



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

Report for April 2013





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## I FREEDOM OF EXPRESSION

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

### 1. *Threats and pressures*

1.1. According to media reports, Predrag Blagojevic, the editor and journalist of the *online portal "Juzne vesti"* (Southern News) was threatened by the Director of the public company JKP Gradske toplane Nis ("Municipal Heating Plants") Milutin Ilic. On the same day the threats were made, two men, who presented themselves as "Mr. Jankovic from the heating plant" and "Colonel Dobrivoje from Pristina" called Blagojevic on the phone and warned him to "mind what he writes" and to "stop messing with certain things". According to the press release issued by the Independent Journalists' Association of Serbia (NUNS), the two men told Blagojevic to meet them during the evening, in order to "clarify certain things", while the "colonel" told him he would have to give a statement related to his reporting about the heating plant, otherwise he (the colonel) would come with the police in the morning to fetch him". "Juzne vesti" claim that back in late November last year, they wrote about "Colonel Dobrivoje" as one of the two officials of the ruling SNS, who had got their positions at the heating plant through political affiliation. On April 8, 2013, the Nis Police Administration pressed criminal charges against the Director of the heating plant, SNS member Milutin Ilic, the Vice-President of the Security Committee of the SNS in Nis, Colonel Dobrivoje Stanimirovic, as well as against Mija J., for having allegedly threatened Blagojevic. The threats against Blagojevic were condemned by NUNS, the Commissioner for Information of Public Importance Rodoljub Sabic and the OSCE Mission to Serbia. In a press statement, a group of NGOs called for the dismissal of those that made the threats and their "removal from public duties in the City". The Mayor of Nis Zoran Perisic, also from the SNS, distanced himself from the threats in a brief press release posted on the website of the City.

Under the Law on Public Information, state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as MPs and councilors, are obligated to make information about their work available to the public, under equal conditions to all journalists and all media. The Law prescribes that ideas, information and opinions about phenomena, events and persons of interest for the public shall be released freely in the media, regardless of how this information was obtained. The Law stipulates that it shall be prohibited to directly or indirectly restrict freedom of public information in any way suitable for restricting the

free flow of ideas, information and opinions, as well as to put any kind of physical or other pressure on media and the staff thereof, or exert influence that may obstruct their work. In the concrete case, the employment policy in public companies is undoubtedly a matter of public interest and “Juzne vesti” were definitely entitled to release information about such policy and, more specifically, about possible abuse in the form of privileging members of the ruling party when employing new workers. What is more, the public company “JKP Gradske toplane” was obligated to make this information available to the public, since the employment policy is an integral part of the operations of public companies. Telephone threats made to the editor and journalist over information he released about matters of public interest, are undoubtedly suited to restrict the free flow of information and obstruct the work of the journalists. The good news in this case is the swift reaction of the police, which identified the persons making the threats (which was not too difficult, since they did not try to hide at all) and pressed charges against them. Furthermore, the fact that the Mayor of Nis distanced himself from the threats is also commendable, since they had come from members of his political party.

1.2. Fourteen employees in *TV Jedinstvo* from Novi Pazar have sent an open letter to the President of Serbia, the Prime Minister and Deputy Prime Minister, the competent ministry, the Director of the Police, embassies in Belgrade, the OSCE Mission to Serbia, as well as to their fellow journalists from other media, asking for help. The letter says their rights to free life and occupation have been under threat after a group of people, lead by Mirsad Fijuljanin, stormed their offices at the station. In the letter, the employees say they dare not come to the station due to security concerns. Mirsad Fijuljanin, who has claimed to be the Director of *TV Jedinstvo*, said that the 14 employees were fired for not showing up for work for 13 days.

The turmoil in *TV Jedinstvo*, which was described in our previous report, is apparently related to the divisions inside the Bosniak Democratic Union (BDU). We remind that *TV Jedinstvo* was stripped off its license in 2012, after its mother company, the Joint Stock Company for Graphic Services “Jedinstvo AD” (in the scope of which the station used to operate), went bankrupt over debts incurred by other parts of that company. The TV station continued operating through a third company, but since its license remained registered on Jedinstvo AD (the transfer of the license being prohibited under the Broadcasting Law), the RBA ultimately revoked it, citing as a reason the bankruptcy of the mother company. *TV Jedinstvo* continued broadcasting nonetheless and the director was fired in March. According to media reports, his dismissal resulted from a political row between the Mufti of the Islamic Community in Serbia Muamer Zukorlic and Emir Elfic, the President of the Bosniak Democratic Union; according to reports, the former Director Serif Marukic

