LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for March 2013

ANEM

Kingdom of the Netherlands

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This project is financially supported by the Embassy of the Kingdom of the Netherlands

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OPEN SOCIETY FOUNDATION, SERBIA

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TABLE OF CONTENTS:

I FREEDOM OF EXPRESSION

In the period covered by this Report, several cases pointing to potential violations of freedom of expression were recorded.

1. Threats and pressures

1.1. At the press conference held on March 8, the Vice-President of the Socialist Party of Serbia (SPS) and the President of the Provincial Committee of the SPS for Vojvodina Dusan Bajatovic said that the SPS was requesting the change of editorial policy in Radio-Television Vojvodina (RTV), saying it was biased in favor of the Democratic Party (DS). If not, Bajatovic warned, his political party would demand the dismissal of all the managing people in the station. He added that the SPS had requested a list of the 20 highest salaries in RTV. Bajatovic also said, "I have heard that the salaries of some RTV managers exceed my own, which is, you will admit it, very difficult to achieve". The Director of the RTV News Program Igor Bozic told the daily "Blic": "Bajatovic has not put forward a single piece of evidence to back up his claim that RTV is biased towards a particular political party. Analyses have shown our program to be well balanced, as confirmed by the RBA analysis after the elections". The journalists' associations NUNS and NDNV have condemned Bajatovic's statement. They said, "Bajatovic has thereby joined the campaign that is being waged about the Vojvodina public service broadcaster, which started with stories in ultranationalist media, controlled/edited by Bajatovic's (former?) political allies and war propagandists from the notorious 90s".

In our previous report, we have written about a series of texts published in the weekly "Pecat", whose editor-in-chief is the former RTS Director and former high SPS official, Milorad Vucelic. Vucelic's texts contained vitriolic verbal attacks on the managers and journalists of RTV. NUNS and NDNV also said that the attacks against RTV had "occurred at the moment when that station's ratings and public standing were finally on the rise after 20 years of financial and professional decline". The press releases of the two associations went on saying that RTV had been operating for the last 14 years as the foster child of the state, in rented and unsuitable premises, with unstable revenue making its proper functioning impossible. The Broadcasting Law insists on the obligation to ensure that the programs of PSBs, and especially news programs, be protected from any interference of the government, political organizations or business power players. On one hand, PSBs are obligated, when producing and airing news program, to adhere to the principles of unbiased and objective reporting in dealing with various political interests and entities, to promote

freedom and pluralism of public opinion, as well as to prevent any form of racial, religious, ethnic, or other animosity or hatred, or intolerance towards different sexual orientation. On the other hand, however, the Broadcasting Law has created a complex mechanism of electing the managing structure and editors of RTV, precisely in order to protect the PSB from political interference, as well as to ensure that its program is unbiased and committed to the public interest and not to that of the political elites. Hence, in Serbian PSBs, including RTV, the managing board consists of journalists, as well as well-established experts for the media, management, law and finances and other renowned figures. The managing board is appointed by an independent regulatory body. With a two-third majority, the managing board appoints and dismisses the general manager, after an open competition. It also appoints and dismisses the directors of the radio and television and the programming editors-in-chief. The extent to which RTV has managed to achieve unbiased reporting and commitment to the interest of the public is evidenced by the regulators' reports, such as, for example, the Report on the Oversight of the Operations of the Broadcasters During the Election Campaign for last year's presidential, parliamentary, provincial and local elections. According to these reports, the RTV program was pretty much balanced, even more balanced than the program of the national public service broadcaster RTS, even in the period when the DS was in power both in Vojvodina and at the national level. It is therefore unclear what the foundations for the allegations of SPS and its vice-president Bajatovic are supposed to be. In that sense, it is impossible not to view Bajatovic's statement as an attempt to influence the editorial policy of RTV as anything else but as a pressure (forbidden under the Law on Public Information) on a media and its staff and influence that may obstruct their work.

1.2. On March 23, the journalist of the website "Pistaljka" Ivan Ninic was questioned in the premises of the Criminal Police Administration of the Ministry of Internal Affairs, under the subpoena of the First Basic Prosecutor's Office in Belgrade. Ninic was questioned in relation to the criminal charges pressed after the release of an article on the aforementioned website, claiming that the company Yunycom d.o.o. had signed a contract on a donation with the Blood Transfusion Institute of Serbia before landing the deal on procuring the tests for blood-transmitted diseases. The article in question said that, after two failed tenders dismissed by the Republic Commission for the Protection of Legality in Public Procurement Procedures, the Blood Transfusion Institute of Serbia had allocated to the company Yunycom d.o.o., in a direct negotiation procedure, the procurement of 120.000 ELISA tests for blood-transmitted diseases, the total value of which was 21.6 million dinars. Less than two months before that, the Manager of Yunycom d.o.o., Dr. Slobodan Krivokapic and the Director of the Institute, Dr. Snezana Srzentic, signed a donation contract, under which Yunycom had donated to the Institute an appliance for the analysis of ELISA tests worth

30.326 Euros. The Director of the Institute, Dr. Snezana Jovanovic Srzentic, filed criminal charges for abuse of office against unknown persons employed in the Institute. In her words, the abuse was contained in the fact that Ninic obtained the copy of the contract (that was released by "Pistaljka") without authorization. She claims that "Pistaljka" posted the contract and the text before the Institute had officially responded to the journalist's request for a copy of the contract, namely before he confirmed having received the contract on the post office's return receipt. The Deputy Prosecutor of the First Basic Prosecutor's Office requested the police to determine how Ninic had obtained the controversial contract, from whom and under which circumstances. According to "Pistaljka", Ninic confirmed on the hearing that he was in the possession of the contract before receiving it officially from the Blood Transfusion Institute. However, he refused to disclose to the police the source of the information based on which he had written the text, saying that he had received it anonymously and that "Pistaljka" decided to release the text and the contract along with the previously received answers from the Blood Transfusion Institute. "Pistaljka" branded the charges as an attempt of intimidation of the journalist and the employees in the Blood Transfusion Institute.

