UNCERTAIN OPTIMISM OR OPTIMISTIC UNCERTAINTY

Virtual MFRR Mission Report – 2020

MEDIA FREEDOM RAPID RESPONSE

MFRR FAST RESPONSE MISSION REPORT: MONTENEGRO

Media Freedom in Montenegro: Uncertain optimism or optimistic uncertainty

Authored by European Centre for Press and Media Freedom with contributions from Renate Schroeder of European Federation of Journalists and Luka Zanoni of Osservatorio Balcani e Caucaso Transeuropa (OBCT)

Content

The delegation featured*:

ARTICLE 19: Sarah Clarke (Head of Europe and Central Asia)

European Centre for Press and Media Freedom (ECPMF): Laurens Hueting (Advocacy Officer) and Nik Williams (MFRR Coordinator)

European Federation of Journalists (EFJ): Camille Petit (Communications and Project Officer) and Renate Schroeder (Director)

Free Press Unlimited (FPU): Jessica Machacova (Advocacy Coordinator & EU Representative)

International Press Institute (IPI): Scott Griffen (Deputy Director) and Jamie Wiseman (Advocacy Officer)

Osservatorio Balcani e Caucaso Transeuropa (OBCT): Paola Rosà (Curator of the Resource Centre) and Luka Zanoni (Editor-in-Chief)

South East Europe Media Organisation (SEEMO): Oliver Vujovic (Secretary General)

Layout:
Andreas Lamm (ECPMF)

* Please note: all representatives did not participate in every meeting, but notes and findings have been shared internally

Introduction

On 30th August 2020, the people of Montenegro went to the polls for the Skupština (Montenegrin Assembly) elections. The results brought to an end the 31-year rule of the Democratic Party of Socialists (DPS), under Milo Đukanović's leadership. Three coalitions, For the Future of Montenegro, Black and White and Peace is Our Nation, hold a majority of 41 seats in the 81-seat parliament, with Aleksa Bečić, leader of the coalition Peace is Our Nation, the Montenegrin parliament speaker, and Zdravko Krivokapić, the Prime Minister. This watershed moment brings with it a significant amount of uncertain optimism or optimistic uncertainty, depending on who you ask.

Even before polls closed, this election took place at an unprecedented time for Montenegro, Europe and the rest of the globe as the COVID-19 pandemic continued to take hold and understandably drive state attention, resources and focus towards issues pertaining to public health. Against this backdrop, the Media Freedom Rapid Response (MFRR) and key partners undertook a virtual fact-finding mission to Montenegro to learn more from local and regional stakeholders about the impact of the election on expectations for media freedom, as well as key trends and other topics and concerns regarding the protection of journalists and media workers and media freedom.

This mission was held over a number of separate video calls between 7th and 17th September and involved a series of stakeholders including at-risk journalists and media workers and representatives from regional and supranational bodies, journalist associations and media outlets.

The purpose of this virtual fact-finding mission was to understand from stakeholders in Montenegro the current state of media freedom in the country, in relation to individual cases such as the ongoing criminal proceedings against investigative journalist Jovo Martinović and the legacy of the unsolved crimes such as the shooting of Vijesti journalist Olivera Lakić in 2018, as well as a broader analysis of the environment for journalists and media workers as a whole. Throughout the meetings, a number of trends and themes emerged, which guided the subsequent meetings and the contents of this report. The meetings will also aid in plotting the direction of our future engagement on media freedom in Montenegro, as the conversations also covered emerging developments, most notably regarding the outcome and expectations around the change in government following the election.

This report reflects those conversations and covers the lived experience of journalists and media workers, including an analysis of the working conditions and ability to organise, the economic stability of the employment of media workers and future planning for media outlets; the impact of division, hyper-partisanship and polarisation on media visibility, independence, trust and respect; efficacy of local, regional and supranational oversight and support mechanisms to defend media freedom and protect journalists and media workers; interrogation of mechanisms and actors involved in investigating crimes against journalists and media workers, including the role of police officers and prosecutors; the impact of unsolved (or partially solved) crimes against media actors and how this legacy of enduring impunity affects

the ability of media actors to work safely; the impact of media law regulation and legislation on media freedom; the expectations that follow the election result; and issues around political interference, independence and commitment to European standards.

Between 7th and 17th September, the delegates (or an assortment of those present) took part in seven online meetings with (in the order of meetings scheduled): Radomir Kračković, the Vice-President of the Trade Union Media of Montenegro (TUMM); Boris Ristović, Senior Project Officer for JUFREX 2; Investigative journalist, Jovo Martinović; Siniša Bjeković, Deputy Ombudsman for The Protector of Human Rights and Freedoms of Montenegro; Mihailo Jovović, Editor-at-Large of Vijesti; Dejan Milovac, Deputy Executive Director, Programme Director of MANS Investigation Centre; Daniel Blank, Programme Manager (Media), OSCE Mission to Montenegro; Nikola Marković (Chair), Dalibor Tomović and Ranko Vujović, Commission for Monitoring Investigations of Attacks on Journalists. Each meeting was structured as an informal conversation between the delegates outlined above and relevant expert stakeholders working in Montenegro.

The delegates and the MFRR thank each stakeholder, as well as the translators and administrative teams that made the meetings possible, for their time and expertise.

State of Play

Authored by Luka Zanoni of Osservatorio Balcani e Caucaso Transeuropa (OBCT)

In the 2020 World Press Freedom Index compiled by Reporters Without Borders, Montenegro occupies the 105th position (out of 180). This is a drop of one spot compared to the 2019 ranking. In southeastern Europe, only Bulgaria ranks lower (111). Plus, in the 2020 Freedom House report, Montenegro (together with Serbia) slipped from "democratic country" to "hybrid regime" in the first recorded decline since 2003.

Although the country is often described as a front runner in the European integration process, the reasons behind its poor democratic health and weak rule of law have long been apparent.

According to the community of local journalists, the season of repression of media freedom in Montenegro started in 2004, when the then director of the opposition daily Dan, Duško Jovanović was killed. On the night of 27th May 2004 he was outside the newspaper office, heading for his car to go home, when he was shot from another car. The news shocked both Montenegrin and international media, but the case remains unsolved.

A few years later, repeated attacks targeted the daily Vijesti, which together with Dan and the weekly Monitor are prominent actors in the small cohort of independent media in Montenegro. After the 2006 referendum which endorsed the country's independence - after the collapse of Yugoslavia, Serbia and Montenegro initially shared a common institutional path, first as a Federation of Yugoslavia then, from 2003 to 2006, as the Union of Serbia and Montenegro - Vijesti took a critical attitude towards Milo Đukanović's politics. From then on, the Podgorica newspaper suffered a series of violent attacks on its people and premises, with the apparent intention of silencing an editorial line disliked by the regime. In 2007, Vijesti founder and then director

Željko Ivanović was brutally beaten in the centre of the capital. In 2013, a bomb exploded under the window of editor-in-chief Mihailo Jovović's office, leaving no one injured only by chance. During the same period, the newspaper's service cars were repeatedly set on fire. The most recent attack occurred in 2018 when Vijesti investigative journalist Olivera Lakić was shot in front of her home, the same location where she had already been beaten six years earlier.

Other notable cases include the attempted murder of journalist Tufik Softić, a collaborator of Vijesti, Monitor, and others. In 2007, Softić was beaten in front of his family home in Berane. He was only placed under guard seven years later in 2014, after a bomb placed in his car had detonated in his backyard in 2013. Faced with the failures of the judicial system, Softić decided to sue the state of Montenegro for a series of errors and negligence of the judiciary. In 2017 he won the case and, for the first time ever, a Montenegrin citizen was compensated by the state for an ineffective investigation.

