



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for May 2013





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I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1. Vladimir Cvijan, MP of the Serbian Progressive Party (SNS) and Chairman of the Parliamentary Committee for Constitutional Affairs, has filed criminal charges against the Director and Editor of "Nase novine" Vuk Vucurevic and Antonije Kovacevic. Cvijan claims the two have endangered the security of his six-year old son, accusing them in the Parliament, in a statement to the media, of being maniacs and pedophiles. In his words, a day before he pressed the charges, he received a telephone call from "Nase novine". A female journalist asked him where he had spent his holidays, from which question Cvijan concluded that the paper had come in the possession of photographs of his son and wife from her Facebook profile. Cvijan claims that "Nase novine" threatened him with releasing the photographs of his juvenile son. He called on the authorities to investigate Vucurevic's and Kovacevic's motives and to take the appropriate measures against them. Cvijan described the director and the editor of "Nase novine" as people "with a long history of diverse abnormal behaviors, in their respective families, as well as them personally". He branded them "the worst pedophiles in Serbia" and warned parents to keep these two off their children, while telling journalists they should be distinguishing between the politicians occupying public functions and their families. After Cvijan's intervention in the Parliament, leaflets with Vucurevic's and Kovacevic's photos and the inscription "Warning! Pedophiles" were placed on cars parked near the offices of "Nase novine". Cvijan had previously shown these leaflets to journalists. The text over which "Nase novine" had asked Cvijan for a comment and the photographs he claimed were downloaded from his wife's Facebook profile were released in the newspaper was entitled "Downfall in Serbia, Cvijan in Dubai". The front page contained a teaser to the text saying "Cvijan Enjoys Luxury and Threatens Journalists". It also said that Cvijan's travel arrangement costs 1.400 euros and as the MP said, "it was a treat from his wife". The article went quoting the threats and insults Cvijan threw at the journalist. His dialogue with the journalist was described, as well as the alleged threats and insults "Nase novine" claimed Cvijan uttered. The EU Delegation to Serbia and NUNS condemned Cvijan's attack on "Nase novine", while UNS called to an investigation to determine if Cvijan was really the one to have distributed the above-described leaflets with photos of Vucurevic and Kovacevic "Warning! Pedophiles. Parents beware; keep those two out off from your children! If you see them, report them to the nearest police station!". "Nase novine" asked for police protection.

Under the Public Information Law, it is prohibited to put any kind of physical or other pressure on public media and the staff thereof, or any influence that might obstruct their work. Until now, in Serbia at least, we didn't have a case of an MP, unhappy with media reports, accusing journalists of being pedophiles and pressing criminal charges against them for threatening the security of a juvenile person.

The Public Information Law stipulates that persons occupying state and political functions have their privacy protection rights restricted, if the information is of public interest, in view of the fact the person the said information pertain to its occupying a certain public position. This restriction will be proportionate to the justified interest of the public to know in each particular case. Furthermore, the Public Information Law says that the MPs are obligated to make information about their work accessible to the public, under equal conditions for all journalists and all public media. Even though the reason for mutual accusations of the MP and the journalists was quite trivial (where the MP had spent his holidays), Cvijan's reaction and particularly distributing leaflets accusing the journalists of being pedophiles and calling on parents to watch out for their children and report the two to the police, is more than inappropriate and unheard of in Serbia to this day. Moreover, under the Criminal Code, wrongful accusations shall be punishable between three months and three years in prison. Apart from press releases condemning Cvijan's actions, it seems that there were no reactions by competent authorities. The President of the SNS and Deputy-Prime Minister Aleksandar Vucic said that the "state will protect the journalists of "Nase novine" and all other citizens", noting that he hadn't heard Cvijan's side of the story, but that he didn't think the Parliament to be the proper place for account settling between MPs and journalists. Vucic thus avoided answering if distributing leaflets accusing the journalists of being pedophiles in the community where they live and work is an acceptable reaction by politicians in cases where they are unhappy with media reports about them, or is it rather an intolerable lynching call the state should have reacted to.

1.2. The Association of Journalists of Serbia (UNS) called on the police in Prokuplje to establish and publicly announce all facts related to the claims of Biljana Roganovic, correspondent of "Juzne vesti" from that town, that she received a threatening text message from the President of the SNS in Prokuplje Darko Laketic. According to Roganovic, she received the message from Roganovic's number, saying, "This is a friendly warning to watch what you write and say. Stay away from SNS, my people and myself. If you have any questions, call me, don't call other people, for they will not be able to help you if you mess up like you have until now". Laketic called Roganovic the next day telling her he didn't send her the message. After she reported the threats to the police, Laketic reported her for wrongful accusation. "I didn't send any text messages to Biljana Roganovic. I called on the police to establish who sent it as soon as possible and hold the sender to account", Laketic told UNS.

Late May also saw the case of the threats sent in a letter to Radio Sto plus in Novi Pazar. The letter was posted from Belgrade. The Editor-in-Chief of the station Ishak Slezovic said he is unable to point his finger at anyone since, as he says, "Radio Sto plus airs things people don't like on daily basis". The case was reported to the police.

