



# **LEGAL MONITORING OF THE SERBIAN MEDIA SCENE**

Report for August 2014





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*The contents of this Report are the sole responsibility of the authors and do not necessarily reflect the views of the Civil Rights Defenders.*



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**SUMMARY AND CONCLUSION**  
**OF THE ANEM LEGAL MONITORING REPORT No. 55**  
**-SERBIAN MEDIA SCENE IN AUGUST 2014-**

The central event for the media landscape in August was the final adoption and entry into force of the new media laws. The adoption of these laws constitutes the fulfillment of several goals contained in the Public Information System Development Strategy adopted back in 2011. While full implementation of these goals will require the adoption of the Advertising Law, as well as of the bylaws for the implementation of the media laws, the fact remains that the latter, regardless of certain flaws, have created a fairly good regulatory framework for the media.

The state unequivocally opted for the complete withdrawal from media ownership by July 1, 2015. By that date, publicly owned media will have to be privatized in one of the ways foreseen by general rules governing privatization, failing which privatization will be carried out by means of free shares distribution to media employees or the shutting down of the media in question. In addition to public service broadcasters, the mandatory privatization mode has left out the media founded by the ethnic minorities' national councils, as well as the institution which will provide information to the citizens in Kosovo and Metohija. While the decision to privatize the remaining public media is to be commended, the question remains why that has not been dealt with earlier, under previous laws containing the same requirement. Moreover, one should not forget that privatization is not an end in itself and the withdrawal of the state from ownership must not mean the abandoning of public information in Serbia to the fury of the market forces.

The media laws have also invalidated certain provisions contrary to the media legislation of the Law on Local Self Government, the Law on the Capital City and several other laws, which has re-established the integrity of the legal system the media and journalists' associations insisted on for years.

The new regulatory framework has also regulated the issues regarding the application of the state aid control regulations in the media sector. Hence, on the one hand, the system of project-based financing of media content of public interest was regulated, while on the other hand the system of financing of PSBs was aligned with the European practice and particularly with the European Commission Communication on the Application of State Aid Rules to PSBs from 2009. The system of project-based financing of media content foresees that, apart from expert competition commissions, the final decision on awarding the funds will be made by the Ministry, the bodies of the autonomous province or local self-government. Notwithstanding the fact that the funding decisions will be predominantly based on the findings of the expert commissions

(and that such decisions will have to be thoroughly explained), concern remains over potential political interference. In this area too, serious monitoring of the implementation of the new legal frame will clearly have to become a key activity of media and journalists' associations in the following period.

The new laws provide for an upgraded system of registering information about the media. Instead of the hitherto public media register, a new media register will be established, which provides for the availability of information about the media, their owners and other persons that might influence editorial policy. Such information should make it easier for the citizens to assess information reported by the media, especially in the cases of conflict between the particular interests of the media owners and persons affiliated to them and the interest of the public. On the other hand, the restrictions against direct foreign ownership of media have been scrapped and the media concentration rules have been liberalized. This has removed the key causes of opacity of media ownership in the previous period. Regulating the issue of concentration of media ownership has not been left to the general regime of control provided for by the Law on Protection of Competition; on the contrary, the new setting provides for special thresholds for the share in the circulation of print media, namely in the ratings of broadcast media. If these thresholds are exceeded, the Ministry or the competent regulatory body are authorized to react by (among other means) deleting the media in question from the register or revoking its broadcasting license. The question remains whether the aforementioned thresholds have been properly set and even more important, if the Ministry and the regulatory body have sufficient capacity to adequately apply their new powers.

A positive step related to the Law on Public Information and Media is that it now contains a clear definition of what is and what is not a media outlet; it also recognizes the specificity of various formats of online expression, without classifying them by force as media and imposing on them the same obligations born by traditional media. At the same time, these online formats are now allowed to register as media, with all the associated rights and obligations arising from such status.

The Law on Public Service Broadcasters provides for a new model of financing from the tax, while also foreseeing harmonization with European standards on the application of state aid control rules to PSBs. This is good news, since it involves more responsible expenditures of public resources. What is not good, however, is the fact that the implementation of the new financing model has been postponed until the beginning of 2016; what is more, the provisional financing model which will be applied in the meantime stops short of guaranteeing either the stable financing of PSBs or their full independence from the executive. It is also bad that the Law

does not provide for guarantees that the impoverished, cumbersome and inefficient PSBs will be successfully transformed into genuine public services; that critical moment, which has been postponed for more than a decade, is treated as something that goes without saying and that will happen on its own. Unfortunately, as evidenced by developments in the previous period, nothing about PSBs is to be taken for granted and especially not positive changes: the forces that have been obstructing transformation into genuine PSBs were always stronger than those promoting such changes.

