

**PRAVNI
MONITORING
MEDIJSKE SCENE
U SRBIJI**

**LEGAL
MONITORING
OF THE SERBIAN
MEDIA SCENE**

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SADRŽAJ

UVOD	4
Godinu dana sa Pravilnikom o sufinansiranju projekata - sumiranje rezultata	7
Advokat Slobodan Kremenjak	
Integrativni procesi u medijskom sektoru Srbije: Da li je medijska koncentracija nova vrednost medijske scene?	9
Advokat Miloš Stojković	
Javni interes u oblasti javnog informisanja	13
Prof. dr Snježana Milivojević	
Uloga medija u razvoju slobode misli i stvaranju odgovorne javnosti	17
Docent dr Jovo Bakić	
Evropski sud za ljudska prava - Informatori o praksi Suda	21

TABLE OF CONTENTS

INTRODUCTION	26
Project Co-Financing Rulebook: One Year After	30
Slobodan Kremenjak, Attorney at Law	
Integrative Processes in the Serbian Media Sector: Is Media Concentration the new Value of the Media Scene?	32
Miloš Stojković, Attorney at Law	
The Public Interest in the Area of Public Information	36
Prof. Snježana Milivojević, PhD	
The Role of the Media in the Development of Freedom of Expression and Creation of a Responsible Public	40
Docent Jovo Bakić, PhD	
European Court of Human Rights - Information Notes on the Court's Case-Law	44

PRAVNI MONITORING MEDIJSKE SCENE U SRBIJI

UVOD

U 2015. godinu medijski sektor je ušao sa velikim očekivanjima. Set medijskih zakona, donet u avgustu prošle godine, a pre svega Zakon o javnom informisanju i medijima, obećavao je rešenja mnogih problema i neophodne medijske reforme. Međutim, na isteku 2015. godine, jasno je da nije došlo do željenih rezultata, a za to ima više razloga – od nedostataka samih zakona, preko njihove neadekvatne primene, do nepoštovanja zakona i opstrukcije i od strane nadležnih organa, ali i od određenih medija. Dešavanja na medijskoj sceni samo su potvrdila ono što se odavno zna, da promene ne može da nosi samo jedno ministarstvo, već da je neophodna međusobna saradnja svih nadležnih organa, a naročito volja najviših organa da se promene sprovedu.

Za zaustavljanje ekonomskog propadanja medija najvažnije je bilo da se realizuju zakonska rešenja koja bi stvorila pretpostavke za razvoj medijskog tržišta na kom bi važila jednaka pravila i jednaki uslovi za sve učesnike, i principi slobodne i fer konkurencije. Nažalost, to se nije dogodilo. Naime, privatizacija medija se razvukla preko cele godine umesto da bude završena do 1. jula 2015, kako je zakonom prvobitno bilo predviđeno. Izmenama zakona rok je produžen do 31. oktobra (osim za Politiku AD, koja je na spisku strateški važnih firmi kojima je dat duži rok za privatizaciju), ali za neke medije, i to za one koji se nalaze u postupku prenosa kapitala zaposlenima bez naknade, privatizacija još uvek traje i ne zna se kada će i kako biti završena – ključno sporno pitanje, oko kog se ne slažu nadležni organi i koje koči završetak celog procesa, jeste to da li će zaposleni u medijima dobiti svih 100% kapitala, ili maksimalno trećinu, a to otvara i niz drugih pitanja na koja, za sada, niko nema odgovor. Kašnjenju u procesu privatizacije doprineli su i neki od tih medija, koji su opstruiranjem celog procesa pokušali da spreče neminovne promene, što im je samo dodatno otežalo situaciju. Tačan broj medija koji su još u postupku privatizacije ne zna se sa sigurnošću. Ono što se zna je to da je u postupku privatizacije do 31. oktobra, od 73 medija prodato 34, većina po početnoj ceni, ali i po ceni daleko većoj od početne (čak do 70 puta - Radio Šid), da je među kupcima medija bilo firmi i preduzetnika iz medijske i drugih oblasti, konzorcijuma, ličnosti o kojima se ne zna mnogo, kao i to da su neki od njih postali vlasnici više medija. Zna se i to da Tanjug nije našao svog kupca i da je formalno-pravno prestao da postoji prestankom važenja zakona o toj agenciji, što je izazvalo polemike u javnosti i zamalo zaustavilo ceo proces privatizacije – jedni su smatrali da je to nedopustivo, dok su drugi isticali da je Tanjug odavno izgubio svoj ugled zbog neprofesionalnog i instrumentalizovanog novinarstva, i da bi prestao da postoji i pre da nije bilo velikih budžetskih sredstava koje je svake godine, bez poštovanja pravila konkurencije, dobijao za funkcionisanje. Ono što se priča i što zabrinjava je to da iza kupovine većine medija stoje lica finansijski i politički povezana sa vladajućom strankom, kao i to da je proces privatizacije medija obeležen brojnim nezakonitostima. Najzad, ono što se ne može ni naslutiti jeste to kako će ova svojinska transformacija uticati na razvoj medijske scene u Srbiji –hoće li konačno svi mediji biti ravnopravni na medijskom tržištu ili će nove gazde dojučerašnjih državnih medija, uz pomoć lokalnih vlasti i stranačkih kolega, nastaviti tradiciju nelojalne konkurencije, na šta upućuju rezultati nekih konkursa za projektno sufinansiranje na lokalnu i u Glavnom gradu. To može dovesti u pitanje i drugi važan smisao privatizacije - smanjenje političkog uticaja na rad medija i unapređenje profesionalizacije rada medija i novinara. Pojedini slučajevi privatizacije medija ukazuju na to da ti mediji neće naći u novim vlasnicima garanciju svoje uređivačke nezavisnosti niti sigurnu zaštitu od spoljnih pritisaka.