The detention and trial of investigative journalist Jovo Martinović are also symptomatic of the poor state of media freedom in the country. Arrested in 2015 on charges of drug trafficking and creating a criminal association, Martinović was released after more than 14 months of pre-trial detention in January 2019, and was sentenced to 18 months of detention by the Montenegrin High Court. The verdict received widespread condemnation from international and regional media outlets and human rights and media freedoms organisations. In October 2020, upon retrial the High Court of Montenegro sentenced Jovo Martinović to one year in prison for participating in drug trafficking.

Over the past fifteen years, Montenegro has recorded over 80 cases of attacks on journalists and media workers. As we have highlighted, such attacks often target investigative journalists who deal with the relationship between power and organised crime and work at media outlets not controlled by the ruling party.

Political power, until the elections of 30th August, was firmly in the hands of Milo Đukanović (still President of the Republic until 2023) for over three decades. Consequently, Montenegro has experienced an actual "state capture" with endemic corruption, in which the interests of a few select groups and centres of power have systematically prevailed over the public good. This also applies to the media environment: The concentration and control of a large part of the media due to the management of state support funds and public advertisements has been paired with a ruthless campaign against independent newspapers, often backed up by various tabloids and web portals known for their poor compliance with established codes of ethics.

Despite the enthusiasm of the independent press for the historic electoral defeat suffered by Đukanović's party, journalists remain cautious. Vexatious litigation, unsolved cases of attacks on journalists – including for instance, the Jovanović murder - an environment that favours public and pro-government media and lack of transparency in media ownership are among the myriad of problems to be resolved in order to develop a safer and free environment for the media in Montenegro.

Media Freedom Expectations Following the Election Result and a Legacy of Polarisation

"The landscape is different now"

Every stakeholder interviewed highlighted the unprecedented nature of the Skupština elections that removed the DPS from power after 31 years. Many highlighted the stagnation that comes with such long and uninterrupted tenure, which has resulted in a patchwork and incomplete response to threats to media freedom in Montenegro. However, expectations across the stakeholders were muted. Radomir Kračković of TUMM highlighted that the professed commitment to fight against corruption and organised crime could be significant for media freedom if the new administration expands this focus to incorporate a commitment to tackle the climate of impunity that undermines the ability to fully investigate crimes against journalists, which in turn impacts journalists' and media workers' willingness to tackle sensitive but important topics. Beyond the stated election claims of different parties, there was interest in holding back from defining the significance of this shift until the shape and nature of the new administration can be ascertained. This was encapsulated by Mihailo Jovović, who said that "we should wait and see what the new government is going to do about [the present bad situation for journalists in Montenegro]." Beyond this, many interviewees stated that at the time, it was too early to know what to expect as the promise of election rhetoric must materialise for change to happen. They went further stating that the new government should not seek to replace the DPS, they should instead work to improve on the previous administration.

There are early signs of divergence that should be monitored. On 8th September, representatives from the three parties who make up the new Government, including Zdravko Krivokapić of the For the Future of Montenegro coalition; Aleksa Bečić from Peace is our Nation Coalition and Dritan Abazović of the Black on White coalition signed a statement in Podgorica outlining a number of key agreements the three coalitions have made as the basis for their collaboration. While the agreement did not explicitly mention media freedom, a number of the commitments are significant, including pledges to "completely depoliticise key government institutions" and "adopt and revise all laws in accordance with European standards." In light of the pivotal importance of media freedom in these standards, this agreement could establish a foundation upon which media freedom can be fostered. However, as mentioned by an interviewee, revising the law will not be sufficient on its own. Political will needs to change alongside the law and while this will arguably be an even more complex and long term task, the election result could be the first step in this process.

However, there were suggestions and fears that the domination of the DPS for so many years and the consolidation of power this enabled could hinder the ability of the new government to move beyond the entrenched approaches, especially at a time when the administration will have to face immediate concerns and issues, such as the COVID-19 pandemic. A central tenet of the criticism of the existing administration was how the political dominance has ennobled a climate of division, hyper-partisanship and polarisation in the political and social climate of Montenegro that has disproportionately affected media freedom and efforts to protect journalists and media workers. This has manifested in a number of ways, including the patchwork of regulatory or self-regulatory mechanisms that fail to adhere to a shared or standardised set of principles or guidelines, the demonisation of individual journalists and the

profession at large, and the amplification of public service broadcasters or pro-government outlets at the expense of independent and largely private outlets.

Boris Ristovic from JUFREX highlighted a significant shift in attitudes towards independent media outlets that took place in 1998, when media outlets critical of the ongoing conflict in the Balkans moved more towards European journalistic standards and approaches. However unintended, this shift further aided in the development of a dichotomy between pro-Government and independent outlets, a distinction that has been entrenched in the years that have followed. This has established a fragmented media landscape that has significantly hindered most of the attempts to resolve seemingly intractable conflicts and embolden a free and vibrant media environment. This polarisation can take on worrying contours in light of the election and expectations of the new administration, is yet to formulate its priorities when it comes to the support to the media community and ensuring media freedom. This would be most pronounced in the public media sector, where the new administration should stimulate the process of reforms of the national public broadcasting system (RTCG) along the lines of European standards. Current political interests vested over the managerial and editorial structures within the RTCG should be counteracted with the accountability to citizens and advocacy of professional journalistic standards.

Throughout the meetings, tackling this entrenched polarisation was highlighted as an issue that should be prioritised by the new administration. Siniša Bjeković, the Deputy Ombudsman for The Protector of Human Rights and Freedoms of Montenegro, stated that this issue dampens the usual optimism in the future that manifests in such moments of transition.

Public/Private Broadcasting and a Patchwork of Regulatory Regimes

> "In many transitional and post-transitional countries, there is still a widespread underlying notion of public service broadcasting being a type of "official" broadcasting … In other words, those who hold the political power also control the public service media"
>
> OSCE Draft Law on National Service Broadcaster: Legal opinion and comments

The inconsistent and unpredictable progress of media freedom in Montenegro is epitomised in part by the evolution of the country's national public broadcaster, Radio Television of Montenegro (RTCG). As highlighted by civil society organisations including Osservatorio Balcani e Caucaso Transeuropa (OBCT) and Reporters Without Borders, the transformation of RTCG into a public service has stalled. In the European Commission and Council of Europe's words: "RTCG's transition from a state media to a public service media is generally deemed not to be complete." In 2018 as reported by OBCT, the RTCG Council voted to remove the general director of the public broadcaster Andrijana Kadija from her position, a measure pushed by Council members with close ties to the DPS leadership, including Mimo Drašković, Slobo Pajović, Ivan Jovetić and Goran Sekulović. While this act was criticised by the European Commission, the US State Department and OSCE, the Council defended its actions as necessary to "depoliticise public service and introduce professional standards in accordance with

the founding values of the European Union." The contradictions at the heart of the RTCG Council - giving the appearance of independence, while reinforcing state dominance - were identified by the Council of Europe and European Commission as part of the 2018 report, Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards: "The appointment process of the Council members ultimately resting in the hands of Parliament, the whole management structure is usually strongly tied and connected to political interests. Editorial interference as well as self-censorship is widely acknowledged and criticised." The report goes on to highlight how this reinforced, or offered inadequate opposition to, the dominance of pro-government viewpoints and representatives in RTCG's coverage:

> "The RTCG was generally deemed actively pro-government. The Centre for Civic Education ... has used quantitative data to test these claims. In an analysis of three years of news programming on the television and radio stations of RTCG (2013, 2014, and 2015), it found that the overwhelming majority of guests on RTCG's news shows came from the ruling Democratic Party of Socialists (DPS) and public institutions."

