic rights generally provide a suitable basic framework for fair labor relations (with the exception of Montenegro where strongly criticized labor legislation is currently under revision), but it can be concluded from their reports that legislative frameworks evolved from traditional categories that have been seriously questioned as already highlighted. There is an overwhelming gap between legislative theory and actual practice, mostly due to inefficient enforcement of legislation and to lengthy court proceedings but also to the weakness or non-existence of journalists' trade unions, their low level of solidarity and a very low awareness of their rights among media workers.

Respect for rules and norms in labor relations is related to the broader political and economic framework, characterized by the transition after the fall of Communism, and in some countries by EU accession, post-conflict and other extraordinary conditions.<sup>69</sup> Markets in the region offer “essentially different conditions for media operation,” but it is possible to identify certain common denominators: “Most of these markets are small and fragmented, hosting a great number of media, particularly broadcast media, or there are parallel markets divided along linguistic lines. Another feature shared by these markets is the existence of close links between the largest and most influential media on the one hand, and local owners of capital

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objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.” (CEC, various)

<sup>66</sup> The directive guarantees part-time workers the right to equal treatment. (CEC, various)

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

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

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

and political parties on the other.”<sup>70</sup> The abundance of media in the countries in this study would not be sustainable in the existing markets were it not for serious cost cutting in the production process. A general practice of media owners/employers reported in the present study is that of tax evasion, a problem that has not been properly addressed.

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

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

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

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

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

- Court and other formal proceedings are slow, and inspections that should supervise and ensure the implementation of labor legislation are inefficient.
- A particularly vulnerable group is that of young journalists who are regularly exploited by being required to work long hours for low pay or for no pay at all.
- Discrimination on the grounds of age; gender; political, religious or other beliefs; ethnicity and nationality was mentioned although it was not perceived as a serious problem.
- Conscience clauses in journalists' contracts are the exception rather than the rule.
- Authors' rights are frequently breached, and there is low awareness of their significance for the quality and integrity of journalism.
- Journalists' professional and social insecurity makes it easier to impose censorship and enhances self-censorship. There are different levels of recognition of such practices, but they are present in all countries, both as a result of political and commercial pressure.
- With few exceptions, journalists' trade unions are weak or non-existent, social dialogue is very limited and collective agreements in the media sector are a rarity. Many employers have very negative attitudes toward trade unions, and in spite of legislative guarantees of freedom of association, journalists fear to form or join them. In some cases, lack of transparency of media ownership is cited as an additional problem for trade unions and individuals who want to defend workers' rights.

## **IV. Specific Topics**

### **Legislative Framework**

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

national level but are placed under the jurisdiction of the Federation of Bosnia and Herzegovina, Republika Srpska and of District Brčko, the three jurisdictions into which the country is organized.

In all countries in the region, basic labor-related rights are stipulated in their constitutions starting with the right to work and extending to the freedom to organize trade unions and in some cases also specifically guaranteeing the right to strike. National constitutions also contain general prohibitions against discrimination. Specific regulations for labor relations are stipulated in general labor codes that apply to all employers and employees; as a rule there are no particular regulations specifically for the media, with the exception of some provisions in media legislation that more or less directly affect the position of journalists as employees/workers.

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

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

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

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

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<sup>71</sup> observation based on the authors' personal interviews with journalists and other creative workers



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

## **Collective Agreements**

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

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

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

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

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

## **Other Measures**

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

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

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

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

## **Implementation of the Legislation in Practice**

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

In Serbia, researchers observed that although the legislation itself is mostly harmonized with EU standards, violations are frequent. “The reasons lie in the attitude that the interests of the

owners, political parties and economic groups are more important than truth in reporting. Additionally, enforcement of the law is hindered by the lack of transparency in media ownership as well as the judicial system's disinterest and inefficiency in prosecuting those who violate the law and the basic principles of the journalistic profession.” Over a quarter of Serbian respondents did not have any kind of contract, and payments were usually made to someone else’s account or in cash. When employment contracts did exist, they were frequently concluded for the minimum/base salary, and there were no formal arrangements for the remaining amount of journalists’ remuneration which was usually paid in cash. This practice was also reportedly widespread in Bosnia and Herzegovina and in Montenegro.