is said to be close to Emir Elfic, while the new one, Mirsad Fijuljanin, to Mufti Zukorlic. The turmoil in TV Jedinstvo may be analyzed from multiple levels. On one hand, fourteen people were left without a job, evidently for not being prepared to adjust their reporting to the ambitions of one of the parties in the political row in Novi Pazar. The new director stormed their station accompanied with armed security guards and sent them off home. Thirteen days later, he fired them for not coming to work. From a different perspective, the developments in Novi Pazar illustrate why combating piracy in Serbia is so difficult. What is evident is that the political support that TV Jedinstvo enjoyed, at a given moment, from the President of the Bosniak Democratic Union or, at a different time, from the Mufti of the Islamic Community in Serbia, sufficed to allow unobstructed broadcasting, in spite of the fact that the license of the station had been revoked. It is still unclear what is Mirsad Fijuljanin managing (as the "Director"), since the company Jedinstvo AD, which was the sole holder of the license, is bankrupt. All in all, it is evident that there are people in Serbia that are prepared to ensure media support for their political groups by storming television stations accompanied by armed security; that the institutions are powerless to stand up to them, let alone the Republic Broadcasting Agency (RBA) or the Republic Electronic Communications Agency (RATEL), which were supposed to enforce their own decisions revoking the broadcasting licenses, namely transmitter license. Finally, the ineffective legal framework for the operation of media in Serbia not only lacks responses for situations such as the one in Novi Pazar, but is also unable to identify the real owner of TV Jedinstvo at the present time, or the rights of its journalists towards that owner.

1.3. The right-wing organization SNP NASI has continued its campaign from January, in the scope of which they have been plastering posters in Serbian towns, labeling certain NGOs and media as "foreign agents", "anti-Serbian media and NGOs financed by Western intelligence services". Among these "traitors", SNP NASI cited RTV B92, the dailies "Blic" and "Danas", the weekly "Vreme" and the "Republika" magazine, the online portal "Pescanik", NUNS, as well as NGOs such as the Humanitarian Law Fund, Women in Black, Center for Cultural Decontamination, YUCOM, the Helsinki Committee for Human Rights, the Initiative of Youth for Human Rights, the Sandzak Committee for the Protection of Human Rights, the EXIT Foundation, the Autonomous Women's Center, the Belgrade Center for Human Rights, Amnesty International, the Civic Initiative, Queeria Center, the Gay-Straight Alliance, Dokukino and others. In early April, SNP NASI issued a new press release announcing the continuation of their campaign entitled "Who should be Banned?" by plastering posters and distributing flyers with the same-named inscription and the picture of Veran Matic, the Editor-in-Chief of B92 and a number of civil society activists. The poster also contained a text branding the persons from the pictures, as well as TVB92, the LGBT

population and “other political cults” as “foreign agents”, accusing them of working against the interests of Serbia, leading a campaign for dismantling Serbian institutions, spreading hate speech against the Serbian people, Serbian culture and religion, funding Albanian organizations in Kosovo promoting the independence thereof, as well as of persecuting the Serbian people”.

We remind that the Public Prosecutor has requested the ban of SNP NASI by the Constitutional Court. Article 55 of the Constitution of the Republic of Serbia guarantees freedom of association, but also says that the Constitutional Court may ban an association whose actions are aimed at forcibly undermining the constitutional system, violating guaranteed human or minority rights or instigating racial, ethnic or religious hatred. However, on November 14, 2012, the Constitutional Court found that “constitutional grounds for banning SNP NASI may not be reliably established”, stressing that it believed that not all “measures of prevention and penalizing the illegal actions of that association and its members have been exhausted”. In the concrete case, RTV B92 pressed charges against the responsible persons in SNP NASI and extended these charges after that organization’s announcement in April. Unfortunately, no measures have been taken against them yet. We may only repeat what we have stressed in our prior reports: the media are typically first to be targeted by extremists. At that, naming them and journalists “foreign agents” and accusing them of “acting against the interests of Serbia”, of “leading a campaign for the dismantling of Serbian institutions” and “spreading hate speech against the Serbian people, Serbian culture and Serbian religion”, “funding Albanian organizations in Kosovo that promote the independence thereof, as well as of persecuting the Serbian people”, if nothing else, amounts to intimidation and constitutes “influence that may obstruct their work”. As such, it should be subject to the Law on Public Information and its provisions prohibiting the restriction of freedom of public information, the cases of which are supposed to be settled before a court of law in urgent proceedings. Unfortunately, the only decision that has been passed against the intimidation campaign by SNP NASI is that of the Constitutional Court of Serbia, saying that “the existence of constitutional grounds for banning the activities of that organization may not be reliably established”. The extremists visibly view such a decision as their victory and an incentive for continuing with even more ruthless threats against journalists.

1.4. In early April, the media published the press release of the Municipal Council (MC) of the Serbian Progressive Party (SNS) in Cacak, signed by the Acting President Radenko Lukovic. The press release denounced the statement made by SNS official Mirjana Djokovic, Deputy-Mayor for the field of economic development and environment protection. Djokovic had said that, as a member of the Commission for Awarding Funds to Local Media, she would have a restrictive

position towards those media that criticized the activities of the Municipal Council, the Councilors' Group and councilors of the SNS and that she would see with the Commission to have their funds reduced. The press release by the SNS MC in Cacak says that SNS supports quality journalism, which by no means excludes criticizing someone's work. Shortly after, however, the media were addressed by Gordana Cikić Plazinić, the Acting Secretary of the SNS MC in Cacak, saying that the MC had not reviewed the statements by Mirjana Djoković and that it did not convene a session at all, therefore the MC statement did not constitute SNS' position about the statements by Mirjana Djoković, but merely a personal view of the Acting President Radenko Luković. These public disagreements between SNS officials in Cacak may be interpreted as additional pressure on the media to be less critical, if they want their projects to be funded from the municipal budget.