The Law on Electronic Media has been harmonized with the European regulatory framework and especially with the Audiovisual Media Services Directive. Many new institutes have been introduced, bringing Serbia closer to the rules governing the internal EU market in this area. However, the Law stops short of distinguishing between the daily operations of the regulatory body and its strategic and regulatory function. Furthermore, many new competences require the improvement of the existing capabilities and the development of new ones, which will be difficult to achieve in the situation where employees are subject to regulations about the state administration, particularly in the context of the current crisis and painful austerity cuts in the public sector. To a certain extent, the latter illustrates the lack of understanding on the part of the legislator for the specific nature of independent regulatory bodies, which may not be entirely compared to the state administration. The system of issuance of licenses provided for by the Law also seems insufficiently open to the technological changes that are imminent. Too much attention has been devoted to the those transmission technologies that are losing step on the market, while the solutions for the new platforms and technologies that are knocking on the door are yet to be put forward.

A part of the Law on Electronic Media deals with advertising. Product placement is regulated for the first time, as well as the new advertising forms, such as virtual advertising. The negative effect of such practice is that the conflict induced between the Advertising Law (as the general legislation in this area) and the Law on Electronic Media might lead to a situation where different bodies with competences in this domain (such as the Regulatory Body for Electronic Media, the Market Inspectorate or the misdemeanor or commercial courts) will have different opinions on which of these two laws should be applied to a concrete case, thus creating legal uncertainty. It is therefore necessary to pass a new Advertising Law aligned with the Law on Electronic Media and European rules and standards in that field.

The adoption and coming into force of the media laws have to some extent cast a shadow on other events in the period covered by this Report, namely the inappropriate comments of the Prime Minister about a weekly newspaper over the analysis of the contract entered into by the

Government, the text of which contract was kept secret for more than a year. That case, as well as another case described in this Report (related to the refusal of the Foreign Ministry to make available, at the request of the Center for Investigative Journalism, information about issued diplomatic passports) reveal the extent to which public administration authorities, including the Government and the ministries, still refuse (ten years after the start of the implementation of the Law on Free Access to Information of Public Importance) to embrace the reality that public information should not be concealed from the public. To make things worse, the Commissioner for Information of Public Importance and Personal Data Protection has warned of a case where a journalist of RTV Kragujevac was threatened by her management that she will be fired for having requested, using the right to free access to information of public importance, access to data about the debts of her media company.

Two things remained unchanged in August, though. We have again seen an assault against media professionals, this time on the photographer of the daily "Informer" Darko Cvetanovic, as well as a hacking attack against the website "Pescanik". Cvetanovic was attacked while filming the entrance to the residential building "Informer" believed to be the new home of the former Defence Minister and MP Dragan Sutanovac. The attacker, who was subsequently interrogated by the police, presented himself as the owner of the building. The good news is that the photographer was not injured. The "Pescanik" website, which was also targeted in early June, was attacked again on August 27. The conclusion is that the perpetrators of the first incident have not been identified, which has obviously encouraged new hacking attacks.

Finally, our Report has noted certain steps forward in the digitalization and privatization processes. The Ministry of Trade, Tourism and Telecommunications passed new Rulebook on Switching over to Digital Broadcasting, providing for the exact dates for analog switch off, namely in the period between February 28 and April 30, 2015. Meanwhile, the Initial Network for testing the digital signal has reached coverage enabling the reception of the digital signal for 90% of the citizens of Serbia. The latter, however, brings few benefits. The reason is that the required set-top boxes (for the conversion of the digital signal), necessary for the old TV sets to work, are still scarce on the market. Moreover, it remains unknown how exactly the state will help (as it has been repeatedly announced) vulnerable population groups to purchase such devices. The categories of citizens that will be eligible for assistance have not been divulged either. As for the privatization process, the periods in which the publishers of publicly owned media have to file an initiative for privatization have started. Meanwhile, the Privatization Agency has started probing the interest of potential investors.

The fact that, amid the adoption of the new media laws (which, even if not perfect, definitely constitute a big step forward in the harmonization with the European legislative framework), journalists are still being attacked and intimidated and have their rights infringed (such as the right to access information of public importance) only reinforces our conclusion that modern media laws *per se* are not sufficient for improving a negative media environment. Such laws are part of a broader effort, which must involve adequate implementation, as well as the change of the general climate in society and raising the awareness of the importance of freedom of expression for democratic processes and the development of society.

*The full ANEM Legal Monitoring Report No. 55 for August 2014 in Serbian is available on the ANEM website [here](#).*