



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

Report for July 2013





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## I FREEDOM OF EXPRESSION

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

### 1. *Threats and pressures*

1.1. The leader of the Democratic Party and the Mayor of Belgrade Dragan Djilas sent a letter in late July to the management of the Radio-Television of Serbia (RTS), saying that the national public service broadcaster has been informing the citizens in an unprofessional and biased manner, giving insufficient coverage to the biggest opposition party and denying viewers the opportunity to hear more dissenting voices. According to Djilas, „the RTS is not the public service broadcaster of a European Serbia, but that of a SNS Serbia, a country of dictatorship, without dissenting opinions.“ What pushed him to write the letter, Djilas said, was the fact that the Vice-President of the DS Bojan Pajtic had been given merely 15 seconds of coverage in the central news bulletin of the RTS, while the SNS enjoyed a 12-minute package about the reshuffle of the government and a live stand-up from the office of the SNS Main Board.

Under the Law on Public Information and the Media, public information shall be free, in the interest of the public and free of censorship. It is disallowed to restrict freedom of public information in any manner whatsoever suitable to restrict the free flow of ideas, information and opinions, or to put any kind of pressure so as to obstruct the media's work. On the other hand, the Broadcasting Law stipulates that the public service broadcasters (PSB's) shall, in the general interest in the field of public information, ensure that the programs they produce and broadcast (especially news programs) are free of any influence by the government, political organizations or centers of economic power. Moreover, the Law also provides that the PSB's must ensure diverse and balanced content. It stops short, however, of insisting on the equal coverage of the government and the opposition, save in the case of free electoral coverage, which the PSB's are required to provide to all participants in the electoral process. The Broadcasters' Code of Conduct goes even further, saying that all broadcasters, and not only PSB's, must in their news political features fulfill the standards of objectivity, impartiality and non-discrimination; the standard of impartiality involves the obligation to clearly separate the facts from views, opinions or comments; personal convictions and opinions of the editors and the journalists shall not affect or discriminate the topic and the manner of describing it; statements, press releases and similar content must not be manipulated with, in order to alter their essential meaning. The Code particularly bans all broadcasters, and not only the PSB's, from clearly favoring or discriminating certain political parties, organizations or their officials. While it is evident that the statement by the DS leader and Belgrade Mayor Dragan Djilas constitute undue pressure on the editorial policy of the RTS, it is also true that Serbia lacks the mechanisms for making a quantitative evaluation of the content produced and aired by the PSB's. The oversight reports of the Republic Broadcasting Agency (RBA) itself (which is competent

for controlling the consistent enforcement of the Broadcasting Law, not least the extent to which the PSB's fulfill their function and mission) are predominantly quantitative. This has helped building a conviction that independence entails equidistance and balance in terms of seconds or minutes of coverage dedicated to certain actors on the social or political landscape. According to that reasoning, critical opinions (of the political opposition) equal the right to air time, which would actually restrict the right and the possibility of the PSB to have its own critical stance. Therefore, the key problem is not the one highlighted by Dragan Djilas – that the Vice-President of his Party gets 50 times less air time in the RTS central news bulletin than the representatives of the ruling coalition. Even if the latter was true, the main issue is whether the PSB is adhering to its statutory mission.

1.2. In the course of the month of July, TV Pink waged for several days a campaign against the daily „Blic“ and its Editor-in-Chief Veselin Simonovic. Pink aired long press releases where Zeljko Mitrovic, the owner of the TV station, called Blic „a filthy newspaper“, while using foul language to describe his opinion of Simonovic. The text of the press releases was accompanied by malicious editing using photos of Simonovic, who was never given the opportunity to comment on Mitrovic's allegations. The Association of Journalists of Serbia (UNS) and the Independent Association of Journalists of Serbia (NUNS), the Media Association and even some members of the RBA, condemned the Mitrovic's actions, calling it abuse of the national frequency for private ends. Both associations insisted it was not the first time that Mitrovic misused the air in such a manner and called on the RBA Council to react as soon as possible. Goran Karadzic, the Deputy President of the RBA Council, told „Blic“ that his agency had already initiated proceedings against TV Pink *ex officio* and the basis of monitoring and, even before it received the petition of Blic's founder.

Under the Broadcasting Law, all broadcasters shall ensure in their operations free, complete and timely information of the citizens and contribute to raising the overall cultural and educational level of the citizens. The competences of the RBA include controlling and ensuring consistent enforcement of the provisions of the Broadcasting Law; overseeing the work of the broadcasters; as well as taking the proper measures where such provisions are violated. The RBA may namely pronounce a warning and a caution against a broadcaster and it may also (under the Broadcasting Law) temporarily or permanently revoke their broadcasting license. The Broadcasters' Code of Conduct expressly says that the broadcasters shall be impartial in their reporting. When reporting about debates that include conflicts of any kind, the broadcasters shall enable all participants in the debate to take an equal part in it. The Code also prohibits airing unilateral personal attacks or waging lengthy or repetitive campaigns against private individuals, social groups or institutions without relevant new information that would justify continuous or repeated reporting about the same phenomenon, event, institution or person. When saying that “it is not the first time Zeljko Mitrovic has abused the national frequency in such manner”, UNS and NUNS had two cases in mind. Back in 2002, Mitrovic attacked in a similar fashion the then member of the government's anti-corruption council Cedomir Cupic, a Professor on the Faculty of the Political Sciences. The campaign ensued after Cupic accused the new authorities of turning a blind eye to

