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*The protection of journalists
in Croatia:
the EU talks a lot but acts too little.*

by Stefanie Pukallus

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Abstract

The EU Charter of Fundamental Rights enshrines the right to freedom of expression. The European Commission refers to this right a cornerstone of EU democracy. As such, so the European Commission claims, the protection of the right to freedom of expression is a condition any country applying for EU membership has to fulfill. The case of Croatia proves different. Croatian journalists often find themselves in situations of undue political pressures and confronted with various kinds of censorship. And yet, Croatia became the 28th EU member state on 1 July 2013. This paper shows that in reality, the EU does not push as hard for freedom of expression in acceding EU countries as it likes to claim.

The protection of journalists in Croatia: the EU talks a lot but acts too little.

1 December 2009 was the day when the EU Charter of Fundamental Rights became legally binding; the day when the EU could finally start its pan-European quest for the protection of the right to freedom of expression with the Charter as its magic shield. Humorous exaggeration aside, the EU Charter is an important document that, according to Viviane Reding, Commissioner for Justice, Citizenship and Fundamental Rights (2010-2014), 'represents the most modern codification of fundamental rights in the world' and something 'Europeans can be proud of'¹. The right to freedom of expression is enshrined in art. 11:

1. 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.

2. The freedom and pluralism of the media shall be respected.

Freedom of expression is considered a cornerstone of democracy in Europe. Or as Neelie Kroes, Commissioner for Digital Agenda and responsible for EU media freedom (2010-2014), puts it: 'We [Europe] are the birthplace of democracy; a global guardian of

fundamental rights. If Europe is to be anything more than an economic union, it should be as a model and champion of those values'². And for Kroes, to 'champion' these values means to 'be the global best-in-class' and to have 'the freest and proudest media in the world'³.

So how could we become the 'best-in-class'? The answer is rather simple: If we want the freest media in the world, then the EU - equipped with the Charter of Fundamental Rights - needs to ensure that journalists and notably investigative journalists across the EU can exercise their right to freedom of expression free from fear, harassment, threats, undue political pressure and censorship. Kroes duly endorses '[q]uality, investigative journalism [as] a defining feature of European political culture, a foundation of our democracy'⁴. She emphasises the need to protect it, and condemns threats against journalists: 'Very recently, a Greek extreme-right party made death threats against a Greek journalist. I am very concerned about such threats - I denounce them. These incidents show that (...) we have to think harder about how to protect journalists themselves - and anyone who uses his right to speak up - from physical or verbal violence'⁵. Kroes further insists that she 'could not disagree more' with those who say about that protecting the right to freedom of ex-

2 Neelie Kroes (2013) Safeguarding media freedom and pluralism, 22 March, SPEECH/13/252, http://europa.eu/rapid/press-release_SPEECH-13-252_en.htm.

3 Ibid.

4 Neelie Kroes (2012) Defending media freedom, 8 May, SPEECH/12/335 http://europa.eu/rapid/press-release_SPEECH-12-335_en.htm?locale=FR.

5 Ibid.

1 Viviane Reding (2010) The EU's accession to the European Convention on Human Rights: Towards a stronger and more coherent protection of human rights in Europe, 18 March, http://ec.europa.eu/commission_2010-2014/reding/pdf/speeches/speech_20100318_1_en.pdf.

pression is 'too complex, too risky, too much of a headache to even think about (...). This is about democracy, it is about freedom, it is about Europe'⁶.

This is a clarion call indeed. Some seventy years after the end of World War II and Europe's extreme experiences of censorship, propaganda, authoritarian regimes, dictatorships and their attendant curtailing of citizens' rights, the EU has equipped itself with a Charter of Fundamental Rights and commits firmly to the protection and defense of the fundamental right to freedom of expression. Furthermore, as Kroes points out, the EU continues 'to push for freedom of expression in those countries seeking to join the EU'. To this the Commission adds: 'Freedom of expression is a key indicator of a country's readiness to become part of the EU. It implies a commitment to democracy, good governance and political accountability. Accordingly, no country can join the EU without guaranteeing freedom of expression as a basic human right (art. 49 Lisbon Treaty).

However, the accession process of Croatia, which became the 28th EU member state on 1 July 2013, shows that in reality, the EU does not push as hard for freedom of expression in acceding EU countries as it likes to claim.