The Law on Local Self-Government stipulates that local self-government units shall attend to public information of local relevance and ensure the prerequisites for public information in the Serbian language and languages of ethnic minorities used on their territory. Amid a grave economic crisis, the funds local self-governments earmark for the media for the aforementioned purpose are increasing by the year and the survival of many media hinges on them. The reality is, however, that in most municipalities and cities, these funds are typically awarded arbitrarily. In early 2013, Cacak has seen the adoption of the Rulebook on the Requirements and the Manner of Using the Funds for Public Information of Local Relevance, under which the funds are awarded for live broadcasting of the sessions of the City Council, as well as for media programs and project of local relevance. Furthermore, the funds are awarded by having the recipients sign an annual contract on broadcasting thematic content of local interest. An open competition is called and a five-strong Commission, appointed by the City Council, implements the competition procedure. According to the Rulebook, the criteria guiding the Commission in assessing the projects are the project's impact on realizing public information of local relevance, the share of news content in the programming of the applicant media, the value of the public media for providing information to the local population, the perceived contribution of the project to the inclusion of various social groups (disabled persons, ethnic minorities, vulnerable groups, etc.), the project's contribution to the affirmation of the city, sustainability of the project, the level of ensured funds that needs to be proportionate with the number of accepted projects and applications. Mirjana Djoković, appointed to the Commission by the City Council, said that she would see, as a member of that body, that those media that criticized the work of the SNS MC, councilors and SNS parliamentary group, city officials and SNS appointed company directors, would receive less or no money on the competition for awarding funds in the field of public information. After such statements, "Jutro Production", a media group that incorporates "Cacanske novine" and *Radio Ozon*, filed to the City Council a motion for the exclusion



of Mirjana Djokovic from the Commission for Awarding Funds to Local Media. The Rapporteur about that motion said at the session of the Council that the exclusion was legally impossible, thus practically rejecting it. The contradictory statements made by the President and the Secretary of the SNS MC in Cacak, about whether that political party shares the position of Mirjana Djokovic on refraining from criticizing SNS staff as an additional criterion for receiving media funds, may be interpreted as extra pressure on the media to give up critical reporting. The decision of the Commission, which would be based on assessing the criteria of critical or non-critical tone in the reporting of the media, would most certainly contravene the law. However, an even greater concern is the fact that the Commission includes politicians that overtly proclaim they will attend to their political party interests, instead of being guided by the relevant Rulebook. Similar situation is in Kraljevo – controlled by the SNS, too – which also had a problem with awarding media funds. The Mayor of Kraljevo Dragan Jovanovic requested that the owners of media agree upon the allocation of the first portion of budget money intended for the media. After they managed to come to an arrangement, Jovanovic tweaked it by adding three new media to the mix. TV Kraljevo, however, refused the Mayor’s proposal. Overall, the mechanisms for allocating budget money have visibly been used as an instrument of putting pressure on the media and protecting political party interests, instead of attending to those of the public.

## **2. Legal proceedings**

2.1. The Higher Court in Belgrade sentenced “*E-novine*” and its Editor-in-Chief Petar Lukovic to a fine of 100.000 dinars, as well as 44.800 dinars of legal expenses, to be jointly paid to film director Emir Kusturica as damages for injury to honor and reputation. The text “A Little Analysis from Sarajevo”, for which Kusturica sued that online portal and Petar Lukovic, was actually conveyed from the portal “PROTEST.ba” and posted on “*E-novine*” on February 15, 2011. The author of the text is Nermin Cengic, who writes for this Bosnian portal. As the Editor-in-Chief of “*E-novine*”, Lukovic was ordered by the Higher Court in Belgrade to post the court verdict within 8 days of it coming into effect. The Higher Court partly approved the claim for three million dinars of non-pecuniary damages. The remaining part of the claim was rejected as unfounded. The case was forwarded to the Appellate Court in Belgrade, since both parties lodged an appeal. Emir Kusturica has also pressed charges against Petar Lukovic and “*E-novine*” over the text “New Year’s Fairytale for Murderers”, posted on January 15, 2011 on the portal, which was taken over from “*Pescanik*”’s website. The authors were Zoran Janic and Miroslav Bojcic, who were sued by Kusturica for damages in separate proceedings conducted against the authors, but also against the Broadcasting Company B92. The station was identified in the lawsuit by Kusturica as the owner of the domain

[www.pescanik.net](http://www.pescanik.net). B92 claimed it was merely providing the service of administrative contact for the website of "Pescanik", a radio production and online portal originating from a radio program formerly aired on Radio B92.

While, according to the case-law of the ECHR in applying Article 10 of the European Convention of Human Rights and Fundamental Freedoms (back from the mid-70s and the verdict in the Handyside case from December 7, 1976), freedom of expression, as one of the fundamental pillars of democratic society, applies not only to "information" or "ideas" that have been received with approval, or are considered inoffensive or trivial, but also to information that are offensive, shocking or distressing (since these are the requirements of pluralism, tolerance and free thinking, which are the prerequisites of democracy), Serbian courts seem unsure as to how to handle value judgments that might be offensive. This dilemma transcends the enforcement of the Law on Public Information – Serbia has recently decriminalized defamation, which entails communicating or disseminating untrue facts, but it has not decriminalized insults, which entails the communication of offensive value judgments. In the case of the verdict against "E-novine", concerning is the fact that the controversial text "A Little Analysis from Sarajevo", albeit most certainly suitable to offend, shock or distress and containing inappropriate language, actually constitutes a dissection of the public activities of Emir Kusturica as a public persona.

