LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for August 2013

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I FREEDOM OF EXPRESSION

In the period covered by this Monitoring Report, there were several cases pointing to possible violations of freedom of expression.

1. Threats and pressures

1.1. The daily "Nase novine" announced that Negovan Saranovic, the Secretary of the Podujevo municipality, had threatened Nedjeljko Zejak, the correspondent of this daily from Pristina. According to the press release, Saranovic told Zejak "the journalist of a miserable newspaper and those behind the text 'The Government's Commissioner for Kosovo is a Wanted Person' are welcome neither in Kosovo, nor in Serbia". The text published by "Nase novine" said, among other things, that the District Court in Pozarevac had sentenced Saranovic on October 21, 2008 to ten months in prison for abuse of office. Negovan Saranovic denied the claims in the text and his response was published by "Nase novine". The text also said that, despite the said prison sentence, Saranovic continued to occupy the position of Head of the Municipal administration in Pristina and was appointed Secretary of the Temporary Council of Podujevo. The criterion for appointment to these two positions is that the candidate is not under investigation or subject to criminal proceedings.

Under the Law on Public Information, the media shall freely release ideas, information and opinions about phenomena, events and persons relevant for the public interest, regardless of how the information was gathered. The Law explicitly says it is forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff, or influence that might obstruct their work. In the concrete case, the journalist was reporting about a topic that was undoubtedly relevant for the public interest, using the data from a document of a competent public authority – a court verdict. For that reason, "Nase novine" were entitled to release information about the fact that the Secretary of the Podujevo municipality, despite the final verdict sentencing him to prison term, had occupied the position of Head of the Municipal administration in Pristina and was appointed the position of Secretary of the Temporary Council of Podujevo. Telephone threats made to the journalist for having released information about matters of public interest are undoubtedly suited to restrict free flow of information and obstruct the journalists' work. Under the Criminal Code of the Republic Serbia, anyone who threatens the security of a person performing a job of public interest in the field of information (and the journalist in this case fits that description) and if the threat is directly related to this job, will be fined and sentenced to a prison term ranging from six months to five years. The media stopped short of revealing if charges have been brought against Saranovic at all.

1.2. According to the daily "Kurir", Dusan Stanojevic, the Director of the Clinic for Gynecology and Obstetrics (GAK) "Narodni front", insulted the reporter of the newspaper, who was involved in investigating the death of a baby at birth in that hospital. According to "Kurir", the reporter asked Stanojevic about the content of the internal control department report, which established that the baby's death was a doctor's error; she also asked Stanojevic if the doctor on call in the evening on Sunday, July 28 (who had refused to assist the woman to deliver the baby that had later died only because her delivery was scheduled for the following day), would suffer any consequences for her actions.

Under the Law on Public Information, public services shall be obligated to make information about their work available to the public, under equal conditions for all journalists and media. This definitely applies to GAK "Narodni front" in Belgrade. The Law stipulates that ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the media, regardless of how the particular piece of information was gathered. The Law especially provides that it be forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff or influence that might obstruct their work. The insults against the journalist that was investigating the reasons behind the baby's death and the findings of the internal control service that investigated that case undoubtedly constitute a violation of freedom of expression. Here we must underline that the insults made against the journalist undermine not only her right to report about an event, occurrence of person, but also the right of the public to receive such information unobstructed.

2. Legal proceedings

2.1. The Basic Public Prosecutor's Office has filed charges against Milutin Ilic, Director of the public utility company "Gradska Toplana" (municipal heating plant) from Nis and two of his associates, Dobrivoje Stanimirovic and Mija Jankovic. The three are believed to have threatened the editor of the Internet portal "Juzne vesti" Predrag Blagojevic. The charges say that Ilic, together with Stanimirovic and Jankovic, with premeditation and of sound mind, repeatedly threatened Blagojevic by telephone. We remind that, according to media reports, Milutin Ilic threatened Blagojevic in early April, unhappy with the reports in "Juzne vesti" about the recruitment of politically affiliated people in Ilic's company. On the same day, two men, introducing themselves as "Jankovic, from the Heating Plant" and "colonel Dobrivoje, from Pristina", telephoned Blagojevic, warning him to "mind his writings" and to "stop messing with certain things". They invited him to meet them that same evening, "in order to sort some things out", while "colonel Dobrivoje" told him he would have to give a statement to the police in relation to his writing about the heating plant, otherwise he (the colonel) would fetch him the next morning accompanied by the police. According to portal's reports

from last November, Dobrivoje Stanimirovic was described as one of the two members of the ruling SNS, which was employed in the heating plant owing to political affiliation and connections.