This dominance over state broadcasters also informs the broader work to protect journalists and counter impunity as demonstrated in the 2019 case of investigative journalist Vladimir Otašević, who was assaulted by a bodyguard of businessman Zoran Bećirović, who is known to have strong ties to the DPS. Freedom House reported in its latest country report that Bećirović observed the attack alongside state prosecutor Miloš Šoškić. When this was covered by the public broadcaster, RTCG, the outlet showed "a doctored video from which the actual assault on Otašević was deleted, claiming there had been no physical contact during the incident." This example demonstrates how public outlets, such as RTCG, play a role in deepening polarisation and undermining movements to ensure journalists are protected and impunity countered.

If public media outlets and broadcasts are perceived as the spoils of war, a view reinforced by the polarisation of Montenegrin society, what does this mean for the broader media environment? Earlier this year, the Montenegrin parliament passed the Law on Media and the Law on National Public Broadcaster – Radio Television of Montenegro (RTCG), which sought to modernise the laws related to public and private media outlets in the country. Minister of Culture, Aleksandar Bogdanović told parliament: "Having in mind the importance and role of public broadcasting for a democratic society, I am especially glad that the legal solution on RTCG fully provides normative preconditions for institutionally, politically and financially independent public broadcaster based on the principles of the Council of Europe."

As the draft law on National Public Broadcaster Radio and Television of Montenegro (RTCG) was moving through parliament, TUMM outlined the need for reform: "the Council is not accountable to anyone for its work. Practice has shown that some actions or non-actions of the Council have caused damage to the Public Service. There is no statutory liability in case of damage to the Public Service, neither the members nor the President of the Council." Establishing in the final law, the obligation to publish activity and financial reports, as well as the certified auditor's report on the RTCG's website, moves the broadcaster close to the requisite transparency, public broadcasters should be bound by. The importance of this should not be underestimated; according to The

Centre for Civic Education: "the independence of the RTCG is directly determined by the independence of the RTCG Council."

The situation is made more complex by the dependence on a number of laws that interact to govern and support public broadcasters that each have their own strengths and weaknesses. For instance, in May 2019, the OSCE undertook a review of the Electronic Media Law at the request of the Montenegrin Ministry of Culture. Regarding public broadcasters it raised concerns and reiterated the need for independence: "To function as an effective public broadcaster, public broadcasting services in Montenegro need both structural independence and editorial independence from State (or local authorities) and political interference...Funding can all too easily be used as a means to exert political pressure on a public broadcaster". However, as highlighted by Boris Ristovic of JUFREX, the legislative practice regarding the different interconnected media laws in Montenegro, has been gradually improving over the recent years to strengthen the media legislative framework. In addition, the entire legislative drafting process with lengthy and thorough discussions has been a valuable exercise for the national media community. Despite occurrences of significant interventions to the governmental bills during the parliamentary review and adoption process, which happened with two recent media laws in July 2020, the general line of European standards has been maintained. Therefore, after the complex legal reforms, which included a broad array of stakeholders, even stronger focus should be given to the actual implementation. Especially now, as the JUFREX report Montenegro Media Sector Inquiry (2017) stated "legal guarantees of media freedoms are empty words on paper and declarative phrases unless their implementation is not vigorous, robust and honest." With expected completion of media legislative reforms in 2021, this should remain as one of the top priorities for the new administration, as it is imperative that strong principles and standards surrounding media freedom are central to any and all reforms and are shared by all relevant parties.

The entrenched polarisation of Montenegrin society also exerts significant pressure on the division between public and private media entities. The media environment is diverse and fragmented with a large number of private media outlets being owned by different companies. According to IREX's 2019 Media Sustainability Index "of the more than 100 outlets registered with the Agency for Electronic Media, 40 are websites, 35 are commercial radio stations, 12 are commercial television stations, 14 are local public radio stations, and four are local public television stations". While this can offer the potential for a diverse and pluralist environment, it does come with its own issues, problems and requirements for reform. As private outlets are not bound by the same laws regarding financial transparency as public broadcasters, the source of funding of these outlets is obscured. This can make it harder to interrogate potential conflicts of interest, scrutinise the economic interests informing editorial choices and other connected concerns. This can also complicate effective action for robust working standards and wage equality by journalists and media workers employed by these outlets, as there are few mechanisms to compel transparency.

While concerns remain as to the impact of private finance on media pluralism and the ability to access a level playing field, the line between public and private is at times hazy at best.

According to Dejan Milovac, approximately 80 percent of state advertising goes to private media outlets supportive of the state. This appears to be a continuation of the concerns raised by the European Commission and Council of Eu-

rope in 2017, who stated that "state advertising is not managed in a transparent manner and that the allocation of this advertising discriminates between media outlets". This bears out in the report's own analysis of the 2016 procurement figures provided by the Montenegrin Government, where out of €318,942 spent on state advertising in print outlets (as opposed to broadcast advertising), over three-quarters (€207,676 and €40,681) of the total went to Pobjeda and Dnevne Novine respectively, two newspapers broadly aligned with the DPS. This issue persists with such significance that it was mentioned in the European Commission 2019 Communication on EU Enlargement Policy: "Concerns about transparency and non-discrimination in state advertising persist. The fact that many media outlets are not financially sustainable has a negative impact on the quality of reporting and professionalism." This is another example of how the media environment in Montenegro is both fed by and contributes to the climate of polarisation. This manipulation and prioritisation undermines any commitment to a free and independent media market. While public media broadcasters should not pivot to incorporate the viewpoints and priorities of the new government, equally the government should not use spending on advertising to reward loyal outlets. The new administration should prioritise establishing a robust, fair and transparent process by which government advertising is awarded as a vital part of the broader process to reconfigure the media landscape in line with European standards and best practice.

One of the changes proposed in the newest set of media laws is to overhaul media regulation. As highlighted by the Council of Europe and European Commission in 2017 the fragmented nature of state regulation, self-regulation and media associations can be seen as a "result of political tensions that have arguably divided the media landscape." While there are two self-regulatory bodies: the Media Council for Self-Regulation and the Self-Regulatory Council for Local Press (for local print media only), these are not representative of a number of leading media outlets in the country. For instance, outlets such as Dan, Monitor and Vijesti have not signed up to the Media Council for Self-Regulation, instead opting for internal ombudspersons (Vijesti and Monitor are part of the same mechanism). This fragmented universe of internal and external regulatory frameworks has long been a target of law reform as outlined in the Council of Europe and European Commission report: "discussions took place between 2010 and 2012 with the ambition to extend the self-regulatory system to the whole sector as was the case since 2003." In our mission interview, Radomir Kračković of TUMM reiterated that this situation is not incidental, but instead is another symptom of the polarisation in the media landscape and the deep divisions between pro-government and independent outlets, which has manifested in different and oftentimes incompatible regulatory regimes. This was also highlighted by the European Commission report of 2019: "Self-regulatory bodies continued to reflect the overall polarisation of the media scene in Montenegro and one of them suspended its activities in August 2018". This theme was also picked up by Siniša Bjeković, Deputy Ombudsman for The Protector of Human Rights and Freedoms of Montenegro in our interviews who stressed that, while the fragmentation in itself is problematic, the fundamental issue is the lack of a harmonised, shared or standardised set of principles or rules that underpin each regime and the broader media landscape.

