



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for July 2015



SERBIAN MEDIA SCENE IN JULY 2015

Summer in Serbia has always been the period when unpopular political decisions were adopted, while people were on holiday, which more or less guaranteed a low degree of protest. For years, media laws in Serbia were changed during the summer. Even the existing media laws were adopted in August last year, albeit for different reasons. Bearing this in mind, this summer of 2015 is unexpectedly calm. Even the deadlines for mandatory privatization of public media have been extended until October 31, as if someone didn't want that process to be completed in a period of when public attention is at its lowest level. The absence of visible activities of the majority of state authorities and regulatory bodies is noticeable. Such a standstill has created room for a greater visibility of all the problems faced by the media community on regular basis – hacking attacks against Internet portals; threats by politicians, even from the parliamentary stand, saying that those “who wrote things in the papers” should be rightfully afraid; a drastic case showing a complete absence of elementary security of journalists at work involved Milan Djokic, journalist of the weekly “Užička nedelja”, who was stabbed with a knife in the City Hall in Uzice, during a press conference, while interviewing the Mayor Tihomir Petkovic and the Deputy Speaker of the Serbian Parliament Vladimir Marinkovic; Milorad Komrakov, the last of Milosevic's editors on the RTS newsprogram back in 2000, was also injured, though the motives of the attack are unclear and hence it is impossible to tell whether the incident is related to the period when Komrakov worked on RTS.

We have noted yet another case of discrimination and non-invitation of the journalists of certain media by public authorities to press conferences and other event, which case is typically interpreted as a retaliation against “unsuitable media”. We also follow the efforts of the Ministry of Culture and Information aiming at securing that media outlets furnish to the Media Registry, in the statutory term, missing data that ought to provide for the transparency of the ownership structure of the media. On the other hand, we point to the omission caused by the failure to prescribe the deadlines for submitting data on state aid allocated to the media since the beginning of the implementation of the Law on Public Information and Media before the transfer of data from the former Public Media Registry into the newly established Media Registry.

We also analyze whether there is room for the Regulatory Body for Electronic Media to react relative to more or less drastic changes to the programming concepts of licensed media after the issuance of their licences, especially relative to the licenses issued under the previous Broadcasting Law. We particularly point out that the interest of the Regulator for the changed programming concepts of licensed media services may not be merely hectic and subject to public pressure; on the contrary, it must be based on clear and predictable rules.

We have also dealt with the rulebooks on the implementation of the Law on Electronic Media that have come into force in the meantime – on prize competitions in the field of provision of media services; on the obligation of media services providers during the electoral campaign; on the protection of human rights in the field of provision of media services; as well as on the issuance of licenses on open competition and on request. We pointed to what may be particularly controversial in the Rulebook regulating the Protection of Human Rights: the obligation of electronic media, if they publish press releases or the content of public authority documents violating human rights or if human rights violations happen during a live program, to inform the viewers/listeners that a specific human right has actually been violated. Such a provision provides for an obligation of electronic media, in specific cases and relative to specific sources (public authority documents), to decide whether there was a violation of human right or not (which is the duty of the courts and that of the media). This also might be contrary to the jurisprudence of the European Court of Human Rights, which found in its decisions that the media must be entitled, when reporting on matters of public interest, to rely upon official reports, without being required to subject them to an independent review. Under the Rulebook of the Regulatory Body for Electronic Media, Serbian electronic media are required the exact opposite. They are namely required to subject public authority documents to an independent review and always inform the public about their “private” judgment that the content of these documents has violated human rights. If we suppose that the intent of the Regulator was merely to incite the media to critically review (mainly) police communiqués, which were often problematic in practice due to violations of the presumption of innocence, it seems that the formulation developed to that end is utterly problematic. We also point out to the fact that the rulebooks on the issuance of licenses based on an open competition and at request stopped short of regulating the issue of the conditions and criteria for the issuance of licenses based on an open competition, namely minimum technical and organizational requirements for the issuance of licenses at request. While the former may be justified by the need to adapt the conditions and criteria to the concrete objectives of media policy in that area, relative to each specific open completion called, it seems that the latter (failure to prescribe minimum technical and organizational criteria for the issuance of licenses at request) may not be justified.

The Report also covers two issues concerning the implementation of the Law on Public Service Broadcasters. The first issue pertains as to the manner in which the fee for the PSB will be charged from now on, as well as to the resistance and obstructions that will most certainly be faced on the path of setting up an efficient collection mechanism. The second question concerns the transparency (or lack thereof) with which the RTS (outside of the procedure prescribed by the Law on Public Service Providers) introduced the new media television service, the RTS3 channel). It seems that the citizens, which are expected not only to participate in, but also to be the mainstays of the financing of PSBs, should get the opportunity to voice their opinion, in the form of a public debate, about the rationale of the added value in the form of the new media service they have obtained. Avoiding a public debate in this case is in complete contravention of the expected and necessary opening of PSBs towards the citizens and strengthening their financial and every other responsibility.

The Report also analyzes the Draft Law on Information Security that was tabled for public debate by the Ministry of Trade, Tourism and Telecommunications. When adopted, the Law will prescribe the obligation of the operators of IT systems, as systems that could also encompass media portals, to undertake the required technical protective measures that would ensure the prevention of incidents threatening the performance of activities, especially in the scope of providing services to other persons. This coincides with what we have written in our previous reports concerning to the hacking of media portals: the traditional mechanism of state protection by conducting criminal proceedings is slow and rather inefficient; hence, the portals themselves must react and take actions focused on the prevention and improvement of technological prevention measures.

Nonetheless, the reporting period was most strikingly marked by two judgments – by the First Basic Court in Belgrade and the Appellate Court in Nis, respectively. These judgments are a serious reason for concern and threaten to shatter everything positive aspect that we’ve reported these last few years about the improvement of the jurisprudence in media-related disputes in Serbia. The biggest concern isn’t even the erroneous application of Law, but carelessness and slackness; how can we otherwise explain the fact that we are again faced with judgments whose important parts are not reasoned; in which no difference is made between value judgments and factual judgments; or where a person is identified as the responsible editor, only for the court to order a different person to pay damages, in the capacity of responsible editor. Such judgments ring the alarm bell, not only due to the paradoxical situations they create for their respective trials, but because of the dangerous possibility, if such the Serbian courts persist with their ways, that they will destroy the minimum of legal security that remains. The courts are logically the last defense line of freedom of information in every society and that includes Serbia. If that last stance of freedom isn’t doing its job and merely plods along, freedom of information is threatened and we all have a serious problem.

The full ANEM Legal Monitoring Report No. 62, for July 2015, is available in Serbian on the ANEM website [here](#).

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Association of Independent Electronic Media (ANEM) is a non-governmental and non-profit media association, founded in 1993 and registered in 1997, active in the development and improvement of the freedom of opinion and expression, and of freedom, professionalism and independence of the media in accordance with the highest internationally recognized norms, principles and standards. ANEM is the largest association of electronic media in Serbia gathering more than 100 radio and TV stations across the country, and online media. ANEM’s activities contribute to the improvement of the media regulatory framework and the establishment of favorable media environment in the interest of the media sector, as well as to better position, conditions, and the quality of work of its members and other media. ANEM is nowadays recognized by the media sector and responsible institutions as an unavoidable stakeholder in the development of media policy and legislation. It is recognizable in Serbia and abroad by its active advocacy for media reforms, protection and promotion of the freedom of expression and freedom of the media, while ANEM’s membership is recognizable by its dedication to the highest professional standards and professional ethics.