Under the Law on Public Information, public companies shall be obligated to make information about their work available to the public, under equal conditions for all journalists and all media. Furthermore, ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the media, regardless of how the information was gathered. The Law especially says it is forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff or influence that might obstruct their work. The recruitment of employees in public companies is definitely a topic relevant for the citizens (one of public interest), so "Juzne vesti" were undoubtedly entitled to freely release information about the recruitment policy and the abuse thereof by giving the advantage to candidates affiliated with the ruling party. What is more, the heating plant was required to make this information available to the media, since the recruitment/employment policy is an integral part of the work and operation of public companies. Telephone threats against the editor and journalist over the publishing of information about matters of public interest are suitable to restrict the free flow of information and obstruct the journalists' work. In the concrete case, the Prosecutor has charged Stanimirovic and Jankovic for the criminal offense threats against security. Under the Criminal Code, threats made against the life of a person or against the life of that person's next of kin, shall be subject to a fine or prison sentence of up to one year. A qualified form of the same act exists if the threat was directed at the person performing jobs of public interest in the field of information and if the threat is directly related to these jobs, in which case the prescribed prison sentence shall be from six months to five years. After it receives the charges, the Court shall forward it to the defendants and schedule the hearing, typically within a month or earlier. It may also call for additional investigative measures to be conducted.

2.2. In early August, the daily "Kurir" was furnished the lawsuit for damages filed by the former education minister Zarko Obradovic. Obradovic claims damages for anguish suffered due to injured honor and reputation caused by information published by "Kurir", relating to the cancelling of final exams for admission to high schools. Obradovic claimed 13.5 million dinars of damages, namely 900.000 dinars for each of the thirteen texts published by "Kurir" about that topic. "Kurir" issued a press release saying that, in addition to the lawsuit, they had received Obradovic's warning that he would press new charges if they continued writing about the matter. Journalists' associations have condemned the former minister's actions, calling them undue pressure on media.

Under the Law on Public Information, state bodies, including ministers, shall be obligated to make information about their work available to the public, under equal conditions for all journalists and all media. The Law particularly insists on the obligation of holders of political functions to show

greater tolerance for criticism, reminding that their rights to privacy are restricted if the information in question is relevant for the public, since the person it pertains to is holding a certain position. On the other hand, filing charges for excessive damages and threatening with new charges, especially in the situation when it is done by a high state official, undoubtedly constitutes a restriction of the freedom of public information, abuse of one's office and of the very right to legal protection. Such restriction is suitable not only to obstruct the journalists of the media in question in their work, but also to intimidate other journalists, shielding part of the government from public criticism and control. It is undisputed, however, that Zarko Obradovic, who was still education minister at the time when the texts were published (since the cancellation of the final exams for admission to high schools on the entire territory of Serbia is definitely a topic of public interest), should have exercised a higher degree of tolerance for media criticism.

2.3. In mid-August, the Commercial Court in Belgrade delivered the verdict in the litigation (that started in 2008) between the plaintiff "SOS kanal" d.o.o. from Belgrade and the defendants, the Republic Broadcasting Agency (RBA) and the Republic Electronic Communications Agency (RATEL). According to the verdict, the 36th UHF channel, allocated to the plaintiff in an open competition for regional commercial televisions in the area of Belgrade, does not allow for quality reception of television signal. Under the verdict, the defendants are obligated to pay the amount of 463.634.000 dinars, along with default interest for actual damages; the amount of 195.674.000 dinars with default interest for profits lost; the amount of 2.315.778,96 dinars as repayment of the amount paid for the rental of equipment and the transmitter; and the amount of 3.160.602,80 dinars for litigation costs. In addition, RATEL was ordered to repay to the plaintiff the amount of 5.118.634,92 dinars with default interest, for the received fee for the use of the radio frequency, while the RBA was ordered to pay the amount of 7.385.610,45 dinars with default interest as repayment of the fee for television broadcasting. Both RATEL and the RBA filed an appeal before the Commercial Appellate Court in Belgrade.

This verdict was accompanied by an array of media texts insisting on the responsibility of RATEL for the high damages to be paid to the plaintiff, at the expense of the taxpayers (the state budget). However, there was no deeper analysis, although the trial itself was very interesting. Namely, for the first time in the practice of Serbian courts, at stake was the extent of responsibility of the regulatory body in charge of electronic communications, in dealing with the problem of harmful interferences on the air. Since many broadcasters face such interference on daily basis, this matter is extremely important for them. What is unquestionable is that SOS kanal, a specialized sports TV channel, was issued a license for a regional television network in the Belgrade region on an open competition back in 2006. The network involved three transmitter sites and three broadcasting channels, including the disputed 36th UHF channel. After suffering harmful interferences by a TV station in neighboring Romania, SOS kanal repeatedly requested both RATEL and the RBA that its channel be replaced. RATEL addressed the Romanian regulator several times for assistance in the procedure of

