



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for September 2014





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SUMMARY AND CONCLUSION OF THE ANEM LEGAL MONITORING REPORT No. 56

-SERBIAN MEDIA SCENE IN SEPTEMBER 2014-

In September, the Serbian media scene was marked by debate about the increasingly restricted debating space about issues of public interest in the Serbian media, caused by the withdrawal of political talk shows from the air on several TV stations. While the government was accused of putting pressure on the media (which allegedly caused the cancelling of talk shows such as “Utisak nedelje” on TV B92 and “Sarapin problem” on TV Studio B), the latter attempted to justify such decisions by legitimate programming reasons or misunderstandings with the independent production companies that are actually producing the above-mentioned programs. Our starting point in this Report is the undisputed fact that the function of the media in a democracy, among other things, is to reflect the pluralist nature of society, free of the domination of a single viewpoint or a single interest group, as well as creating space for the widest possible debate about matters of public concern. When the space for such a debate is narrowed down, one should inevitably question the existence of the available regulation mechanisms to tackle such changes. The media market will not, on its own, provide space for an extensive debate about matters of public interest, especially not the Serbian market that is small, poor and unregulated. The advertising market will not help either, since in the opinion of many independent sources it is deeply politicized and cartelized. Hence, the key question is what the state and the competent regulatory bodies may do in order to secure what we mentioned above – that the Serbian media, starting from the public service broadcaster (whose role is crucial), may reflect the pluralist nature of society, operate free of the domination of a single viewpoint or a single interest group, as well as create space for a flourishing debate about matters of public interest, instead of it dying out, as it is currently the case. The regulation mechanisms are complex and it is questionable whether the regulatory bodies have mastered them. According to the Law on Electronic Media, media services providers must ensure free, accurate, objective, complete and timely information, as well as contribute to raising the general cultural and educational level of the population. These provisions, however, stop short of providing the grounds to regulatory bodies (especially in the case of private TV stations) to order stations to air specific television programs or types of programs. The right of regulators to directly influence programming in such a manner is limited to cases pertaining to airing press releases by public authorities about urgent matters concerning threats to life, health, security or property. Finer regulation hinted at by the Law on Public Information and Media (which Law insists on the regulators’ decisions being based on media market analyses, as well on the control of state aid, with the concept of state aid involving not only public expenditures for the benefit of the beneficiaries allowing the latter to gain market advantage, but also incentives or privileges enjoyed by the beneficiaries) is obviously late and its effectiveness is therefore questionable. In this Report we also elaborate on the current activities in the process of adoption of new regulations in the field of advertizing. The fact that the Ministry of Trade, Tourism and Telecommunications has set up a working group for drafting the new Advertizing Law should be taken advantage of, not only for the purpose of harmonization with EU laws and the implementation of certain EU directives in this area, but also for introducing bolder changes. The necessity for such changes arises from the reports about

the advertising market in Serbia and particularly those compiled by the World Association of Newspapers and News Publishers (WAN-IFRA), the Center for International Media Assistance (CIMA) and the report by the Balkan Investigative Reporting Network (BIRN) from 2013 – “Soft Censorship: Strangling Serbia's Media”. That report says that the bulk of state advertising, even when used for completely legitimate purposes, is based on opaque and arbitrary decisions about the scope of advertising contracts, their economic viability, allocation of marketing budgets and content of advertising. The adoption of the new Advertising Law should be the moment when a certain degree of order will have been introduced in state advertising too, aiming to prevent the favorization of media close to the government. However, the existence of political will and strength to do it is highly uncertain.