Different regulatory models are not unique to Montenegro, but without a set of shared standards that are used as the reference point for each regime, there are few guarantees of a fair and level playing field for media outlets, the public and the state. While it is promising that this

patchwork approach to regulation has been addressed in the recent media law, the key will lie in the implementation and response from both private and public media outlets, as well as how it engages with European standards on this issue.

Media Law Issues

While the new media law is promising a number of modifications to bring the law and guidelines around media freedom, pluralism, ownership and transparency in line with European standards, there are a number of proposed reforms that elicited concern from a number of interviewees. Central to this is the proposed change to the rules under which journalists and media workers can be compelled to disclose their sources to the authorities. According to Veljko Smiljanić and Bojan Vučković of Karanovic & Partners, a regional legal practice in Southeast Europe, the new media law proposes to loosen "up the guarantees for journalistic integrity by stipulating that a journalist must disclose his source of information at the request of the public prosecutor if it is deemed necessary for the protection of interests of national security, territorial integrity and health protection." This concern was mirrored by a number of interviewees, including TUMM, who submitted to the Montenegrin Parliament that:

> we believe that the existing solution of the Media Law should be kept, according to which journalists are not obliged to reveal the source of information. Any restriction of this achieved right would mean narrowing the space for investigative journalism, which is in the greatest public interest. The provision that journalists in some situations are obliged to reveal the source of information would certainly reduce the number of those sources and whistleblowers in general, which would be a step backwards in the development of journalism and a democratic society.

While some interviewees highlighted that this shift moves the law closer to European standards, others maintained that enabling prosecutors to access this information is a danger to journalism and any order to compel the revealing of a source should come from the Supreme Court (not left to lower courts or prosecutors) to protect against abuse. The danger of this reform have been noted by the European Commission, whose Spokesperson Ana Pisonero stated on Twitter: "The protection of journalistic sources is crucial for the freedom of the press. Therefore, disclosure of journalistic sources represents serious interference in the freedom of expression which should be limited to strictly exceptional circumstances only." This amendment also undermines journalists' abilities to conform to the Code of Ethics of Montenegrin Journalists compiled by a working group composed of representatives of the Media Council of Self-Regulation, Vijesti, Dan and Monitor, with the support of the Office of the OSCE Representative on Freedom of the Media and the Council of Europe. Principle Seven of the code states: "It is the right and duty of journalists to protect confidential information sources, but also to always check motives of the confidential source before one is promised anonymity and protection." The impact of this could further hasten the narrowing space left for journalists to engage with whistleblowers and other covert sources. Dejan Milovac noted a reduction in the number of whistleblowers and government

sources coming forward to journalists, a trend which will only increase due to the passage of this law.

The legal landscape for journalists and media workers in Montenegro is an evolving and ever-changing situation. Boris Ristović of JUFREX highlighted the transformative impact of the 2005 Law on Free Access to Information, which enhanced transparency and accountability in governance, while also reconfiguring the relationship between the government and the media. However, a government backlash undermined the administration of requests for access, restricted access and increased procedural complexity. The law was reformed in 2017 and while, according to analysis undertaken by MANS and Access Info, it is "a very strong access to information law with many positive features that comply with international standards" and is "more and more used by Montenegrin journalists" according to Dejan Milovac, a number of aspects undermine journalists' and others' ability to access information. Weakening the law's otherwise comprehensive nature, it also establishes exemptions that are overly broad, going beyond Article 51 of the Montenegrin constitution, which limits restrictions to Freedom of Information to the "protection of life; public health; morality and privacy; carrying of criminal proceedings; security and defense of Montenegro; foreign, monetary and economic policy". However, by exempting processes such as "judicial, administrative and other procedures prescribed by the law, to whom access to information from these proceedings is prescribed by regulation", as well as "information that must be kept secret" the reform establishes a series of vague limitations that has undone a significant amount of progress in this field. These limitations fail to offer the necessary clarity that prevents their abuse by state authorities to obscure information or documentation from public scrutiny. While a significant motivation, or stated motivation, for legal reform in Montenegrin has been framed within the accession process for the European Union, the reforms discussed here in fact moved in the opposite direction of European standards.

The development of online journalism in Montenegro, through online portals for existing media outlets, standalone online outlets and social media, has kept pace with the rest of Europe. According to Datareportal's Digital 2020 report for Montenegro "there were 390,000 social media users in Montenegro in January 2020", representing a penetration rate of 62% in January 2020. While this offers a number of opportunities both for outlets and individual media actors, it has opened up the Montenegrin media landscape to the same seen elsewhere, including a decrease in ad revenue and sustainable funding models, predatory competition from social media platforms, as well as an increase in the sharing of unverified information and disinformation. The state has responded to the evolving dynamics regarding online communication to attempt to reassert its control and dominance over these networks, which has led to a number of users being prosecuted for content shared online. As highlighted by Radomir Kračković of TUMM, due to the regional cross-border complexities present in the West Balkans, the ability for disinformation to spread beyond national borders can further exacerbate existing tensions in a manner where responsibility is diffuse and hard to track. This was demonstrated by a smear campaign against a number of people including journalists Sinisa Lukovic and Vuk Lajovic of the daily Vijesti and Dražen Živković of the news site Borba.me, who were included on a list published on the web portal udar.me as supposed "collaborators of Serbian secret services". While early rumours suggested this website and the list posted on it were created by the Montenegrin Ministry of Culture, as part of a campaign to discredit critical journalists, this was never sub-

stantiated. Altogether, the case demonstrates the ease with which disinformation can be shared, also leveraging cross-cutting tensions across the broader region, including language, religions, ethnicities and territory.

During the COVID-19 pandemic, the nature and frequency of mis/disinformation being shared within Montenegro and from other countries (most notably other Balkan countries) increased, in much the same way it has across Europe and the rest of the globe. However, the unique dynamics at play in Montenegro, most notably entrenched polarisation, the lack of an independent and agreed upon regulatory standard, as well as the prominent role played by the state established a situation worthy of further scrutiny. As highlighted by both Dragan Koprivica of Balkan Investigative Reporting Network (BIRN) and the Raskrinkavanju portal managed by the Centar za Demokratsku Tranziciju (CDT), the predominance of the state in responses to disinformation was significant. This was highlighted by Koprvica in a Balkan Insight piece: "The government continued pursuing its ambition to extend its constitutional competencies to encompass the assessment of the respect (or lack of it) of journalism's professional code. This "investigative" role, which the government created by positioning itself as the body that debunks fake news, was not followed by setting up a legal and institutional framework defining the rules in the cases of disinformation." This approach exacerbates existing problems with the fragmented regulatory environment and state actions and motivations in this field. This reinforces political and media hegemony without oversight as opposed to working towards transparent and shared standards and independent scrutiny.