the illegally built building of TV Pink, while bringing down other illegal structures. He was immediately subjected to an aggressive campaign on Pink television, where he was insulted in the communiqués of Pink's owner, aired in the news bulletins of that station for days. The case ended up in court and Mitrovic was fined 30.000 dinars. A slightly different situation happened in 2011, when Mitrovic reacted to the decision of the Croatian customs to seize his yacht, claiming two million euros in alleged customs offences committed when the yacht was entering Croatian territorial waters from Montenegrin territorial waters. Mitrovic responded by removing Croatian music and films from the air and banning the advertising of Croatian tourism on TV Pink. He also launched an anti-Croatian campaign, highlighting in the news attacks against Serbian or Bosnian tourists and the vandalizing of their property in Croatia. Back then, Pink said that it "would never again cover up the incidents against Serbian, Bosnia and Montenegrin citizens on holiday in Croatia." While the attacks against Professor Cupic happened before the entering into force of the Broadcasting Law, the "anti-Croatian" campaign, instigated by a private dispute Mitrovic had with the Croatian customs authorities, happened after that. In that sense, the abuse of news program for personal vendettas may definitely constitute a repeated breach of the Code and entail a stricter penalty provided for by the Law.

1.3. The daily "Informer" published in July a series of texts discussing the reasons for putting Veran Matic, the Editor of the B92 news programme, under police protection. Informer pointed to the costs of such an arrangement for the national budget and accused Matic of arrogance. In the text authored by Dragan Vucicevic, the Editor-in-Chief of Informer, it was claimed that Matic didn't need security in the first place. The Police Directorate (PD) responded to this claim by saying that Matic hadn't requested to be placed under police security, which was assigned to him after it was assessed necessary on the basis of information supplied by the Special Prosecutor for Organized Crime and the Security Information Agency. The PD also said that the security costs are much lesser than the potential consequences if the security threats against Matic were to be realized.

Security threats against every person in Serbia, including Veran Matic, are assessed by the competent authorities of the Republic of Serbia and not by the person to be placed under security. After the assessment is completed, the decision is made whether to assign them police protection, the duration of which is decided in further assessments of the threats against that person's security. The reality that the journalists in Serbia are threatened is evidenced by the assassinations of Milan Pantic, Dada Vujasinovic and Slavko Curuvija, as well as by the attempts on the life of Dejan Anastasijevic and the almost daily attacks against journalists. Besides Matic, police protection has already been assigned to the General Manager of the RTS Aleksandar Tijanic, the author and editor of the investigative programme "Insider" aired on TVB92 Brankica Stankovic, Vladimir Mitric, the correspondent of Vecernje Novosti from Loznica, as well as other journalists deemed to be threatened. Interestingly enough, Dragan Vucicevic, the Editor-in-Chief of "Informer" and the author of the controversial text against Matic, was also, at one time, placed under police protection. Claiming that police protection for certain journalists is costly and unnecessary and the result of these persons' whims will certainly not contribute to the betterment of the

position of journalists in Serbia. It is evident that keeping certain journalists under police protection for years, instead of addressing the causes of them being under threat, is not good. However, accusing the journalists for such a state of affairs amounts to additionally victimizing the victims and will certainly not contribute to solving the problem. On the contrary, such practice constitutes unacceptable pressure on the most threatened news outlets and journalists.

1.4. The web portal “Koreni” (Serbian for “roots”) posted a text calling the journalist and writer from Novi Sad Nedim Sejdinovic, the President of the Executive Board of the Independent Association of Journalists of Vojvodina (NDNV), a “Muslim Duke” and “one of the leading separatists in Vojvodina”. The text went on saying that “Sejdinovic is a man unable to see the log in the side of his Islamic-Bosnian group” and that he “dares to describe the thorns in the Serbian side as enormous logs”. “Koreni” is self-described as the web portal of diaspora Serbs the aim of which is to truthfully inform them about the developments in their mother countries (i.e. in the former Yugoslavia) and the countries the Serbs in the diaspora currently live in, in our interest and that of our people and homeland”. The editor-in-chief of Koreni is a certain Nikola Janic, while the physical address of the portal is in Sweden. The text was reposted on right-wing websites, but on the Internet it is available on a domain registered in Serbia, with a Serbian address for administrative and technical contact.

According to the Serbian Constitution, indirect or direct discrimination shall be prohibited, particularly on the basis of race, gender, ethnicity, social background, birth, religious affiliation, political or other conviction, material wealth, culture, language, age or physical or mental disability. Furthermore, the Broadcasting Law prohibits hate speech, which is described as the release of ideas, information and opinions instigating discrimination, hatred or violence against persons or groups of persons due to their affiliation or non-affiliation to a certain race, nation, ethnicity, gender or sexual orientation, whether such release amounts to a criminal offense or not. As a post-conflict society, Serbia should be less tolerant of ethnically motivated attacks. Unfortunately, the outbursts of ethnic hatred against certain journalists on the Internet are yet to be dealt with adequately by the authorities.