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

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

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

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

Considering the social role of the profession and the importance of journalists' independence, the poor protection of journalists from dismissal is a grave concern. Those without any contracts or with civil contracts are at all times faced with the prospect of a sudden loss of income: "The possibility of dismissal is like Damocles' sword," as one respondent in Hungary put it. Even journalists who are officially employed in many cases do not feel safe from unjustified dismissal. In Serbia, 60% of respondents did not believe that employment contracts protected them from dismissal or sanctioning, and only about one third of respondents in Macedonia and in Bosnia and Herzegovina gave an affirmative response in that regard. Furthermore, the existing legislation in Bosnia and Herzegovina includes "overly generalized wording that leads to difficulties in practice." The broad formulation that terminations of employment are permissible, "if there are justifiable economic, technical or organizational reasons" can be and reportedly is abused to execute employers' arbitrary decisions. The survey revealed that the low quality of labor contracts represents one of the basic problems in labor relations in the media. A similar observation was made in Albania where even those few journalists who had contracts mostly did not think they would offer any real protection against sanctions or removal from their jobs.

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

While there are explicit legislated limitations on the maximum amount of overtime work in addition to the regular (eight) daily working hours, and extra payments are defined for extra work, there seems to be hardly any regard for those provisions; instead, there is a general acceptance of extended working hours by journalists. Journalists do not perceive overtime work as a violation of their rights but rather as a necessity in performing their jobs. As a consequence, work days can regularly extend to 12 or even 14 hours, and journalists' social lives suffer. Saturday and Sunday are frequently considered normal working days and there is no extra compensation for those who work on weekends, as noted by the Romanian country reporter. In a discussion, a respondent from a Romanian commercial television station "admitted that journalists work between 12 and 14 hours per day and even during the night, but as compensation he allows them to take one or two days off every two to three weeks to pay bills and fulfill other obligations that can be done only during normal working hours".

Journalists' salaries are sometimes paid after delays that can last for several months, most prominently in Albania and Serbia. Withholding payment has been noted as a means of sanctioning "disobedient" journalists. One quarter of respondents in Bosnia and Herzegovina considered problems with payment (low, irregular wages, only minimum salaries reported) as the most prominent violations of journalists' labor rights. Overall, a vast majority of

respondents indicated that journalists were not sufficiently remunerated for their work. For example, only 8% of the persons surveyed in Albania said they considered their salaries to be appropriate for their jobs, and journalists could not determine their position in the overall hierarchy of salaries in the country. In Moldova, 88% of respondents mentioned that the wages they received did not correspond to the work they did.

Another issue that was examined in the study was discrimination which is explicitly prohibited under international and national law. In many cases, respondents in the study failed to recognize and were unwilling to discuss discrimination, but during interviews researchers could detect that discrimination actually existed in larger proportions than statistical data revealed. For example in Serbia, about three quarters of respondents did not answer the question about discrimination in the survey, but during the interviews, most of the participants recognized discrimination on the basis of sex, age, financial status, education, professional skills or political affiliation. In Bosnia and Herzegovina, 80% of respondents perceived that there were no discriminatory practices, but one editor noted: “There is already an opinion that there is ethnic segregation in the media so that employees do not apply for posts that are clearly oriented toward the ‘other’ ethnic groups.” In Bulgaria, age discrimination was rather common according to one respondent, and the Romanian reporter noted “systematic discrimination against women. There are overwhelmingly more women than men in entry level-jobs, but this ratio changes in middle management where men dominate.” It can be concluded that there are also cases of discrimination on the grounds of political and other beliefs, for example in Slovenia where journalists have been sanctioned for expressing opinions. Serbian reporters noted that freelancers are victims of discrimination in society by not being allowed to enjoy the benefits offered by commercial banks like applying for loans, although many of them receive regular salaries just like typically hired employees. In some countries, freelancers are even discriminated against by trade unions.

### **Freelance Journalists**

The SEENPM country studies confirm the existence of significant pay gaps between regularly employed and freelance journalists. Researchers generally report that freelancers/atypical workers<sup>72</sup> are paid less than their employed colleagues and that their social security is a major cause for concern.

In Slovenia, it became evident when amending the tax and labor legislation that the numbers of *de facto* fake and forced freelancers were massive. Neither tax nor labor inspections have been efficiently overseeing the implementation of the new stipulations. There is “the typical inequality between the obligations and the rights of freelance journalists.” They have the same responsibilities as those in employment contracts, in many cases including the competition clause, but the financial, economic and other obligations of their employers are considerably less than those for the regularly employed. It is estimated that nearly two thirds of freelance journalists are forced into that status; the most frequent violator of the explicit prohibition against concluding civil contracts when there are elements of an employment relationship has been the national public broadcaster. Overall, major media are leading in that respect, but

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

local RTV stations provide a good illustration of the general observance of labor legislation. Of the total of 75 registered radio stations, 18 operated without one single employee in 2004, and 11 of the 52 TV stations did so likewise. Furthermore, about one half of the total of 127 private RTV stations employed only managers, so the reporter concluded that about two thirds of publishers operated exclusively by hiring freelance journalists.

