

A. INTRODUCTION – SERBIAN MEDIA SCENE IN THE PERIOD JANUARY – APRIL 2014

General assessment of the state of media freedoms and most important developments impacting the media landscape in the period January – April 2014

The general impression is that the degree of realization of media freedoms has fallen markedly in the first four months of this year. The already present problem of self-censorship has become increasingly ubiquitous, while there are occasional cases of overt pressure against the media. Attacks on journalists haven't stopped, on the contrary – they have intensified. Media related laws are yet to be passed, the privatization of the media awaits the adoption of the law, and the digital switchover hasn't entered in its final phase yet, while the media market is still stagnating.

Although there were signs that the media laws would be adopted before the EU screening in May, it didn't happen. The snap parliamentary elections held in March 2014 have once again postponed this process indefinitely. At the constitutive session of the Serbian Parliament on the 27th of April, the then Prime Minister Designate, now Prime Minister Aleksandar Vucic, said in the presentation of the new cabinet's program that the media laws would be adopted by the end of the summer. In the period covered by this Introduction, no specific date could be discerned and according to the latest available information, the draft media laws are still being adjusted with the competent European Commission directorates.

In early February 2014, video content depicting in a satirical way the emergency rescue of people from the blizzard near the village of Feketic, with the participation of the then First Prime Minister Aleksandar Vucic, were removed from YouTube. The controversial clips used in the background are from the report of the national television (RTS) about the rescue, accompanied by a satirical text. The clips were promptly removed on the grounds of multiple notifications on alleged copyright violations, under YouTube rules. The applicant of the notification was, in most cases, a private company from Austria – KVZ Music, which has an office in Serbia. According to the information found on their website, the company is involved in global digital distribution of music, music videos and melodies, as well as in providing customer services (record labels and performers). In relation to the removal of the said clips, an official of the municipal committee of the Serbian Progressive Party (SNS) tweeted, in response to a question by another Tweeter user about how they are able to remove the clips involving Vucic (the then First Prime Minister), responded "The mind rules, but a large number of people is useful too". This was interpreted as

a sign that the ruling party was behind removal of the controversial clips. Furthermore, the role of the RTS in that case has never been completely elucidated. The report of the national television was used in the background by the author of the satirical clip and KVZ allegedly reacted on behalf of RTS, as an authorized agent. Reacting to this case, SHARE Defense, part of the SHARE Foundation involved in protecting the rights of the citizens on electronic communication networks, demanded from RTS to explain its role in the removal of satirical clips, as well as its relationship with a private Austrian company. RTS' response didn't clarify whether the RTS asked KVZ to remove the clip or if KVZ acted on its own¹. Journalist and media associations condemned the removal of the clips, while SHARE filed criminal charges for the felony prescribed in Article 149 of the Criminal Code – obstruction of the printing and dissemination of printed items and broadcasting. To this day, the outcome of these criminal charges remains unknown, or if any actions have been taken at all/if the prosecutor will opt for initiating criminal proceedings against the responsible persons in KVZ. Particularly significant for this case is the fact that the mechanism, which is aimed at protecting copyright, was used for the removal of satirical content, although under the current Law on Copyright and Related Rights, a processed copyrighted work (in the case of a parody and cartoon/caricature and if such processing doesn't create or may not create confusion as to the source of the work), is allowed and free. Interestingly enough, in the same period other commercial content (such as domestic RTS-produced series) were not removed from the Internet for copyright violations, while it has been done with a satirical clip containing a report of the national television about the rescue of people from a blizzard, with the participation of the then Deputy Prime Minister.

Also related to the “Feketic” affair, Tanjug's journalist Jasminka Kocijan claimed she was a victim of mobbing after she wrote on her Facebook profile that she had learned that Red Cross teams were unable to access the snow-covered cars until the filming of the rescue operation, involving the then First Prime Minister, was finished. Kocijan said that, after her Facebook post, she was denied annual leave and transferred to a different work position. The Red Cross rebuffed the claim that their crews had to delay their rescue operation in order for the filming of the First Prime Minister to finish. There is currently no information about whether Kocijan's mobbing claims are being investigated or dealt with in any other manner, as she had announced.