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

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

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. On April 15, the Council of the Republic Broadcasting Agency (RBA) announced that *TV Pink* would cease broadcasting the show "Prejubnici" (Adulterers) and that it would air the program "Trenutak istine" (Moment of Truth) at 11.30 p.m. The RBA issued the press release after a joint meeting of the members of the Council and representatives of *TV Pink*. The meeting was organized

in the scope of the procedure of introducing measures against *TV Pink*, initiated earlier by the Council. We remind that both programs had been under special surveillance by the RBA for quite some time. The RBA Council tackled the issue of the “Adulterers” back in April in 2012, when *TV Pink* was ordered to clearly label this program (prior to broadcasting and at the program’s end) as a featured one, in order not to mislead the public that it was a documentary program. The Council had ordered the station to clearly mark the program as unsuitable for viewers below 16 years of age, while in cases when it was inappropriate for viewers younger than 18, the program was supposed to be aired after midnight. After that, the Council dealt with the same program in February, after an episode following a dramatized investigation of a private detective agency allegedly uncovering a case of incest. The RBA found that the content of the episode could have been harmful for the physical, mental or moral development of children and youth. At the same time, misdemeanor proceedings were requested, while the station was ordered to refrain from airing “Adulterers” and similar programs after midnight. As for the “Moment of Truth”, the Council dealt with this issue in 2009. We remind that, back then, the host of the show asked a participant if she had experienced an orgasm while her father raped her. After vehement reactions from the public, the Council reacted by issuing a reprimand to *TV Pink*.

Under the Broadcasting Law, the RBA shall, among other things, supervise the activities of broadcasters and control/ensure the consistent application of the Broadcasting Law. Article 19 of the latter expressly stipulates that the RBA shall take care about the protection of minors and respect for personal dignity in radio and television programs and shall pass a general binding order about it. Furthermore, Article 68 provides for the obligation of broadcasters not to air programs that emphasize or support violence or other types of criminal behavior. The RBA is authorized to introduce measures against broadcasters, namely reprimands, warnings, or to temporarily or permanently revoke its broadcasting license. In the concrete case, judging from the press release, it is evident that the RBA did not resort to any of the aforementioned measures, opting instead for entering into a “plea bargain” with the broadcaster, which agreed to remove one show from the program and to air the other in late evening hours only. While, on one hand, the RBA indeed invested a lot of effort to supervise the broadcasting of content that might harm the physical, moral or mental integrity of minors, we nonetheless must question the reasons as to why the Agency has continually been dealing with the same programs. Why is the same program that was on its agenda in April 2012, again in the program scheme in April 2013? Why is the RBA, after an unheard-of scandal in the case of the “Moment of Truth”, negotiating again with *TV Pink* about the time slot for airing that show? At that, during this whole time, of all the measures it is entitled to take, the RBA opted for the mildest one – a reprimand – and filed several requests for initiating misdemeanor

proceedings. This is all the more important at a time when Serbia is expected to carry on with amendments to its media laws. It is namely necessary to establish if the problem lies in the present legislation, which is perhaps unable to effectively protect minors and human dignity in TV and radio programs, due to a lack of adequate mechanisms at the disposal of the regulator or perhaps with the RBA itself?

2.2. In the already quoted press release on April 15, the RBA Council stressed that the expert services of the Agency were performing stricter oversight of the reality shows “Big Brother” and “Farma” (The Farm) and that any complaints against any of these shows would be immediately furnished to the broadcasters. Furthermore, the RBA Council decided to hold a meeting with the Press Council over the fact that some parts of the program, which were not aired due to stricter regulation, were promoted in the press, particularly on online portals of print media, featuring utterly problematic video clips. The said meeting was held on April 25, 2013, when it was agreed that all complaints sent by the citizens to the RBA related to the content of print media be forwarded to the Press Council. It was also agreed that the Ministry of Culture and Media would be requested to react, in line with its competences, in situations where the content and distribution of the public media was as such that it might harm the ethical, intellectual, emotional or social development of minors. It was also agreed to request a joint meeting with the Association of Media, which regroups the publishers of major print media in Serbia.

The cooperation of regulatory and self-regulatory bodies is definitely a step in the right direction. The good news is also that the RBA has recognized the Press Council as a cooperation partner. We remind that the amendments to the Statute of the Press Council have enabled that body to act also in relation to content posted on online media that have accepted the competence of the Council. However, regardless of the good cooperation between regulatory and self-regulatory bodies, one should not disregard the fact that the possibility to apply the current regulations in the electronic media sector to traditional press media and their online editions is utterly problematic. In Europe, a similar debate took place after the adoption of the controversial Hungarian Media Law. That Law provided for a single regulator for all media (electronic, online and print) and was vehemently criticized, among other things, for attempts of broadening the scope of electronic media, or audio-visual media services, to traditional print media and their online editions, under the guise of convergence and convergent regulators in some other countries. After the adoption of the aforementioned Law, expert analyses have concluded that the online editions of print media do not fall under the set of rules regulating radio and television, pointing to the fact that the introduction

of convergent regulators in some European countries (UK, Italy and Finland) never went as far as to empower them with the competence and the scope as in the case of the Hungarian regulators.