international coordination of the use of broadcasting spectrum, but to no avail. Meanwhile, RATEL has repeatedly indicated to SOS kanal that the potential of the network in question is not sufficiently utilized, that the transmitter on the 36th channel is not broadcasting with sufficient strength, as well as that several channels included in the network allocated to SOS kanal are not used at all. Ultimately, the Court has passed an unusual verdict, in the favor of the broadcaster, without, however, bringing much hope to other broadcasters suffering harmful interferences that they will obtain similar justice. No definitive answer has been provided to a whole range of questions. The cause of the interference remains unknown – is it illicit broadcasting from Romania, an omission in international coordination, an error in the national frequency plan, or the fact that SOS kanal broadcast with insufficient power and from only two, instead of three transmitter sites? If the interference may not be remedied, can replacing the channel solve the problem and what happens in the situation where there are no available channels in the national frequency plan? Moreover, may RATEL be held liable at all for the inability of cable operators to receive a sufficiently good signal for further cable distribution (the court has ordered RATEL to pay damages on these grounds too)? Furthermore, even if know the interference is caused by errors in the frequency plans, we do not know who would be responsible for damage produced in this way – RATEL, which proposes the plan, or the Ministry adopting it? Also, what will be RATEL's responsibility for the harmful interference, if they have not been dealt with, due to the reluctance of the regulator from the neighbouring country to cooperate? Finally, can the broadcaster invoke harmful interference at all, without having previously put into operation the entire network it has been issued a license for, or if it has put into operation that network, but with far less power than prescribed? For all the above reasons, the decision of the appellate court will be very interesting.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

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

2. Broadcasting Law

2.1. At a session held on August 9, the RBA Council decided not to allocate the broadcasting license with national coverage in the K5 network, the one in which TV Avala used to broadcast before its license was revoked. In late August, the RBA Council's decision was delivered to the candidates – TV Nova and Kopernikus TV.

The decision was made by secret vote. Four members of the Council did not vote for any of the applicants, two members voted for TV Nova.rs, while three voted for TV Kopernikus Svet plus 3. However, none of the candidates received the necessary majority of votes and hence the formal conditions prescribed by the Broadcasting Law for passing the decision were not met. Under Article 32 of the Law, the Council shall pass a decision by the majority of votes of the attending members, unless the Law itself or the Statute provide for otherwise in the given context. Under Article 20 of the Statute of the RBA ("Official Gazette of the Republic of Serbia" no. 102/2005), the Council shall decide on the allocation of radio and TV broadcasting licenses in an open competition procedure, by a qualified majority of five votes. Regarding the further procedure, Article 54 of the Law stipulates that the applicant that is dissatisfied with the Council's decision shall be entitled to submit a complaint to the Council within 15 days and the Council shall decide about it within 30 days of the submission of the complaint. The ensuing decision is final and an administrative dispute may not be lodged against it. In relation to the above-mentioned regulations, it is evident that, since neither TV Nova, nor Kopernikus TV, received five votes each out of the nine members of the Council, the legal conditions for the allocation of the national frequency were not fulfilled. By the end of August, the negative decision of the Council was submitted to the applicants and the final decision about their potential complaints was pending. It remains unclear, however, whether the RBA will, in case it rejects the complaints, continue to insist on its own interpretation of Article 49, paragraph 2 of the Broadcasting Law and call a new open competition, or the Ministry of Foreign and Internal Trade and Telecommunications will change the Radio Frequencies Allocation Plan, so as to reassign the frequencies in the K5 network (formerly allocated to the now defunct TV Avala) for the purpose of expanding the initial digital broadcasting network, which will (as it is believed) enable simulcast (simultaneous analog and digital broadcasting) for what is believed to be more than 50% of the households in Serbia, thus making the digital switchover smoother and quicker.

2.2. At the same session of the RBA on August 9, the decisions passed on the allocation of regional and local coverage licenses were to some extent "obscured" by the decision on the non-allocation of the national coverage license. Namely, the regional television broadcasting licenses were issued to TV Jedinstvo (for the region it covers – the towns/municipalities of Novi Pazar, Tutin and Sjenica), TV Kanal 3 (for the area of Belgrade) and TV Telemark (for the region covering the towns/municipalities of Kraljevo, Cacak, Pozega, Gornji Milanovac, Arilje, Sevojno, Ivanjica and Kosjeric). For the region including the towns/municipalities of Knjazevac and Zajecar, the radio broadcasting license was issued to Radio M55 from Knjazevac. Local radio and television broadcasting licenses were allocated to 11 broadcasters (8 for TV and 3 for radio).

Among the local TV stations that have obtained a local license is TV Trstenik, the founder of which is the Public Company Radio-Television Trstenik from Trstenik, one of the non-privatized media funded from the local government budget. The decision by the RBA to issue a license to such a broadcaster is highly problematic, since the withdrawal of the state from media ownership is a goal