Under the Law on Public Information, the public media shall publish and release ideas, information and opinions about phenomena, events and persons of relevant interest for the public, regardless of the manner of receiving the information. The Law goes on stipulating that journalists shall not be obligated to disclose information related to the source of the information, unless it concerns a criminal offense, or perpetrator of a criminal offense, subject to at least five years in prison. In the above-described case, the criminal offense of abuse of office, which the Director of the Institute said was committed by employee/employees in her institute, is subject to between six months and five years in prison. In any case, such criminal charges, including the decision of the First Basic Prosecutor's Office to proceed in accordance with the criminal charges and question the journalist about the source of his information, may undoubtedly result in intimidation of the journalist, as well as employees that might blow the whistle on corruption in their respective institutions. We remind that, under the Law on Public Information, it is forbidden to directly or indirectly restrict freedom of public information in any way suitable for restricting the free flow of ideas, information and opinions, including by abusing government powers or law.

1.3. On March 24, two masked assailants threw two hand grenades on the home of the owner of the "Comtrade" Company and the portal Telegraf.rs Veselin Jevrosimovic. One bomb was thrown to the balcony of the bedroom where Jevrosimovic's daughter was sleeping at the time. Jevrosimovic's spouse was also in the house. Fortunately, nobody was injured. The attackers were caught on the

security cameras of the house, but it was nonetheless impossible to identify them. The police conducted an on-scene investigation and apprehended several individuals for questioning. By the time this Report was concluded, nobody was officially suspected of the attack. Jevrosimovic himself said that he or the "Comtrade" Company were not in any debt. He said the probable cause of the attack was the online portal he owned and branded it as an attack on the media. The incident was swiftly condemned by the journalists' associations, which requested that it be determined if it was related to the reporting of the portal owned by Jevrosimovic.

The fact is that we have often written in these reports about bomb attacks on the homes of journalists, editors and media owners. The most drastic case was the bomb that was planted on the window of the apartment of the weekly "Vreme" journalist Dejan Anastasijevic in April 2007. The perpetrators have never been discovered. Although Veselin Jevrosimovic is predominantly perceived in the public as an executive and owner of "Comtrade" and not as a publisher, it would definitively be significant for the freedom of expression in Serbia to get to the bottom of this case and establish if the attack is really related to the writing of Jevrosimovic's online portal.

1.4. On March 26, the daily "Danas" published a text titled "The Imams' Rebel against Mufti Zukorlic", authored by Sladjana Novosel. The text claimed that a group of imams stood up openly against the Mufti Zukorlic, unhappy with the way he led the Islamic community in Serbia. The press service of the Mesihat of the Islamic Community in Serbia, led by Mufti Zukorlic, promptly issued a press release sent to "Danas". As the newspaper reported, the press release contained a series of insulting and personal qualifications against the author of the text and brutal threats that might have threatened her security. "Danas" said the Police Administration in Novi Sad, as well as NUNS and UNS, international journalists' associations and the OSCE Mission to Serbia had been informed. The journalists' associations slammed the actions of the Mesihat, saying that it was not the first time that it reacted "in a manner improper for public communication, with insults and personal disqualifications" to the reporting of Sladjana Novosel from Novi Pazar. They also said that the Mesihat was putting pressure on not only Novosel, but also other journalists reporting from Novi Pazar and that it was not contributing to the civil and religious tolerance it verbally cherished, threatening the freedom of public expression instead.

The Law on Public Information expressly stipulates that public information shall be free and in the interest of the public, not to be subject to censorship, as well as that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free

flow of ideas, information or opinion. Particularly, no one is allowed to put physical or other type of pressure on public media and the staff thereof to obstruct their work. Pressure is particularly dangerous when coming from religious communities, which should be an important segment of interethnic and interreligious tolerance in society. The information about the relations between the imams and the Mufti of the Islamic Community in Serbia without a doubt constitutes information about events and persons the public is entitled to know about. Therefore, it is necessary in such cases to protect the right to freely publish ideas, information and opinions about matters of public interest.

1.5. The Director of the Novi Pazar-based TV Jedinstvo Serif Marukic said in an interview for RTS that a group of armed persons had entered the premises of that station on March 26 after 6 p.m. Marukic said that the group was led by Mirsad Fijuljanin, who introduced himself as the new director; he also said that he had the case reported to the police. The station did not air the news and the employees were sent home. The Spokesperson of the Police Administration in Novi Pazar Bedrija Cekovic confirmed they had received the notification about the incident, but when the patrol visited the premises, the police established that public order had not been violated. The security guards in the station did not allow the crew of RTS to film the premises. The online portal "Sandzak pres", close to the Islamic Community in Serbia, reported that the aforementioned Fijuljanin had been appointed Director of TV Jedinstvo and that he took over the office in the afternoon hours. "Sandzak pres" explained the dismissal of Serif Marukic by the fact that the employees "had not received their salaries for months" and that he had "caused the station to lose frequency because of his irresponsible behavior".

TV Jedinstvo is the oldest television station in Novi Pazar. The Shareholders Society for Graphic Services Jedinstvo, within which the station used to operate, went bankrupt over debts incurred by other parts of that company. Nevertheless, the TV station continued to function through a different company, although the license was still registered with Jedinstvo a.d. However, since under the Broadcasting Law the broadcasting license may not be assigned, leased or transferred/disposed with in any other way, the RBA revoked the license of TV Jedinstvo in 2012, citing the bankruptcy of the mother company as the reason. TV Jedinstvo continued to broadcast without a license and the Director was sacked, according to media reports, after a political distancing between the Mufti of the Islamic Community in Serbia Muamer Zukorlic and Emir Elfic, the President of the Bosniak Democratic Union. The mere change of Director, justified or not, shows that the media remain extremely dependent of wider developments on the social and political stage. The incident in TV Jedinstvo in Novi Pazar is an evidence of fundamental shortcomings of the legal framework for the

functioning of media in Serbia. First, the legal framework is utterly inflexible and incapable of dealing with situations happening in reality, such as the one where the company Jedinstvo a.d. went bankrupt, while the television continued to operate in the scope thereof, finding a way to continue to broadcast. Moreover, the legal framework does not contain instruments to ensure the transparency of media ownership, not even to the extent that would make it possible to know who is authorized to appoint and dismiss the managing structures in the media. The legal framework does not even contain provisions that would guarantee certain rights of journalists relative to the owners of media. Finally, the mere fact that TV Jedinstvo formally lost its license last year and that it has continued to broadcast to this day confirms that the regulator does not have mechanisms to ensure that its decisions are complied with.