## **2. Court proceedings**

2.1. The company for the production and distribution of television program “TV Apatin” d.o.o. from Apatin – the founder of the newspaper “Novi glas komune” and its Editor-in-Chief Vesna Milanovic Simcic, received in early July the verdict of the Appellate Court in Novi Sad, committing them to pay to the plaintiffs Nenad Nisic and Vesna Nisic the amount of 500 thousand dinars, namely a total of one million dinars in damages for injury to honor and reputation, as well as 99.750,00 dinars of legal costs for the first and second-instance trial. As the Editor-in-Chief of “Novi glas komune”, Vesna Milanovic-Simcic was ordered to publish the Appellate Court’s verdict without any comments and delay and no later than in the second edition of the newspaper, as of the day when the verdict came into effect. The

Appellate Court in Novi Sad has namely reversed the first instance decision of the Higher Court in Sombor, which had entirely rejected the claim of the plaintiffs against “TV Apatin” and Vesna Milanovic Simcic. In early February 2013, Nenad and Vesna Nisic claimed damages for injury to honor and reputation allegedly caused by two texts in “Novi glas komune”, requesting the amount of two million dinars. The texts discussed the suicide of the daughter of the plaintiffs. The latter’s claim said that the defendants were reporting about the suicide of their daughter – the motives, the manner in which she had taken her life, the suicide note – while failing to act with due journalist care prescribed in Article 3 of the Public Information Law. That article says it is the duty of the journalist and the editor-in-chief of a public media, prior to releasing information about a particular event, phenomenon or person, to check, with the proper care in the given context, the originality, accuracy and completeness of the information, since there was no official confirmation of its accuracy at the moment when it was released. The Higher Court in Novi Sad found that the texts about the defunct girl contained sensitive and careful language and stopped short of mentioning the plaintiffs, which means there was no causal relationship between the information published and the injury to honor and reputation of the plaintiffs. For that reason, as the first instance verdict says, the plaintiffs may not claim damages from the defendants for injury to honor and reputation due to the changed attitude of other persons about them after their daughter’s death. The court of first instance also established that the author of the texts – the editor in chief of “Novi glas komune” – had acted with due journalist care and that the information released, in view of the presented evidence, are accurate. For these reasons, the court rejected the plaintiffs’ claim in its entirety. Acting upon the plaintiffs’ appeal against the above described verdict, the Appellate Court in Novi Sad reversed the decision of the Higher Court in Sombor. In spite of accepting the position of the court of first instance about the established facts, the Appellate Court explained that the defendants have violated the plaintiffs’ rights to privacy and decided, for that reason, to partially uphold their claim, by upholding it in the amount up to one million of the total two million dinars claimed.

Since the plaintiffs in this case didn’t claim damages for breach of privacy and that, consequently, no evidence was presented on these grounds (nor did the defendants have the opportunity to say their opinion about that), it seems that the court of second instance overstepped the claim, thus violating the provisions of the Law on Litigation Procedure. In addition, it failed to explain how the defendants have injured the honor and reputation of the plaintiffs, i.e. what is the exact causal relationship between the information published and the injured honor and reputation of the parents. The latter especially since the court of first instance established that “the texts were affirmative”, that they are not event mentioned by the parents in the context of the responsibility for the death of their daughter, as well as that the editor and the media outlet should not be held accountable for the injured honor and reputation of the plaintiff for having allegedly created a negative image of them with a certain number of people (who would supposedly blame the parents for the conditions in which their late daughter lived, due to which she presumably took her own life, or for the injury the plaintiffs themselves, by associating their honor with such conditions). The problem is that the verdict may not be contested by an appeal; instead, an extraordinary remedy must be resorted to – special review – which does not delay the enforcement of



the verdict. The specificity of the special review is that it is allowed only when the Appellate Court or the Supreme Court of Cassation believes it is necessary to examine legal matters of general interest or legal matters in the interest of citizens' equality; for the purpose of aligning case law, as well as if new interpretation of law is necessary. In addition to resorting to the special review, the defendants may also lodge a constitutional appeal, which will not, however, delay the enforcement either. That means that the plaintiffs may initiate enforced performance and if the second instance-verdict is repealed, the defendants would be able to reclaim forcibly collected moneys in a new trial only. In addition to the fact that the verdict of the Appellate Court in Novi Sad exceeded the plaintiffs' claim, the sentence is also problematic from the standpoint of the damages that are unusually high for this kind of proceedings, threatening the very survival of the two media outlets founded by the Company for the production and distribution of television program "TV Apatin" d.o.o. from Apatin – TV Apatin and Novi glas komune. It is also interesting for showing the inconsistency of the case law in media-related cases, even in the scope of the same court, in this case the Appellate Court in Novi Sad. In one of our previous reports, we have written about the verdict by which that same Appellate Court rejected the claim of the parents of Miladin Kovacevic, which filed a lawsuit for non-financial damages caused by injured honor and reputation against B92, the Editor-in-Chief Veran Matic and journalist Nikola Radisic. In that case, damages were claimed over a packaged aired by TV92, which criticized the decision by the Serbian government in 2009 to pay a million dollars of indemnity to Brian Steinhower and for the bail for Kovacevic to be released from prison. The Kovacevic family claimed damages because they had actually paid the bail and not the government. The same court that in Kovacevic's case properly observed that the negative image of the Kovacevic family held by certain people was not the consequence of the media's mistake in presenting the amount paid (or not paid) by the government; even in the absence of journalist error - since the information released, according to the explanation of both the court of first instance and the court of second instance - is accurate, the Court nonetheless found the defendants to be responsible on grounds that weren't even invoked by the plaintiffs. In addition, if we agree that media coverage of personal tragedies is often devoid of moderation and good taste, it was not the case (according to the explanation of both the court of first instance and the court of second instance) in the aforementioned case.

## **II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS**

### ***1. Law on Public Information***

- 1.1. The implementation of the Law on Public Information has been elaborated on in the section about freedom of expression.