Problema je bilo i u sprovođenju pravila o projektnom sufinansiranju. Svrha tih pravila je da obezbede da se budžetska sredstva namenjena medijima troše na transparentan i nediskriminatoran način koji ne dovodi do narušavanja konkurencije na tržištu, i to za proizvodnju medijskog sadržaja od javnog interesa a ne za finansiranje medija. Međutim, projektno sufinansiranje se sapliće o brojne prepreke u praksi koje dovode u pitanje smisao celog koncepta, a kršenju tih pravila naročito pogoduje to što nema sankcija za njihovu povredu. Prepreke su posledica i nerazumevanja, i nepoštovanja zakonskih odredaba, i manipulacija od strane lokalnih vlasti, ali i nedovoljne spremnosti i obučenosti medija za primenu novih pravila u ovoj oblasti. Ukratko, skoro trećina opština nije raspisala konkurse, a tamo

gde jesu, bilo je primera dobre prakse, ali mnogo više problema – diskriminacija medija, „namešteni“ konkursi, nezakonit sastav i sporan rad komisija, sporna dodela sredstava itd. Iako su se neke opštine potrudile da konkursne procedure sprovedu u skladu sa zakonom, mnoge opštine, a naročito gradovi, odnosno njihove lokalne vlasti, u konkursima su videle samo nov način za finansiranje medija koji će proizvoditi sadržaj koji je u interesu njihovog opstanka na vlasti. S druge strane, i među medijima je bilo onih koji nisu mnogo pomogli da se ta pravila adekvatno primene, iz različitih razloga - počev od slabog kvaliteta projekata do voljnog učešća u kompromitovanju ideje projektnog sufinansiranja radi zadovoljenja sopstvenih interesa. Dodatni problem predstavlja to što pitanje državnog oglašavanja u medijima još uvek nije regulisano nijednim propisom, te se tako, kroz postupak spornih javnih nabavki, velika budžetska sredstva netransparentno i nekontrolisano dodeljuju „odabranim“ medijima, bez poštovanja pravila konkurencije. Iz navedenog je jasno da je, uprkos zabrani, i dalje veoma prisutno finansiranje medija, a ne medijskog sadržaja od javnog interesa, te zloupotreba javnih sredstava radi ostvarivanja uticaja na medije u interesu vladajućih struktura i njihovog opstanka na vlasti.