2. Legal proceedings

2.1. The Appellate Court in Belgrade revoked the first-instance verdict of the Higher Court in Belgrade, acting upon the charges pressed by Nikola Sandulovic, against the publisher of the daily "Danas", the Editor-in-Chief of "Danas" Zoran Panovic and journalist Ivana Pejcic. Sandulovic is the former head of security of the slain Serbian PM Zoran Djindjic. The now revoked verdict of the Higher Court had partly approved Sandulovic's claim and committed the publisher, editor and journalist of "Danas", to pay 100.000 RSD of damages, as well as an additional 77.100 RSD of legal costs. The decision on revoking the verdict was furnished to the Higher Court on March 4.

Nikola Sandulovic sued the publisher, editor and journalist of "Danas" over information contained in the text "In Search of the Attacker's Car" in the online edition of the daily. The topic of the text was the investigation of the case where a bomb was planted under Sandulovic's car, injuring him gravely. The text said that "according to off-the-record information, the motive of the attempt on Sandulovic's life might have been his business dealings, while well-informed sources of "Danas" claim that he was well acquainted with the dealings of the Serbian underground". The text went on saying that Sandulovic also participated in many construction investments in Belgrade. In his lawsuit, Sandulovic said that the author of the text had portrayed him as a person involved in shady dealings, putting a special emphasis on the allegation that the plaintiff was "well acquainted with the dealings of the Serbian underground". According to Sandulovic, the attack against him was described as a showdown between criminals and not as attempted murder of a public figure and one of the close associates of the late PM Zoran Djindjic. The Higher Court in Belgrade found that the defendants had not provided sufficient evidence for the accuracy of the information published

in text, as well as for their claim that the controversial information, in the context it was stated, could have stained the plaintiff's honor and reputation. The claim of the defendants that Sandulovic, as the former chief of security of the late PM Zoran Djindjic, must have been familiar, in view of the nature of his former job, with the developments in the Serbian underground, was rejected by the court of first instance as an assumption of the author, which, as such, should have been checked prior to the release of the text, with due care. Revoking the verdict, the Appellate Court said that the Higher Court failed to properly factor in the fact that the central information about the event (explosives planted under Sandulovic's car) was true, while the motive of the incident was described with expressions such as "according to off-the-record information", "it is believed that". At the same time, the author failed to mention that Sandulovic had taken part in illicit dealings, but merely that he had participated in many construction investments in Belgrade. The Appellate Court ordered the trial to be repeated, so as to explain what were, in the concrete case, factual claims and what were the value judgments, as well as which factual claims were untrue and if such untrue claims were suitable for injuring the plaintiff. Furthermore, the Appellate Court said it needed to be determined if the text contained offensive value judgments that were, in view of the topic of the text, intended on offending the plaintiff's personality. The decision of the Appellate Court has once again confirmed that the Court continues to raise the standard of general protection of freedom of expression in Serbia, consistently insisting that legitimate grounds and conformity to the prescriptions of the Law are not sufficient prerequisites for restricting freedom of expression, namely that each such restriction must be necessary and proportionate in a democratic society.

2.2. The former Editor-in-Chief of the now defunct newspaper "Nacionalni gradjanski list" from Novi Sad Milorad Bojovic received a decision sentencing him to 150 days in prison for the failure to pay a fine in the amount 150 thousand dinars for defamation. The latter is related to the text published in 2011. Bojovic was sued before a court of law by Tatjana Vojtehovski, at the time a presenter at RTV Pink and member of the management of that station, over the text that mentioned her in the context of her relationship with a much younger person. Bojovic told "Dnevnik" it was "ridiculous to sentence people to prison for felonies that did not exist in the Law anymore". He added that, since the state decided to decriminalize defamation, it should also revoke defamation-related sentences that had not yet been served. Bojovic reminded that the explanation of the sentence said that nobody had the right to morally patronize anyone, not even journalists.

The recent amendments to the Criminal Code have decriminalized defamation. The provisions of the Criminal Code concerning the time validity of criminal legislation say that if the relevant Law is amended after the commission of a criminal offense, the less strict Law for the perpetrator shall

apply. Based on that provision, in defamation cases that have not been finalized, the courts have suspended the proceedings, with the explanation that defamation was not provided as a criminal offense under the amended Criminal Code. In Bojovic's case, the sentence was obviously enacted before the said decriminalization of defamation and now he has to serve as much as 150 days in prison, since he failed to pay the fine. The exact number of similar cases is unknown, but even if Bojovic's case was the only one, it is obvious that the decriminalization has not taken into account that aspect, which has resulted in the absurd situation where journalists keep going to prison even after defamation has been decriminalized.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Public Information Law

The implementation of the Public Information Law was elaborated on in the section about freedom of expression.

2. Broadcasting Law

2.1. At its extraordinary session on March 21, the Council of the Republic Broadcasting Agency (RBA) reviewed the report of the Department for Oversight and Analysis of Broadcasters' Program dated March 21, in relation to the reality show "Farma – pregled", aired on March 20 on RTV Pink. The RBA Council requested an explanation from the station about the program, after announcing it was going to furnish the transcript and video material of the show to the competent prosecutor, with the request to establish if a criminal offense had been committed. The controversial program contained the statement by one of the participants that he had been in a relationship with an underage girl, at the time an eight-grade student of elementary school. According to the findings of the RBA Council, such content constituted a violation of both the Broadcasting Law and the Broadcasters' Code of Conduct. The RBA Council initiated a procedure for pronouncing measures against TV Pink. In statements that could have been read in the media, the RBA stressed that the controversial statement was not aired in live or deferred transmission, but in an overview of daily activities of the participants in the reality show, which makes the responsibility of the broadcaster even greater, since they could have decided not to broadcast the statement. On the other hand, RTV

Pink believes that the reactions to the statements made by the participants of the reality show are justified, but excessive. They claim that the participant in question did not say that he had sexual intercourse with an underage girl, but that it was merely a platonic relationship. In the contrary case, the statement would not have been aired, RTV Pink said.