Under the Public Information Law, it is prohibited to put any kind of physical or other pressure on public media and the staff thereof, or any influence that might obstruct their work. A particular concern, however, is the absence of timely reaction by the authorities in such cases, even in those that seem

fairly straightforward. Namely, while it would perhaps be overly optimistic to expect the sender of the threatening letter to Radio Sto plus to be identified, that of the text message to the correspondent of Juzne vesti from Prokuplje could easily and quickly be found. According to the Electronic Communications Law, mobile operators are obligated to keep data that, among other things, may be used for identifying the source of communication and the equipment used for sending the communication, as well as the location of the mobile equipment at the time of sending. In the absence of a reaction by the authorities to threats to journalists, new threats occur; these threats are then reported, followed by wrongful accusation complaints to the police, all resulting in a feeling of insecurity by all journalists.

2. Court proceedings

2.1. The Higher Court in Belgrade has partially upheld the charges pressed by political analyst Djordje Vukadinovic against writer Svetislav Basara, committing the latter to pay Vukadinovic 150.000 dinars of damages for mental pain suffered over injured honor and reputation. Basara will also pay the default interest incurred until the payment is made. The verdict was passed in relation to Basara's column "The Bianniversary", published in the daily "Danas" on February 18, 2010, about the second anniversary of Kosovo's independence. In that text, Basara writes about the unrest in Belgrade on the day of the declaration of Kosovo's independence, saying that "the patriotic forces supported and abetted the mayhem, while Vukadinovic and Antonic, the journalist striking forces of Kostunica's Junta, denounced individuals 'keeping US flags in their homes' and 'directing the righteous destructive anger on TV B92..." In his claim, Vukadinovic said that the author of the text, the editor the daily "Danas" and founder of that public media, had severely injured his dignity, reputation, honor and personal rights. He also said that branding him "a striking force of Kostunica's Junta", associating him to the perpetrators of the unrest and claiming he denounced individuals 'keeping US flags in their homes', and especially putting these claims in the context of instigating and abating unrest, constituted the public release of fictitious, offensive, unsubstantiated and absolutely inaccurate, personally damaging information. The court of first instance rejected the claim against the co-founder of "Danas" and the editor, explaining that "the text constitutes a value judgment of the first defendant and not a factual one, where the plaintiff was not labeled as the perpetrator of a criminal act and where no insults and other insulting names were used; had it been the case, the editor-in-chief and the founder of the public media would be held accountable". Relative to the author of the controversial column, Vukadinovic's claim was upheld, albeit in a fivefold lesser amount than that requested by the plaintiff. In the motivation of the verdict, the Court said that the defendant Svetislav Basara had failed to act with due journalist care, since he had not contacted the plaintiff. Defendant lodged an appeal with the Appellate Court in Belgrade.

The verdict in the case against Basara is interesting in many of its aspects. First, it shows the extent to which today, a decade after the ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the courts in Serbia are having a hard time enforcing it, especially

the case law of the ECHR in applying Article 10 of the Convention. The first thing that's striking is the fact that the Court found that the claims made by Basara about Djordje Vukadinovic were a value judgment, while at the same time being insulting and unsubstantiated. Relative to the first part, back in its decision in the case Handyside v. the United Kingdom from 1976, the ECHR found that "freedom of expression constitutes one of the essential pillars of such a society and one of the basic requirements for its progress and the development of every man" and that it is, "under paragraph 2 of Article 10, applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population."The ECHR concludes that these are the "requirements of pluralism, tolerance and free thinking, without which there is no democratic society". Relative to the second part, also in an old decision in the case Lingens v. Austria from 1986, the ECHR found that "the existence of facts may be proven, while the truthfulness of value judgments may not be proven". Paradoxically, while according to the ECHR, the truthfulness of value judgment may not be proven, the Serbian courts' position is that a person may be sentenced to damages for failing to "substantiate" value judgments. Furthermore, the reasons for which the court made different decisions relative to the editor/publisher and the author of the text are a bit odd. According to the Public Information Law, the journalist, responsible editor and the legal person that is the founder of the public media, which were all in the position to check the inaccuracy or incompleteness of the information in question prior to its release, shall be solidarily responsible for financial and non-financial damage caused by the release of that information. In the concrete case, the Court has created new grounds for excluding the responsibility of the responsible editor and the publisher, which grounds aren't based on the Law. The Court namely found that such responsibility, specific for damage caused by value judgments, would exist only if presumption of innocence had been violated and if insults and "other offensive names" had been used. It is to be expected that such a verdict will not withstand the test of the Appellate Court in the appeals procedure, but the mere fact that it was possible to deliver it and explain as in the motivation, is evidence to the great deal of work Serbia faces in boosting the capacity of its judiciary for handling media-related cases, in accordance with the Law, the Convention and the Constitution and the applicable international human rights and minority rights standards and the practice of international institutions overseeing their implementation.