The example of Croatia

Croatia declared its independence from Yugoslavia in 1991. This led to the Croatian War of Independence (1991-1995). In 1999 Croatian leader Franjo Tuđman

⁶ Neelie Kroes (2012) Safeguarding Media Pluralism in the EU, 27 June, SPEECH/12/504 http://europa.eu/rapid/press-release_SPEECH-12-504_en.htm.

died, and with him the authoritarian regime in Croatia came to an end. In 2003 Croatia had apparently undergone sufficient democratic reforms to apply for EU membership. The accession negotiations started in 2004, in 2011 Croatia signed the accession treaty and finally, in 2013 became a member of the EU.

Since the early 1990s Croatia has faced serious repression of media and journalists' rights. Freedom of expression was significantly curtailed through varied forms of unofficial censorship in spite of art. 34 of the Croatian Constitution which guarantees freedom of expression and prohibits censorship.⁷ In 2011 the Association of Croatian Investigative Journalists (ACIJ) published its 'White Paper – A Chronicle of Threats and assaults on Journalists in Croatia 1990-2011'. It consists of 70⁸ stories of journalists who have experienced censorship and intimidation, often over long periods in their careers. Whilst most have persevered in their journalistic roles, others have succumbed to these pressures and left their profession.

The stories published show a variety of forms of censorship and restrictions on the freedom of expression of journalists, particularly when it comes to reporting on corruption and the investigation of war crimes committed in the early 1990s. Censorship has ranged from threats in the form of letters, hone calls, and public insults to physical violence against journalists. In 2008 two journalists were murdered in a car bomb attack. Another one was so badly

⁷ See SEC(2005)1424.

⁸ The ACIJ collected over a hundred stories but in the end only seventy were published as the remaining journalists had withdrawn their consent to have their stories published.

assaulted that the police categorised it as attempted murder. Further, journalists have on occasion been denied access to press conferences and events and were sacked from their jobs after controversial pieces were published; news organisations were bugged, editors were dismissed on orders of state authorities which appointed new editors, and in 2010 the Indigenous Croatia Party of Rights (AHSP) publicly burned a copy of the Serbian independent newspaper 'Novosti' and a week later the Yugoslav flag in order to show their disregard for Serbian media. The newspaper office had to be guarded by the police for over a week.

Journalists have also been arrested and questioned, have been accused of publishing confidential information without ever being told which documents the charges related to and which the police based their investigations on. In the 1990s 'controversial' journalists would occasionally receive mobilisation papers and were put into military training to supposedly prepare for combat at the front. Certainly, this is an example confined to the context of the Croatian War of Independence but to suppose that with the death of Tuđman and the accession process to the EU everything changed for the better would be wrong. According to the White Paper, with Tuđman dead the main source of orchestrated attacks and intimidation of journalists disappeared. Whilst this was in itself a good thing 'it also led to the worst instances of abuse' (ACIJ 2011: 8): various offshoots emerged. These offshoots include several groups of the 'so-called intellectual underworld' which are 'linked with different fractions [sic] in the ruling party, (...) local and regional strongmen, con-

victed and non-convicted war criminals, police ministers (...), nouveau riche from the edge or the other side of the law, ordinary criminals ... They all generally act relatively independently' (ibid.) which according to the ACIJ (ibid.) explains why the amount of violence since 2000 'was even greater than in the nineties'. Besides the crimes against journalists, Croatia also faces an issue of impunity in three ways: first, police reports are filed but often not followed up on; second, assailants of journalists are often charged with disturbing the peace instead of assault; third, investigations – when they happen – take a long time and often only succeed in finding the hitman whilst the orchestrators of the crimes remain unidentified.

What this short overview shows is that Croatia faces – 20 years ago and today – serious challenges to the right to freedom of expression and correspondingly, a truly free press. There is a well-founded concern for the safety of journalists when exercising their profession and, as outlined above, an issue of impunity. In other words, those who commit crimes against journalists – crimes that either escape justice altogether or face only minor charges such as disturbing the peace.

That the EU knew about the various forms of repressions of media freedom and the danger that journalists faced is certain as the Commission's Progress Reports on Croatia show.

The Progress Reports 2005-2013

The Progress Reports 2005-2013 point to three main challenges to the exercise of freedom of expression. These include first, Croatia's libel law; second, undue

political pressures on the public service broadcaster HRT (Hrvatska Radio Televizija) and third, crimes against journalists.