## 2. *Broadcasting Law*

2.1. The month of July saw the continuation of the procedure under the open competition for the allocation of frequencies with national coverage. The deadline for submitting applications expired on July 9 and two stations applied. The RBA released the list of applicants on July 11, which list included the criteria for the issuance of the licenses. On its website, the RBA also posted the ownership structure of the applications, while the interviews with the applicants were held on July 17. Stating the criteria for the licenses, the RBA said that, while making the decision, it will particularly take into account: the business results of the applicant; the ratings of the TV station (in the case of an existing broadcaster); experience in broadcasting or similar activities; predominant activity of the applicants; helping the development of domestic production, guarantees in terms of quality and diversity of content; past behavior of the applicant; ownership structure, transparency and origin of capital; prevention of overt or covert imposition of a dominant influence on public opinion (protecting the pluralism of opinions); as well as the conduct of the applicant during the competition procedure. The applicants on the competition were Kopernikus Cable Network d.o.o. from Nis and Nova.rs Television from Belgrade. According to the data released by the RBA, Kopernikus Cable d.o.o has the following ownership structure: Twinel d.o.o from Nis (whose sole owner is Zvezdan Milovanovic) has 47,59% of the share, Zvezdan Milovanovic directly 47,71%, and Mitra Milovanovic 4,7%. Nova.rs Television is exclusively owned by Nova.rs Media Holding d.o.o. from Belgrade. The owners of Media Holding are GMG Media Group d.o.o. from Belgrade, with 7%, BD Media Invest B.V. from the Netherlands, with 85.1% and Dragan Djurkovic from Belgrade, with 7.9 %. The sole owner of GMG Media Group is Ulrich Brock, a German citizen, while BD Media Invest B.V. is owned by New Amsterdam Cititrust B.V. from the Netherlands, the founders of which are Bernd Matthias Dietel (99%) and Ulf Malte Iversen (1%), both German citizens.

On public interviews with the representatives of the applicants, the members of the RBA Council asked additional questions that mainly pertained to the possibility to realize the set goals from their programming study, as well as to the ownership structure, the possible existence of media concentration and the preparedness of the applicant for the digital switchover. The representatives of TV Kopernikus c cable broadcasting, on three channels. They said they will have between 150 and 200 employees, of which 100 with university degrees. They also said to already have 20 correspondent offices throughout Serbia, as well as that they have invested about five million euros in digital equipment. The members of the Council had certain objections to the programming study, finding it inconsistent in some parts. They reminded the representatives of TV Kopernikus of their biased behavior during the election campaign in 2012, where they openly sided (in the opinion of some members of the Council) with one political party. Some members of the Council wanted to know more about the connection of the station with the cable operator Kopernikus, noting that the new Law on Electronic Media “will probably expressly forbid vertical integration”. The representatives of TV Kopernikus said that the abovementioned cable operator is a separate firm, owned by a foreign company. Relative to Nova.rs, the bulk of the questions pertained to their interest in media activities, as well as to their ownership structure. The Council wanted to know

what is the interest of a foreign company to invest in a small market like Serbia, which has been steadily declining, on top of already having four national commercial broadcasters and two public service broadcasters. The station's representatives said they believed they could end up among the Top 3 of national broadcasters, explaining they aimed at providing a quality service, which will be technically up to date with the latest trends, highly interactive and underpinned by quality own production. The Council was most interested in the ownership structure, the relationship with RTL and the former Director of TV Prva Dejan Jovic. The representatives of Nova.rs said they don't have any hidden owners, as well as that the former Director of TV Prva does not participate in the management or the ownership structure. Their relationship with RTL was described as a contractual relationship involving technical cooperation. The RBA said the Council will decide about the applications on July 23, but due to the absence of most of the members, at the time of writing this Report, that session was not held. It actually took place more than two weeks after the deadline.

In addition to the talks with the applicants for the open competition for the national coverage, the RBA Council also talked to the representatives of TV Jedinstvo and TV NP from Novi Pazar, TV Telemark from Cacak, Moja TV from Belgrade and Radio M from Knjazevac. As in the case of the open competition, the decision had still not been taken while we were compiling this Report.

### **III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS**

#### ***1. Law on Public Information and Media, Law on Electronic Media***

After the exposé of the representative of the Ministry of Culture and Media on the session of the Parliamentary Committee for Culture and Media, which was held on July 17, it is almost certain that three laws will be adopted instead of two. Namely, the Law on Public Service Broadcasters will exist as a separate law. Interestingly enough, a brief about the progress of in the drafting of media laws was included subsequently in the agenda for the aforementioned session, where ANEM's monitoring publication (dealing with the successes and failures of the media reform) was presented. Speaking at the session, Assistant Minister of Culture and Media Dragan Kolarevic said that the Draft Law on Public Information and Media has been entered into the official government procedure He also said that the Draft Law is expected to be tabled to the Parliament in September, after the reception of the opinion from Brussels. As for the Draft Law on Electronic Media and the Draft Law on Public Service Broadcasters, the public debate is expected to take place in late August. Kolarevic said that all the draft laws were made with the assistance of EU and OSCE experts and the Serbian media community. In addition to the members of the Parliamentary Committee, the debate about the media laws included the representatives of the Ministry, the media community and international organizations. They discussed the issue of financing of PSB's and possible consequences of the withdrawal of the state from media