2.2. In early May, the parties received the verdict of the Appellate Court in Novi Sad, reversing the first-instance verdict of the Higher Court in Sombor, rejecting as unfounded the claim by Petar Kovacevic and Branka Prodanovic-Kovacevic (the parents of Miladin Kovacevic) against the Broadcasting Company B92, Veran Matic (as the Editor-in-Chief of TV B92) and journalist Nikola Radisic. The controversial story in the news bulletin of TV B92 concerned the legal proceedings against Miladin Kovacevic, for the beating of his university colleague Brian Steinhower in 2008 in Boston. After the US authorities stripped Kovacevic off his passport, the Serbian consulate issued him a copy, with which he left the USA and avoided trial before an American court of law. The case resulted in a Belgrade-based trial against the Serbian Consul and Vice-Consul in New York. The news about Kovacevic's trial in Belgrade, aired on TV B92, ended with the reporter's conclusion that his case will

cost one million dollar of Serbian taxpayers' money (100 thousand for the bail in the US and 900 thousand paid by the state of Serbia for Steinhower's medical bills). Miladin's parents claimed that the information was false and damaging to them, since they paid the bill with their own money. The Higher Court in Sombor awarded them damages in the amount of 200.000 dinars, but that decision was reversed by the Appellate Court in Novi Sad. The explanation of the second-instance verdict said that there was no causal-consequential relationship between the injured honor and reputation of Petar Kovacevic and Branka Prodanovic-Kovacevic and the release of the inaccurate information; the Court also said that B92, Veran Matic and Nikola Radisic were not obligated to pay the Kovacevic family any damages in relation to the release of the above-described information, since they are not mentioned anywhere in the text, nor is their morally or legally unacceptable conduct pointed to. What's more, nothing at all is implied in relation to the Kovacevics at all.

The verdict of the Appellate Court of Novi Sad reversed a very odd decision by the Higher Court in Sombor and to some extent alleviated the uncertainty that existed in a series of long proceedings the Kovacevics conducted against different media before that same Court and for the same reasons. In the concrete case, the source of the erroneous information (that the state had spent on Kovacevic a million dollars and not 900 thousand) was the state, namely it was probably a slip of the tongue by one of Kovacevic's lawyers. What could have been dangerous in this whole case is the precedent that the verdict of the Higher Court in Sombor could have created, where in the dispute over information about how public money is spent, those that benefited from state payments could appear as plaintiffs, even if they had borne some part of the costs. The Appellate Court of Novi Sad rightfully observed the absence of a causal-consequential relationship between the injured honor and reputation of Petar Kovacevic and Branka Prodanovic-Kovacevic and the information about whether the state had paid 100 thousand dollars more or less for something. The Appellate Court even said that the negative image about the Kovacevic family with a certain number of people was the consequence of the public's negative image of their adult son, and not that of a mistake in the amount of money the state had paid or failed to pay, as reported by the media. This verdict may also be important because it is a rare court decision in Serbia confirming that a journalist is entitled to making a mistake and that not every journalist error automatically constitutes grounds for damages.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Public Information Law

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

2. Broadcasting Law

2.1. The Republic Broadcasting Agency (RBA) released, on May 17, the Report on the Realization of Statutory and Programming Obligations of the public service broadcaster (RTS) for the year 2012. The analysis involved the channels RTS 1, RTS 2, RTS SAT and RTS Digital. At first glance, one may clearly see the absence of an analysis of the radio program of the public service broadcaster. At the same time, the analysis of the public service broadcaster's obligations tackled mainly the segment of compliance with statutory and programming obligations. Therefore, one may say that, although very detailed in some segments, the analysis was not complete. The Report concluded that the RTS, on its channels RTS 1 and RTS 2, has complied with its obligations concerning the mandatory quotas of Serbian language-production and own production. On the other hand, as to the percentage share of independent production content (6,56% on RTS 1 and 9,01% on RTS 2), the RTS hasn't fulfilled the statutory mandatory quota for independent production content on its channels. Moreover, since 2012 was an election year, the analysis also dealt with the issue of meeting the statutory obligation of the RTS to enable the representation of all election lists and all presidential candidates. The analysis concluded that the RTS had fulfilled that obligation through specialized programs on its second channel RTS 2.

Although the analysis, as aforementioned, also encompassed RTS SAT (a program mainly intended for the diaspora, consisting of rebroadcast content from RTS 1 and RTS 2, as well as of the specialized experimental program RTS DIGITAL), we are hereby analyzing the realization of programming functions relative to the basic programming offer of the RTS – the channels RTS 1 and RTS 2. The RBA states that the analysis had placed an emphasis on articles 68, 73, 74, 77 and 78 of the Broadcasting Law. Article 68 prescribes general programming standards; Article 73 provides for the mandatory quotas for original, own-production content, produced in the Serbian language; and Article 74 prescribes the quota for independent production content. Article 77 of the Law says that the programs produced and aired in the scope of the public service broadcaster, shall involve news programs, as well as content from the area of culture, art, education, religion, children's program, entertainment, sports and other field. These programs aim at fulfilling the needs of the citizens and other entities and the realization of their rights in the field of broadcasting. Article 78 of the Law stipulates that public service broadcasters' shall produce and broadcast programs intended for all segments of society, without discrimination, taking into particular consideration specific social groups. Public service broadcasters shall also satisfy the needs of the citizens for program content expressing the cultural identity of the nation, as well as those of national minorities and ethnic groups, by enabling them to follow certain programs or blocks programs in the areas where they live and work, in their native languages, both spoken and written; as well as to ensure the appropriate time slots for broadcasting content related to the activities of civic associations and NGOs, as well as religious communities in the region where the program is broadcasted. The first thing that strikes one is that, for the third year in a row (from the time the RBA has been releasing its reports), the RTS has failed to meet its statutory mandatory quota for independent production on its channels. Instead of having the share of independent production content at 10% or more, on the RTS 1 it amounted to 5,99% in 2010, 6,27% in 2011 and 6,56% in