April saw the formal (unsuccessful) completion of the repeated open competition for the allocation of the TV broadcasting license on the territory of the Republic of Serbia. The RBA Council first decided in March not to issue any licenses and rejected the objections of the candidates to such decision in April. ANEM pointed several times to the formal and material

¹ More on: <http://www.shareconference.net/sh/defense/vase-pravo-da-vam-uklonimo-snimak>

shortcomings of the competition, claiming that the insistence on calling the competition by invoking Article 49 of the Broadcasting Law has threatened and delayed the digital switchover. The second calling of the competition, according to ANEM, after a compromise was reached related to the use of the frequencies for digitalization, has brought into question the suitability of the remaining frequencies (that were to be allocated to the future broadcaster) for ensuring full national coverage. Furthermore, the same candidates applied to both competitions and they were found twice to have not met the criteria prescribed by the Broadcasting Law (hence neither of the candidates received the required majority of the RBA Council members). On the eve of passing the decision about the above mentioned objections, the RBA was exposed to strong pressure by one of the candidates, which waged an overt campaign (on its television channel and in other media) during the objections procedure, with the aim of arm-twisting the independent regulator to change its decision and allocate the license. The RBA did not bow to pressure and remained consistent in its decision.

Also in April, the Constitutional Court of the Republic of Serbia passed a decision related to ANEM's initiative for assessing the constitutionality of the provisions of the Law on the Film Industry. In that decision, the Court found that the said provisions were not in accordance with the Constitution. We remind that on May 30, ANEM submitted an initiative to the Constitutional Court for the assessment of the constitutionality of the provisions of Article 19, paragraph 1, subparagraphs 3 and 4 of the Law on the Film Industry, which provisions stipulate that the funds for the development of the film industry shall be provided (among other sources) by allocating a portion of fees collected by the Republic Broadcasting Agency (RBA) (20%) and the Republic Agency for Electronic Communications (RATEL) (10%) from broadcasters and telecommunication operators. ANEM claimed that the enforcement of these provisions, which undermined the system of financing of regulatory broadcasting and electronic media bodies, may harm both the functioning of the media and the work of regulatory bodies, and hence the overall operation of the broadcasting and electronic communications sector in Serbia. In its initiative, ANEM presented its reasons for believing why the disputed provisions were in direct contravention of the Constitution, the applicable regulations in the area of broadcasting and the Media Strategy, as well as of the relevant European regulations. The Association proposed the Constitutional Court to establish if these provisions of the Law on the Film Industry are in disagreement with the Constitution. Among other things, ANEM invoked the applicable international standard of human and minority rights in the domain of the protection of freedom of expression defined by the Recommendation of the Committee of Ministers of the Council of Europe no. 23 from 2000 about the independence and the functions of regulatory bodies for the broadcasting sector. Pursuant to the said Recommendation, funding is the key element of the regulatory bodies' independence and it should be regulated by law, according to a clearly

defined plan. The same Recommendation goes on saying that public authorities will not use their competences related to financing in such a way that would undermine the independence of regulatory bodies, as well as that the financing mechanisms for regulatory bodies must not be subject to anyone's ad hoc decisions. With its decision finding that the contested provisions were not in accordance with the Constitution, the Constitutional Court practically confirmed ANEM's allegations that the arbitrary meddling in the funds intended for the financing of regulatory bodies is tantamount to undermining their independence.

The decision on the unconstitutionality of the provisions of the Law on the Film Industry ensued after a decision by the Constitutional Court passed in January, also on the initiative of a group of petitioners, including ANEM. The Court then found that certain provisions of the Law on the National Councils of Ethnic Minorities were unconstitutional, including those providing for the possibility of assigning founding rights in state-owned media in minority languages to national councils. Based on its prior decision that the Republic and the autonomous province (or local self-government unit) may not be founders of public media, and on the provisions of the new Law on Public Enterprises according to which neither the Republic, nor the autonomous province or local self-government may be founders of media, the Constitutional Court found it was legally and constitutionally impossible, by the Law on the National Councils of Ethnic Minorities, to provide for the assignment of founding rights to the national councils. However, the Court emphasized that the established unconstitutionality of the above mentioned provisions does not preclude the hitherto transfer of founding rights in several public media. Furthermore, starting from the specific statutory position of the Public Broadcasting Service (PBS), the practice of the ECHR and international standards in the area of freedom of media, the Constitutional Court found that the powers of the National Councils, provided for by the Law on the National Councils of Ethnic Minorities, in relation to participating in decision-making about the elections of the body of the republic and provincial PBS, were not in compliance with the Constitution. These provisions provided that the national councils will give their opinion in the procedure of appointing the members of the managing board, programming board and the managing director of the PBS of Serbia and the PBS of Vojvodina, if these institutions broadcast in the language of the respective ethnic minority; they will set the criteria for the choice of editor-in-chief of the program in the minority language in the PBS institution and propose to the managing board of the PBS the appointment of the responsible editor of the program in the minority language among the shortlisted candidates.