Stoga, ni u 2015. godini medijsko tržište nije funkcionalno, još nema ravnopravnih uslova niti zaštite konkurencije, te je ekonomsko propadanje medija nastavljeno. To jača politički i ekonomski uticaj na medije, a naročito na lokalnu, gde su mediji, zbog kraha privrede, u velikoj meri zavisni od budžetskih sredstava, što podriva njihovu nezavisnost.

Ono što posebno zabrinjava jesu pritisci, napadi i pretnje novinarima i medijima, a naročito to što ih sve više čine sami nosioci javnih i političkih funkcija, i to i najviših, nezadovoljni izveštavanjem o njima ili njihovom radu. Netrpeljivost prema medijskoj kritici i agresivnost koju ispoljavaju u takvim situacijama pokazuju da nosioci vlasti medije doživljavaju kao sredstvo za promociju i za ostvarivanje svojih političkih ciljeva i interesa i da ne razumeju i ne prihvataju ni kontrolnu ulogu medija ni zadatak i obavezu novinara da objektivno i profesionalno izveštavaju javnost o svemu što je od javnog interesa. Loše je i to što u slučajevima ugrožavanja života i prava novinara i medija još uvek nema adekvatne reakcije nadležnih organa, uključujući tu i tužilaštva i sudove, čime ohrabruju neke nove počiniocima da nastave s takvim ponašanjem. Pored toga, činjenica je da u Srbiji ima novinara pod 24-časovnom policijskom zaštitom koja već godinama traje, kao i nerazjašnjenih ubistava novinara, počinjenih pre mnogo godina. Sve su brojniji i slučajevi hakerskih napada na kritičke informativne portale. Posledica svega navedenog je to da sa medijske scene odlaze kvalitetni profesionalni novinari, nestaju kritičke emisije, kao i mediji koji su bili simbol slobodnog novinarstva, a autocenzura vlada medijima. Tako se prostor za otvorenu debatu o pitanjima od javnog interesa sve više sužava, izostaje istinska raznovrsnost ideja i mišljenja koje se javnosti plasiraju putem medija da bi građani mogli da formiraju sopstveno mišljenje o pojavama, događajima i ličnostima. Nedostaju istraživački i kvalitetni kritički sadržaji, kao i neki drugi važni sadržaji, poput: kulturnog, dokumentarnog, obrazovnog, dečjeg, programa za mlade i sl. Umesto toga, tabloidizacija, uniformno izveštavanje i „copy-paste“ novinarstvo dominiraju, a uloga medija se svodi na zabavu širokih masa nekvalitetnim i spornim sadržajima. Sve su prisutniji i slučajevi zloupotrebe medija u političke svrhe, protiv neistomišljenika, uključujući tu i medije, novinare i organizacije civilnog društva. U takvim uslovima i demokratizacija društva je dovedena u pitanje. Stoga ne čudi što je u mnogim međunarodnim izveštajima, koji se odnose na stanje slobode medija u Srbiji, ocenjeno da je situacija u toj oblasti pogoršana. A jedan od razloga za ovakvo stanje slobode medija je i to što je Zakon o javnom informisanju i medijima, kao krovni medijski zakon, propustio da na jasan način reguliše pitanje zaštite prava novinara i medija, osim na načelnom nivou; paradoksalno, brojne zakonske obaveze i kaznene odredbe uglavnom se odnose na medije i novinare, a retko na nadležne organe i nosioce javnih i političkih funkcija.

Od ostalih bitnih dešavanja u medijskom sektoru u 2015. godini izdvajamo završetak procesa digitalizacije u junu, nešto pre krajnjeg roka. Iako bi od tog procesa korist trebalo da imaju svi – i država, i mediji i građani, kada su mediji u pitanju ta korist i nije baš najjasnija. Naime, čini se da će najveći teret procesa poneti mediji plaćanjem izuzetno visokih naknada JP Emisiona tehnika i veze (ETV) za usluge multipleksiranja i distribucije signala. U kojoj meri će mediji taj teret moći da izdrže ostaje da se vidi nakon 01.01.2017, do kada važe značajni popusti koje je ETV odobrio lokalnim i