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

In the period covered by this Report, the Parliament has not adopted any laws particularly relevant for the media sector. The process of media reform has evidently come to a halt. The public debate about the Draft Law on Public Information was concluded on March 22 and in the meantime, no information has emerged about the status of that Draft. First, it is unclear if and to what extent the suggestions, compiled during the public debate, have influenced the Draft Law and whether the Ministry would review and comment on these suggestions. It is also unclear whether the Draft Law has been sent for review to other ministries, or if, and when, the Government of the Republic of Serbia will lay down the Draft Law and table it for public debate. We remind that the Action Plan accompanying the Strategy of the Development of the Public Information System in the Republic of Serbia by 2016 provides for the obligation to lay down a draft law regulating the field of public information and a draft law regulating the sphere of electronic media, within 18 months after the Strategy comes into effect. The Strategy came into force on September 28, 2011, which means that the said deadlines have been exceeded by far.

#### **1. *Advertising Law***

The Ministry for Foreign and Internal Trade and Telecommunications has set up a working group for drafting the Draft Advertising Law. The current Advertising Law was adopted in 2005 and has been strongly criticized as rigid and restrictive both for the marketing industry and for the media as the most important conveyors of advertising messages. In the last few years, there were several attempts to amend the Law, to no avail. The new Law is expected to be in harmony with the Directive on Audio-Visual Media Services, the Directive on Misleading and Comparative Advertising and other European documents. The expected innovations are, for example, comparative advertising or product placement. The current Law prohibits comparative advertising, as well as product placement that is considered as implicit advertising. The media have called for changes to this Law on multiple occasions in the previous years and ANEM had some concrete proposals for the line ministry. The good news is that, in view of the relevance of the media's opinions on this

Law, the representatives of the media industry have been invited to be part of the working group drafting the Law.

#### **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 written about the activities of the Republic Broadcasting Agency in the part of this Report pertaining to the implementation of the Broadcasting Law.

1.2. On the eve of the May 1 holidays, the RBA Council called an open competition for the issuance of the license for television broadcasting with national coverage in the K5 network. The latter is a national analog network left vacant after TV Avala lost its license. We will examine the effect of this decision on the digitalization process in the part of this Monitoring Report dedicated to this process. In this section, we will analyze the powers to pass the decision on calling the open competition.

Article 49, paragraph 2 of the Broadcasting Law stipulates that an open competition for the issuance of the license for television broadcasting shall be called when there are possibilities for issuing new broadcasting licenses on the basis of the Radio Frequency Allocation Plan. The rationale of such a provision, at the time when the Broadcasting Law was adopted – more than a decade ago – was to prevent the situation in which the RBA would refuse to call an open competition, in the case where there are frequencies available and several persons interested to participate in the tender. It was assumed that freedom of expression might be threatened also with the failure to call a tender, which would, in turn, deny any new players access to the media market. However, many things have changed in the last ten years. The penetration of cable, IPTV and satellite DTH distribution has exceeded 50% of households. On the other hand, the prolonged crisis has resulted in very few players being interested in entering the media market. In the case of Serbia, rather than entering the market, serious players have opted to withdraw, such as in the case

of the German WAZ Group (in the print media sector) or the News Corporation (in the field of electronic media). Furthermore, there has been a consensus for years that the electronic media scene is completely saturated. In order to survive, stations have been forced to cut down costs, resulting in poorer in quality and typically more expensive programs. In the present situation, if one wants to ensure a variety and quality of program offer for viewers, the solution is not to issue new license, but to create an environment where the media will be able to find sustainable business models. On the media-saturated market, impoverished in terms of advertising budgets, constantly influenced by the state with covert or opaque state aid, calling a competition for the issuance of new license seems like an ill-starred decision.

The question remains, however, if the RBA had any choice at all, namely, whether the mandatory calling of an open competition under the Article 49, paragraph 2 of the Broadcasting Law is mandatory indeed. It seems it is not. We cannot ignore the fact that the frequencies of TV Avala are not the only frequencies that were left vacant in the previous period, while the competition was called for them only. We remind that, only four days after the license of TV Avala was revoked last October, the same happened with the licenses of TV Zona from Nis, TV S from Belgrade, Radio Prick from Grdelica and Radio Vinex from Rekovac. Is the RBA breaking the Broadcasting Law by failing to call a competition for new television stations in Nis and Belgrade or new radio stations in Grdelica and Rekovac? On the other hand, is the RBA perhaps applying the Law arbitrarily and selectively? The other problem is that the Law says that the competition shall be called when, based on the Radio Frequency Allocation Plan, there are possibilities for issuing new broadcasting licenses. The said Plan is a live thing, subject to changes, and according to the Law on Electronic Communications, it is adopted by the Ministry of Foreign and Domestic Trade and Telecommunications, at the proposal of the Electronic Communications Agency (RATEL). When the Allocation Plan is adopted, again, under the Law on Electronic Communications, the criteria will include international agreements and recommendations. In the concrete case, the latter are contained in the Final Acts of the Regional Conference on Radio Communications for the Planning of the Digital Terrestrial Service in parts of regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06). Serbia has even passed the Law on Ratifying the Final Acts of the Regional Conference RRC-06, which was published in the "Official Gazette of RS – International Agreements", no. 4/10. By ratifying the final acts of the Regional Conference RRC-06, the Republic of Serbia assumed the obligation to switch to digital TV broadcasting no later than by June 17, 2015. By calling an open competition for the issuance of licenses for analog coverage only two years prior to the expiration of the last deadline for the digital switchover, Serbia has actually sent a message to the world that it is not a reliable partner and that it has no intent on adhering to its internationally