ownership and transition to project financing. Other topics included the media register, addressing the question of competences for dealing with unlawful media concentration, as well as the future of the local media. The Assistant Minister for Culture and Media said that the budget is going to be the main source of funding for PSB's until 2015. The representatives of the media community criticized the delay in the adoption of media laws, which under the Media Strategy should have been passed back in March. They pointed to the problem of inconsistent regulation in the area of project financing of the media, which will result in different application of general legal principles governing project financing at the level of the Republic, Autonomous Province and local self-government. Furthermore, the media community believes that the question whether specific provisions of other laws may be repealed by the Law on Public Information and the Media, is not a formal, but an essential question and that it should not be solely to the Republic Legislation Secretariat to decide about it. Certain provisions of the Law on Local Self-Government, Law on the Capital City, Law on the Protection of Ethnic Minority Rights, Law on Ethnic Minorities Ethnic Councils, Law on Tanjug and Law on Public Services, are most certainly in breach of the constitutional principle of uniformity of the legal system. If the position of the Republic Legislation Secretariat is that such provisions may not be repealed by the Law on Public Information and Media, the issue of the inconsistency of legislation will remain topical. The representatives of ANEM retained the right to also comment on the provisions on unlawful media concentration, when the Draft Law on Electronic Media becomes available, since the last Draft does not contain provisions on unlawful concentration of property for electronic media. Some of these concerns are shared by the representatives of the European Commission, which have criticized the delay of media reforms. According to the EC Directorate, the implementation of the Media Strategy "is not the key priority", in view of the decision of the European Council on opening the accession negotiation with Serbia. In a letter addressed, at the initiative of the European Enlargement Commissioner Stefan Füle, by the Head of Relations with Serbia Myrriam Ferran, to the Tanjug and Beta news agencies, the EC says that "tangible progress was needed" in that field. The letter underscores the fact that the "first deadlines" provided for by the Media Strategy have already been exceeded, since the media laws that would specifically regulate the status of the Tanjug news agency (and other state-owned media) were supposed to be passed back in March. The letter highlighted the need to align state financing of the media at different levels with the rules on state aid, including financing through advertising campaigns from public sources. It was concluded that Serbia, an EU candidate country, will have to face the issues of transparency of ownership and media financing, which constitute key indicators in the association process, along with the necessary and urgent withdrawal of the state from media ownership.

## ***2. Law on Public Media Services***

After it was officially announced that the position, organization, financing and other issues relevant for the operation of public media services, will be regulated by a separate law, as well as that the main source of their funding will come from the budget, it is legitimate to ask if such a model will be sustainable and whether the public media services will be able to discharge their programming

functions, especially since their track record until now in that field hasn't exactly been satisfactory. Moreover, the solution for the budget to be the main source of funding of the PSB hasn't been recognized in the Media Strategy and hence the draft law that will introduce such a concept will be diverging from the Strategy. Besides, that model hasn't been successful in other European states either. The Montenegrin model, often mentioned since it also entails budget financing, can hardly be an option. Unlike Serbia, Montenegro has less than 700 thousand inhabitants and only one PSB. In addition, a key question is how to ensure the necessary independence of the PSB from political pressure from the executive branch, namely from the Government and the Ministry of Finance. The EC's media experts that have analyzed the prepared drafts said that, prior to switching to budget financing, it should be explained why aren't Serbian citizens paying the subscription fee. Considering the sensitivity of that question and the crisis endured by PSB's, they proposed a compromise solution, under which the subscription should remain, while models would be introduced to make the collection thereof more effective and the budget would provide only the missing portion of the funds. Part of the funds coming from the budget would be gradually reduced, proportionately to the increased collection rate.

#### **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 tackled the activities of the RBA in the part of this Report concerning the implementation of the Broadcasting Law.

1.2. In July, the RBA released a report on the fulfillment of programming and statutory obligations of the provincial PSB. As in the case of the report on the fulfillment of programming and statutory obligations of the PSB at the level of the Republic, the aforementioned report does not contain an analysis of the radio program, making the Report incomplete. The analysis encompassed the programs RTV1 and RTV2 in 2012. As for RTV1, the Report that, in view of the diversity of the content, the statutory obligation from Article 77 of the Broadcasting Law (entailing that the program of PSB's must include news, cultural, artistic, educational, religious, scientific, children's, entertainment, sports and other content, in order to satisfy the needs of the citizens and other actors and the realization of their rights in the field of broadcasting. The share of the news program is dominant (more than 50%), followed by series (about 12%) and entertainment content (about 12%). The Report pointed to the plummeting of the share of children's, documentary and film program. This fact is highly indicative,