of the public media policy in Serbia, as defined by the Media Strategy, among other documents. Furthermore, bearing in mind the concepts contained in the latest version of the Draft Law on Public Information and Media, a pertinent question to ask is what will happen with the licenses of TV Trstenik and similar stations, if they remain non-privatized by the end of 2014? According to the Draft Law, all publicly owned broadcasters must be privatized, or they will cease to exist (they will be deleted from the public media register). At the same time, Article 61 of the Broadcasting Law that is currently in force, providing for the reasons for the cessation/revoking of the license from a broadcaster prior to its term, stops short of regulating the cessation of the existence of the legal person that owns the broadcaster. However, it would be legally unsustainable for the license to continue to exist, in the situation where its holder has ceased to exist. In any case, this could be yet another reason that should motivate the legislators to speed up the procedure for the adoption of the complete set of new media laws.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In early August, the Ministry of Culture and Media posted on its website the Draft Law on Electronic Media and the Draft Law on Public Service Broadcasters. The Ministry said the purpose was to prepare a public debate about these laws. Part of the public has reacted by criticizing the lack of transparency and democratic principles in the procedure of drafting/passing the media laws, since the draft laws that were posted substantially differ from those drafted by the working group. Unfortunately, there was no qualitative analysis of the said drafts, which, despite of containing several very questionable provisions, still represent a step forward compared to the working group's drafts. On the other hand, no clear argument was presented to support the alleged lack of transparency and democratic principles of the drafting process, since the working group completed its work in early May, after which the competent ministry was authorized to formulate the draft on its own, as the sole authority responsible for media and information policy. So, the Ministry's actions are not legally questionable, while the issue of legitimacy is a completely different one and it unfortunately corresponds to the state of cultural transparency in enacting the law, which, in turn, is narrowly connected to the democratization of society. The issue of transparency and democracy of the procedure of adoption of new media laws is a very important one, but it is also important to adopt the said laws as soon as possible, given that they are five months late. The issue of transparency of the said procedure aside, the fact is that the ministry could have at least tried to explain why it has altered certain concepts from the previous draft. Otherwise, the public could get the impression that the draft was changed in order to satisfy somebody's particular interests. Whatever the case may be, we will try in our analysis to point to certain provisions that could bear strong implications for the media market and the freedom of expression in general.

3.1. Draft Law on Electronic Media

The basis for the drafting of the Draft Law on Electronic Media is the Audio-Visual Media Services Directive of the European Commission (EC). The Draft mirrors that Directive to a great extent, but certain concepts from the Directive are implemented so as to give excessive authority to the independent regulator (the RBA). Under Article 24, paragraph 3 of the Draft Law, the Regulator shall control electronic media (for the purposes of the Law on Electronic Media), with the exception of electronic versions of print media and independent electronic editions, which are supervised by the ministry in charge of information affairs. That concretely means that the control of radio and TV broadcasters' online portals (in the context of the statutory obligation from the Law on Electronic Media – protection of minors, prohibition of hate speech, etc.) is performed by the RBA, while the ministry controls, in a similar way, electronic versions of print media and independent electronic editions. Both concepts seem questionable. While interests such as the protection if minors and ban on hate speech are unquestionable, claiming the authority to supervise online editions is problematic, since it has major implications for the protection of the right to free expression on the Internet, without a valid reason. The right to freedom of expression may be restricted only if it is (under the Law) necessary in a democratic society, for the purpose of protecting the vital interests of society (national security, public health, rights and freedoms of others, etc.), while the restrictive measures and the purpose to be achieved must be proportionate. These standards were accepted by Serbia as a member of the Council of Europe and signatory of the European Convention on Human Rights and Fundamental Freedoms. What is questionable is the right of the Ministry of Culture and Media to oversee the fulfillment of obligations from the Law on Electronic Media by the online versions of newspapers, if that obligation does not exist relative to the print version of these newspapers. This is a very important question, since print editions are regulated completely differently, which may lead to identical content in print form and in online form being subject to different regimes. On the other hand, the RBA's authority to control online portals of radio and TV stations is questionable too, since the nature of online content of electronic media may be completely different than that of traditional television and radio services – the two are namely not always comparable. The online portals of radio and TV broadcasters in Serbia are similar to the portals of print media and independent online editions. They all typically contain news, links to certain video content, comments and the like. With its wide-ranging powers under the Draft Law, the RBA may (for the purpose of enforcing the hate speech ban or protecting minors) create mechanisms that substantially restrict freedom of expression or result in self-censorship, which is very dangerous, especially if we bear in mind the nature and significance of Internet as a media. The intent of the legislator, when introducing such control, remains unclear. Is it really necessary to force online media into the "molds" in which we deal with traditional media? If we carefully analyze the regulations in the region, we will see a tendency to strengthen mechanisms for the control of online media. Croatia and Montenegro have introduced the obligation of registering so-called electronic publications, which causes many problems. Furthermore, it needs to be stressed that the Directive on Audio-Visual Media Services, as its name says, primarily concerns audio-visual media