assumed obligations. To make matters worse, the competition was called less than a month after the completion of RATEL's public consultation on the Rulebook on the Amendments to the Rulebook on Laying down the Plan for the Allocation of Frequencies/Locations for Terrestrial Analog FM and TV Broadcasting Stations for the Territory of the Republic of Serbia. Namely, RATEL had already prepared the Draft Rulebook foreseeing the vacant frequencies formerly held by TV Avala to be used for expanding the Initial Network for testing the digital TV signal, which was subject to consultations held between March 21 and April 5, 2013. At these consultations, only the RBA opposed such use of vacant frequencies. While it was widely expected that the Ministry of Foreign and Internal Trade and Telecommunications would adopt the new Rulebook under RATEL's draft, the RBA clearly made its move first.

The question here is what is next? Any serious investor will be reluctant to incur the costs of developing the national analog network, in the situation where the digital switchover is an imminent process in which Serbia must not remain the last analog island in Europe. Hence, the issuance of license may result in two equally bad scenarios: that the license is issued to a candidate that is unable to guarantee he will improve the quality and diversity of the offer to the viewers, or to one that will not invest any serious efforts to set up the analog network, opting instead to buy time until the switchover is complete and use the network at minimum capacity, while preventing the expansion of the Initial Network for testing the digital TV signal of the public company "Broadcasting Equipment and Communications" (ETV), thus jeopardizing digitalization. Both outcomes are to the detriment of the public interest, but what is still not clear is for whose benefit. It seems that the only logical and dignified remedy for the clear mistake made by calling the open competition would be for Rasim Ljajic's Ministry of Foreign and Internal Trade and Telecommunications to adopt RATEL's Draft Rulebook on Laying Down the Plan for the Allocation of Frequencies/Locations for Terrestrial Analog FM and TV Broadcasting Stations for the Territory of the Republic of Serbia. Since the Ministry failed to avert calling the competition, this would allow it at least to prevent a license to be issued on that competition.

## ***2. Republic Agency for Electronic Communications (RATEL)***

On April 5, RATEL completed the public consultations about the Draft Rulebook on the Amendments to the Rulebook on Laying down the Plan on the Allocation of Frequencies/Locations for Terrestrial Analog FM and TV Broadcasting Stations for the Territory of the Republic of Serbia. These Amendments foresee the vacant frequencies of TV Avala to be used to expand the Initial



Network for the testing of the digital TV signal. The competition called by the RBA for the issuance of the television broadcasting license for national coverage on the exact same frequencies has created an ambiguous legal situation in terms of the further procedure of adopting the Rulebook, which means that the Ministry of Foreign and Internal Trade and Telecommunications will have the final saying. Article 84 of the Law on Electronic Communications says that the Allocations Plans will be passed by the ministry in charge of the field of electronic communications, with the participation of the competent body of the autonomous province, at the proposal of the Agency. That article also stipulates that, in the procedure of preparing the draft allocations plans, RATEL shall conduct public consultations and ask the opinion of defense and security authorities, as well as that of emergency services. The legal grounds for adopting the Allocation Plan exist. Article 84 of the Law does not give any formal advantage to RBA's opinion in the public consultations procedure and hence the Ministry of Foreign and Internal Trade and Telecommunications has the final word in terms of deciding if the proposal will be adopted. RBA's decision has made things more complicated, but has not automatically prejudiced the decision of the Ministry.

## **STATE AUTHORITIES**

### ***3. Ombudsman***

On April 2, the Ombudsman reminded that it is forbidden under the Advertising Law to use the face, voice or personal attribute of an official in advertising state authorities' activities and measures of relevance for the citizens. Nonetheless, the Ombudsman pointed out that such occurrences do happen. In his press release, he said that the only advertisers exempt of the penalty provided for by the Advertising Law were the state officials who had violated the ban contained in the Law. Therefore, the Ombudsman requested the RBA to prohibit the release of advertising messages that violated the Law, while publicly calling on state officials – on the national, provincial and local levels – to respect the rule of law in every domain, including advertising.