Under the Broadcasting Law, the competence of the RBA includes oversight of the work of broadcasters and controlling and attending to the consistent enforcement of the provisions of the Broadcasting Law. Article 19 of that Law expressly says that the RBA shall attend to the protection of minors and the respect of personal dignity in programs broadcast on radio and television, about which it will enact a general binding instruction. Furthermore, Article 68 provides for the obligation of broadcasters to refrain from broadcasting content glorifying or supporting violence or other forms of criminal behavior. The RBA is authorized for pronouncing measures against broadcasters, namely a notice, warning, or temporary or permanent revocation of the broadcasting license. The warning is pronounced, among other cases, where the broadcaster has violated a legal obligation for the first time, but in such a way that the violation seriously threatens the principle of regulating the relations in the field of broadcasting. The warning will be published in the media and, without exception, in the program of the broadcaster it pertains to. The protection of minors is one of the key goals the RBA realizes in the scope of its regulatory function. In the concrete case, grounds may exist for pronouncing several measures. By the time this report was completed, the RBA Council has not pronounced measures, but the latter are expected in the coming period. It will also be interesting to see what will be the reaction of the prosecutor's office to the claims about the possible commission of the criminal act against the sexual freedom of a juvenile person.

2.2. At a session held on March 25, the Council of the Republic Broadcasting Agency (RBA) passed the decision to suspend the license of Radio Fokus for a period of 30 days. Radio Fokus has a national coverage license; the Council made the said decision due to the price of text messages the listeners were charged for having their favorite songs aired, the amount of which was not officially stated in the program of Radio Fokus.

Under the Broadcasting Law, the RBA is authorized to temporarily revoke the broadcasting license to a broadcaster that has continued to violate the provisions of the Law, or regulations adopted on the basis thereof, in spite of an issued warning, or which has failed to comply with the requirements stated by the broadcasting license, or has failed to take measures for remedying the violations established by the RBA Council in the aforementioned warning. If these conditions are met, the RBA

Council is entitled to pass a decision to temporarily revoke the broadcasting license for 30 days. The above-described case may also be observed from the aspect of regulations concerning electronic communications. Sending text messages for hearing one's favorite song on the air falls in the category of value added services, in accordance with the Law on Electronic Communications. The operator of value added services is obligated to pre-release a detailed description and the price of the service, namely all its integral parts. The Rulebook on Obligations of Operator of Value Added Services additionally defines that the operator of such services is a person providing that service to a service user. Bearing in mind the well-known circumstances of the case, the broadcaster in question may also be considered an operator of value added services unless, in the concrete case, the telecommunications service was provided by some other entity. The failure to publicly state the prices of text messages shall be subject to misdemeanor liability under the Law on Electronic Communications, which stipulates that the legal entity shall be fined between 500.000 and 2.000.000 RSD, if it fails to provided value added services in line with the provisions of the Law. The Law also stipulates that an entrepreneur may be prohibited to perform a certain business activity in the period of three years, namely one year for the responsible person in the legal entity. The same case could be treated as a violation of advertising regulations. Namely, Article 57 of the Advertising Law says that the advertisement message sent to a number to which a special tariff applies must contain the amount of that tariff. In the concrete case, one could claim that for self-promotion reasons, Radio Fokus advertized the programming action – the broadcasting of the favorite songs of its listeners – while the amount of the special tariff that was charged in the advertising message was not stated. Furthermore, it is important to take into account consumer protection regulations. Each listener has the right to know the price of the service offered to him/her in the broadcaster's programming.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament has not adopted any laws with implications for the media sector. However, the public debate about the Draft Law on Public Information and Media was held.

1. The Law on Public Information and Media

Meetings discussing the Draft Law on Public Information and Media were held in Novi Sad, Novi Pazar, Nis and Belgrade. It was announced that the Draft Law on Electronic Media would also be publicly debated soon. The public discussions that were held have revealed several things. First, the dominant topic of discussions concerned the existence of the so-called regional public service broadcasters, although, formally speaking, the Draft Law on Public Information and Media does not tackle that issue, but merely provides for the obligation to privatize the existing public media at the level of municipalities and cities. The debates were marked by conflicting positions of media representatives about some form of public ownership and privately owned media. Special emphasis was put on the question of survival of public media after the mandatory privatization. The debate was often marred with tension and the one in Nis was constantly on the verge of degenerating into an incident. In addition, there were no concrete proposals that would improve the text of the Law and the speakers (especially those from state-owned media), insisted on the issue of privatization, which was already dealt with in the Public Information System Development Strategy and not by this Draft. Based on the Strategy, the Draft has instituted and defined the principle of withdrawal of the state from ownership in media, with few exceptions, as mentioned above. Unfortunately, the concept of the so-called regional public service broadcasters in the Strategy was poor. Although the Strategy has not envisaged that the existing media at the level of municipalities and cities would be automatically transformed in regional public service broadcasters, their representatives have persistently attacked the Draft as an attempt to stifle their media companies.

Unfortunately, the debate about the Draft Law on Public Information and Media actually turned out to be a discussion about the business model. The opponents of the Draft advocated for direct budget financing of the media, as the only sustainable model in the Serbian media scene. The mere attempt of the Draft to make the mechanism through which the state intervenes on the media scene more transparent and prevent the continuing undermining of competition by subsidizing cumbersome, economically inefficient and often obedient media, was dismissed as an attack of the right of citizens in small communities to be informed about matters of regional and local interest. A relatively small group of media, consisting of a couple of dozen non-privatized public radio and TV stations at the level of municipalities and cities and their particular interest to have access to secure financing (regardless of the quality of the services they provide and the rational use of the funds they receive) hijacked the public discussion and prevented any other topics to be debated. With their alleged concern for the right of local and regional communities to receive information, they actually attempted to conceal the fact that the state was spending millions for information and that

80% of these funds were allocated to a privileged circle of less than 10% of media in Serbia. What is more, these funds are allocated without a clearly defined mandate of these media and without adequate control of their expenditures. Allowing a small group of media to hijack the public debate added to the sad impression that the debate failed to realize its purpose and that it was devoid of constructive proposals that could improve the text of the Draft.