since it directly shows how the lack of financial resources impacts the programming content of the PSB. It results in a sharp reduction of the share of non-commercial program significant for the realization of the programming function of the PSB (documentary and children's program). Meanwhile, it is also evident that the share of films is down, which is directly caused by the lack of funds. If this trend persists, we may expect the provincial PSB to reorient its business towards commercial content. The latter, again, could disrupt the state of affairs on the media market, where the PSB would ultimately be unable to perform its core function. This is backed up by a trend of plummeting of the share of premieres relative to reruns, which trend is particularly visible with RTS. With about 80% of own production, RTV1 has far exceeded the statutory quota of own production, although the share of the latter has, in the last year, fallen by almost 9%. About 87% of the production is in the Serbian language, while the rest is in minority languages. However, the Report acknowledges a total absence of own production series and films, which also points to a lack of financial resources, in view of the high costs of producing such content. Particularly interesting is the fact that the share of independent production is about 7%, which is below the statutory minimum (it has also been acknowledged in the RTS report – 6,56% for RTS1 and 9,01% for RTS2). This shows that both PSB's dedicate little attention to independent production, a trend that has been persisting for the last three years. At that, in the RBA's estimate, the genre structure of independent production on RTV1 does not correspond to the primary goal for which the PSB's are obligated to include independent production content in their program. Hence, while the RTS, which wasn't reprimanded for the genre structure of the independent production, airs about 40% of independent documentary program, while that share is merely 4% in RTV. Meanwhile, the PSB's claim that the content offered to them by independent production is unsatisfactory. The crisis has obviously hit that sector hard, since it is not able to offer the right quality and volume of program that may satisfy the needs and standards of RTV and RTS. The RBA also made interesting remarks about the series program. All the premieres that are aired are foreign production, while merely one domestic series was aired in 2012, as a rerun. The RTV has evidently the same problem as the RTS – the ration of premieres and reruns are 38% to 62%. The situation with films is similar. As for programs intended for specific social groups, their share is about 3%. Just like in the report about RTS, the program intended for specific social groups on RTV is present in a percentage that shows the attitude of the broadcaster towards obligations of general interest in the field of public information, which are defined in Article 78, paragraph 1, subparagraph 2) of the Broadcasting Law". The RBA stops short of saying more clearly if that percentage is sufficient or not, namely if the PSB's program covers all segments of society, without discrimination. One may observe that the share of the program intended for specific social groups on RTV exceeds three times that of RTS. The statistic of behaviors the RBA deems violations of the applicable regulations show that, relative to RTV, the majority of such behaviors concerns the use of Latin instead of Cyrillic language, thus breaching the Broadcasters' Code of Conduct. Such a position by the RBA may be questionable, since the Latin alphabet is in use on the territory of the Autonomous Province of Vojvodina, in accordance with the Law on the Official Use of Alphabet and Language and having in mind that the RTV program is watched, among others, by the ethnic minorities using Latin alphabet and understand the Serbian language. The other group of behaviors the RBA deems to be in

contravention of the applicable regulations concerns the obligation of the broadcasters to air content unsuitable for minors only in the period between 00:00-06.00 hours.

As for RTV2, its function is slightly more specific, since it airs content in minority languages, but also in Serbian. RBA's analysis has shown that the predominant languages are Hungarian with about 36%, Romanian with about 12%, Ruthenian, Slovakian and Roma, with approximately the same shares (about 10%). The share of the program in Serbian is around 8% and the channel also airs content in Croatian, Macedonian, Ukrainian and Bunjevci language. The RBA concludes that, by ensuring language diversity of the broadcasted content, RTV2 has fulfilled the specific obligations of the PSB provided for by Article 78, paragraph 1, subparagraphs 2), 3) and 4), which concern production and broadcasting of programs intended for all segments of society, especially taking into account specific social groups, the respect for standards of language and speech of the majority population and in proportion with the size of ethnic minorities, as well as fulfilling the needs of the citizens for content expressing their cultural identity. The characteristics of the RTV2 channel make it specific compared to all other PSB channels. If we take into account the expression of the cultural identity of ethnic minorities (since this is not a specific programming obligation of the provincial PSB only), one may observe the extent to which the RTS (PSB at the level of the Republic) is below the standards set by RTV2. On the other hand, the quota of independent production on RTV2 is lagging. Observing the overall programming in all languages, the share of independent productions is about 7% less than the 10% statutory minimum. Also, according to the reports, the genre structure of independent productions on RTV2 is not satisfactory. Of all PSB channels in Serbia, only RTS2 with 9% is close to meeting the statutory quota for independent production content.

1.3. On its website, the RBA also posted the report on the fulfillment of commercial broadcasters' obligations for 2012. This report tackled the realization of programming and statutory obligations of commercial broadcasters holding a national coverage license, relative to the Broadcasting Law and the Advertising Law. It is evident that the majority of broadcasters have fulfilled its statutory obligations relative to the quotas for programming content in Serbian language and own production content. The sole exception is TV Prva, which has failed to meet the 50% statutory minimum for the share of Serbian language programming, while it has managed to raise it by 10% compared to 2011. Relative to the share of particular genres in the programming of commercial broadcasters, the report emphasized that the news program is dominant on TV B92, both relative to the share in own production (84%) and relative to the diversity of news content. The programs of TV Pink and TV Prva are dominated by entertainment content, although their news program is on the rise compared to the previous year. It was also emphasized that the entertainment program of TV Pink is dominated by reality shows. Children's program is negligible with almost all broadcasters, save for Hepi Kids TV, specialized for this type of content and Hepi TV, which has a 7% share of children's programs. On the basis of RBA's analysis, it is obvious that the share of documentary programs on Hepi TV is on the rise, while being negligible on other stations. Commercial content ranges from 10% (Hepi TV) to 16% (Pink). Regarding aggregate