services, both linear (television) and non-linear (services on request). The Directive allows member countries to extend the range to other media services. The question is, however, to what extent it is suitable to expand the scope of the Directive beyond radio, at least in Serbia. The Ministry stopped short of explaining to the public the reasons behind introducing such interference in the realization of freedom of expression on the Internet. Additionally, certain provisions of the Draft Law are difficult to apply to online media. For example, Article 27 of the Draft Law, which provides for a mechanism of reporting improper behavior and the actions of the RBA upon such report, prescribes a 30-day deadline from the first showing or the rerun of the questionable content. On the Internet page, the content is stored on the server and lasts for a undetermined time, opening the possibility for online portals to be reported for "improper content" without time limitations, namely after the expiration of time limits relative to the broadcasting of the same content on radio and television. Another open issue is the treatment of user-generated content on electronic media websites, since the broadcasting regulator does not have any relevant experience in relation to such type of interactivity. The issue of responsibility for comments posted on media portals is also topical in global professional communities and there is an absence of a single and unified response as to how to regulate it. Such user-generated content implies a series of questions. Is the comment part of the news that is posted? May the portal, as an intermediary in communication, be held responsible for the user-generated content? Finally, is the current system of comment moderation effective and could it constitute a form of censorship? These questions remain open. Each new questions opens up a new controversy and it is necessary to tackle them with a wide consensus of the professionals and the general public, bearing in mind the need to maintain "democratic principles on the Internet", which is in the interest of each individual user. In addition, strong interference with the freedom of expression may also affect the business models of the media, which means that the media market, which is already declining, may be affected too.

What is also questionable in the Draft Law is the failure to separate the functions of the Chairman of the RBA Council from the function of Director of the services providing expert and technical services for the Agency. In the previous version of the Draft Law, the working group held the opposite position. Apart from the fact that the concept providing for the "merger" of functions seems undemocratic, since it gives excessive authority to one person, from the hitherto practice of the RBA, it seems that the circumstance that the chairpersons of the Council were at the same time the directors of the Agency did not bring any particular value to the regulation of broadcasting in Serbia. On the other hand, it looks as if the separation of the functions could contribute to better operational capacity of the Agency on the daily level and the development and strengthening of its overall capacities. The concept entailing the separation of the functions has been embraced by other countries in the region too, such as Croatia and Montenegro. Furthermore, the European practice of non-convergent regulators – those whose authority does not encompass electronic media – is moving in the direction of separating the aforementioned functions. The contrary position leads to possible abuse of excessive powers by one person and the transformation of advisory and technical departments of the regulator into advisory and technical services of one person.

A notable shortcoming of the Draft Law on Electronic Media, released by the Ministry of Culture and Media in early August, is the systemic inconsistency of the criteria for assessing unlawful concentration of media ownership relative to the criteria provided for by the Draft Law on Public Information and Media, the draft version of which has already undergone public debate. Relative to previous drafts, the Ministry particularly intervened in the text made by the working group, prescribing new thresholds of unlawful media concentration that are even more rigid than the concept contained in the current Broadcasting Law. It should be stressed that, in the initial draft media laws, all rules concerning media concentration were contained by the Draft Law on Public Information and Media; subsequently, the provisions about electronic media were removed from the latest version of the draft. Finally, the new concepts embraced by the Draft Law on Electronic Media constituted a "Copernican Turn" relative to everything we had the opportunity to hear in the last few years, back in time of never adopted Draft Law on the Transparency of Media Ownership from 2008. In a nutshell, as opposed the prohibition of vertical integration of the publishers of print media and press distributors, the Draft Law on Electronic Media allows the vertical integration of broadcasters and the owners of cable or other distribution systems. Furthermore, in the situation where the impending digital switchover of terrestrial broadcasting is hoped to open up additional space on the air compared to the analog era, stricter restrictions are proposed for media concentration than those in force today, when the terrestrial frequency is a far scarcer resource. Moreover, stricter restrictions in terrestrial broadcasting are not accompanied by stricter restrictions in cable broadcasting, although the number of households receiving terrestrial TV signal (according to RATEL's official statistics for 2012) has fallen to about 40%, with a clear downward tendency. This actually creates the situation where the ministry, with the supposed aim to protect media pluralism, is showing the intent of protecting such pluralism with stricter rules in the ever-less-important terrestrial reception, while neglecting it in the increasingly prevalent cable, IPTV and satellite DTH reception. If such concepts prevail, the consequence will be that the same owner will not be allowed to have several channels that would be available to the minority of citizens, but he will be able to have an unlimited number of channels that will be available to the majority of viewers. Re-regulating the (analog) transfer that has lost its predominant character and that will soon stop being a scarce resource (while at the same time de-regulating the dominant digital transfer and opening up space for the further vertical integration of the media and telecommunications operators) is unlikely to bring anything positive.

3.2. Draft Law on Public Service Broadcasters

The Draft Law on Public Service Broadcasters was subject of a debate in part of the public and it was quickly removed from the Ministry's website. A new mini-working group was subsequently formed with the task of ironing out its shortcomings. Particularly questionable in the Draft Law was the budget financing of PSB. This was most unfortunate, since many arguments and clear negative examples from international practice were put forward to demonstrate that budget financing

enabled a high degree of political influence on the editorial policy of PSB and their further indebting. However, not even the budget financing provisions complied with European standards. They did not provide for any protective mechanism against blackmail and political pressure with each particular payment, which have been set at monthly level. At the same time, the dates when the payments are to be made were not precisely determined, nor were any mechanisms envisioned that would set objective, predetermined and international standards-based criteria for determining the amounts of the payments to PSB. Furthermore, the Draft Law has completely neglected the principle of balancing the revenues from public and commercial sources, which is provided for by the Media Strategy. Under the latter document, the PSB revenues from commercial sources shall be restricted, when proceeds from subscription fees reach a level sufficient for the realization of the PSB basic functions.