If public broadcasts are seen as a spoil of war for the ruling party, the same concern can be seen in the state's ability to label and respond to alleged disinformation with little oversight or few checks on this power. This concern predates the COVID-19 pandemic, but highlights the fragility of a system that will be in much demand during this public health crisis. In January 2020, police in Montenegro arrested Gojko Raičević and Dražen Živković, the editors of two local news websites, IN4S and Borba, on suspicion of causing panic and public disorder in connection with reports of an explosion. Prior to this, Andjela Djikanović, Editor-in-Chief of Fos web site was arrested and detained for 72 hours for "causing panic and disorder" in relation to her reporting that stated that members of the Kosovo Special Police Forces were poised to intervene in Montenegro over Orthodox Christmas. Responding to criticism from Montenegrin civil society and media organisations, as well as the international community, the Foreign Ministry reiterated the point that Djikanovic should have checked her information prior to publication, before stating: "There are indications that the placement of this information was an attempt by a third party to interfere in Montenegro's internal affairs with the intention of destabilizing the state and disturbing law and order." Regarding the detention of Raicević and Živković, the Centre for Investigative Reporting (CIN) issued a strongly worded statement condemning the arrests stating: "The biggest producer of fake news in Montenegro is this government, which creates an atmosphere of fear and spreads panic about the country's alleged defence against external enemies and its own citizens." The process by which the disciplinary force of the state is deployed to counter dis/misinformation is a complex process but one that exerts significant to media freedom. Without transparency or accountability, it can be abused. In a Balkan Insight piece, CIN president, Milka Tadic Mijovic stated that while in power, the Democratic Party of Socialists (DPS) defined the government's detention of journalists such as Djikanović, Raičević and Živković as a response to a "special war that cer-

tain centres are waging via persons hiding behind journalists' IDs". In the same article, Mijovic also highlights a way by which dis/misinformation can be opposed in a manner that respects media freedom and does not consolidate power within the state. In response to the condemnation of the state's approach to these cases, referring to the opposition from journalists, unions and rights organisations, Mijovic reaffirms the approach that "self-regulation and raising professional standards are the best medicine against misinformation". This returns to a central concern regarding the Montenegrin media landscape, the absence of a shared standard to underpin the numerous regulatory regimes and the politicisation of journalistic professional standards. While there is no silver bullet to protecting media freedom, addressing this foundational concern would be a significant improvement, upon which other reforms could be envisaged and realised.

Legal Threats and SLAPPs

Defamation was decriminalised in 2012, which in turn led to a "decrease in the number of lawsuits against the media" according to the European Commission report the same year. However four years later, the Commission report in 2016 painted a bleaker picture, reminding us that "the number of defamation cases remains high, which points to weak self-regulation mechanisms, as well as to challenges in understanding the role of the media." Jovo Martinović summarised the climate succinctly, stating there is a culture of "I will sue you". As highlighted by Radomir Kračković of TUMM, there is an ongoing legal action brought by attorney Ana Kolarević, the sister of former Prime Minister, Milo Đukanović, against independent newspapers Vijesti, Dan, and Monitor over articles alleging that she took bribes during the purchase of Montenegrin state firm Telekom by Magyar Telekom (which is part of Deutsche Telekom). The cases, in which she is seeking €300,000 in damages (€100,000 for each outlet), commenced in November 2013 and are currently before the Constitutional Court.

According to Human Rights Watch, "at the end of 2012, there were 23 lawsuits pending against daily newspaper Vijesti amounting to €2 million including a 2007 lawsuit by Prime Minister Đukanović for a total of €1 million in damages." This is not isolated to Vijesti alone, in an interview for the same HRW report, Nikola Marković, editor-in-chief of Dan, stated that the outlets had "paid more than €200,000 so far in fines. Most of the cases related to Prime Minister Đukanović or his friends, such as former and current ministers and their family." The lack of independence in the judiciary further hampers the ability of media outlets to defend themselves against legal threats. This was highlighted by Mihailo Jovović, who stated that in his experience for an individual judge to rule in favour of media outlets in cases involving those in, or close to, the ruling party requires political will. Also outside the context of defamation actions, this lack of judicial independence has a significant impact on media freedom. In his interview with the fact-finding mission, Jovo Martinović, who is currently in court for a retrial following a previous conviction (see below for more details), alleged that the courts and prosecutors had been captured by the state and that the scale of political influence in the judicial process calls the independence of the judiciary into question. This perception is also shared by the European Commission, who stated in 2019 that although there are constitutional and legal guarantees in place to protect judicial independence, the system is still "vulnerable to political interference" and to counter this, a "firmer political com-

mitment is needed to ensure the full independence of Montenegro's justice system". Out of the 98 judgements at the European Court of Human Rights against Montenegro, nearly half (43) relate to Article 6 of the European Convention of Human Rights, the right to a fair trial.

While the decriminalisation of defamation in Montenegro represents a step towards incorporating European standards, the continued use of other legal bases for Strategic Lawsuits Against Public Participation (SLAPPs) by those in power, who should tolerate, due to their influence, power and prominence, increased scrutiny of their actions, coupled with the lack of independence of the judicial system contributes to a media and legal environment that actively and passively dissuades critical reporting and thus undermines the foundations of media freedom across the country.

Case Study: The Ongoing Trial of Jovo Martinović

One of the most prominent court cases against a journalist in Montenegro is the case brought against Jovo Martinović. A specialist in covering organised crime for leading international media outlets including The Economist, Financial Times, NPR and the BBC, Jovo Martinović was convicted under charges of the Criminal Code of Montenegro relating to the creation of a criminal organisation as well as illicit production, possession and distribution of narcotics. While he set up a meeting with defendants over the filming of smuggled weapons in France for journalistic purposes, the state claimed this was evidence of his active involvement in the criminal organisation he was documenting. According to a statement drafted by Reporters Without Borders: "Denied the right to due process, he spent almost 15 months in pre-trial detention before the High Court of Montenegro sentenced him to an 18-month prison term for marijuana trafficking and criminal association in January 2019." In October 2019 the Appeal Court of Montenegro quashed the verdict stating that the original court ruling had "failed to explain the facts and name the evidence that would justify a conviction of the journalist" and returned the case to the lower court for a retrial

On 8th October 2020, the High Court of Montenegro sentenced Jovo Martinović to one year in prison for participating in drug trafficking, acquitting him of charges for membership in a criminal organization. He will not spend time in prison due to the time already spent in pre-trial detention, but if upheld, the conviction means that Martinović will have a criminal record. The decision comes after a number of criticisms about the court's apparent unwillingness to consider the standard processes deployed by journalists to cover issues around organised crime, alongside evidence provided by the defence. There remains a fear that this ruling could establish a precedent in which courts fail to incorporate journalistic standards and practices into their assessment of the facts, to the disadvantage of the journalists and media workers on trial. Coupled with the unaddressed legacy of impunity for crimes against media actors, this could further chill media freedom and discourage others from important but sensitive reporting. This concern was picked up by Damien Cottier and Emanuelis Zingeris, rapporteurs for the Parliamentary Assembly of the Council of Europe: "We remain concerned that journalists here face pressure through judicial procedures or detention."

The toll of this case on Martinović is significant. Stating that he is perceived by the state to be a "non-cooperative journalist", he highlighted that

a point of these protracted legal actions is to exhaust and demotivate the defendants, while also affecting their ability to work effectively. Martinović has stated that while he is still able to work, the case has affected the government's willingness to engage and work with him, potentially limiting his ability to access sources and cover important issues. Moreover, the impact of this case goes beyond Martinović alone. In his words, it should be read as a warning to intimidate other journalists: "if you investigate this far, this can happen to you".