IV MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. Republic Broadcasting Agency (RBA)

1.1. We have tackled the activities of the RBA in the segment of this Report concerning the implementation of the Broadcasting Law.

1.2. The RBA Council has completed the procedure for awarding one regional license for television, for the area of Zajecar, Negotin and Zagubica, two regional licenses for radio in Belgrade, as well as three local licenses for television – in Negotin, Krusevac and in Partizanske vode, as well as seven local licenses for radio: in Lazarevac, Jagodina, Razanj, Smederevska Palanka, Kostolac, Sremski Karlovci and Kula. On March 11, the RBA released a list of persons that had been issued (for the aforementioned areas) a license. Under the Broadcasting Law, the license is issued for a period of 8 years. Among those that have received the broadcasting license is TV Cajetina, whose founder (according to what is stated on the list of persons that are issued a broadcasting license posted on the RBA website) is the Cultural and Sports Center Cajetina, which has been issued the license for broadcasting TV program in the local area (Broadcasting Area L104 – Partizanske vode).

The decision of the RBA to award the license to the Cultural and Sports Center Cajetina immediately strikes as problematic. Firstly, the legal form of the founder of the station (Cultural and Sports Center Cajetina) may not be discerned by reading the list of persons that were issued a broadcasting license posted on the RBA website. On the Cajetina Municipality website, the Cultural and Sports Center Cajetina is listed among municipal public companies. In the Serbian Business

Registers Agency's company register, however, there is no public company registered under that name. That register, however, does include a Public Information Company RTV Cajetina, which is claimed to be in liquidation. If we assume that the Cultural and Sports Center Cajetina is an institution, it is most probably an institution formed by the local government. We remind that, under the Public Information Law, the founder of a public media may not be, either directly or indirectly, the state and territorial autonomy, or an institution, company or other legal person predominantly owned by the state, or predominantly or completely funded from public revenues, unless provided for by a special law governing the field of broadcasting. The mere fact that a state-owned institution has established a media is, hence, in contravention of the Law. Even under the Law on Local Self-Government (which says that the municipality takes care of information of local relevance and ensures the conditions for provision of public information in the Serbian language and ethnic minority languages used on the territory of the municipality and establishes TV and radio stations for the purpose of reporting in the language of ethnic minorities that is officially used in that municipality, as well as for the purpose of reporting in the language of ethnic minorities that is not in official use, when such reporting constitutes the attained level of minority rights), the question is which minority language in the Cajetina municipality could constitute an attained level of minority rights. Namely, according to the results of the census from 2011, the population of Cajetina is ethnically homogenous, with about 98% of Serbs. Cajetina is also the home of two Bosniaks, two Bunjevci, six Gorani, five Yugoslavs, six Hungarians, seven Macedonians, one Roma, one Russian, one Slovak, one Slovenian, 13 Croats and 36 Montenegrins. The question is relative to which of these minorities the TV broadcasting in Cajetina could constitute an attained level of minority rights. Meanwhile, both the Strategy and the Draft Law on Public Information and Media firmly stipulate that the state will withdraw from media ownership. What was then the strategic reason for the RBA to issue a broadcasting license to a state-owned TV station in Cajetina? It is also unclear how did the Cultural and Sports Center Cajetina, namely its founder – the Municipality of Cajetina – prove its potential to realize the program it presented at the open competition, since the public company of the same founder, RTV Cajetina, is under liquidation proceedings.

2. Republic Agency for Electronic Communications (RATEL)

In late March, the Republic Electronic Communications Agency (RATEL) announced that it had paid, in accordance with the provisions of Articles 19 and 20 of the Law on Cinematography, the amount of 40.484.363,72 RSD to the bank account of the Film Center of Serbia. These funds are designated for boosting the national film industry, while the amount paid constitutes 10% of the revenues

RATEL generated in the period between July 3 and December 31, 2012, in the manner prescribed by the Law on Electronic Communications.

By paying more than 300 thousand Euros to the Film Center of Serbia, RATEL fulfilled its statutory obligation that was imposed by the controversial Law on Cinematography in 2012. Article 19 of the Law foresees the obligation to channel part of the revenues of the RBA, RATEL and RTS to the Film Center of Serbia. These provisions are controversial, since they are contrary to the allocation of funds that are collected by independent regulatory bodies under the Law on Electronic Communications and the Broadcasting Law. This has undermined, like many times before, the principle of the uniformity of the legal system, thus placing independent regulatory bodies in a tight spot. We remind that the European Commission Report on Serbia's progress in 2012 said that, "the adoption of the Law on Cinematography, envisaging 10% of the revenues of RATEL being transferred to designated accounts intended for the development of the film industry, has restricted the independence of the regulatory body". Moreover, almost one year after the adoption of the aforementioned Law, the connection between the development of the national film industry and the revenues charged by independent regulatory bodies to electronic communications operators and broadcasters remains unclear. The concept of shifting the burden of developing the film industry on telecommunications operators is in direct contravention of the provision of the Law on Electronic Communications, saying that the complete additional revenues of RATEL will be channeled for the development of electronic communications and information society. Hence, we now have a paradox where Serbia relies on international assistance and loans for implementing the digital switchover, while at the same time channeling to the film industry the funds that, under Serbian legislation, could and should be used for that purpose.