regionalnim TV stanicama. Pri tom, država nije predvidela da deo prihoda od digitalne dividende usmeri na razvoj medijskih usluga, iako su taj opseg do skoro koristili mediji. Poseban problem su i programske obaveze lokalnih emitera, koji sada postaju regionalni. Novinu na medijskoj sceni predstavlja i umrežavanje lokalnih medija, koje je novim pravnim pravilima dozvoljeno bez ograničenja. Televizije se umrežavaju, između ostalog, i zbog veće zone pokrivanja koju sada imaju, kako bi novoj publici ponudile odgovarajući program, dok radio stanice imaju uglavnom ekonomske motive. Koliko će taj proces doprineti razvoju i kvalitetu medijske scene, ostaje da se vidi u narednom periodu. Pored toga, u 2015. godini se očekivalo da će pravni okvir od značaja za medije biti kompletiran novim Zakonom o oglašavanju i nizom podzakonskih akata koje treba da donese Regulatorno telo za elektronske medije (REM), kao i da će biti urađene dve nove strategije. Zakon o oglašavanju još nije donet, a njegov nacrt, koji je u januaru bio na javnoj raspravi, sadrži ozbiljne nedostatke, posebno zbog suženog opsega primene opštih pravila o oglašavanju i izostanka regulacije državnog oglašavanja u medijima. REM je doneo značajan broj podzakonskih akata, dok sa donošenjem nekih kasni, ali je uradio i Nacrt predloga strategije razvoja medijske usluge radija i audio-vizuelnih medijskih usluga, koji, prema reakcijama zainteresovanih na javnoj raspravi, iziskuje određene promene i unapređenja. Izrada Medijske strategije, za koju je zaduženo ministarstvo nadležno za informisanje, tek predstoji.

Sve napred navedeno upućuje na zaključak da raskorak između načelno dobre medijske regulative i loših efekata u praksi leži u tri ključna faktora: u pojedinim nedostacima zakona, u lošoj navici nosilaca javnih i političkih funkcija, kao i nadležnih organa, da ne primenjuju zakone ili da ih primenjuju na način koji njima odgovara, kao i u suštinskoj nespремnosti vlasti da se odrekne uticaja na medije. Prvi problem se može lako otkloniti izmenama zakona – propisivanjem jasnih i sveobuhvatnih pravila koja neće dopuštati različita tumačenja; drugi je takođe rešiv, propisivanjem sankcija za nepoštovanje pravila; ali, treći problem nije nimalo jednostavan – za njegovo rešenje je neophodno daleko veće zajedništvo i bolja saradnja unutar medijskog sektora, kako bi mogli uspešno da se nose sa izazovima koje vlast pred njih postavlja, i da osvajaju svoju slobodu.

Imajući u vidu sve što se dešavalo na medijskoj sceni Srbije u 2015. godini, opredelili smo se za sledeće teme u ovoj publikaciji: projektno sufinansiranje, zbog značaja koji ta pravila u oblasti finansiranja medija imaju za uspeh medijske reforme - o tome je pisao Slobodan Kremenjak, advokat; integracija medija, zbog važnosti pravilne primene novih liberalnih pravila u ovoj oblasti – autor teksta je Miloš Stojković, advokat; javni interes u oblasti javnog informisanja, jer je to ključni pojam u medijskoj sferi – ovu temu je, u istoimenom tekstu, analizirala prof. dr Snježana Milivojević, sa Fakulteta političkih nauka Univerziteta u Beogradu; uloga medija u razvoju slobode misli i stvaranju odgovorne javnosti, zato što se čini da je vlast ne razume i ne prihvata, a da su je mediji zaboravili ili potisnuli – svoje viđenje o toj temi dao je docent dr Jovo Bakić, sa Filozofskog fakulteta Univerziteta u Beogradu. Peti tekst čini sažet prikaz dve presude Evropskog suda za ljudska prava koje se odnose na primenu člana 10 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda; prva je doneta po predstavci četiri novinara povodom toga što su bili osuđeni zbog tajnog snimanja intervjua sa agentom osiguranja i kasnijeg emitovanja intervjua za potrebe javnog interesa, gde je Sud utvrdio povredu prava podnosioca predstavke na saopštavanje informacija; druga je doneta po predstavci novinara/fotografa povodom toga što je bio uhapšen i osuđen zbog nepoštovanja policijskih naredbi tokom demonstracija, a Sud je ovde našao da nije bilo povrede prava podnosioca predstavke na slobodu izražavanja.