The first challenge is addressed in the Progress Reports 2005⁹ and 2006¹⁰. For example, the Progress Report 2005 criticises the incomplete decriminalisation of Croatian libel law: ‘Since October 2004, four journalists have received suspended prison sentences for libel. The revised libel regime still appears to lead to a certain degree of self-censorship among journalists and could be further improved’¹¹. In June 2006 the Croatian ‘Parliament approved amendments to the Criminal Code abolishing the sanction of prison sentences for libel’. Whereas this appeared to be a promising improvement, in reality the new changes to Croatian Criminal Law – which entered into force on 1 January 2013 - need to be understood as a setback with regard to media freedom. According to this law insults, defamation, and slander are considered crimes. If a journalist is accused of any of these crimes he/she needs to prove that his/her intention was not to harm the other party’s reputation. As such, this law reversed the amendment of 2004 which placed the burden of proof on the prosecutor. The new law places the burden once again on the accused, in contradiction to the principle that anyone accused is presumed innocent until proven guilty. The EU has remained silent on the recently passed law and its implication for the possibility of freedom of expression 9 SEC(2005)1424.

10 SEC(2006)1385.

11 SEC(2005)1424: 18.

and media freedom in Croatia. No speech, no report, no mention of it at all.

With regard to the second, the Progress Reports of 2005, 2006¹², 2007¹³, 2008¹⁴, 2010¹⁵, and 2011¹⁶ address undue political pressures on and interference with the public service broadcaster HRT in particular and state that these raise concerns for freedom of expression. For example, the Progress Report 2006 states that the ‘concerns expressed in the 2005 Progress Report concerning possibilities for political influence at the local level remain valid. Two cases in particular concerning the political TV shows “Otvoreno” and “Latinica” also highlighted political pressure being exerted on the public broadcaster HRT, threatening its independence and raising concerns about freedom of expression in Croatia’¹⁷. This is a continuing problem as the Progress Report 2007 points out: ‘the public broadcaster HRT continues to be subject to occasional political pressure, raising concerns about freedom of expression’¹⁸. Both Progress Reports in 2010 and 2011 emphasise that HRT ‘continued to face serious [managerial] difficulties’ that had an impact on its functioning. The 2012 Monitoring Report mentions a new law on the public broadcaster adopted in July 2012 which was passed in order to achieve

12 SEC(2006)1385: 9.

13 SEC(2007) 1431.

14 SEC(2008) 2694.

15 SEC(2010) 1326.

16 SEC(2011) 1200.

17 SEC(2006)1385: 9.

18 SEC(2007) 1431: 11.

more editorial independence from particularly political authorities. However, this law has not brought about an immediate success – after all, and as the Commission points out, improving the situation with regard to media freedom ‘goes beyond a simple transposition of EU rules: it calls for behavioural and cultural change in politics, judiciary and media’¹⁹. Correspondingly, the Commission stresses that ‘continued efforts are needed to ensure the independence of the public service broadcaster and to increase its transparency’²⁰. And then the EU leaves it at that.

With regard to the third challenge, the Progress Reports of 2008²¹, 2009²² and 2010²³ address the topic of crimes against journalists. The EU’s concern was triggered by the murder of two Croatian journalists in 2008: ‘Cases of physical attacks as well as death threats against journalists have gained in prominence and require more thorough investigations. Journalists working on corruption cases or organised crime are increasingly targeted. There has been limited success in identifying and prosecuting perpetrators. Two journalists have been recently murdered.’²⁴ These two journalists were Ivo Pukani and Niko Franji. They were killed by a bomb placed in a scooter next to Pukani’s car. To date, their murderer has not been caught. These two murders and the

attempted murder of Dušan Miljuš, a journalist of Jutarnji List, led the Commission (2009) to note that ‘(...) threats against journalists working on cases of corruption and organised crime have been increasing. There has been limited success in identifying and prosecuting perpetrators and instigators of certain physical attacks on journalists’²⁵ and to stress that ‘Particular vigilance is required as regards freedom of expression and threats against journalists.’²⁶ It appears that the events of 2008 and the findings of further inquiries into the situation of journalists in Croatia alarmed the Commission. Accordingly, in 2010 the Commission stresses that all of the above issues ‘need to be addressed by the countries [the Western Balkan countries including Croatia] concerned as a matter of urgency’²⁷ and emphasises that the ‘Commission will closely monitor progress in (...) areas such as the legal framework and its compliance with European standards, in particular regarding defamation; the responsibility of authorities to duly sanction all cases of attacks on journalists; the establishment of self-regulatory bodies and their contribution to enhanced professionalism; the role of public service broadcasters in pluralistic democracies (...)’²⁸. Further the Commission announces the ‘organisation of a conference on freedom of expression and the media in the enlargement countries in spring 2011’ - this conference was the called the ‘Speak Up Conference.’²⁹

19 http://ec.europa.eu/enlargement/policy/policy-highlights/media-freedom/index_en.htm.