The competences of the RBA concerning the realization of programming functions of PSB are questionable too. Although the provisions on the Agency's monitoring of the PSB programming are completely adequate as a controlling instrument, certain concepts regarding the way in which such controlling is conducted seem problematic. Namely, what is the purpose of procedures against PSB for the non-fulfillment of programming functions? For example, PSB are required to submit to the RBA complaints against their work received from viewers and listeners, as well as the PSB response to these complaints. However, what the Agency does with these complaints and responses remains unclear. Furthermore, it is prohibited to influence the independence of the PSB editorial policy, which is good, but the Draft Law fails to prescribe the RBA's response where such influences have taken place. Finally, the Law does not provide for the proper punitive measures and hence there are no sanctions against the PSB for non-compliance or the RBA, when the latter fails to discharge its competences.

Article 15 of the Draft Law is particularly interesting, since it says that the PSB may be dismantled. Although this may be done only by Law, this provision could also be interpreted as a justification to really dismantle a PSB as part of austerity measures, which would serve as an excuse for dismantling it over its editorial policy.

A particular curiosity is the fact that the Draft Law contains norms that are even more general in nature than those contained in the Media Strategy. Under the latter document, new PSB channels may be set up, as an exception, after the digital switchover (although this is solely in the function of fulfilling the obligation of the PSB) and that new channels will be introduced at the request of PSB. These requests shall be considered and decided upon by the independent regulator, in keeping with the Law and taking into consideration the programming principles and obligations in realizing the public interest (on the basis of a prior analysis of the extent to which these principles and obligations are realized by the existing programs), accompanied by guarantees that the new channel will not perturb the media market. The Draft Law, meanwhile, has abandoned all the

aforementioned provisions, opting instead for a concept under which the PSB at the level of the Republic realizes its programming functions through at least two general and two specialized channels (more than there currently are) and three radio channels. At that, the sole obligation of the PSB, when introducing new services, is to submit a program study to the regulator. The Draft Law stops short of prescribing the authority of the regulator relative to that study.

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 also elaborated on the activities of the RBA in the part of this Report concerning the implementation of the Broadcasting Law.

1.2. On August 7, the RBA Council issued a warning against RTV Pink, a broadcaster with national coverage, over the violations of the obligations from the Broadcasting Law and the General Binding Instruction on Broadcaster Conduct – Code of Conduct for Broadcasters. The reason for such a decision by the RBA was a series of press releases by the owner and the Editor in Chief of RTV Pink, aired between June 11 and June 26, in the prime-time news bulletins. In these press releases, Pink's owner attacked the Belgrade Mayor Dragan Djilas and the Editor in Chief of the daily "Blic" Veselin Simonovic, as we detailed in our previous reports. The attacks against Djilas and Simonovic were utterly improper and each response by the latter was followed by new attacks. Hence, after the press release of NUNS condemning the actions of TV Pink, calling them a misuse of the national frequency, the station issued a response, expressing "astonishment" over the perceived siding by NUNS with the "stinking daily newspaper Blic". The Pink even misused social networks to back up the alleged unprofessionalism of "Blic", quoting the statements of the members of a Facebook group reviling the newspaper.

The grounds for pronouncing the measure by the RBA exists in Article 68, paragraph 1, subparagraph 2) of the Broadcasting Law, prescribing that the broadcasters shall provide free, complete and timely information to the citizens. This general obligation is further elaborated on in sections 2.3 and 2.8 of the Broadcasters' Code of Conduct, concerning the general programming standards in news program and political program. These sections define that the broadcasters shall be entitled to their own editorial policy, while being obligated to respect a minimum of impartiality

and separate factual reporting from views, opinions and comments. Furthermore, according to the Code, it shall be prohibited to manipulate with statements, press releases and similar content with the aim to alter their basic meaning; the broadcasters shall respect the *audiatur et altera pars* rule, under which, when reporting about a debate or a row, the media shall give the opportunity to both parties to take an equal part in the polemics. In addition, the Code expressly prohibits personal attacks, as well as waging lengthy or repetitive campaigns in relation to particular persons, social groups or institutions without relevant new information justifying extended or repeated reporting about the same phenomenon, event, institution or person. In the concrete case, the RBA stopped short of providing for a violation of the Broadcasters' Code of Conduct in the part concerning the language that is used on the air, entailing the duty of broadcasters to suppress extreme talk and insults.