Article 86 of the Advertising Law indeed provides for certain restrictions when state authorities, organizations, territorial autonomy and local self-government bodies, public services and public companies, are making information about their work available to the public. In the advertising message promoting such activities, one may not use the name, face, voice or personal attribute of a state officials/officials of state authorities, organizations, territorial autonomy and local self-government bodies, public services and public companies; furthermore, a political organization or

other organization founded by a state authority, political party or politician, may not be advertised directly or indirectly. Moreover, the Advertising Law does not provide for misdemeanor responsibility for non-compliance with obligations from Article 86 for officials. Hence, it is completely justified for the Ombudsman to be pointing out to this shortcoming of the Law and addressing the independent regulator from the field of electronic media. We have written several times in these reports about how the regulation of advertising in Serbia typically ends at the detriment of the media, as the conveyors of advertising messages. The chain of participants in advertising is wider and more complex and the Ombudsman has rightfully noticed the paradox that the politicians are practically exempt from the responsibility for breaking the Advertising Law. Since the Ministry of Foreign and Internal Trade and Telecommunications has established the working group for drafting the new Draft Advertising Law, the Ombudsman's recommendation should definitely be reviewed by the working group too, in order to prevent the existing misuse identified by the Ombudsman.

## **V THE DIGITALIZATION PROCESS**

After the optimistic tones expressed in our March Monitoring Report, a radical u-turn took place, bringing into question the completion of the digitalization process by June 17, 2015, the date when Serbia is expected to finalize its digital switchover, in accordance with its international obligations. The event that has threatens to slow down of the digitalization process is the decision by the RBA Council to call a public competition for the issuance of television broadcasting licenses with national coverage, on the frequencies left vacant after TV Avala lost its frequencies last October. We have analyzed the grounds for such a decision in the part of this Report concerning the work of regulatory bodies. Here we will try to point to the consequences of that decision on the digitalization process, as well as to the financial implications and the indirect damage that Serbia might incur as a result of the slowing down of the digital switchover process.

The main problem of digitalization in Serbia, ever since 2006, when it started being contemplated, is the lack of frequencies. The main reason for that is the excessive number of licenses with national coverage. Precisely due to the lack of frequencies, the state initially opted for the "one-day" digital switchover. A true simulcast (simultaneous digital and analog broadcasting) was not possible. On the other hand, the simulcast is necessary for testing the digital signal and adequately preparing the digital network. The simulcast undoubtedly reduces the risk of signal loss at the moment of the

switchover. In the meantime, the initial deadline for the switchover – April 4, 2012 – was exceeded, but certain frequencies were left vacant after some stations were shut down, which enabled some form of simulcast by setting up the Initial Network for experimental digital broadcasting. That resulted in a changed digital switchover strategy and other relevant digitalization-related documents. The most significant change was the one providing for the switchover by gradual switching-off of the signal by region (in stages) and the setting up of the Initial Network for experimental digital broadcasting. That network has been in operation since March 23, 2012. However, in more than a year of its existence, it has failed to deliver on its full purpose, since it enables small-scale broadcasting from merely 15 locations. It seemed as if the Ministry of Foreign and Internal Trade and Telecommunications, RATEL and the Public Company “Broadcasting Equipment and Communications” (ETV) had reached a high degree of agreement about the need to expand the Initial Network. Revoking the license of TV Avala has made it technically possible, since the shutting down of that national-coverage television station has for the first time left the frequencies vacant for expanding the network. RATEL and ETV planned to air the trial digital signal from 35 instead of 15 locations, which may be observed from the Allocation Plan that was subject to public consultations in March and April. At the conference on digitalization organized by OSCE in Belgrade on March 25, only a month before the RBA called the tender, Deputy Prime Minister and Minister for Foreign and Internal Trade and Telecommunications Rasim Ljajic, the Minister for Culture and the Media Bratislav Petkovic, OSCE Ambassador Peter Bukhard, the Ambassador of the EU Delegation to Serbia Vincent Degert, State Secretary in the Ministry for Foreign and Internal Trade and Telecommunications Stefan Lazarevic, RATEL Director Milan Jankovic and the Acting Director of ETV Dejan Smigic, practically agreed that the “key development to enable a step forward and a real kick-off of the digitalization process is the expansion of the Initial Network with the channels hitherto used by TV Avala, according to the design initiated and produced by ETV. Back then, Smigic said that “ETV is preparing for putting in operation the planned transmitters as soon as the paperwork is finished”. He also said that, at the same, time, EU-donated equipment would be put into operation, which had been lying idle, while simulcast would enable the coverage of 80% of the population.

What are the consequences of calling the tender for vacant frequencies formerly used by TV Avala? Firstly, without a genuine simulcast, Serbia might remain without a terrestrial television signal at the moment of the digital switchover. Secondly, ETV will not be able to install the remaining equipment it has received under the agreement with the European Commission, from pre-accession EU funds. That equipment is worth almost 8 million Euros. Due to the fact it has not been used, the EC could reclaim it, while Serbia could be ordered to pay penalties for breach of contract. This is a