Impunity and Flawed Investigative Systems and Procedures

As previously mentioned, a number of high-profile attacks on journalists and media workers, including shootings and bomb attacks have taken place in Montenegro. According to analysis by the Commission for Monitoring Investigations of Attacks on Journalists, since 2004 there have been 85 attacks on journalists and media workers in Montenegro. In the last year alone there have been 11 attacks against journalists and media properties, such as offices of media outlets and private premises, including cars. These attacks have been compounded by inadequate and flawed investigations, which have fostered a climate of impunity, in which inaction or inadequate actions by the authorities has acted as implicit support for further attacks. As outlined in a number of interviews, the flaws in investigations demonstrate a structural and enduring concern about the state's response to crimes against journalists and media workers that has significantly contributed to the climate of impunity.

In 2012, after a request from the European Commission, Montenegro created the Commission for Monitoring Investigations of Attacks on Journalists, made up of nine members including representatives of the country's prosecutors. In 2016, following that year's elections, a new, differently composed commission was formed. According to its current chairperson, Nikola Marković, this new commission was necessary due to the need to be independent from the prosecutors, who are charged by the state to investigate crimes against journalists. The commission monitors the investigations and offers recommendations, but does not play an active role in the investigation itself. The representatives of the commission we interviewed outlined a number of issues that have significantly hindered investigations into crimes against journalists. These may be started soon after the crime itself, but can last decades without resulting in charges. For instance, for the attack on Olivera Lakić individuals were arrested but no charges have ever been brought and the crime remains unsolved. So while there may be results in investigations, few end in the perpetrator of attacks on journalists and media workers being brought to justice. Members of the commission identified two potential reasons for this failure, namely a lack of political will to see these cases through and undertake the necessary steps to achieve justice, and secondly, there is a lack of professional capacity of police and prosecutors. The role of prosecutors in investigating crimes against journalists was a common issue that ran through the majority of meetings held as part of this mission. Many interviewees highlighted the lack of professional and political capacity and will to explore all investigatory channels through which to identify the nature of the threats against journalists.

As seen in other countries, most notably Slovakia following the murder of Ján Kuciak and Martina Kušnírová, as well as concerns regarding the ongoing criminal case and public inquriy following

the assassination of Daphne Caruana Galizia in Malta, while the direct perpetrators of the crimes may be identified as part of the prosecutors' work, there are few investigations and prosecutions of the individuals or organisations who funded, orchestrated or commissioned the crime. This is evident in the outcome of the investigation into the murder of Duško Jovanović, editor-in-chief of Dan, who was shot dead while he was leaving his office in Podgorica by unidentified individuals in 2004. While Damir Mandić, a local organised crime figure, was arrested, charged and ultimately sentenced to 30 years in prison for being an accomplice to the murder, as outlined in the Council of Europe alert regarding the case: "The lawyer representing the Jovanović family and Dan staff has criticised the police investigation for failing to identify Mandić's accomplices; not identifying who ordered the killing; and not investigating possible links between Mandic and Montenegrin government authorities."

In the meeting with Mihailo Jovović and Dejan Milovac, Milovac highlighted that this legacy of partial or incomplete justice could be in part due to pressure placed on the prosecutors to achieve an outcome, even if only partial or inadequate, oftentimes connected to external public pressures including European Commission reports or international delegation visits. Combined with inadequate capacity and resources, prosecutors often fail to investigate every aspect of the case, which would require additional resources to address the added complexity and delay achieving an outcome. When it comes to the prosecutorial office and their work on the protection of journalists, they still require significant training in order to increase their capacities to the extent of being able to properly respond to the expectations set by the international human rights standards. Practical application of these standards by prosecutors, in combination with positive trends with Montenegrin judges should create necessary synergy in time ahead. Dejan Milovac defined the prosecutorial approach to protecting journalists as "window-dressing". This reduces any opportunity for follow up and hinders adequate investigation of the different forces behind the crimes. In light of the acknowledged gap between the limited actions undertaken by prosecutors and the latitude of investigative and prosecutorial powers and responsibilities provided under the law, many interviewees wondered why prosecutors choose not to exercise all necessary functions within their remit to respond to crimes against journalists and media workers. While doubts about the level of training and expertise within the prosecuting services were raised, a number of interviewees stated the level of training and knowledge was high. This leaves questions about independence, impartiality, leadership and a willingness and ability to undertake complex and resource-intensive investigations unanswered at this stage. Regardless, they offer insight into avenues to explore for reform, a process that in itself would require significant political will. Moreover, as Dejan Milovac highlighted, while the Government and Parliament have changed, the fact that prosecutors and judges will remain in place may prove an obstacle to significant change in the immediate future.

This was further highlighted by Nikola Marković, the chairperson of the Commission for Monitoring Investigations of Attacks on Journalists, who sees a divergence of approaches when prosecutors are faced with cases that are perceived to be political in nature. He noted that cases about high-level corruption or involving journalists who cover these issues are more commonly unsolved, while crimes where political connections or insinuations were absent are more commonly resolved. This raises concerns that the relevant authorities may be unwilling to duly investigate and prosecute these so-called political cases, such as the attacks against Olivera Lakić, Duško

Jovanovic and Tufik Softić.

Beyond this concern, criticism has endured as to the capacity and efficacy of the prosecuting services and the perception that it is a closed group that is slow to interact with outside organisations, including media outlets and, increasingly, the Commission for Monitoring Investigations of Attacks on Journalists. While the latter is not an investigatory body, for the implementation of its tasks it depends on information and documents from police and prosecutors. Since the Commission's inception, there has been an ongoing issue with securing the necessary cooperation from these institutions. However, while in relation to the police force the situation has improved over the last two to three years, the problem remains for the prosecutors. According to the Commission, prosecutors have not submitted documents in the last nine months, including documents related to the attempted murder of Olivera Lakić, and their only recent release of records required concerted public and press pressure. This undermines the nature of this relationship and undercuts the ability of the Commission to fulfil its mandate.

Despite the improved commitment of the police to contribute to the activities of the Commission, unresolved historic and ongoing failings by law enforcement and prosecuting services have helped to create and continue to fortify a climate of impunity for attacks on journalists and media workers in Montenegro. These include for instance the false testimony by police officers investigating the attempted murder of Olivera Lakić and the apparent disappearance of a detailed confession from the only individual convicted for the murder of Duško Jovanovic from the police archives. Although the Commission was able to obtain a copy of the confession and submit it to the relevant authorities, the court did not take it into consideration as part of the proceedings against the suspect. Furthermore, it was reported to the MFRR partners that inaction and a reluctance to respond to requests from external bodies, including legal representatives connected to the case, has undermined the efficacy of the state's response. For instance, in the case of journalist Tufik Softić who was beaten in front of his family home in Berane in 2007, the bat used in the attack was not investigated for DNA evidence until 2013, when prosecutors acted only after pressure from Softić's legal representatives.

Considered together, these concerns and examples paint a picture of a system in dire need of reform that despite some progress remains limited in its capacity to protect and provide justice for journalists and media workers. One tangible way to address this situation, and one recommendation echoed by a number of different interviewees, is to ensure that the Commission for Monitoring Investigations of Attacks on Journalists is well funded and that its existence remains guaranteed by the new administration. Many interviewees including Jovo Martinović, whose recent court action required intervention from the Commission, stated that the Commission is well intentioned but currently does not have adequate powers to ensure it is fit for purpose. For one, the Commission's remit is solely to monitor and advise, so any success in improving investigations depends on the government and investigating bodies alone. Furthermore, the Commission has no powers to ensure the government responds to or engages with the recommendations included in their reports and, as highlighted previously, the efficacy of the Commission's work is predicated on the willingness of State entities to cooperate, without a mechanism that can compel their compliance in line with agreed procedures. Nikola Marković highlighted the need to create and reinforce a standardised and systematic approach, including enforceable rules that govern

the relationship between the Commission, police and prosecutors. However, Marković did highlight the frustration of this idea being mooted by the Commission, asking why this has not been established as the foundation for this work by the participating state entities. Lastly, concerns about the composition of the Commission persist, in particular the fact that a member of Montenegro's 'secret police' sits on the Commission. However, Marković confirmed to the MFRR delegation that they have never participated.