The second issue addressed in this Report, which also concerns the expansion or narrowing of the space for debating matters of public interest, pertains to two cases of comments on social networks or media web portals. The first case concerns the investigation the police in Nis launched over comments on the Facebook page of “Juzne vesti”, calling the journalists of the latter “American lackeys”, “scum deserving a beating”, “mice paid to poison and destroy this wretched people”, “those that bombed us and due to which our children are ill” and calling for the beating up these journalists and expelling them from the country. Such comments ensued after Juzne vesti reported that the Deputy Mayor of Nis, Ljubivoje Slavkovic, insulted in the City Hall in Nis their reporter Aleksandar Stankov, over the alleged comment “Death to the Mayor” that Slavkovic read on the Facebook page of Juzne vesti, although the administrators of the page claim they were not able to trace such comment. The second case happened in Sombor, where the staff of the online portal “SOinfo” were moved out from the premises they had been using free of charge the last 11 years, due to alleged obscene comments posted on their online forum. These comments were denounced by Sinisa Todorovic, City Councilor for Economy and Finances belonging to the Serbian Progressive Party (SNS) in Sombor. To make matters even more serious, the portal claims that Todorovic told them that he would make sure “SOinfo” did not receive a cent on the competition for funds from the city budget. Todorovic responded that, although his personal opinion was that portals posting comments signed with pseudonyms should not be eligible for receiving budget funds, his personal position is not a criterion for deciding about the recipients of such funds.

In this context, it needs to be noted that the Law on Public Information and Media expressly stipulates that neither social networks, nor Internet forums constitute media outlets. The fact that the portal “SOinfo”, in addition to its part where editorially processed information is published, as well as ideas and opinions and other content intended for public distribution to an undetermined number of users (which is the definition of media from the Law on Public Information and which undoubtedly makes this portal a media outlet), also administers a forum with more than seven thousand members (as a platform enabling free exchange of information, ideas and opinions among the said members) should not mean that such forum is also a media outlet and especially not that information on the forum constitutes editorially processed information. Similarly, Facebook is not a media outlet and neither is

the webpage of Juzne vesti on that social network. The issue of the existence or non-existence of the grounds for treating user comments (in one case on an Internet forum and in the other on a social network) as an “extension” of the media itself, namely as content under the editorial control of the publishers, which entails the same standards of responsibility as for the journalists’ texts in the media, is topical in many countries and not only in Serbia. While there are different decisions, both in the case law of Serbian courts and even in that of the European Court of Human Rights (see the decision in the case DELFI A.S. vs. Estonia from October 10, 2013 upon the petition 64569/09, which may be found in its English version at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126635>), it seems that the Law on Electronic Commerce is unequivocally saying that user comments on Internet forums, including those on media portals, and on social networks, should be treated as information society services, namely as remotely provided services through electronic equipment for data processing and storage, at the user’s personal request. Consequently, user comments should be subject to the rules provided for by the Law on E-Commerce for information society services and not the rules about media content prescribed by media laws. The rules regulating information society services entail that the service provider that merely stores user data is not obligated to review the stored data or investigate the circumstances that would point to illicit actions by the users. The service provider will be held accountable only if it knew or could have known about illicit actions by the users and if it has failed, immediately upon learning about a case of illicit action or piece of information (which is typically the moment where the service provider has learned about it from the person whose rights are potentially threatened), to remove the same or deny access to it. When the latter becomes undisputed in the practice of Serbian courts, the media will not only have an instrument to defend themselves effectively from pressures and attacks, but the threat of restricting the space for public debate about matters of public interest on the Internet will have also been removed. Everything else, as rightfully observed by the UN Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression Frank La Rue, pushes the media to become censors and makes private censorship the latter would implement defensive, too extensive, opaque and legally unregulated.

All the above shows that the problem of the narrowing down of the space for the debate about issues of public interest in the Serbian media is not always only a local problem. Establishing the responsibility for that problem is important, but even more important is finding the mechanisms to overcome it. These mechanisms are undoubtedly regulation mechanisms. Finding them is very difficult and complex; it requires political will that is often in short supply; what is more, it requires the competences and capacities that are not sufficiently consolidated. Condemning each specific instance recognized as pressure against media freedom is undoubtedly important, but far more significant are the reforms that would change the environment contributing to the persistence of pressure and the narrowing down of space for public debate about issues of public interest.

The full ANEM Legal Monitoring Report No. 56 for September 2014 in Serbian is available on the ANEM website [here](#).