2012. On RTS 2, it was 7,36%, in 2010, 7,4%, in 2011 and 9,01% in 2012. As for genre, the analysis has shown that RTS 1 posted a trend of moderate growth of the share of news and sports programs, respectively. At the same time, the share of films, sitcoms, entertainment, documentary, children's and music programs, respectively, was down by a small margin. Although their share is up, science and educational content and musical and artistic programs are still insufficiently represented. Furthermore, the share of premieres on RTS channels stopped falling in 2011; nonetheless, the share of reruns continued to grow. The share of commercials is also down. Meanwhile, the share of news programming on RTS 2 is slightly down, as for science and educational content. The share of documentary, children's, cultural-artistic and entertainment content is slightly up. As for the programming intended for specific social groups, the analysis of RTS 1 has only recorded programming for hard-of-hearing persons, which are broadcasted in sign language, as well as programs for national minorities. However, the share of such content in the overall programming is merely 0,30%. There was slightly more programs for specific social groups on RTS2 – 4,57%. However, relative to the obligation of the public service broadcaster to provide for satisfying the needs of national minorities and ethnic groups for the content expressing their cultural identity, including the possibility to receive certain programs and program content in their own mother language both spoken and written, the impression remains that the RTS has fallen short drastically by broadcasting, in the course of the whole year, only one program on the life of national minorities and two programs in Roma language, leaving Hungarian, Bosniak or Albanian minority without any program content. Several key objections to the Report on fulfilling of statutory and program obligations of RTS are self-obvious and have been pointed to for the third year in a row.

First, radio program is completely neglected, as if the public service broadcaster didn't have any statutory and programming obligations relative to it. The second objection is the absence of qualitative analysis, since the mere statistics about how the RTS has dedicated a certain percentage of its program to certain type of contents, does not automatically mean that the content broadcasted was of proper quality and does not mean that they fulfilled their designated purpose. Thirdly, if the purpose of the Report was to influence the RTS to improve its offer, it is obvious, when one compares the latest report to the previous two, that this purpose is far from being realized. For the third year in a row, the RTS failed to fulfill its statutory mandatory quota of independent production program on its channels. The share of such independent production program is up, but that growth is so small that it does not guarantee that the mandatory quota for RTS 1 will be fulfilled at all before 2025. Fourth, the Report contains a section with the statistics of misdemeanors. We remind that, under the Serbian legislation, misdemeanor is a unlawful, culpably committed act, which is determined as an misdemeanor by a regulation of a competent authority. Misdemeanors may be prescribed by a Law or Ordinance, decision of the parliament of an autonomous province, local council or city council. That means that misdemeanors may not be provided for by binding instructions of the RBA. Furthermore, even in cases where a specific misdemeanor referred to by the RBA is correctly prescribed, it goes without saying that nobody may be declared responsible for such misdemeanor outside of a legally prescribed procedure conducted by the competent authority. The RBA mislabels things here (it's doing what it bans the media from doing – breaches the presumption of innocence) and brands as misdemeanor alleged violations of

various regulations and obligations of the RTS. This category in the Report imposes a new question: what has the RBA undertaken if, according to the RBA's report, the RTS is guilty of 1370 violations of different regulations in only one year?. If we add to that the fact that, for the third consecutive year, the RTS fails to comply with its statutory program quota, the RBA's responsibility is even greater. What could the RBA have undertaken? According to the Broadcasting Law, it is authorized to take measures, in the concrete case merely warnings and notices. The Report didn't show that any procedures for issuing such measures had been initiated. Moreover, if the actions of the broadcaster, in the concrete case, may be characterized as an offense under the Law, the RBA is authorized to initiate the proper procedure before the competent court or other state authority. One cannot conclude from the Report whether these procedures have been initiated. Finally, the RBA is also competent for dismissing members of the RTS Management Board. If the members of the latter are obligated to ensure the consistent enforcement of the provisions of the Broadcasting Law, meaning the provisions concerning the RTS, as well as if the results of the Report have shown that, for the third consecutive year, the RTS Management Board failed to comply with this obligation, one may ask when will the mentioned members be dismissed? Finally, bearing in mind the fact that the adoption of new Broadcasting Law is pending, i.e. Electronic Media Law, from the Report it stems that the new Law could provide to the regulator clearer base criteria for assessing the effectiveness of the function of the public service broadcaster than those existing (or better say inexistent) in the applicable Law.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. *Public Information and Media Law and Electronic Media Law*