20 SWD(2012) 338 final: 7.

21 SEC(2008) 2694.

22 SEC(2009)1333.

23 SEC(2010) 1326.

24 SEC(2008)2694: 11.

25 SEC(2009) 1333: 19.

26 Ibid.: 56.

27 COM(2010)660: 8.

28 Ibid.: 9.

29 The first Speak Up Conference was held in 2011

Whereas the Commission's position statement reconfirms the importance of freedom of expression for any country that wishes to join the EU, it does not lead to any practical consequences. On the contrary and rather surprisingly, the EU has been increasingly silent: In the reports of the following years 2011-2013 there is no mentioning of the 'Speak Up Conference' and its results. Whilst the 2011³⁰ Progress Report notes en passant the limited progress in investigating threats against journalists and a Commission report of 2012³¹ does not mention the issue of freedom of expression at all and in 2013 the Commission merely notes that the 'investigation and prosecution of cases of intimidation and violence against journalists continued'³².

How can the EU go quiet with regard to the state of freedom of expression in Croatia? Croatia ranks only 64th on the World Press Freedom Ranking 2013.³³ A new criminal law has just been passed which restricts media freedom and has the potential to increase self-censorship amongst Croatian journalists. However, when I inquired at the Commission about the state of media freedom and if the right to freedom of expression in Croatia in May 2013, I was told: 'We'd like to inform you that following the 2012 Comprehensive

(http://ec.europa.eu/enlargement/tenders/support-for-civil-society/speak-up-conference/index_en.htm) and the second Speak Up Conference was held in 2013 (http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2013/06/20130614_2_en.htm). 30 SEC(2011) 1200.

31 COM(2012) 601.

32 COM(2013) 171: 10.

33 http://fr.rsrf.org/IMG/pdf/classement_2013_gb-bd.pdf.

Monitoring Report on Croatia (page 15) "Croatia is meeting the commitments and requirements arising from the accession negotiations and is in a position to implement the acquis as of accession in the fields of freedom of movement for workers, company law, intellectual property law, financial services, information society and media..." (personal communication, May 2013). And when I raised the issue of impunity in Croatia (and other EU member states) the Commission reassured me that 'the European Commission raises proactively the issues of impunity in discussions with third countries' whilst simultaneously telling me that 'there is currently no dedicated dialogue with Member States regarding violence against journalists'. No, there isn't: the ACIJ confirmed that the EU administration did not emphasise the need to protect journalists while Croatia was in its accession process.

So where does this leave us with regard to the EU Charter of Fundamental Rights and freedom of expression? The example of Croatia shows that the EU observes and comments on restrictions of freedom of expression, that it makes recommendations and voices criticism, then waits, and finally looks away when the required improvements are not realised. Croatia joined the EU anyway – its accession wasn't delayed because of challenges to freedom of expression and this points to the conclusion that freedom of expression is not a crucial criterion for accession (noted above) as the EU likes to claim. And maybe the EU found that the situation with regard to media freedom in Croatia was a little 'too complex, too risky [and] too much of a headache' after all. With its non-intervention the EU missed

an opportunity to show that the EU Charter of Fundamental Rights represents more than a paper commitment. It failed to show that EU Fundamental Rights are substantive and not, to borrow Geuss' terms, 'a vacuous conception' and a 'kind of puffery or white magic'³⁴. The EU could have demonstrated that Reding's 'Zero Tolerance Policy' on violations of the Charter and her commitment to 'certainly not shy away from starting infringement proceedings whenever necessary'³⁵ were more than rhetorical flourishes. But it didn't. Instead the nearer the accession date came, the more silent the EU became and silence is just not enough.

34 Geuss, R. (2001) *History and Illusion in Politics*.
Cambridge: Cambridge University Press, 144.

35 Viviane Reding (2010) *Towards a European Area of Fundamental Rights: The EU's Charter of Fundamental Rights and Accession to the European Convention of Human Rights*, 19 February, SPEECH 10/33, http://europa.eu/rapid/press-release_SPEECH-10-33_en.htm.

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