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The Permanent Mission of Bosnia and Herzegovina to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, in regard to the letter sent by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, dated 18th May 2015, has the honor to transmit the response received from the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

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



Geneva, 24th June, 2015

**OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS**
Geneva

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INFORMATION PAPER ON „Freedom of Opinion and Expression“

Freedom of opinion and expression is one of the fundamental rights listed in the catalogue of human rights afforded to the citizens of Bosnia and Herzegovina (BiH). Article II (Human Rights and Fundamental Freedoms) of the Constitution of BiH determines Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. The catalogue of human rights enumerates *inter alia* freedom of expression. Paragraph 3 of Enumeration of Rights reads that all persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above, including freedom of expression (sub-paragraph h).

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

Article 13 (Fundamental Rights and Obligations) of the Statute of Breko District of BiH determines *inter alia* that everyone is entitled to the enjoyment of all rights and freedoms guaranteed under the Constitution and laws of Bosnia and Herzegovina, this Statute and the laws of the District, without discrimination of any kind. In Article 17(1) – Public Information determines that all BD institutions shall respect freedom of information.

Human Rights and Fundamental Freedoms enshrined in the the European Convention on Human Rights and Fundamental Freedoms are incorporated into the Constitution of Bosnia and Herzegovina. They are directly applicable in Bosnia and Herzegovina so that they have a priority over all other laws. Article 10(1) of the European Convention on Human Rights and Fundamental Freedoms provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 18 of the International Covenant on Civil and Political Rights determines that everyone shall have the right to freedom of thought, conscience and religion, while Article 19(2) provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Bosnia and Herzegovina has passed a number of laws protecting the right to freedom of expression. The Law on Protection against Defamation of the Federation of Bosnia and Herzegovina („FBiH Official Gazette“ 59/02, 73/05) regulates civil liability for harm caused to the reputation of a natural or legal person by making or disseminating an expression of false fact identifying that legal or natural person to a third person.

Legal protection of the life and physical integrity of all citizens, including journalists, in Bosnia and Herzegovina has been ensured in the criminal legislation of the Entities and the Breko District of BiH, which prescribes penalties for various types of attacks. All criminalized acts against the life and physical

integrity of man can be divided into two groups. The first group consists of crimes in which the life and body of a man are the primary and sole object of attack and are defined in a separate chapter of the Criminal Code (offenses against life and limb), while the second group includes crimes defined in various chapters of the Criminal Code and whose primary object of protection are some other individual or social values (e.g. crimes against freedoms and human and civil rights, offenses against public order etc.).

The current criminal legislation in BiH does not criminalize an attack on journalists as a separate offense. The High Judicial and Prosecutorial Council collects statistics on the prosecution of criminal offenses by type and number provided for by law and not by victim's profession and other characteristics. Due to this, we are not able to provide data on the prosecution of criminal offenses committed against journalists.

Article 6 (Scope of Application) of Chapter III: Protected Rights of the Law on Prohibition of Discrimination ("BiH Official Gazette" 59/09) determines *inter alia* that this Law shall apply to actions of all public bodies at the level of the state, entity, canton and Breko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as to the action of all legal and natural persons, in all spheres of life, including the public information and the media.

The Press Code of BiH that also covers the online media was derived from existing European standards of journalistic practice. The Code aims to lay foundations of the system of self-regulation in the print and online media, which is considered morally binding on reporters, editors, owners and publishers of the print and online media.

In exercising its competencies the Communications Regulatory Agency is guided with the regulatory principles of broadcasting defined in the Law on Communications ("BiH Official Gazette" 31/03, 75/06, 32/10, 98/12), which include *inter alia* the protection of freedom of expression and diversity of opinion while respecting generally accepted standards of decency, non-discrimination, fairness, accuracy, and impartiality (Article 4 of the Law).

Ethical norms of journalism are well developed in the framework of the relevant documents. There are a number of laws governing the electronic media. Communications Regulatory Agency of Bosnia and Herzegovina as an independent body, granted licenses for electronic media and enforce laws and regulations in the broadcasting sector.

1. Please indicate if there are norms or regulations which protect those in the media from the compelled disclosure of confidential sources of information, When these exist, what limitations on such protections may be accepted under the law?

Bosnia and Herzegovina has passed three laws on defamation, which is an important positive step.

Article 9 of the Law on Protection against Defamation of the Federation of Bosnia and Herzegovina („FBiH Official Gazette“ 59/02, 73/05) determines:

Quotations: „1. A journalist, and any other natural person regularly or professionally engaged in the journalistic activity of seeking, receiving or imparting information to the public, who has obtained information from a confidential source has the right not to disclose the identity of that source. This right includes the right not to disclose any document or fact which may reveal the identity of the source particularly any oral, written, audio, visual or electronic material. Under no circumstances shall the right not to disclose the identity of a confidential source be limited in proceedings under this Law.

2. The right not to disclose the identity of a confidential source is extended to any other natural person involved in proceedings under this Law who, as a result of his or her professional relationship with a journalist or other person referred to in paragraph 1 of this Article, acquires knowledge of the identity of a confidential source of information.“