For impunity to become a systemic and enduring problem, crimes against journalists and media workers alone are insufficient. Another vital component is how the state responds to these threats. Any unwillingness or resistance towards opening investigations, movements to undermine the investigation's independence, inadequate financial resources or allocations of personnel, insufficient training and a lack of commitment to undertake all necessary avenues of investigation all contribute to and reinforce an atmosphere of impunity. In this manner. The responsibility for tackling this issue is split between those who would attack journalists and those charged with investigating these crimes.

Working Conditions of Journalists and Media Workers and Health of Media Ecosystem

Authored by Renate Schroeder of European Federation of Journalists

The situation of journalists and media workers in Montenegro is at an unprecedented low level and has deteriorated due to the COVID-19 pandemic. Though the state has offered more than €600,000 in financial support to media outlets, there has not been any transparency about its use or any monitoring or evaluation as to whether it has benefitted the journalists, media workers and outlets most in need. Without the requisite transparency, there are concerns that the allocation of funds related to the pandemic would fall foul of the polarisation of the media environment, with funds disbursed unequally and used to support pro-government outlets. The crisis comes against a background of ongoing deterioration of the conditions for journalists and media workers in Montenegro. In 2019, the European Commission stated: "The economic situation of journalists remains precarious, particularly due to job insecurity and low salaries, putting them at risk of editorial interference and possible self-censorship."

Radomir Kračković of TUMM said that self-censorship is a huge problem both in private media and public service media. Media owners are putting pressure on their employees because of their own economic and political interests. This has led organisations such as TUMM to call on the authorities to look to examples from countries such as Croatia and Slovenia to protect outlets and media actors from the influence of their owners, which could include "the introduction of the obligation to adopt a codified document (statute) that would regulate any unregulated issues in media, such as the choice of editor-in-chief." This was put forward during the public debate on the recently adopted media law, with the proposed amendment to Article 29 of the Media Law:

> The special act of the media regulates the issues of defining editorial policy, the involvement of journalists in the appointment and dismissal of the editor-in-chief, the freedom of

> work and the responsibility of journalists, and the conditions and procedure according to which the editor-in-chief has the right to resign with just satisfaction in cases of such a change in ownership or the governing structure of the media, which leads to a significant change in the program base or program content of the media (so-called clause of conscience).

Further to this, the media law establishes a new provision, advocated for by TUMM, for protecting the integrity of journalists and media workers' work. This would prevent editors from publishing articles they have modified without gaining the consent of the journalist or media worker who produced the piece in question.

In addition, the recently adopted media law establishes a fund for media pluralism, which is financed from the state budget. According to TUMM, this fund can support content, including the:

> promotion of cultural diversity and preservation of tradition, European integration of Montenegro and current social, political and economic topics...topics dedicated to science, culture, art and education, protection of rights and dignity of minority peoples and other minority nationalities and children, sports and youth. The Fund will also finance topics of importance for environmental protection, sustainable development and tourism, promotion of health and healthy lifestyles, promotion of agriculture and tourism, affirmation of entrepreneurship, consumer protection, fight against corruption, fight against addiction, social integration of vulnerable categories of society, development of civil society and volunteerism and promotion of media literacy.

Funded from 0.08% of the annual state budget, the fund will be administered by the Board of Regulators for Audiovisual Media Services and an independent commission and will be distributed once a year through a public competition. TUMM also stresses that "self-regulatory bodies are provided with financial assistance from sub-funds to cover operating costs." Correctly administered and transparently disbursed, this could address some of the economic difficulties highlighted by the interviewees.

Due to lack of opportunities coupled with inadequate working conditions, low income and the proliferation of insecure contracts, the journalistic profession is not perceived as attractive, with journalism students and experienced media professionals alike looking for better working conditions in the PR or communications sector. This was captured in TUMM's report, New Media Old Problems 2019, which found that of those interviewed "as many as 63% say they work overtime, and just over 13% of employees have the luxury of getting the job done during regular working hours. Yet, every other respondent never gets the compensation to which they are entitled for working overtime." As concerns students, Boris Ristović of JUFREX commented that there is an imbalance between the number of courses and modules available to study and the number of jobs available, while Mihailo Jovović estimated only 10% of the journalism students he has met, want to be journalists.

The absence of a financially sustainable independent media short of a small number of pro-

ject-based portals, paired with the lack of alternative funding sources outwith conventional outlets or the state, has restricted the number of alternatives on offer, which has also resulted in the loss of more specialised reporting and encouraged the growth of 'clickbait' journalism. This has further damaged both the media environment itself, but also how reporting is consumed, understood and trusted by the broader community; media literacy is not being nurtured or supported.

Commenting on the health of the overall media environment, both Mihailo Jovović and Dejan Milovac outlined the threats to investigative journalism. They agreed that the environment in Montenegro is not welcoming to this form of journalism, which tends to require significant allocation of time and funds, as well as institutional support to ensure they can defend against any adverse responses including the threat of legal action. This is affecting many outlets, including larger media houses. Mihailo Jovović stated that Vijesti, one of the largest outlets in Montenegro, could not afford to maintain its investigative unit. This has been seen globally across the industry and has placed the onus of this long-form and resource-heavy form of reporting on non-governmental organisations (NGOs), but their capacity is similarly diminished and they do not generally have the ability to publish with the frequency and targeting that media outlets are experienced in delivering. But while this and the limited ability to cover stories or issues outside their specialism may undermine their ability to carry out the necessary reporting, the ability for NGOs to access funding from foundations and other 3rd sector bodies (both based in Montenegro and international donors) offers them a level of financial security and flexibility to pursue this work that is not available to media outlets.

An issue raised by multiple interviewees was the lack of solidarity between journalists, media workers and outlets and the impact this has on the broader media environment. Whether this is a tangible outcome of the endemic polarisation that has constructed dichotomies between ideas, beliefs, backgrounds or political opinions in a manner that encourages confrontation as opposed to collaboration, or the fighting over scant resources or support, this has magnified the other threats outlined in this report. This has resulted in media outlets and actors being unable or unwilling to seek out or provide support or solidarity from or with others. This lack of solidarity is concerning especially in light of the fact that union membership is high. According to TUMM, it has 600 members from more than twenty Montenegrin media or approximately half of all media sector workers. This is a significant basis upon which solidarity can be built and directed towards the improvement of media freedom in Montenegro. There appear to be hierarchical issues which need to also be addressed. When it comes to negotiations for the adoption of the Branch Collective Agreement for this sector, there appears to be a lack of will on behalf of the media owners to resolve this issue. According to Kračković this issue is reinforced by the lack of shared regulatory standards.