The media reforms have visible come to halt, one of the reasons being the lack of a vision of the state and disagreements as to the implementation of the most important items of the Strategy for the Development of the Public Information System in the Republic of Serbia, known in the public as the Media Strategy. After more than 6 months of working on the media laws and two months after the completion of the public debate about the Draft Public Information and Media Law, the Draft is yet to be tabled to the Parliament for the adoption. Meanwhile, the Draft Electronic Media Law did not even reach public debate phase. It seems that the government still doesn't have a clear picture of how to achieve some of the key requirements of the Media Strategy. First of all, postponing the adoption of new laws will result in postponing the privatization of the remaining media in public ownership. Secondly, it leads to problems in the implementation of the project-based financing concept for the media in 2014. The third problematic question concerns finding a sustainable model for financing the functions of public service broadcasters. If we are to believe the media coverage on this topic, it seems that it is the main stumbling block of the media reforms. From the statements of the highest government officials, one may conclude that they have given up the concept of financing public service broadcasters through subscription fees, at least for the time being. This is in direct contravention of the Media Strategy, which

expressly provides for the subscription fee to be the main form of financing whereas it is only necessary to raise the collection rate. The financing of public service broadcasters from the budget is provided for by the Strategy only as a temporary and subsidiary possibility, until the abovementioned collection rate is raised to an acceptable level. However, in that period too, the former must be done in accordance with state aid control rules, which involve a clear definition of the function and obligations of the public service broadcaster, the proper oversight of the realization of the said function and obligations, transparent financial control, clear rules on the introduction of new services, a ban on overpayment (taking into account commercial revenues too), proportionality and market conduct that does not undermine competition regulation. Such commitments from the Strategy are fully in accordance with the Communication from the Commission on the application of State aid rules to Public Service Broadcasting 2009/C 257/01. Among other things, the Media Strategy lays down the principle of *balancing* of income from the subscription fee and commercial revenues as follows: when the subscription income reaches a level *sufficient for the realization of the basic functions of public service broadcasters*, the right to commercial revenues (primarily from advertising) of the public service broadcasters shall be narrowed down and restricted. The latter is important from the standpoint of preserving the independence of the public service broadcaster and the equidistance from the biggest advertisers. That principle from the Media Strategy seems inapplicable if the subscription fee is scrapped altogether, while preserving independence of the public service broadcaster relative to the biggest advertisers is definitely an interest that should be overlooked.

The impression is that the media reforms are at a stage where one impetuous decision or deviation towards populism and demagogy (instead of having a focus on public interest) could completely reverse the character of the coming changes. Such decision would be, for example, committing to budget financing of the public service broadcaster, shunning the aforementioned Communication of the EC. It could undermine the system envisaged by the Media Strategy, as well as the difficult equilibrium between conflicting interests of different stakeholders. On the other hand, there is doubt as to the existence of funds for such purposes in the state budget. Information reported by the media isn't reliable and detailed enough, but nine billion dollars are mentioned (slightly less than 90 million euros), that the public service broadcasters will receive in 12 monthly installments. First of all, it should be stressed that this number is pure speculation, according to publicly accessible data at least. What lacks is an analysis about the funds the public service broadcasters' need (separately the RTS and RTV) for financing their programming functions. Furthermore, there isn't either an analysis of the collectability of the subscription fee, which could potentially justify giving up such a system (which, in many countries, was established as the sole sustainable and stable solution for financing the programming functions of public service broadcaster. It isn't clear either why has the subscription fee been completely cancelled for a three-year period, although some funds had been collected from it after all. Let us repeat that the collectability, according to the current information, stands at around 30%, which is about 30 million euros. The revenues of public service broadcasters from advertising and other commercial activities shouldn't be overlooked either. Only when both types of revenues are added up, one may assess the effectiveness of the system of financing. On the other hand, if we assume that the 9

billion dinars the public service broadcasters need were estimated on the basis of their expenditures in the previous period, the said amount is perhaps unrealistically low, since the public service broadcasters, and RTS in particular, are lately getting away with defaulting on some of their responsibilities, such as the responsibilities towards collective organizations for the protection of copyright and related rights (SOKO), OFPBS and Pi); responsibilities stemming from the fees for the use of the radio-frequency spectrum (RATEL); and responsibilities stemming from the fees for broadcasting services (the public company Broadcasting Technology and Links). Furthermore, it is unclear if, when making the aforementioned 9 billion dinar estimate, the necessity to streamline the operations and reducing the costs of public service broadcasters was considered at all. All this confirms the absence of a proper analysis prior to making the decision to cancel the subscription fee.

On the other hand, the shortcomings of budget financing are best visible on the example of the Spanish public service broadcaster. Since the introduction of new, commercial TV and radio programs in the 90s, RTVE had been constantly looking for a sustainable financing model. It is one of the few public service broadcasters in Europe that has state budget financing as its base financing model. That model proved to be fatal, since it did not withstand the “burden of the economic crisis” that hit the country. Although the Spanish public service broadcaster is much bigger than its Serbian counterparts (it also covers the channels intended for autonomous regions), there are certain common characteristics that make comparisons possible. The reform of public service broadcaster -related legislation in Spain took place due to the pressure from the European Commission, and particularly due to the hitherto possibility to politically influence the public service broadcaster. In the preamble of the new Law on public service broadcaster, three key components were put forward: guaranteed the independence of the public service broadcaster, optimal organization structure and a stable financing model, with the purpose of realizing the functions of the public service broadcaster in the most efficient way. The financing model provided for by that Law is based on three main types of revenues: revenues from public funds (the budget), from commercial activities and from advertising. Advertising was completely banned in 2010 and due to the economic downturn, public service broadcaster slipped to the edge of bankruptcy and never recovered. This example makes budget financing looking a far less reliable model than subscription, in particular due to the possibility of political influence on the editorial policy, as well as due to the vulnerability relative to the general economic developments in the country affecting the state of the budget. To sum up, we can identify several key problems regarding budget financing, namely:

- The best examples from European practice mainly involve budget financing as auxiliary, for very specific purposes with separate accounting for – this is the concept put forward in our Media Strategy;
- Those EU countries that financed their public service broadcaster from the budget were under special supervision by the EC, which imposed them many obligations concerning the organizational separation of various parts of public service broadcaster, laying off a considerable number of employees, as well as precisely separation of revenues generated on different grounds. The difficulties these public service

broadcasters suffered confirmed that budget financing is not that of a stable financing source, as it may appear at first glance;

- Practice has shown subscription-based financing to be the most effective and sustainable financing model for the public service broadcaster and that the government in Serbia might be making a big mistake by failing to at least try to improve the existing model, instead of revoking it,
- Once they scrap the subscription fee as a financing model, the latter is very difficult to restore: some government officials have already announced that it will be revoked next autumn, which already has a destimulating effect on the collection rate and threatens the financial survival of public service broadcasters as early as this summer;
- Budget financing of public service broadcasters increases the probability of political pressure on editorial policy, especially in the absence of control mechanisms, accounting separation of revenues generated on different grounds and the control of the independent regulator, state and external audit.

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 dwelled on the activities of the RBA in the segment of this Report concerning the implementation of the Broadcasting Law.

1.2. In the previous Monitoring Report, we have dealt with the obligation of the RBA to call an open competition for the issuance of broadcasting licenses at the moment where there are available/vacant radio frequencies. Back then, in the context of the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala was stripped off its license, we had pointed to certain inconsistencies regarding the application of Article 49, paragraph 2 of the Broadcasting Law. More specifically, although the Law stipulates that an open competition must be called when, under the Radio Frequencies Allocation Plan, there is a possibility to issue new broadcasting licenses in case when the licenses of the existing broadcasters are revoked, it seems that the RBA is acting arbitrarily: sometimes it calls an open competition and sometimes it doesn't. Apart from the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala had its license revoked, at the present time there is another competition, called in 2012, for the issuance of broadcasting licenses for one regional TV channel in Belgrade, one regional TV channel in the region of Novi Pazar, Tutin and Sjenica and one for the region of Kraljevo, Cacak, Pozega, Gornji Milanovac, Arilje, Sevojno, Ivanjica and Kosjeric. The same competition was called for a number of radio broadcasting

licenses, mainly with local coverage. Although the last deadline for submitting the required documentation expired back on December 25, 2012, the RBA not only failed to allocate the licenses, but it also didn't publish the list of complete and timely submitted applications. Under Article 53, paragraph 2) point 2 of the Broadcasting Law, the RBA must, within 7 days from the expiration of the application deadline, release the list of all applicants that have submitted complete and timely applications. Publishing the list is extremely important, since it constitutes the start of the time limits for the issuance of licenses. The Law namely says that the decision on the full-fledged broadcasting license (defined by the Broadcasting Law as a broadcasting license and one or several licenses for radio stations – transmitters) must be issued no later than within 90 days from the publishing of the list of applicants to the open competition. In the concrete case, the RBA is five months late, which points to a serious lack of capacity to simultaneously conduct several competitions: the said competition was the second one called in 2012, opened before the previous one had even expired. The first competition from 2013 ended in March 2013. By calling the open competition for the issuance of broadcasting licenses on the radio frequencies left vacant after TV Avala had its license revoked, the Agency again created a situation with two simultaneous competition proceedings. This standstill could be settled either by simplifying competition procedures, or by substantially capacity building of the Agency to deal with an increased workload.

1.3. In late May, the RBA informed a great number of broadcasters that they hadn't entered into an agreement with the Organization of Phonogram Producers of Serbia (OFPS). The broadcasters were warned that the OFPS had informed the RBA about the absence of contracts signed with specific broadcasters. The RBA reminded of its competence, under the Broadcasting Law, to make sure that all broadcasters adhere to copyright and related rights regulations, warning that non-compliance with these regulations constitutes grounds for punitive measures to be pronounced by the Agency. Finally, the latter says that broadcasting music, without having entered into the required contract with OFPS, constitutes unauthorized usage of an object protected by the related right.