Beograd, novembar 2015.

Godinu dana sa Pravilnikom o sufinansiranju projekata – sumiranje rezultata

Advokat Slobodan Kremenjak¹

Vrednost tržišta oglašavanja u Srbiji 2014. godine, prema procenama Nielsen Audience Measurement, iznosila je 156 miliona evra, što je za gotovo četvrtinu manje nego 2008. godine. Iako je od toga čak 83 miliona evra bilo usmereno na oglašavanje na televiziji, pad televizijskog oglašavanja, u odnosu na 2008. godinu, još je veći, i iznosi čak 27%. Za oglašavanje na radiju, 2014. godine potrošeno je 7 miliona evra. Ovi iznosi plasirani su, pored javnih servisa, na još 117 televizijskih i 319 radio stanica koje poseduju dozvole, ali i na jedan broj kablovskih televizijskih kanala licenciranih u inostranstvu, koji se u Srbiji emituju lokalizovani i sa domaćim oglasnim porukama. Kod televizije, čak 89,9% od ukupnih 83 miliona evra bilo je usmereno na stanice sa nacionalnom pokrivenošću. Ovo nam zapravo govori da je više od stotinu lokalnih i regionalnih televizijskih kanala u Srbiji u 2014. godini moglo da računa tek na nekih 8 miliona evra od oglašavanja, ako i na toliko. Posmatrano iz tog ugla, razumljivo je koliko je finansiranje medija, pre svega lokalnih i regionalnih, iz javnih izvora značajno pitanje u Srbiji. Državne subvencije za njih nisu uslov da ponude kvalitetnije sadržaje od javnog interesa. Državne subvencije isuviše često su uslov da prežive.

Posebno je pitanje i otkud u Srbiji toliko medija, ako je već tržište oglašavanja toliko slabo i ako je dominacija kanala sa nacionalnom pokrivenošću na njemu tolika kolika jeste. Činjenica je da broj radio i TV stanica u Srbiji opada već čitavu deceniju. Strategija razvoja radiodifuzije u Republici Srbiji konstatovala je 2005. godine da je u Srbiji, u tom trenutku, funkcionisalo 212 televizijskih i 682 radio stanice. Šest godina kasnije, po podacima iz Medijske strategije, dozvole za emitovanje imale su 134 televizijske i 321 radio stanica. U tom relativno kratkom periodu Srbija je izgubila više od polovine svojih radio stanica, i više od 40% svojih televizija. Očigledno je da broj medija u Srbiji, koji je u potpunoj disproporciji s potencijalima tržišta oglašavanja, nije posledica situacije koju smo u zemlji imali u poslednjih deset godina. Naprotiv, broj medija je u poslednjoj deceniji prepolovljen. Problem je stariji i posledica je nečega što se dešavalo devedesetih godina prošlog veka.

Ali, i vlasti koje su se smenjivale u poslednjih deset ili petnaest godina svakako snose svoj deo odgovornosti. Nisu ponudile bilo kakvu strategiju ili program kojim bi se podržala konsolidacija i opstanak kvalitetnih lokalnih i regionalnih medija. Stanice su se gasile naizgled stihijski, a zapravo redom kojim su ostajale bez finansijske podrške koja nije bila motivisana kvalitetom i interesom javnosti. Subvencije, pre svega one lokalnih samouprava, postale su pojas za spasavanje kojim su mediji, po pravilu bliski lokalnim oligarhijama, održavani u životu.

Zbog svega ovog ne treba da čudi to što su medijska i novinarska udruženja još 2009. godine, kada su inicijalno definisala svoj zahtev tadašnjoj Vladi Republike Srbije za donošenje Medijske strategije, kao jedan od ključnih zahteva postavila onaj da se uredi sistem finansiranja medija iz javnih izvora i da se spreče zloupotrebe u raspolaganju javnim sredstvima, a da se obezbede uslovi da se iz tih sredstava pruži nediskriminatorna podrška ne medijima kao takvima, već produkciji sadržaja koji su u javnom interesu.