realistic possibility, since the EU Delegation in Serbia has warned several times the line ministry that the equipment must be installed and used. Thirdly, since all the countries in the region will switch over to digital broadcasting by June 17, 2015, when the Agreement on the Protection of Analog Frequencies expires, some fear that the neighboring digital signals will hamper the reception of analog signal in Serbia. Instead of the promised quality digital signal and accompanying services, the citizens could lose the analog signal they are currently receiving. In the fourth place, deferring the process of digitalization will defer the licensing of the digitalization-freed frequency spectrum, which is typically called “digital dividend”. Serbia could earn substantial profit from licensing the digital dividend. Moreover, since this part of the spectrum could be licensed for broadband mobile access services, the citizens and the economy could end up without modern mobile broadband, if the aforementioned deferment takes place. Finally, the issuance of analog frequency licenses in the second decade of the 21<sup>st</sup> century is completely anachronous and may not be logically or economically justified. Setting up an analog network entails costs; setting up such network in Europe, only two years from the date as of which analog frequencies will cease to be protected at the international level, is akin to throwing money away in a situation when money is scarce and could find better use. Some would say it is the private money of a broadcaster opting to participate and win on the tender and that it is not our business to worry about someone spending their money irrationally. However, it is not that simple. The tender is a cost for the state, while the biggest cost is the postponement of the sale of the digital dividend. The countries that sold the digital dividend have generated substantial one-time profit. Germany received 3.57 billion Euros for 60 MHz in the part of band for digital dividend, which is almost 60 million Euros per megahertz. For the same number of megahertz, France got 2.6 billion Euros, the US 19.1 billion dollars, Italy 2.96 billion Euros and Spain 1.3 billion Euros. Experience has shown that the price of the spectrum falls exponentially with the postponement of its release, namely the digital switchover process. In the region, even Croatia, which has completed the digitalization and launched a tender for selling the digital dividend, got for 40 MHz only 40 million Euros. If the switchover is further postponed, Serbia will probably receive even less. Furthermore, in addition to direct gain in the form of tender funds, experience has shown the link between the usage of this part of the spectrum and the increased use of the broadband access: in that part of the spectrum, the costs of using mobile Internet are far lower and, according to some reports, 10% increase in the penetration of broadband access brings a 1.4% BDP growth, which, in turn, increases employment. With all that in mind, the question is what motivated the RBA to pass a decision that practically deferred the sale of the digital dividend for the purpose of licensing the fifth national commercial station, on top of the existing four? What is more, the tender itself comes at a cost. If we bear in mind that the license of the remaining national broadcasters will expire as soon as in 2014, is the RBA intent on having a tender for national coverage twice in only two years and who will pay for it?

## **VI THE PRIVATIZATION PROCESS**

The evident standstill in the media reform process threatens the viability of the deadlines for the privatization of public media provided for by the Law on Public Information and Media. The public debate about the draft of that Law ended on March 22 and since then, there has been no information about the further fate of that Draft, whether it has incorporated any recommendations presented at the public debate, or when will the government have any decision about the text, namely when will it be tabled to Parliament. Under the transitional and final provisions of the Draft Law on Public Information and Media, the competitions for 2014 projects must be called no later than by September 15, 2013. Since the Draft Law is not even in procedure before the Government and the summer is nearing, there are legitimate concerns that it will perhaps not be adopted by September 15. This could jeopardize the implementation of the project-based financing model in 2014, as provided for by the Draft Law, as well as to allow the continuation of direct local budget financing of the media next year. The next deadline, provided for by the Draft Law, which could be exceeded, is the deadline for privatization. Serbia does not have any more time for postponing the media reforms, but it seems such postponement is already taking place, which could be fatal for many media, especially at the local level.

## **VII CONCLUSION**

In our prior reports, we often stressed that, if a thorough reform of the media sector was again stopped, the regression of the media landscape would continue, both in the public and in the commercial sector. The way the media report will continue to be affected by the financial duress. The media would increasingly give up their role of providing forum for a wide range debates about public matters, becoming mere conveyors of information that is not in the interest of the public, but are benefiting the ruling oligarchies and instruments of manipulation for the purpose of the latter holding on to power. How much this concern is real is evidenced on one hand by the news from Cacak, where people, supposed to decide about the allocation of state aid to media, have openly stated their decisions would be guided by the concerned media's reporting about their political parties and that they would have a restrictive position towards those criticizing the officials appointed by those parties. On the other hand, the public debate about the Draft Law on Public Information and Media ended on March 22 and there is still no information as to what will happen with the Draft, if any recommendations have been accepted, whether some concepts have been

abandoned, when the Draft Law will be tabled to the Government for review and to Parliament for approval. Meanwhile, any further postponement of the adoption of the Draft Law threatens the viability of the deadlines for changing the system of budget financing of the media and the completion of privatization.

However, even more than by the standstill in the media reforms, the month of April was marked by the calling of the tender for yet another analog national commercial television. That tender seriously threatens to undermine the digitalization process. Firstly, it deprives Serbia of a genuine simulcast (simultaneous airing of the analog and digital signals), which is vital during the fine-tuning phase of the new digital network. Secondly, it threatens to create a problem in the relations with the European Commission, since it postpones the use of about 8-million Euros worth of equipment, received from pre-accession EU funds. Thirdly, the postponement of the switchover by calling a tender for analog television immediately before the expiration of the agreement on the protection of analog frequencies increases the danger of having digital signals from the region obstruct the reception of analog signal in Serbia, which would deprive Serbian citizens of the analog signal they currently enjoy before the digital signal is even put in operation. Fourthly, the deferment of digitalization would also defer the licensing of the part of the frequency spectrum freed by the switchover – the digital dividend. Serbia could generate substantial profit by licensing the dividend. At the same time, Serbia and its citizens and the economy could be deprived of modern mobile broadband access, since the part of the spectrum freed by the switchover would be licensed precisely for mobile broadband services. On the other hand, no matter how hard we try, we are unable to discern a single positive change on the media scene that could result from the licensing of a new commercial national television.