3. The Press Council

Amendments to the Statute of the Press Council have introduced several novelties boosting self-regulation in the field of print, but also other media that accept the competence of this body. Primarily, the said amendments foresee the possibility for online media, as well as news agencies, to join the Council. In order for online media to become members of the Press Council, in addition to general requirements, they must fulfill two additional ones: to have a masthead, and a news team of at least three members and a responsible editor. The amendments have introduced the prerogative of the Press Council's Complaints Commission to give opinion on alleged violations of the Journalists' Code committed by the media that have not accepted the authority of the Council. In

such cases, the opinion issued by the Commission will not be binding for such media, but will be released publicly, nonetheless.

The purpose of self-regulation is to have the proper mechanism that will effectively promote adherence to the highest ethical and professional standards in journalism. The amendments to the Statute of the Press Council have expanded the competences of this self-regulatory body. The voluntary character of the membership to the Press Council remains the fundamental principle. However, the newly introduced competence of the Complaints Commission to release opinions about violations of the Code by media, whose publishers are not members of that body, is a major novelty that may increase the influence of the Council. During the public debate on the Draft Law on Public Information and Media, the Coalition, consisting of media and journalists' associations, proposed that one of the criteria for the allocation of funds through project financing should be adherence to professional and ethical standards, which is particularly evident in accepting the competence of self-regulatory bodies and respecting the decisions of the independent regulator in the case of electronic media. Although the proposal is yet to be accepted, it seems that the Press Council is not waiting for the legislators to recognize the importance of this body, but is rather opening up space for exercising greater influence on improving the situation on the media scene through the aforementioned Amendments to its Statute.

STATE AUTHORITIES

4. Commissioner for Information of Public Importance and Personal Data Protection

In its regular annual report, the Commissioner for Information of Public Importance and Personal Data Protection has revealed that the right to access to information of public importance in 2012 was used predominantly by individual citizens, citizens' associations, journalists and media representatives, trade unions, political parties, government authorities, lawyers, entrepreneurs and others. Journalists and the media are ranked third on that list, which points to the fact that this is a useful tool for gathering information. On the other hand, it is interesting to look at the structure of information that was requested in 2012. At the top of the list is information related to the actions, or lack of actions of government authorities, disposal of public funds, court and prosecutor's office cases, public procurement, activities of security and services, police etc. The most sought-for information are those related to the activities of government authorities and expenditure of budget funds, which reveals that the citizens and other persons are now better informed and more aware

about the right to access to information of public importance. The Commissioner also said that the number of denied requests for access to information of public importance (invoking abuse of right or confidentiality as the reason) was on the rise. Certain public authorities have even denied the applicability of the Law on Free Access to Information of Public Importance to them. Here, the Commissioner has particularly emphasized the telecommunications operator Telekom Srbija. The Report also says that certain authorities and organizations had failed to remedy identified shortcomings even after being served a binding decision. This was particularly the case in situations applicants attempted to obtain information about high-value public procurement. Particularly interesting for the media was the case of Telekom refusing to provide information about the funds spent for advertising on electronic and in print media in the period 2006-2010, as well as that of the RTS to divulge (at the request of the Anti-Corruption Council) records related to the procedure for choosing the programs the national broadcaster purchased from independent production companies. According to the Commissioner, this points to a trend where, on one hand, the state authorities are slowly starting to recognize the obligations they are subject to under the Law on Free Access to Information of Public Importance, while on the other hand, non-compliance with the same Law by public companies and other users of public funds (such as the case with RTS) is also on the rise. As for the part of the Commissioner's competence pertaining to personal data protection, the report says it is necessary to pass bylaws for the implementation of the Law in this field. Furthermore, the report says that many regulations are not conformed to the constitutional guarantees related to the protection of personal data. A special emphasis is put on the Law on Electronic Communications, the Law on Military Intelligence Agency and the Military Security Agency, but also the Law on Criminal Procedure. The objections of the Commissioner concerned special measures of access to data, particularly in relation to lawful interception of communications and withholding of data, in the context of the need to approve such measures solely by a court order. The Commissioner stressed that the aforementioned constitutional guarantees were subject to consistent violations in practice and that it was necessary to amend the regulations so as to enable access to withheld information without a court order. This issue is also very important to the media, since uncontrolled and unrestricted access to withheld data and content of communications compromises the right of journalists to protect their sources. In the scope of his competence, the Commissioner has conducted oversight of the work of the mobile telephony operators in relation to access to withheld data and concluded that the manner in which such data are accessed and processed constituted a major intrusion in the privacy of citizens. The Commissioner also pointed to the necessity to urgently adopt the Law on Protection of Whistleblowers, which would ensure the safety of persons prepared to disclose corruption-related information.

The case of Telekom Srbija, highlighted by the Commissioner in his report, is particularly important, since this shareholder company denies the applicability of the Law on Free Access to Information of Public Interest to it. Telekom claims that no regulations are entrusting it the performance of public competences. They also claim that they have never been financed from the budget and that they have not been established by the state initially, but by the public company PTT Serbia, while after the privatization in 1997, they were predominantly owned by an international group (the Italian Telecommunications company STET and the Greek OTE), as well as that the Republic of Serbia acquired a propriety interest of more than 50% only after having subsequently purchased the shares of STET and OTE. Furthermore, Telekom says that, as a telecommunications operator and especially as an operator with major market strength under electronic communications regulations and the decision of the sector regulator RATEL, it has strictly defined obligations related to the disclosure of certain data and that any other order by the Commissioner would, in their case, undermine the principle of equality of business conditions for the operations of Telekom, in relation to their competitors – other telecommunication operators. Nobody disputes that, on a highly concentrated market with a small number of mobile and landline operators, information sought from Telekom may be commercial-sensitive. On the other hand, the Law on Free Access to Information of Public Importance stipulates that the right to access to information may be restricted, if its enforcement would significantly decrease the capacity of the state to manage the economic processes in the country, or heavily obstruct the realization of justified economic interests. The Commissioner has, however, interpreted that restriction in a very limiting manner. Furthermore, Telekom and other entities that might end up in a similar position do not possess effective and efficient means of seeking legal review of the Commissioner's decisions. Therefore, it seems that this problem in the application of the Law on Free Access to Information of Public Importance is a systemic one and not merely a curiosity. We have often tackled in our reports the issue of access to withheld data without a court order. We remind that the data telecom operators are obligated to withhold allow for the identification of the source and destination of the communication (i.e. who made the call and to whom), the start, duration and end of the communication (when he/she called, the duration of the call and the end of the call), type of communication (was it a telephone call or some other form of communication), to identify the equipment used for communication, but also to determine the location of the user during the communication, if mobile equipment was used. It is undisputed that the applicable regulations and practice in this field do not provide sufficient guarantees that the confidentiality of journalists' sources will be respected.