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

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

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

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

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

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

## **Censorship and Self-censorship as an Effect of Labor Relations**

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

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

The Bulgarian report suggested that to a greater degree in the capital and to a lesser extent in the countryside, the Bulgarian media resist external pressure, but in the words of a regional journalist: “No political or economic interests could influence the labor relations at my media outlet. The editorial policy of the media is decided solely by the journalists and by the owners.” (emphasis added) There are other indications that owners do influence media content in Bulgaria, and there are even individual cases when editors may be in agreement with politicians and their political and/or economic interests may dominate at the expense of

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

press freedom. A Bulgarian journalist stated that the situation in the regional media outlets is more complicated “because the owners, usually businessmen with several other businesses besides the media, might use the media to boost their economic interests”.

Respondents in Bosnia and Herzegovina highlighted that censorship and self-censorship as well as employment policies are predominantly governed by the commercial interests of the employers. One of the respondents argued that the politically driven censorship culture is declining while a certain “corporative marketing dictatorship” is on the rise in the sense that companies that are attractive for marketing contracts are influencing editorial policies. The general secretary of the Croatian journalists’ trade union observed: “Under Communism, there was open political pressure on the media, but today interconnected political and economic power centers have a more subtle influence with the full participation of media owners. (...) Advertisements are more important than news.”

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

When journalists in Hungary were asked about their professional autonomy in a survey conducted in 2000, 56% replied that they could not ignore the business interests of the owner of their outlets, and 42% mentioned the interests of the advertisers as taboo issues.<sup>75</sup> Almost half the journalists cited attempts to withdraw completed articles or programs under political pressure, and an equal proportion had noted such attempts by business groups. Overall, about two thirds of those attempts were not rejected by the editorial boards. In the SEENPM research, 65% of typical workers and 86% of atypical workers in Hungary mentioned that their superiors censored their work. One of the respondents said that there is no censorship, “but I know the expectations”. The contracts of only 8% of employed respondents in Hungary contained conscious clauses, and one respondent added: “Disagreement is not recommended.” The Albanian researcher reported that even in those few contracts that exist in Albanian media, the conscience clause is unheard of, either on paper or in practice, and the majority of respondents in Bosnia and Herzegovina also claimed that there were no such clauses in their contracts.

In Macedonia, 60% of the total number of journalists surveyed in a study on ethics had been censored by their editors-in-chief or employers. It can happen that whole sentences are added

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



to journalists' stories or journalists are asked to sign already made or ordered stories. The reporter cited media ownership and close relations to political structures as the main obstacles to combating censorship or self-censorship in the media.

In Slovenia, a particular problem has been the Employment Relationship Act stipulating that the worker is obliged to refrain from all actions which could cause material or moral damage or might harm the business interests of the employer. That has reportedly been abused to sanction workers/journalists for expressing opinions, even though that is prohibited by media legislation. Such abuses have also occurred in relation to workers' obligations to protect commercial confidentiality. The Slovenian report noted that informal disciplining for expressing opinions and standpoints has been on the rise as well, preventing journalists from seeking legal protection. Such proceedings in media companies have led to a deterioration of the position of journalists (transfers, demotions to lower paying jobs), and in some cases to consensual termination of employment contracts. The journalists' union has also recorded a number of unauthorized changes in texts and refusals to publish commissioned texts and other content that could be critical of the government. Legislative provisions that guarantee journalistic autonomy in the pursuit of information in the public interest are deficient, their implementation is difficult and state supervision over the implementation of the provisions in force has not been functioning well.

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

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

## **Journalists' Trade Unions**

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

The membership of freelancers in trade unions seems to be even lower in the SEE region than elsewhere, and in some cases, trade unions do not address freelancers' issues at all. In Bosnia and Herzegovina, none of the atypical journalists/freelancers from the survey sample was a member of a trade union, although they have the right to membership, and the issue of

atypical workers is not dealt with at all in the ongoing collective negotiations. The Croatian trade union organizes journalists from all media, including freelancers, and so does the Slovenian journalists' union, but its president observes that freelancers "are much more difficult to draw into a trade union, particularly in the framework of the existing rules of trade union organization and the existing practices of trade unionism". In Macedonia, to become a member of the trade union, one needs to have a valid contract with an employer, but one third of respondents in the survey worked without contracts. In Serbia, the freedom to form trade unions is guaranteed only to employees, and freelance workers (although admitted to the unions) are excluded from any type of agreement reached with a media outlet. The Romanian researcher also noted that the right to affiliate in trade unions was only for those who had an individual labor contract.<sup>76</sup>