Under Article 9, paragraph 2 of the Broadcasting Law, the RBA performs tasks related to taking measures in the field of broadcasting, with the aim of enforcing copyright and related rights regulations. Unfortunately, for several years now, the RBA has been unable to recognize its place and role in the copyright and related rights protection system. This is the second time the OFPS addresses the RBA, in an attempt to put pressure on the broadcasters and realize certain objectives. In the previous case, in late 2010 and early 2011, the OFPS complained that the RBA hasn't been receiving the filled-in daily broadcasting logs, with a record of broadcasted phonogram. The RBA forwarded the complaints to the prosecutor's offices, which have conducted dozens of proceedings against stations for corporate offenses. In these proceedings, some stations were severely fined; however, the OFPS was later proven to have based its claims on unlawful general acts, which it later had to amend, at the orders of the Intellectual Property Office. This time, the OFPS objected that the stations didn't renew their annual contracts with them, although these contracts are tacitly renewed even when not signed again each year. The RBA again forwarded OFPS's complaints to the stations, instead of rejecting them as

unfounded. In the light of this case, it is evident that the place and role of the RBA in the system of protection of copyright and related rights, must dwelled on, if not immediately, then in the scope of the consultations that ought to be conducted about the new Broadcasting Development Strategy (the previous one practically expired this year). Furthermore, the capacity of the agencies for discharging this competence, entrusted by the Broadcasting Law and the Law on Special Competences for Effective Protection of Intellectual Property, ought to be substantially increased.

STATE AUTHORITIES

2. Special Prosecutor's Office for Organized Crime

In May 2013, the Special Prosecutor's Office for Organized Crime indicted 18 persons of scamming more than 160.000 people from Serbia, the region and the diaspora by organizing telephone quizzes and astrology programs, while making more than 500 million dinars (slightly less than five million euros) of fraudulent profit in the process. Charges were pressed against the owner and director of the companies "Fonlider", incorporated in Serbia, Germany, Montenegro and Republika Srpska and RTV „Duga“, MHC d.o.o and MHC „Telekomunikacije“, as well as other companies and their employees. They are all charged of the criminal offense of association for the purpose of committing criminal offenses. This group is suspected of organizing and broadcasting radio and television quizzes (in the period from January 1, 2009 to November 27, 2012), where viewers/listeners were offered prizes in money/goods for correct answers to simple questions. The citizens would call the studio on added-value telephone numbers, resulting in a special tariff of 0,5-2 euros per minute. In the course of the quizzes, the citizens that called radio and TV stations or sent SMS messages through the aforementioned numbers, were not switched on the air. They were kept on hold all the time, in order to increase the costs of the calls. Not a single prize in goods or money was ever paid off in the scope of the quizzes. In order to create a semblance of regularity, member of the aforementioned group had been switched on the air, which were tasked with calling from normal landlines, while some of them were actually present in the studio, impersonating quiz participants. Astrology programs were organized in a similar way. Members of the group, their relatives and friends had been switched on the air, while the calls of genuine viewers and listeners, were kept on hold.

The broadcaster RTV Duga, which is mentioned in the Prosecutor's Office press release, is nowhere to be found in the Public Media Register or the Licenses Register of the RBA. The website of RTV Duga says that the program is aired via satellite (GlobeCast World TV for the USA, Eutelsat W2 for Europe) and in Serbia also through cable systems and satellite DTH distribution. The question is whether, in relation to the aforementioned scams (astrology shows and quizzes), the RBA could have reacted earlier and take the necessary measures? The latter particularly in view of the recent decision of the RBA Council to temporarily revoke the broadcasting license of Radio Fokus, for failing to publicly state the prices of specially-tariffed SMS messages. Under Article 13 of the Broadcasting Law, the RBA is authorized to

monitor the work of broadcasters. Article 68, paragraph 1, point 6) of the same Law stipulates that the broadcasters shall be obligated to refrain from broadcasting programs taking advantage of the gullibility of the viewers or listeners. Furthermore, back in 2007, the Council passed a recommendation for broadcasters to refrain from airing programs based on fortune telling, horoscope interpretation and similar non-categorizable content. Hence, there is no doubt that the RBA could have reacted had the above been the case of a licensed broadcaster. However, RTV Duga doesn't exist in RBA's Licenses Register. From the press release of the Special Prosecutor's Office for Organized Crime, one is unable to clearly see the full technological chain of airing the controversial programs. What is clear is that the studio was in Belgrade, although the program was aired by satellite (GlobeCast World TV and Eutelsat W2), but not where the satellite uplink was located. The provisions of the Broadcasting Law concerning the issuance of satellite broadcasting licenses are difficult to apply in practice. Specifically, they stipulate that the request for the issuance of a license must be submitted by the satellite station operator. There is no clear definition as to what is a satellite station operator, since in theory it could be the operator of the satellite uplink, the owner of the satellite or the operator of the DTH satellite platform. The Law even contains a provision under which, for programs that may be received through free (uncoded) satellite broadcasting on the territory of the Republic of Serbia, the licenses must not be acquired at all. In theory, if the satellite uplink operator is not obligated to obtain a license for sending a signal to the satellite, the satellite broadcasting of such a signal, if not be encoded, would be exempted of the license regime in Serbia. A similar situation would exist if the signal from the studio in Serbia was sent to the uplink outside of Serbia. The press release of the Special Prosecutor's Office for Organized Crime only shows the extent to which the Broadcasting Law is obsolete, devoid of concepts that would provide answers for various situations, including the above-described fraudulent quizzes and satellite-aided astrology programs. Serbia lacks clear rules, modeled upon those contained in the ratified European Convention on Cross-border Television, with linkage points based on which such cases, including broadcasters the license of which wasn't issued in Serbia, would fall under the jurisdiction of domestic authorities (in this case, the RBA), on the basis of the fact (for example) that the given broadcaster was incorporated in Serbia, where its head office is located, the studio and the bulk of the employees, as well as its uplink.