Article 17 of the Broadcasting Law says that the RBA shall be authorized to pronounce a warning and a caution against broadcasters, as well as temporary and terminal revoking of the license, as the strictest measure. Article 18 goes on detailing that the warning will be pronounced if a broadcaster is found to have:

- been in continuous non-compliance with the Law or a RBA act passed on the basis of the Law;
- violated for the first time one of the statutory obligations, with the violation seriously undermining the realization of the principle of regulating relations in the field of broadcasting;
- violated any of the criteria contained in the issued broadcasting license.

When pronouncing the warning, the RBA shall expressly state the obligation the broadcaster has violated and determine the measures to be taken by the broadcaster, in order to remedy the violation. The warning shall be published in public media, as well as in the program of the broadcaster it has been issued to. Article 63 of the Broadcasting Law goes on providing for the possibility of temporarily revoking the license for a period of 30 days from a broadcaster that was found to have been in continuous non-compliance with the Law or a RBA act passed on the basis of the Law and/or to have violated any of the criteria contained in the issued broadcasting license/failed to remedy the non-compliances the Council has established in the warning. If the non-compliances persist and his license has already been temporarily revoked at least three times, the broadcaster in question may see its license terminally revoked.

In the explanation of its decision, the RBA said that RTV Pink was found to have behaved similarly in 2009, when the Council issued a caution for non-compliance with the Broadcasters' Code of Conduct. Therefore, the RBA concluded that, since a caution was already pronounced against the broadcaster over a similar violation, the formal requirement from the Law for issuing a caution was met. Interestingly enough, the RBA's decision took place in August only, although the controversial campaign happened in June. In view of the influence on the public opinion by national broadcasters,

it is legitimate to ask if the RBA could have reacted earlier, while fully adhering to the statutory procedure. The warning issued against TV Pink is the twelfth case where the RBA has pronounced such a measure, but the first instance where it happened over such violation of the Code.

STATE AUTHORITIES

2. The Ministry of Foreign and Internal Trade and Telecommunications

2.1. The text of the Rulebook on Determining the Allocation Plan for the Frequencies/Locations/Distribution Zones for Terrestrial Digital TV Broadcasting Stations in the UHF Band for the Territory of the Republic of Serbia was published in the Official Gazette of the Republic of Serbia No. 73/13 from August 16, 2013. The Ministry of Foreign and Internal Trade and Telecommunications passed the Rulebook based on Article 84, paragraph 3 of the Law on Electronic Communications. The Plan includes the criteria for the distribution of radio frequencies by locations, namely distribution zones, as well as the distribution of radio frequencies and other technical criteria for their use.

The Rulebook does not regulate the procedure of the digital switchover or the deadlines; it merely acknowledges that the switchover for television will take place by stages, within the time limits laid down by a separate regulation defining digital broadcasting and access to multiplex in terrestrial digital broadcasting. In that way, the allocation plan actually refers to the Digital Switchover Plan, which is expected to be passed in the form of amendments and annexes to the Digitalization Strategy and the accordingly amended Rulebook on Switching from Analog to Digital Television Broadcasting and Access to Multiplex in Terrestrial Digital Broadcasting. The Plan also sets the frequency allocations for the channels 61-69, from the 790-862 MHz band, which is used for the realization of the digital dividend after the digital switchover. In addition, it also prescribes that the same may be used only until the switchover is complete. Meanwhile, technical and other parameters and criteria for the realization of the network have been prescribed. By adopting the Rulebook, the Ministry of Foreign and Internal Trade and Telecommunications has made another important step in the direction of the digitalization of television broadcasting.

V THE DIGITALIZATION PROCESS

The decision of the RBA Council not to allocate the television broadcasting licenses with national coverage (elaborated on in the part of this Report pertaining to the implementation of the Broadcasting Law) has opened new options in the digital switchover process. RATEL officials and

the Public Company "Broadcasting Equipment and Communications" (ETV) claim it is possible to complete about 70% of the technical side of the switchover by the end of the year, given the frequencies offered in the open competition are used for the continuation of the switchover process. The RBA's decision not to allocate the free frequencies to either of the candidates was commended by the Ministry of Foreign and Internal Trade and Telecommunications, which announced that these frequencies would be used for speeding up the digital switchover. Such a position received the support of the EU Delegation to Serbia, the OSCE Mission to Serbia, as well as media and journalists' associations. The Plan of the Ministry, RATEL and ETV is to use the specific frequencies (that were used by the now defunct TV Avala) for expanding the initial network for the testing of the digital TV signal. That would, in turn – through that network, which is currently broadcasting at low power and from only 15 transmitter sites – enable countrywide coverage and a real simulcast, until the final switchover. It remains to be seen if the plans and announcements of the Ministry, the sectoral regulator for electronic communications and the public company – future operator of the digital network and the simulcast – will actually come to life. First, the competition procedure conducted before the RBA was practically continued after the decision of August 9, since the unhappy applicants had the right to lodge complaints, which, in turn, would require a new decision of the RBA. If the RBA's new decision confirms the previous one, the next step will be for the Ministry of Foreign and Internal Trade and Telecommunications (at RATEL's proposal, which has already been formulated) to reassign the specific frequencies for expanding the initial network for the testing of the digital TV signal. That network, in that manner, would become the actual simulcast network, instead of test network. If the Ministry again fails to pass a decision on reassigning the frequencies (even in the case if the RBA's new decision confirmed the previous one), we will find ourselves at the beginning again: the RBA would again be obligated to call a new competition instead of the failed one, which would (again) hamper the extension of the test network into a simulcast network. That, in a short period, would enable the digital signal for at least 70% of households in Serbia.