5. The Anti-Corruption Agency

In the annual report about its performance, the Anti-Corruption Agency has pointed to many activities involving the participation of the media. The Agency has recognizes the importance of the media for promoting anti-corruption efforts. Hence, the report, among other things, invokes the implementation of joint projects that have contributed to raising awareness about corruption to a considerable extent. In that sense, the activities of the Agency in the field of education were emphasized, especially for the representatives of local media. Among other things, the report highlighted the partnerships with journalists and journalists' associations (such as NUNS), but also with electronic media associations (such as ANEM). Cooperation with ANEM and the Anti-Corruption Agency on the implementation of the project "Illustrated Glossary of Corruption" was mentioned. On the other hand, the report says the public debate about the problems and events we face as a society is conducted in an environment where information about the ownership structure is not available. "The media were fragmented as to the positions they advocate for, which are adapted to the interests of their real owners; this greatly determines the selection, type and quality of information the media will communicate to the citizens. At the same time, the interests of these owners are subtly reflected in the form of influencing the sale of advertising space in the media, which accounts for a great deal of the revenues necessary for funding their operations". The report claims that, for the said reasons, the Anti-Corruption Agency can hardly obtain any coverage in the media, which makes it harder to present its activities and the risks we face as a society in relation to corruption.

Intensifying the cooperation of the media, journalists' and media associations with the Anti-Corruption Agency is something to be commended. It seems, however, that the Agency still does not understand the nature of the problem faced by the media scene. It seems as if it is still fascinated with the opacity of media ownership, while the influence exerted on the media through the purchase of advertising space is portrayed as "subtle". Unfortunately, not even more transparent ownership would prevent *per se* the positions of the owners to be reflected in the selection, type and quality of information communicated to the citizens by the media. At the same time, the influence exerted on the media through the purchase of advertising space is everything but subtle. Furthermore, it seems that the Agency has recognized the significance of the revenues from the sale of advertising space for the financing of the media, although these revenues have shrunk, due to the economic downturn. However, the Agency fails to take into proper account the increasing influence of the state on the selection, type and quality of information that is realized through budget financing, which is also completely non-transparent.

6. Ombudsman

In the general overview of the state of civil freedoms, in its annual report, the Ombudsman warned of the harmful trend of decreasing genuine freedom of press through the influence of opaque owners and political party interests. The main characteristics of this trend is: tabloidization, "leaking" of sensitive information from state authorities to certain media, violation of the presumption of innocence, waging personal campaigns against certain officials, manipulative headlines, selective conveyance of statements and facts, all with a hidden, but well-known goal of political discrediting or promotion. All this has resulted in a lower quality of citizens' rights to true, complete and timely information, while undermining the integrity, dignity and financial substance of the journalistic profession. The Ombudsman said it was necessary to pass a law that would regulate the position of persons prepared to disclose information about corruption, the so-called whistleblowers. In the part of his report about the activities of state authorities, regulatory bodies and organizations in the field of information and electronic communications, the Ombudsman said that a large number of citizens' complaints concerned the work of cable operators, the behavior of broadcasters, but also to that of the regulatory bodies RBA and RATEL. The latter was highlighted as that the body whose work was the most criticized in citizens' complaints. The Ombudsman, however, stressed that RATEL typically responded to citizens' requests in a timely manner and furnishes the information they required from it. The recommendations have emphasized that RATEL should pass a general act, in accordance with the Law on Electronic Communications, which will determine which type of radio stations are used under the general competence regime, namely which specific types of radio stations are not subject to the license regime.

The statistics of the complaints submitted to the Ombudsman are quite interesting: out of a total of 963 violations of civil and political rights the complaints pertained to, merely 4, or 0.42% of the violations concerned the right to freedom of opinion and expression. This indicates the existence of a large "grey" number of violations that are not reported to the Ombudsman. Furthermore, the Ombudsman's report insists on the opacity of media ownership as well. We have written about such conclusion about the segment of this Report, concerning the activities of the Anti-Corruption Agency. Here we will add the following: if we disregard Article 41, paragraph 3 of the Broadcasting Law, there are no specific media-related regulations that would regulate the transparency of ownership in the field of the media differently than in some other industry or activity. On the contrary, the media regulations even envisage that the legal entity, the founders of which are foreign legal entities registered in countries where, under national regulations, it is prohibited or impossible to establish the origin of founding capital, may not participate in an open competition

for a broadcasting license. Moreover, electronic media must report even the slightest change of ownership structure for pre-approval to their sector regulator. Such provisions do not exist in other industries or activities. The potentially questionable Article 49, paragraph 3 of the Broadcasting Law says that a foreign natural or legal person may take part in the share capital of the broadcasting license holder up to 49% of the total capital. Due to such provision, foreign media owners are forced to create complicated corporate structures, involving the establishment of domestic companies, whose sole purpose is to hold at least 51% of the capital of the broadcasting license holder. This probably partially hampers the monitoring of media ownership, however without preventing it. Therefore, the key problem in Serbia seems to be the fact that there is no consensus as to what should media ownership be and what level of transparency Serbia should strive for. In the absence of a consensus about these two issues, insisting on the lack of transparency of media ownership threatens to devalue the issue.