V THE DIGITALIZATION PROCESS

During the month of May, the media have devoted a lot of space to analyzing the harmful consequences of the open competition for the vacant frequencies of the former TV Avala for the digitalization process. By the time this Report was completed, there is no information if anyone had applied, which is not a surprise, given that the application deadline expires on July 9 only.

The line Ministry of Foreign and Internal Trade and Telecommunications has stressed that, in the last year, more was done in the digitalization process than in the previous four combined; that the required

regulations and plans (including the Allocation Plan) were adopted; as well as that the concept of social aid for the most vulnerable categories of the population, in purchasing STBs for receiving digital signal, is in the pipeline, as is the one for the digitalization promotion plan. The Ministry has also assured that there were no concerns that the EU will remove the received equipment that hasn't been installed, because that equipment will be utilized very soon. On the other hand, the media have reported that, in relation to the initiated open competition for the vacant frequencies of the former TV Avala and the delay in the digitalization process, the Ministry had received a protest note from the EU Ambassador to Serbia, Head of the EC Delegation to Belgrade Vincent Degert. Simultaneously, on May 31, the deadline expired for submitting bids in the open procedure the Ministry called for the public procurement of equipment for the needs of the system for broadcasting and distribution of the digital television signal on the territory of the Republic of Serbia (namely antenna systems, telecommunications equipment, 40 gap fillers and UPS devices with associated services). The antenna systems are procured for the broadcasting locations Subotica, Vrsac, Tupiznica, Deli Jovan and Kopaonik. Under the terms of the public procurement, the equipment should be delivered in the period between early March and early May 2014.

In order for the digitalization process to be completed, free frequencies need to be ensured and the Switchover Plan must be finished that will define the time frame of the digital switchover by distribution zones. Upon finalizing that document, under the Strategy for the Transition from Analog to Digital TV Broadcasting in the Republic of Serbia, an awareness campaign will ensue, in order to familiarize the citizens with the digitalization process and provide them with the necessary information how to prepare themselves for that process. The lack of free frequencies could disrupt these entire plans, while the concern that Serbia will be getting a negative score in the coming EC Progress Report, due to the digitalization delay, is quite realistic. This could further undermine Serbia's position in future negotiations on Chapter 10 – Information Society and the Media – which is already problematic due to the existing delay in the implementation of the Media Strategy and the adoption of new media laws.

VI THE PRIVATIZATION PROCESS

The delay in adopting media laws has brought into question the privatization deadlines under the Strategy, as well as switching to the model of project-based financing. There are still no hints as to when the Public Information and Media Law could be adopted. We remind that the Draft Law stipulates that a media publisher, which was directly or indirectly founded by the Republic, autonomous province and local self-government unit, as well as by an institution, enterprise or other legal person entirely or partially in state property, or which is entirely or partially financed from public revenues, shall be privatized by sale of equity according to privatization-related regulations. If the Law is adopted in the current version, privatization (if not already initiated) will have to be launched under an initiative that ought to be submitted within 30 days from the coming into force of the Law. The decision on the

privatization method will then be passed by the Privatization Agency, within 90 days from the submission of the initiative. The Draft Law says that, if by December 31, 2014, the state share is not sold or, at least, if the public call for the sale thereof is not called, the privatization procedure shall be suspended, while the media in question will cease to exist and will be deleted from the register. Any further month of delay in the adoption of the Law would actually shorten the deadline by December 31, 2014, making it increasingly less realistic. On the other hand, extending that deadline would entail many other problems, which are also difficult to overcome, making altogether the already difficult and complex reform processes even more complicated.

VII CONCLUSION

The delays in the adoption of media laws and the postponement of implementation of the Media Strategy, in addition to complicating the media situation even further, have made the relationship with the EU even more complex too. Namely, the EU has insisted on the adoption of the Media Strategy, as a requirement for progress on the accession path. There are two key consequences of the delay in the adoption of media laws. First, the delay postpones the privatization of state media and second, it postpones the switch to project-based financing, instead of direct budget financing of the media. For many media, especially local outlets in communities with a weak advertising market (almost all communities in Serbia), the latter model represents the only way out from the current situation of barely making ends meet and mere postponing imminent disappearance. The key reason for the delay is also the problems faced by the state, incapable of finding an acceptable, stable and sustainable model for financing the public service broadcaster. Hence, while the working group of the Ministry of Culture proposed subscription as the main model of financing the public service broadcasters, the politicians have, apparently for populist reasons, opted for budget financing. The latter concept is not unfeasible *per se*, but is difficult to implement in the situation when the budget is empty and the state is desperately seeking for new budget cuts. The media landscape in Serbia continues to sink even deeper into apathy, as evidenced by the lethargic reactions to brutal attacks on journalists, such as the one described earlier in this Report, where a ruling party MP waved in Parliament with leaflets branding the editors and managers of critical media pedophiles and calling citizens to keep their children away from them. After such incidents, the crucial question is what are the individuals occupying certain positions in this country and exerting considerable influence, prepared to do next?