Medijskom strategijom iz 2011. zahtev medijskih i novinarskih udruženja prihvaćen je na taj način što se Vlada obavezala da, u skladu s propisima kojima je regulisana kontrola državne pomoći, uredi sistem sufinansiranja javnog interesa u medijskom sektoru, po jedinstvenoj metodologiji, bez obzira na to da li se kao davalac pomoći u konkretnom slučaju pojavljuje Republika, autonomna pokrajina ili jedinica lokalne samouprave. Predviđeno je i to da ukupna sredstva za tu namenu budu utvrđena i

¹ Advokatska kancelarija „Živković&Samardžić“, Beograd

opredeljena u budžetima, u obimu koji će obezbediti ostvarivanje javnog interesa, kao i to da se ta sredstva dodeljuju u javnom postupku, pod jednakim i nediskriminatornim uslovima.

Formalno-pravno, usvajanjem Zakona o javnom informisanju i medijima, u leto 2014. godine, ovo je i urađeno. Sam postupak dodatno je preciziran Pravilnikom o sufinansiranju projekata za ostvarivanje javnog interesa u oblasti javnog informisanja, iz novembra 2014. godine. Godinu dana nakon usvajanja Pravilnika čini se da možemo sumirati prve rezultate. Pitanje je, međutim, kako te rezultate vrednovati. Ako je originalna ideja bila obezbediti nediskriminatornu podršku ne medijima kao takvima, već produkciji sadržaja koji su u javnom interesu, onda sama činjenica da je većina srpskih medija i danas, kao i godinu ili dve ranije, u podjednako teškom finansijskom položaju, i nije nešto što je samo po sebi pokazatelj neuspešnosti sistema projektnog sufinansiranja. Ali, činjenica da na tim i takvim medijima i dalje manjka inovativnih i drugačijih sadržaja, da se oskudeva u pluralizmu ideja i mišljenja, mogla bi biti taj realan pokazatelj da je projektno sufinansiranje i dalje daleko od toga da ostvari svoj potencijal i daleko od toga da ostvari svrhu koja mu je inicijalno namenjena.

Odgovornost nesumnjivo leži na političkim oligarhijama. Jedna trećina opština u Srbiji nije čak ni raspisala konkurse. Sredstva opredeljena za medije u lokalnim budžetima prečesto su nedovoljna za bilo kakve ozbiljne projekte. Nisu retki ni slučajevi diskriminacije pojedinih medija, najčešće onih koji su registrovani van teritorije lokalne samouprave koja je raspisala konkurs. U brojnim lokalnim samoupravama i dalje se ne shvata da projektno sufinansiranje nije zamena za direktno finansiranje medija iz opštinskog budžeta, već njegova potpuna negacija, i da javni interes ne može biti poistovećen sa „praćenjem rada organa lokalne samouprave”. Međutim, izgleda da čak i tamo gde nije bilo očiglednih zloupotreba i favorizovanja, postoji tendencija da se onoliko sredstava koliko je opredeljeno u budžetima podeli na taj način da svako dobije po malo, i da se lokalne vlasti nikome ne zamere. Mali projekti, međutim, retko su projekti koji prave razliku, retko nude kvalitet koji nedostaje. S druge strane, sam sistem projektnog sufinansiranja, odnosno način na koji je koncipiran, deo odgovornosti prebacuje i na medijska i novinarska udruženja. Ova udruženja su zakonom dobila pravo da kandidati koje predlažu čine većinu članova stručnih komisija koje ocenjuju projekte na konkursima. Postavlja se pitanje kako je ta većina iskorišćena i kakve projekte su komisije podržale. Postavlja se i pitanje kakav je uopšte kvalitet projekata koji se na konkursima nude. Koliko god truda i napora su medijska udruženja uložila da svoje članice, vlasnike medija, njihove novinare i urednike, obuče za pisanje projekata, i koliko god da su ih ohrabрили da sadržaji koje nude budu drugačiji i inovativni, kako bi istinski obogatili medijski pejzaž u Srbiji, jasno je da uvek može i mora da se uradi više.