VI THE PRIVATIZATION PROCESS

The privatization of the media, except in sporadic cases, has been completely brought to a halt, in the expectation of new media laws. Nonetheless, we want here to mention certain developments from August that are related directly or indirectly to that process. In late August, a two-month training course for journalists started in Sjenica for future municipal TV stations. According to the authorities, a prospective TV station would have to compete for a license and set up a broadcasting system for the signal, which, in the meantime, will be distributed through cable systems. This announcement actually shows to what extent the media system in Serbia is unregulated. Despite new media laws being in the works (which will confirm what is written in the current ones – that the state may not be the owner of media), certain local governments, taking advantage of the fact that the Law on Local Self-Government is in collision with the Law on Public Information and the

Broadcasting Law, have clearly concluded they are still free to spend taxpayers' money by opening municipal TV stations, where they will appoint their political protégés to be the directors and editors, in order to control the flow of information. Particularly interesting is the question about how the RBA would act today if a state media were to apply to an open competition for a terrestrial broadcasting license; or if the RBA were to receive a request for the issuance of a cable terrestrial license. Unfortunately, experience has shown that the RBA has not issued licenses solely guided by the criteria prescribed in the Broadcasting Law and the regulations passed based on it. In support of that, we have the example with the current issuance of the license to the public company RTV Trstenik, a case we have written about in the part of this Report pertaining to the implementation of the Broadcasting Law. In another case, TV Vrnjacka Banja has not been broadcasting news program for more than a month, because the employees have not received their salaries. According to the Mayor, the salaries have not been paid, since the funds earmarked this year for public information in the municipal budget have been reduced and hence TV Vrnjacka Banja has received less money. On one hand, this situation exemplifies the incapacity of public local media to find on the market the money necessary to replace the funds from the budget that have been denied to them. It also shows that the reduction of funds for the media directly and primarily affects news and current affairs programs. In the case of TV Vrnjacka Banja, the effects are as such that news program is not aired anymore. At the same time, the reduction of the funds for information in the local budget could very seriously undermine the implementation of the project-based financing system, as provided by the Media Strategy and the draft media regulations, whose adoption is pending.

On the other hand, privatization of TV Smederevo has continued after the termination of the contract with the previous buyer. The local government recognized the need to privatize that station, since the current situation in it is untenable, particularly with respect to the poor programming. Namely, TV Smederevo has reduced its daily programming to 14 hours, of which 60% are reruns and rebroadcast of program purchased from other stations, with a minimum of own production, which often boils down to conveying the press releases of the police and the Mayor's Office.

Finally, the Deputy Culture Minister in charge of media, Dragan Kolarevic, announced in early August that the state news agency Tanjug would be transformed into the Government's Bureau for Communications, according to the model that existed in Germany. This could be construed as the Government's decision to transform Tanjug (instead of privatizing it) so as to dismantle it as news agency/media outlet.

VII CONCLUSION

The month of August has seen the last days of the old Serbian government, on the eve of its long announced reshuffle. One of the ministers whose term of office ended is Bratislav Petkovic, the Minister of Culture and Media. The key reproach made against the former Minister is that he has failed, after slightly more than 13 months in office, to introduce in the parliamentary proceedings a single piece of legislation of the long awaited media laws. When Minister and his team posted on the Ministry's website the draft Electronic Communications Law and Law on Public Service Broadcasters, it is possible that they had in mind the fact that there was no results and that they needed to show that something was achieved. However, this has resulted in a new problem. The draft laws proved to be different from those previously formulated by the working group of the same ministry, which, again, provoked a series of criticism for non-transparency. By the time this Report was completed, nobody informed the public about who altered the drafts of the Ministry's working group, at whose order and for what reasons. August also saw the end of an unusual competition for the national coverage-broadcasting license. It was unusual from multiple standpoints. If we compare it to the previous competition in 2006, the first striking thing is the absence of big European and international players. We remind that, in 2006, major networks such as News Corporation or the RTL competed for a frequency. A "big shot" station like RTL failed in its bid to get the license. Seven years later, News Corporation fled Serbia and never looked back and RTL never returned either. The tender for the national license in Serbia did not attract anyone whose reputation would be at least close to the two media groups. The total lack of interest for our tender by European and regional media companies is proof of the low expectations and to what extent these companies hold little hope for the potential recovery of the Serbian media market. That is precisely why a failed tender should be considered as a last minute warning to the new, reshuffled Government of Serbia – that the time is up and that media reforms are needed now.