V THE DIGITALIZATION PROCESS

It is commonplace to say that the digitalization in Serbia is late and that it is necessary to speed up all the activities to finalize it by June 17, 2015. In March, however, all activities on establishing the regulatory framework for the digitalization process were intensified. At the proposal of the Foreign and Domestic Trade and Telecommunications Ministry, the Government adopted in March the Decision on the Adoption of Amendments to the Strategy of Switchover from Analog to Digital Radio and Television Broadcasting in the Republic of Serbia, together with the Action Plan. According to the Ministry, the said amendments to the Strategy should enable the improvement of the regulatory framework necessary for the successful implementation of the digitalization process, as well as define the necessary steps in terms of raising the awareness of the citizens about the switchover to digital television broadcasting. They should also further elaborate on the testing of network parameters prior to the complete switch-off of the analog signal and switchover to digital TV signal. Compared to the previous plan, the Action Plan defines the activities of certain institutions in the continuation of the digitalization process more closely. Particularly encouraging is the participation of national broadcasters and electronic media associations in the procedure of adoption of the key regulatory document, which will define the switch-off of the analog signal and switch-on of the digital signal by allocation zones contained in the Switchover Plan. This has helped the recognition of the importance of the broadcasters, which are the most interested party for a smooth transition, without interruption of broadcasting. In addition, the Foreign and Domestic

Trade and Telecommunications Ministry have announced the adoption of the Switchover Plan in June and that the public procurement of the necessary equipment will be launched in September. At the consultative meeting on the topic of digitalization, organized by the Foreign and Domestic Trade and Telecommunications Ministry and the OSCE Mission to Serbia on March 25, the representatives of the EC Delegation said that the EU was planning to complete the digitalization process in the Union itself by 2015. On the other hand, it was proposed that Serbia should use, for the purpose of testing the digital signal, the frequencies of TV Avala, which was stripped off of its broadcasting license by the RBA in December 2012. Such announcements are encouraging as to the continuation of the process, bearing in mind that, on one hand, the Switchover Plan is the key document for having a smooth digital switchover, while the use of TV Avala's frequencies will facilitate the switchover and reduce the risks of interruption of broadcasting. On March 21, RATEL started the public consultations about the Rulebook on the Amendments to the Rulebook on establishing a Plan on the Allocation of Frequencies/Locations for Terrestrial Analog FM and TV broadcasting stations for the territory of the Republic of Serbia. The Amendments were initiated with the objective of providing a regulatory basis for testing the digital signal, which corresponded to the efforts of the Ministry and the Government. The key change lies in the fact that the frequencies formerly used by TV Avala have been committed for the needs of expanding the Initial Network for testing the digital TV signal. RATEL's Draft foresees that the Initial Network will be able to use a larger number of frequency channels, which will enable testing of the signal with greater strength than it has been the case until now.

VI THE PRIVATIZATION PROCESS

The Draft Law on Public Information and Media that has been presented in the previous report provides for the withdrawal of the state from ownership in media. Under that Draft, the media, whose publishers were, directly or indirectly, established by the Republic, autonomous province or local self-government unit, shall cease operating on December 31, 2014. Until then, all public media (with the exception of public service broadcasters, media providing information to ethnic minorities on minority languages, or media intended for providing information in the Serbian language on the territory of Kosovo and Metohija), must be privatized under one of the two foreseen models. As soon as in 2014, project financing will be the sole manner of financing of the media from public funds. Public discussions on the Draft Law on Public Information and Media, held in Novi Sad, Novi Pazar, Nis and Belgrade, have revealed the chasm between the media that have been financed from public funds until now and organized as public companies and those that have been privately owned for quite some time, or founded as private companies. Particularly vocal were

the media financed directly from the budget of local self-governments, which expressed the concern that the privatization would practically mean their demise. On the other hand, privately owned media hailed the intention of the state to stop giving priority to state-controlled media and cease undermining the market with illicit state aid. The opponents of the privatization have continued arguing that the past privatizations had had catastrophic results. What they fail to realize, however, is that it is illicit state aid that destroys the market and that the media fall victim not only to privatization as such, but rather to the absence of a level playing field for private media. If the state refrains from privatization once again and fails to fully implement state aid rules in the media sphere, the media landscape will continue slipping into the abyss of superficial, biased, cowardly, unified and conformist reporting.

VII CONCLUSION

We have concluded several times in our reports that the state has become the dominant player, which, in the backdrop of the financial downturn and shrinking advertising budgets, amid poor competition on the media market and other related markets (primarily advertising market and media content distribution market), by awarding state aid in an opaque way, is in the position to decide which particular media are going to survive on the market and which ones are going to disappear. At that, the state does not have the interest of the public in mind, but merely that of the ruling oligarchies, which support those media that will manipulate the citizens in order to promote the interests of these oligarchies, enabling them to remain in power. Key evidence of that was heard during the public debate on the Draft Law on Public Information and Media. Namely, 80% of the public money, spent by different levels of government on the media, actually ends up in a circle of less than 10% of "privileged" media. These privileged media are currently advocating for the status quo, standing out as the fiercest opponents of privatization and transition to a new model of state financing of media (under which model only clearly-defined projects will be privatized, overpayment would be prevented and effective mechanisms will be introduced to control the expenditure of allocated state aid). Failure, once again, to introduce thorough reforms would plunge the media even deeper into despair, both in the public and in the commercial sector. Reporting would continue to be "fine-tuned" by squeezing the money supply from the budget. If the latter is not enough, we will see overt threats of dismissal, something that the President of the Provincial Board of the SPS for Vojvodina Dusan Bajatovic is already doing in the case of RTV. If such threats fail to discipline disobedient media, their managers and editors will be sacked, with the help of armed security guards where appropriate, as it was the case with the commercial station TV Jedinstvo from Novi Pazar. Meanwhile, the media have increasingly ceased to operate as a forum for

the broadest debate about matters of public interest, failing to adequately address (if at all) these topics. Instead of showing a wealth of content and resorting to a plethora of sources, we see significant topics, such as the public debate about the Draft Law on Public Information and Media, being superficially reported about, without tackling the core of the story. In such an environment, the only good news restoring optimism were certain court decisions, typically passed by the Appellate Court of Belgrade, which have continued to raise the standards of protection of freedom of expression in Serbia; or information about joint projects by journalists' and media associations with anti-corruption bodies; or the expectations that, although reluctantly and under international pressure, the state will prevail in its intention to thoroughly and genuinely reform the media sector.