



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for August 2015



SERBIAN MEDIA SCENE IN AUGUST 2015

The month of August 2015 too was marked by threats, pressures and attacks on journalists, typically those investigating embezzlement, corruption and crime. Ivan Ninic, investigative journalists who has collaborated in the drafting of this year's Report of the Anti-Corruption Council in the segment on corruption in the media and former writer for the "Pistaljka" web portal, was beaten up with metal bars by two unknown attackers in Belgrade, in the night between August 27 and 28. Ninic has suffered swelling under the eye, femur injury and a shoulder injury. Stefan Cvetkovic, a reporter from Bela Crkva, has been threatened after the apprehension of four persons in relation to embezzlement in the Capital Investments Fund of Vojvodina and after he questioned Prime Minister Aleksandar Vucic about the investigations related to that case on a press conference in the Government of Serbia. Veran Matic, the Editor-in-Chief of the news program of B92, was threatened with "ritual murder in the middle of the Terazije Square to set an example to everyone else". Other B92 employees were threatened they would be "beaten to death". According to Predrag Blagojevic, editor and journalist of the Juzne vesti web portal from Nis, a policeman apprehended him and hit him in the head twice and injuring him, after he had shown him a journalist card instead of his ID card, which he didn't have when asked by the police to present his documents. The police internal control department claims that eyewitness accounts confirm that the policeman really hit Blagojevic, which meant that he didn't overstep his official authority. Blagojevic expressed doubts as to the veracity of the report on the incident.

Attacks against investigative journalists and especially those reporting on politically sensitive topics, are a serious problem the root of which lies in the unfavorable environment created in society relative to media freedoms and freedom of expression in general. Just before the release of the Anti-Corruption Council Report, which Ivan Ninic worked on as a legal advisor, the daily Informer started a smear campaign against him, calling him "*a mercenary of the European Union*", a common label used to smear journalists reporting about corruption. On a press conference held last January, even the Prime Minister Aleksandar Vucic accused the journalists of the Balkan Investigative Reporting Network (BIRN), who are also engaged in investigative reporting, of being "*liars on the payroll of Mr. Davenport and the EU*" to "*write against the Government of Serbia*". The reason was BIRN's text about the case of hiring a company with no experience whatsoever for similar water pump-down jobs from the Tamnava mine, after the big floods in 2014. There are even more similar accusations at the lower levels of government.

Though irresponsible statements are not necessarily and always connected to a specific attack against journalists, they are in contravention of the positive obligation of the state to create a favorable environment for the development of media freedoms. The combination of tabloid smear campaigns and attacks originating from state officials is not the way that leads to such an environment. State authorities must first of all distance themselves from such verbal attacks and smear campaigns, let alone conduct them themselves or support them. On the contrary, they must react decisively and efficiently to each specific case of threat or physical attack, as well as bring the perpetrators to justice. This is the only way to reverse the unfavorable environment created in society in relation to media freedoms and freedom of expression in general, helping us, as a society, to escape the vicious circle of threats and violence.

In the part of the Report about the monitoring of the implementation of existing regulations, we have analyzed, on the example of the National Employment Service and the daily "Informer", the public procurement procedures where the media appear as bidders. We remind that the Law on Public Information and Media, in the context of the Media Strategy, intended on establishing a system free of opaque media financing. In view of the specific role of the media, that Law aimed at preventing the decisions on allocating media funds to be made disregarding the specific criteria related to the media field. This is why rules on project co-financing were introduced, entailing the obligation of all public authorities (national, provincial and local) to commit funds for open competitions for financing the public interest in the area of public information. However, the procurement of advertising services of the public sector in the media remains outside of the scope of the Law on Public Information and Media, under the general regime of public procurement. The question is, however, if public procurement is always the best instrument to select the media the public sector will be advertised on or should perhaps different solutions be sought for in this area? The 2011 Media Strategy answered this question by prescribing that the Republic of Serbia and local self-government units, as advertisers, *will distribute advertisements in a transparent and non-discriminatory way (public calls, competitions, advertisements, etc.)* in accordance with the public interest, while the advertising of the state and its bodies will be efficiently regulated by rules on the participation in open competitions, which will prevent the concentration of advertising budgets and the latter being monopolized by certain media or agencies. So, the Media Strategy recognized the problem and foresaw mechanisms to overcome it (open competition based on the principles of transparency, objectivity and non-discrimination). The new media legislation and most probably the soon-to-be-adopted new regulations in the area of advertising have opted to ignore the problem recognized by the Media Strategy. This is not good news. Just like in 2011 when the Media Strategy was drafted, Serbia lacks regulations that would introduce the obligation to release information about funds available for purchasing advertising services for each calendar year on all levels of government and in all other public entities. These regulations would prescribe the

rules for procuring advertising services. Serbia also lacks a system under which the procurement of advertising services would be based on the actual needs of the advertisers, where these services will not be a covert means to finance *politically suitable media*. Finally, clear controlling mechanisms and body/bodies are needed to perform the said control, armed with the adequate controlling powers.