Conclusions

The election result of August 2020 is a jolt to a system that had, in the opinion of many of the interviewees, centralised power and entrenched division in a manner that will have long lasting impacts on society, culture, politics and the media. While there was cautious optimism about how the change in administration could bring forth a change in priorities, clearer commitments to embracing European standards on everything from public service broadcasting, defamation law and self-regulation, reforms to address impunity and changes to support the livelihoods of media actors, many of our interlocutors resisted defining the scale of this shift, instead holding off to judge the new coalition by their deeds as opposed to their commitments. As highlighted in the series of interviews as part of this mission, there are a litany of issues that require immediate, concerted and urgent attention from the new administration, each of which requiring the state to move beyond existing and calcified schisms and divides to work towards strengthening media freedom for all, not solely their own cohorts, patrons or communities.

Media freedom will only survive when journalists and media workers are able to work safely and securely, free from threats of violence or intimidation, corporate or state interference or the dehumanisation that has defined much of the opposition to a free media. A central tenet of the much-needed change of direction is the need to dismantle the entrenched polarisation that frames the editorial and political position of public service broadcasters, trust of media actors in the state's ability to respond to crimes against journalists, the allocation of support funds and resources and to ensure a free and fair playing field for every outlet and actor to safely work. This polarisation - the "spoils of war" mentality - is a predominant factor of the landscape that will take committed, well-resourced and structured work to address. The new administration needs to commit to the necessary reforms for building and maintaining a media landscape that conforms with European standards and is defined by support for public interest reporting, transparent funding, shared regulatory standards and a safe working environment free from attacks and threats, embedded in a broader system that respects the rule of law, in law and practice.

This is significant work with no quick fixes. However, a number of actions can be identified that will be key to rebuilding the trust and implementing the sustainable reform necessary to achieve such a media landscape.

It is essential that crimes against journalists and media workers, both ongoing and enduring impunity cases, are investigated and prosecuted fully and with the urgency they require. Those investigations and prosecutions must be thorough and effective and bring to justice the perpetrators of and, where relevant, masterminds behind attacks and threats against journalists and media workers. This would not only send a significant signal to the media community, but also demonstrate to those seeking to silence critical reporting that they are no longer beyond justice. This will require significant reform of law enforcement and prosecuting authorities, underpinned by investment in building their capacity. It will also require a change in mentality and culture, especially in the prosecutors' approach to complex cases as described by our interlocutors. In terms of supporting independent oversight mechanisms that build public trust, it is vital that prosecutors comply with their responsibilities to respond to the needs of the Commission for Monitoring Investigations of Attacks on Journalists, such as providing the necessary and complete documentation in a timely fashion to aid all mandated monitoring. Establishing rules or guidelines that

are monitored and enforced would be an important step towards reinforcing this responsibility, but this should not delay progress; the expectation for prosecutors to work with the commission is already established.

The polarisation in Montenegro casts a long shadow but is especially pronounced in the regulatory environment and the role and approach of the public service broadcasters. While the organisation of different self-regulatory mechanisms is not unique to Montenegro and not inherently problematic, the lack of shared, transparent and uniform standards upon which all mechanisms are built fosters uncertainty and unnecessary complexity, while also reinforcing the perception that there are no shared norms that cut across divisions and foster a shared ideal of journalism that needs to be either protected or improved. There have been movements to improve this situation outlined in the recent media law but greater engagement between state entities, regulatory authorities, councils such as the Media Council for Self-Regulation and the Self-Regulatory Council for Local Press and media outlets and organisations is needed to ensure that any modifications address the balance between the different priorities in a manner that is in line with international best practice and protects media freedom, pluralism and diversity. Furthermore, as outlined by the European Commission and organisations such as Reporters Without Borders and Osservatorio Balcani e Caucaso Transeuropa the progress of transitioning RTCG towards a public broadcaster is incomplete. The longer the outlet remains below the requisite standards, the easier it will be for the new administration to mimic the acts of the previous government, using the broadcaster to support the government and insulate it from critical and diverse voices. Due to the importance of the RTCG Council to the success of the reform, it must be improved, including reform of the selection and approval process of council members and improved responses to conflicts of interest and guarantees of independence in its functioning. Without reform, RTCG can continue to be used to deepen polarisation and insulate the state from scrutiny, while also further disadvantaging private media outlets.

While there was significant criticism from civil society towards the state's decision to reform the media law in an election year, the new media law has promised to modernise and simplify the rules governing the media in Montenegro, while also attempting to move closer to European standards as part of the accession process. However, while the reform attempts to grapple with the patchwork regulatory environment and address power discrepancies between editors, owners and journalists, a number of reforms threaten fundamental principles for journalism. Most notably, the fact that prosecutors will be able to force journalists to reveal their sources through threats of punitive action undermines the work of journalists and will dissuade sources and whistleblowers to step forward. Closer adherence to international standards is needed, including judicial review and avenues for appeal. This needs immediate attention to ensure it does not do lasting damage.

A change of administration following an election does not signify meaningful change in itself, but it offers a significant opportunity to look at the distance already covered to protect media freedom and reaffirm Montenegro's commitment to protect every journalist, media worker and outlet. While optimism may be couched in cautiousness, this is an opportunity that should not be cast aside. The health and viability of the media landscape in Montenegro and everyone who depends on it is at stake.

Recommendations

To the authorities of Montenegro:

- Address the polarisation of politics and media through meaningful engagement with all relevant stakeholders;

- Establish shared standards and principles for regulation of the media market that encourage a fair playing field for all outlets, both public and private;

- End impunity for attacks and threats against journalists and media workers and create a safe working environment. This will require the state to, among other things:

    - Reform and build the capacity of law enforcement and prosecuting authorities to thoroughly and effectively investigate such crimes and prosecute all those responsible, including perpetrators, masterminds and those who may have funded or profited of them;

    - Empower the Commission for Monitoring Investigations of Attacks on Journalists to adequately carry out its oversight mandate, including endowing it with adequate resources and the necessary powers to compel the cooperation of other state institutions;

- Continue the reform of RTCG from state broadcaster to public broadcaster in line with international standards and best practice. This includes ensuring independence in its management and oversight;

- Reform journalistic source protection in line with international standards, so whistleblowers will feel safe to speak out in the public interest;

- Ensure that all new or amended media laws are drafted in line with international standards and best practice, including in terms of media freedom and pluralism; and,

- Ensure that government advertising is advertised, tendered and administered to private media outlets in a fair and transparent manner.

To the journalistic community in Montenegro:

- Practice responsible journalism in line with the highest ethical standards, that does not contribute to divisiveness and polarisation;
- Encourage solidarity between journalists, media workers and outlets, irrespective of differences to encourage greater collaboration and shared commitments to protecting media freedom, transparency and pluralism; and,
- While respecting the principle of self-regulation, ensure that the practice overall is built on a shared understanding and commitment to international standards on media freedom and pluralism.

To the international community:

- Condemn any attacks and threats against journalists;
- Ensure media freedom, transparency and pluralism is scrutinised as part of the accession process for the European Union; and,
- Continue to support reform in Montenegro towards a more free and pluralist media landscape.

MEDIA FREEDOM RAPID RESPONSE

Media Freedom Rapid Response (MFRR) tracks, monitors and responds to violations of press and media freedom in EU Member States and Candidate Countries. This project provides legal and practical support, public advocacy and information to protect journalists and media workers. The MFRR is organised by a consortium led by the European Centre for Press and Media Freedom (ECPMF) with ARTICLE 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the Institute for Applied Informatics at the University of Leipzig (InfAI), International Press Institute (IPI) and CCI/Osservatorio Balcani e Caucaso Transeuropa (OBCT). The project is co-funded by the European Commission. www.mfrr.eu

supported by the European Commission