volume, the share of premiere programming on all stations remains higher than that of reruns. As for the only specialized channel, Hepar Kids TV, airing children programs, the report says that they should have a bigger share of scientific content, in view of the specific audience of that station. It also points to programs that may be harmful for minors, especially “Adulterers” and “Moment of Truth”, aired on TV Pink, as well as “Mad House” on TV Hepar. The report highlighted “Adulterers” as the most controversial one, due to the morally unacceptable messages, graphic sex, violence and the use of foul language. It said the RBA had taken several measures, including ordering the broadcaster to label such content as feature programs, in order to avoid confusing the viewers into believing they are watching documentary content (they must also replace profanity and insults with bleep sounds) in order to protect minors. We remind that in March, the “Adulterers” was under special monitoring by the RBA and that misdemeanor proceedings were initiated over its content, which we have written about in our previous reports. “Moment of Truth” was also criticized and characterized as offensive for the dignity of the participants due to the nature of the questions and answers, which were labeled intrusive and borderline indecent and unethical. A similar observation was made regarding the show “Mad House” on TV Hepar. The report said it was “based on bizarre and shocking topics, with rows, physical violence, insults and foul language at its core” and that the RBA Council has pronounced similar measures to that related to “Adulterers”. The analysis includes an overview of obligations under the Advertising Law, along with statistics on prosecuted offenses. The absolute recorder-holder is Hepar TV, which was subject to 800 misdemeanor reports filed by the RBA. These reports most often concerned the failure to separate advertising slots from the remainder of the program and the exceeding of the 12-minute quota for commercials per each hour of aired programming. Somewhat specific is the case of Hepar TV, against which the RBA has filed a large number of reports for violations of the ban on alcohol advertising. The Agency has also filed many reports against the specialized children’s channel Hepar Kids TV, for breaching the ban on non-children advertising in children’s programs longer than 30 minutes.

Finally, relative to these two reports – one concerning the provincial PSB and the other about national commercial broadcasters – we may put the same objections as in our prior reports in relation to the report concerning the RTS (PSB at the level of the Republic). First, there is no report about the monitoring of radio – either of the PSB radio program or that of commercial broadcasters. The qualitative analysis isn’t there either, since the mere statistics about the share of specific types of programming tells nothing about the quality of the program aired. Thirdly, if the purpose of the report was to influence the broadcasters to improve their offer, the RBA should then analyze the effects of its prior reports, released in the last couple of years. In the absence of such an analysis, one may rightfully question the purpose of this huge endeavor by the RBA. Fourthly, the statistics of offenses was presented in a way that violates the presumption of innocence. The fact that, in the concrete case, the RBA believes that an offense has been committed does not necessarily mean it is actually the case. In the Serbian legal system, the courts should be the judges of that.



## 2. *The Press Council*

In the period covered by this Report, the Press Council found that three newspapers violated the Journalists Code of Ethics. In the case of Dragan Djilas, the Mayor of Belgrade and President of the Democratic Party against the daily “Kurir”, the Press Council found that the Code was breached in a text claiming that Djilas had withdrawn four million euros in cash from his personal account in a Belgrade bank. In the Council’s opinion, Kurir released inaccurate information, failed to distinguish between facts, assumptions and speculation and, in a hurry to release the information immediately, blindly trusted its source and failed to exercise due journalist caution. Similarly, in the case of Nino Brajovic, the Secretary General of the Association of Journalists of Serbia (UNS) against the daily “Politika”, the Press Council found that Politika had violated the Code of Ethics by failing to check in advance the information it subsequently published and by failing to consult any source, which is contrary to the principle of objective, accurate and complete information of the public. Politika’s journalist, the Press Council said, “blindly trusted the source of the information, failing to take into account that sources often pursue their own interests and adjust their accounts to those interests”. The contested article claimed that, in the trial launched by Nino Brajovic’s slander lawsuit against Petar Stojanovic (which lawsuit was rejected, since slander was decriminalized after Brajovic filed the lawsuit), several witnesses had confirmed the claims from the text over which Stojanovic was sued. In the case of Zoran Radovanovic, the President of the Immunization League, against Vecernje Novosti, the Press Council found that Novosti had violated the Journalists’ Code of Ethics by having their journalist, writing about a serious topic potentially affecting the health of a large number of people, failed to adhere to the rules of due journalist caution, opting instead to blindly trust his source, disregarding the possibility that the source could have followed his own interests or those of a social group and adapt his account accordingly. Furthermore, the members of the Complaints Commission of the Council found that the text also violated the provision of the Code prohibiting journalists to spread unsubstantiated fear. Disturbing claims about the allegedly high risk from the vaccine against cervical uterus for the life and health of little girls were made without any evidence whatsoever and might have very serious consequences. The text namely claimed that the use of the said vaccine led to 136 deaths, 942 permanent disabilities, while 5919 patients never recovered.

The Press Council also made a statement at the request of the weekly “Novi glas komune” from Apatin to establish if the Code of Ethics was respected in their texts “Suicide” and “Student Commits Suicide”, published on August 10, 2012 and August 17, 2012. As we wrote in the part of this Report about legal proceedings monitoring, the weekly was fined 1.000.000 dinars by the Appellate Court in Novi Sad, as damages to the plaintiffs Nenad and Vesna Nisic. The texts concerned the suicide of a university student in Apatin and the motives behind the act. The journalist paraphrased in his text part of the suicide letter left by the girl, while mentioning that she lived in poverty, was very talented and a very good student. The text was accompanied by pictures of the house where the girl lived, from the funeral, as well as one photograph with a diploma from a competition. Nenad and Vesna Nisic are the parents of the student that committed suicide. With a majority of votes, the Press Council ruled that the text didn’t breach the Code of Ethics. The majority of the members of the Complaints Commission found that the girl was