## **Albania**

A journalists' trade union was established in 2005, and it now has branches throughout the country. In 2006, the union signed a memorandum with the Ministry of Labor that would enable the signing of a collective agreement, but negotiations have not been concluded. Due to the highly insecure conditions journalists work under, most of the persons interviewed were pessimistic regarding a quick empowerment of the trade union. Skepticism has grown due to the ineffectiveness of previously established journalists' associations (not acting as trade unions). All interviewees noted that there is very little solidarity among journalists. One said: "In 17 years of independent media I can count on the fingers of just one hand the cases of public protest and solidarity among colleagues." Previous research has shown that journalists "are almost helpless when faced with the arbitrary decisions of owners who can fire their staff without cause".

## **Bosnia and Herzegovina**

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

## **Bulgaria**

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

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

## **Croatia**

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

## **Hungary**

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

## **Macedonia**

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

rights and has adopted rules on the protection and insurance of journalists during combat and conflict reporting.

### **Moldova**

The Union of Journalists has existed since 1957 and nowadays has about 1500 members. In June 2007, it became an associated member of the Romanian MediaSind Trade Union that is a branch of the International Federation of Journalists. Some Moldovan journalists are members of trade unions of cultural workers in the National Confederation of Trade Unions of Moldova. In this SEENPM survey, 17% of the respondents were members of trade unions, but they were not positive about their effectiveness. There have been initiatives and attempts to create a new trade union for journalists. The League of Professional Journalists that was created in 2002 aims to consolidate press workers and to protect their interests in court and in dialogues with authorities.

### **Montenegro**

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

### **Romania**

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

### **Serbia**

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

## **Slovenia**

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

## **V. Conclusions**

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

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

There is a need to rethink labor and social policies and the enforcement of legislation as well as trade union strategies and the role of civil society in safeguarding media freedom.

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

Trade unions have to be strengthened and have to redefine their roles, develop new services and address new issues and new types of workers. The International/European Federation of Journalists should assume a very active role in the process. Above all, trade unions should be inclusive, and organize all workers regardless of their legal status, and they should include freelancers in their activities involving regulations and negotiations on collective agreements. They should prepare model contracts, adopt and publish recommendations on payment for work (that should include social benefits), provide legal advice and organize training and campaigns to raise awareness of the situation in the media industry. In many cases, trade unions lack the necessary capacity and should be supported by NGO's, for example, by non-profit marketing to improve their image and to attract new members or through legal support. There should be strong networking, cooperation, consultation and exchanges of best practices across professions and nations, and available technologies should be used to their best advantage. The expansion of multinational media corporations that reportedly often have double standards in their countries of origin and in the SEE region further highlights the need for international cooperation.

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

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

State agencies should establish closer cooperation, and effective mechanisms of checks and balances should be established for the conclusion of contracts. For example, in Bulgaria no contract is valid unless approved by the National Revenue Agency, and it seems impossible

that journalists could work without contracts. On the other hand, there is nevertheless a great deal of mixed contracting, an important loophole in that system that should be examined.

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

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

It is also necessary to rethink the obligations of journalists to their employers and vice versa, as prescribed by labor codes. If a journalist as a worker must not do anything to damage the material or moral interest of his or her employer, does that mean that it is legitimate (and legal) to require journalists to refrain from any reporting that could be unsettling to the advertisers and other business partners? Researchers reported that such prohibitions (more or less formal) are currently very common, and with the very prevalent concentration of media ownership and the widespread business (and political) interests of media owners, the space for freedom of expression and the pursuit of professional journalism is ever narrower. Media employers should be required to be particularly specific in the contracts they conclude with their workers regarding job descriptions. In the current situation, there is a lot of room for informal sanctioning as well as for imposing obligations that journalists did not originally agree upon and that could even be in conflict with their professional ethics, such as the practice of concealed advertising.

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

human rights are overridden by legislative protection of the free market and competition. Self-employed workers are considered to be on an equal footing in their bargaining power with media (and other) firms, and collective bargaining on behalf of freelancers registered as small businesses or even the mere recommendation of minimum tariffs has been deemed a breach of the rules of free markets by some authorities.

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

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