The month of April saw a new case where the Complaints Commission of the Press Council failed to come to a decision in the complaints procedure. It was the complaint by Vesna Pesic, Nikola Tomic, Vesna Malisic, Tamara Spaic, Branka Mihajlovic, Branka Prpa and Vukasin Obradovic

against the daily “Politika”, in relation of the text “The Third Bullet of Branka Prpa”, published on April 8, 2014. The text accuses a circle of people of discrediting, for political reasons, the investigation of the assassination of Slavko Curuvija. The claimants said that the text violated the provisions of the Serbian Journalists’ Code of Conduct, which concern the truthfulness of reporting, responsibility and independence of journalists and the culture and ethics of the public word. At issue was the part of the text concerning Branka Prpa and privacy provisions. “Politika” defended itself claiming that the plaintiffs “have failed to contest a single fact presented in the text or the accuracy of the statements and quotes the author has built his conclusions and value judgments on”, but rather his personal opinion and views. The majority of the members of the Commission were of the opinion that provisions of the Code concerning the responsibility and independence of journalists and the culture and ethics of the public word had been violated, especially in the part about cherishing the culture and ethics of the public word and those about truthfulness of reporting. Under the latter provisions, journalists may not publish unfounded accusations and slander and must respect the dignity and integrity of the people they write about. The Commission was split on the part concerning the respect of privacy; some members believed that one’s privacy may not be violated by quoting things that had already been published. Three members of the Commissions accepted the position of “Politika” that the author of the text voiced his opinion and value judgments and not the facts the accuracy of which may be contested. Hence, there may not be any violation of the above mentioned Code of Ethics. While there was a two-thirds majority, no decision was passed, since the second condition provided by the Rules of Procedure of the Commission – requiring that such majority must include at least one representative of each of the four founders of the Council and no less than one representative of the public – was not fulfilled. Since the two-thirds majority did not include representatives of the Association of Journalists of Serbia (UNS), the decision could not have been passed. Unfortunately, the Complaints Commission of the Press Council thereby demonstrated that, in spite of all positive steps it initiated in the previous period, it remained incapable of handling cases where the plaintiffs included the President of one of the four founders of the Council (Vukasin Obradovic, the President of NUNS), with the complaint being lodged against the media outlet the responsible editor of which is the president of the second of the four founders of the Council (Ljiljana Smajlovic, the President of UNS). We can only hope that this case will not discredit the concept of self-regulation in the media sector.

During the first four months of 2014, a significant leap forward was made in the collaboration between the representative broadcasters’ association with the collective organizations for the protection of copyright and related rights (SOKOJ, OFPS and PI). First, an agreement was reached about the tariff between OFPS and PI and ANEM; a Protocol with SOKOJ was also signed. After lengthy negotiations, ANEM (as the representative association of broadcasters – users of

copyrighted music works) reached with SOKOJ an arrangement about a Cooperation Protocol. Under that Protocol, substantial discounts and benefits for broadcasters were provided from the existing tariffs, in relation to paying the minimum fee for the use of copyrighted music works. These discounts and benefits will be used under equal conditions by all radio and TV stations paying the minimum fee. The Protocol also regulates the issue of defraying the debt from the previous period. On the other hand, upon agreeing that the existing tariff is onerous, ANEM and SOKOJ agreed upon (under the same Protocol) the formation of a joint expert commission, which will prepare the conditions for the start of new tariff negotiations.

In February, ANEM reached with OFPS and PI an agreement on the single tariff for the fees for broadcasting phonograms and interpretations recorded on them. This has marked the successful completion of the negotiations that were conducted since October 2013, as well as the introduction of a new tariff for the first time since 2009. That tariff changed the system of calculating the base (hence the base includes solely the broadcasting revenues), the amounts of the fees are determined as a percentage of the broadcasting revenue so as to factor in the specific features of radio and television. The above takes into account the significance of the exploitation of the objects of protection of copyright-related rights for the revenues of the broadcaster. Discounts were also introduced, as well as the right to deduct certain marketing costs from the base for calculating the fee.