treated with due respect in the text and that her suicide was depicted as a tragedy, without any intent on injuring the dignity of the victims and the feelings of her family. Since it is an event that shocked the entire town, making local headlines for days, the majority of the Commission's members thought the local newspaper was right to report about it and try to shed light on the suicide. "Novi glas komune" was found to have done it with moderation, respecting the interest the event generated with the citizens. Two of the eleven members of the Commission, of which ten attended this particular session, believed that the release of the suicide letter is not in line with professional standards, since it is a personal letter that does not contain any information that would contribute to shedding light on the motive, nor is there a justified interest of the public to get to know about it. They said that even the way the journalists obtained that letter is controversial. For that reason, one member of the Commission decided to abstain from voting, while the other believed that the newspaper also violated the Code by publishing the letter and engaging in speculation about the motive of the suicide, which may not be established, due to which the journalists entered the domain of speculation and gossip. This opinion is important, because it demonstrates that news outlets have begun to understand the importance of self-regulation, namely the extent to which it is important to consult a self-regulatory body for all contested issues emerging in the journalist profession on daily basis. Moreover, the Deputy President of the Managing Board of the Press Council Petar Jeremic told in an interview for the UNS website that "one of the goals of the Press Council to ensure that its opinions are taken into account in legal proceedings". Relative to the controversial verdict of the Appellate Court in Novi Sad, it is necessary to also hear the opinion of the professionals from the Press Council.

## **V THE DIGITALIZATION PROCESS**

In the period covered by this Report, it is evident that the digitalization process is at a standstill, at least when it comes to the coverage of this topic by the media. It seems that everyone's waiting for the completion of the open competition for the allocation of the broadcasting license with national coverage, after which it will become clear which frequencies are available for digitalization, based on which key regulatory documents will be further worked on, such as the Plan of the Digital Switchover. However, we wish to point here to sporadic statements made by representatives of professional associations and by the EU Commission Delegation to Serbia, warning of the delay of the digitalization process, which could result in Serbia becoming the "black hole" in an a completely digitalized environment – the region, where most of the countries will have finished the switchover before Serbia. The EC representatives have been constantly warning that the equipment procured from IPA funds must be installed and put into operation, in order to set up the final network for broadcasting the digital signal as soon as possible. Until the fate of the former frequencies of TV Avala is known, however, it is unlikely that we will know what will exactly be the assets of Serbia entering the phase of digitalization.

## **VI THE PRIVATIZATION PROCESS**

Apart from the already known problems with the delay in the adoption of media laws, which indirectly affect the privatization of the remaining public media and jeopardize their privatization within the deadlines provided for by the Media Strategy, one instance of privatization continued in July. Namely, the City Council of Smederevo passed a decision to continue with the privatization of JP TV Smederevo, which commenced in 2010. That local station was founded almost 20 years ago by the local government and is one the remaining unprivatized media in Serbia. The decision by the city also envisages cutting the number of staff from 49 to 34. TV Smederevo is a 24/7 broadcaster with a very little share of own production, mainly consisting of reruns. Since 2003, when the Broadcasting Law provided for mandatory privatization of electronic media in public ownership, this process had its ups and downs. In addition to a lack of political will to finish the privatization, the investors were further turned off by the decline of the value of the media market and the advertising market since 2008, when the economic downturn started. This is evident on the example of that local station, which started back in 2010 the privatization procedure, but is yet to complete it. However, that doesn't prove that privatization is inherently bad, but rather that it is necessary to continuously look for successful privatization models which will not lead to the closure of media and that will enable the media to compete on a completely transparent basis, while full adhering to competition rules.

## **VII CONCLUSION**

For many years already the summer was the season that has traditionally seen media laws being amended without public discussion, the end result being restricted freedom of speech and stronger mechanisms for media control by the executive branch and various centres of political or financial power. The most drastic example was the Amendments to the Law on Public Information from 2009, which were subsequently branded unconstitutional by the Constitutional Court. These amendments provoked the reaction of media professionals, which ultimately led to the adoption of the Media Strategy and revived the discussion about the necessity of media reforms. Unfortunately, while anti-reformist amendments to media laws in the previous decade were legion, the implementation of the Media Strategy is unacceptably slow. While it has passed the first phase, the Law on Public Information and Media is yet to be tabled to Parliament for approval. The Law on Electronic Media and the Law on PSB's didn't even come to the public debate phase. It seems that this summer would have elapsed without an anti-reform incident, had it not been for the open competition on the issuance of licenses for a new commercial national station. Although, at first sight, it may seem that everything is happening in accordance with the Law and that the competent authorities are merely implementing the proper statutory procedure, it's clear that the tender has completely blocked the digitalization process, especially since the competent authorities will not know which frequencies they have at their disposal

until the completion of the tender. In the meantime, professional standards continue to be degraded, as evidenced by the outrageous campaigns in the tabloid newspapers and on certain commercial stations, such as the attacks against Veran Matic, the Editor-in-Chief of TV B92 in “Informer” or Veselin Simonovic, the Editor-in-Chief of “Blic” on TV Pink, not the least because Matic is one of the founders of ANEM, while Simonovic was until recently the President of the Management Board of the Media Association – two professional associations that have led the way in fighting for media reforms and the implementation of the Media Strategy. Meanwhile, decisions by certain courts of law continue to surprise. After drawing praises several times in our reports for improving the case law in media cases, the Appellate Court in Novi Sad passed two verdicts that might lead to the closure of two media outlets in Apatin, although the court of first instance, the Higher Court in Sombor, as well as the Press Council, found the actions of that media outlet, in the case described earlier in this Report, to have been completely in accordance with the Law and the Code of Ethics.