We have also analyzed the case of the text-messaging platform Viber, which has chosen the daily "Kurir" as the media that will have a public chat on that platform, which has opened, through the said newspaper another communication channel on which the users will follow the news and the commentaries of Kurir's editors, journalists and correspondents. Our conclusion is that such "compression" of telecommunications, media and information society services will result in the "new" media laws quickly becoming old and obsolete, since they will not be able to respond adequately to the challenges of convergence.

Concerning the implementation of the Law on Electronic Media, we have analyzed the problem of the legal grounds for inserting localized advertising messages in the programs of transfrontier channels distributed in Serbia through media content distribution networks (primarily cable) and other channels. Namely, by ratifying the European Convention on Transfrontier Television Serbia committed not to restrict on its territory the rebroadcast of programming services that are in compliance with the provisions of that convention. The Law on Electronic Media further prescribes that media services, without a prior approval or license, may be provided, among others, by media service providers the programs of which are rebroadcast on the territory of the Republic of Serbia, in accordance with the provisions of the European Convention on Transfrontier Television. The Law goes on to prescribe that rebroadcast does not exist if the source program is altered, namely if the original signal flow was disrupted by inserting a commercial communication or other programming content that is not part of the original programming. In practice, however, it happens that foreign channels, holding licenses issued abroad, in countries signatories of the European Convention on Transfrontier Television, are distributed on Serbian cable networks without a license acquired in Serbia, as if they were rebroadcast, the difference being that the original program is altered and the original signal flow disrupted by inserting commercials intended for the Serbian audience, which commercials are not part of the original foreign programming. Such practice could be adapted to the Law either by broadcasting transfrontier channels in their authentic form, without inserting local commercials, or by licensing localized channels with the Regulatory Body for Electronic Media. The goal we should strive for as a society should be to preserve a wide range of foreign channels accessible in Serbia, while enabling national channels to be competitive on the advertising market. The latter will not be competitive as long as they

pay fees exceeding those paid abroad by competitor channels. For that reason, the first measure, aimed at putting order in cable distribution of media content, should be to reduce the fees paid by media service providers under the Law, to the extent it would lead to equalizing the level of these fees in the region.

In the same part of the Report we have also analyzed the press release of the Adria Media Group, which has informed the public, in the context of their announcement of the plans to extend their business to broadcasting, that it has completed negotiations on the acquisition of the Moja TV cable channel. We have examined the regulations concerning cross-ownership of media, which regulations could probably be implemented for the first time in Serbia in relation to the aforementioned acquisition.

In the Report we also dealt with the new rulebooks and guidelines of the Regulatory Body for Electronic Media that entered into force last August (the most significant definitely being the Rulebook on Audio-Visual Commercial Communications), as well as the reaction of the Commissioner for Information of Public Importance and Personal Data Protection regarding the fact that the new regulations in different areas have reduced the level of protection of the right to free access to information of public importance below the level prescribed by the Law on Free Access to Information of Public Importance. The Commissioner namely said that up to four drafts of various laws have lately dealt with free access to information of public importance and that this right was reduced in certain fields. In his words, the most controversial case could be found in the Draft Law on Foreign Investments.

Relative to the digitalization process, we pointed out that the managing board of RATEL adopted in late August the Decision on Initiating the Public Tendering Procedure for the Issuance of Individual Licenses for the Use of Radio Frequencies in the Radio-Frequency Band Released with the Digital Switchover. Three licenses are issued for the so-called digital dividend at the initial price of 30 million euros for each individual license. In other words, the state will earn at least 90 million euros from the digital dividend if the public tendering is successful. The question automatically arises why shouldn't part of these funds be returned to the media through the financing of media projects?

A specific part of the Report is dedicated to the privatization process. In the context of certain controversies related to the current privatizations, we also analyzed the legislative mechanisms by which the state may counter "suspicious privatizations". These mechanisms, although absent from the media legislation, exist in privatization regulations and regulations on the prevention of money laundering and terrorism financing. In the period covered by this Report, however,

there was no information as to whether the Privatization Agency or the Anti-Money Laundering Office had identified irregularities that would hinder any of the persons participating in the current privatizations from being a buyer of media.

The self-evident conclusion of this Report is that, in the unfavorable environment created in society for the realization of media freedoms and freedom of expression in general (which environment is marked by an endless series of attacks on journalists investigating corruption and politically sensitive topics, along with collecting the “digital dividend” and ending of the privatization process) we are faced with the need to redefine the goals of further reforms of the media scene in Serbia. In that sense, the development of technology, as well as certain issues that were recognized back at the time of the adoption of the Media Strategy as significant for the reforms (which issues the set of media laws adopted last year stopped short of reforming, such as, for example, the setting up of a mechanism that would prevent advertising services procurement, in situation where the state is the advertiser, from becoming a covert means of financing “suitable media”) are merely part of a larger pool of questions requiring new reform initiatives and adequate solutions. Time will tell if such initiatives will emerge.

The full ANEM Legal Monitoring Report No. 63, for August 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.