Projektno sufinansiranje je samo mehanizam. Hoće li taj mehanizam biti iskorišćen u interesu javnosti, koja zaslužuje nešto više od obilja medija i oskudice sadržaja, zavisi od ljudi. Najviše od onih koji sede u nadležnim ministarstvima i organima lokalnih samouprava, ali delom i od onih koji proizvode sadržaje i pišu projekte, i onih koji sede u stručnim komisijama i te projekte ocenjuju.

Integrativni procesi u medijskom sektoru Srbije: Da li je medijska koncentracija nova vrednost medijske scene?

Advokat Miloš Stojković¹

Na medijskom tržištu Srbije (čija se vrednost poslednjih godina kreće oko 150 miliona evra) bore se svi mediji, bez obzira na to koju zonu pokrivanja imaju (nacionalnu, regionalnu i lokalnu), u čijem su vlasništvu (privatni ili u javnoj svojini), koja su vrsta medija (radio, televizija, štampa), koju platformu za distribuciju koriste (terestrijalna, kablovska, satelitska, radio, internet) i da li su registrovani ili ne. U „tranzicionoj“ 2015. godini u Srbiji (po podacima iz Registra medija) ima blizu 1.400 medija, a od toga približno 600 štampanih, 300 radio stanica, 100 televizija i 300 nezavisnih elektronskih izdanja (registrovani internet portali). Toj cifri treba dodati i veliki broj internet portala i domaćih kablovskih kanala koji nisu registrovani. Iskustvo medijske scene Srbije nakon 2000. godine je pokazalo da mnogobrojnost medija nije nikakva garancija medijskog pluralizma i raznovrsnosti medijskih sadržaja. Naprotiv, mediji su u uslovima ekonomske krize gledali kako da po svaku cenu kopiraju svoje „uspešnije“ konkurente, ne uzimajući u obzir potrebe medijskih konzumenata, što je posledično dovelo do toga da danas sve nacionalne komercijalne televizije imaju rijaliti sadržaje koji promovišu sumnjive vrednosti, da svaka radio stanica želi da kopira one stanice koje se oslanjaju na muzičke i zabavne sadržaje sa vrlo malo govornih programa, a da portali jedni od drugih bukvalno krađu vesti i ostale sadržaje. Kako beskonačne kopije iste usluge ne stvaraju nikakvu novu vrednost, prirodno bi bilo da se ukрупnjavanje medijske scene posmatra kao pozitivan proces. Međutim, dešavanja u medijskom sektoru godinama unazad su nas navikla na to da i najbolja ideja može da se izvitoperi, pa smanjenje broja medija može da bude i pozitivna i negativna stvar, zavisi od toga ko su akteri ukрупnjavanja, koje su okolnosti konkretnog slučaja i koji motivi stoje iza ukрупnjavanja.

Regulatorna osnova za medijsku integraciju

Medijski zakoni, usvojeni u avgustu 2014. godine, gotovo su u potpunosti uklonili regulatorne prepreke za udruživanje medija i objedinjavanje distribucije i medijske usluge. Elektronski mediji mogu se objedinjavati ako je njihova zbirna slušanost ili gledanost (eng. *audience share*) ispod 35 % u zoni pokrivanja u godini koja prethodi objedinjavanju. U sadašnjoj situaciji, prekoračenje praga medijske koncentracije više je teorijska nego praktična mogućnost. Objedinjavanje štampanih i elektronskih medija (unakrsna integracija) još je jednostavnije, budući da nedozvoljena koncentracija postoji samo ako se stiče preko 50 % „unakrsnog“ vlasništva, i to ako se radi o izdavaču dnevnih novina koji, pri tom, ima realizovani tiraž preko 50.000 primeraka godišnje i objavljuje informacije iz svih oblasti života, na jednoj, i izdavača elektronskog medija na drugoj strani. Vertikalna integracija distributera i pružaoca medijske usluge, uprkos rešenju koje je postojalo u nacrtima medijskih zakona, nije zabranjena, nego je samo predviđeno da se medijska usluga obavlja preko povezanog lica. Na kraju, Zakon o elektronskim medijima je potpuno ukinuo ograničenja za tzv. umrežavanje medijske usluge. Zbog svega se može zaključiti da regulativa u potpunosti podstiče medijsku integraciju i potpomaže smanjenju broja medija.

SBB i Telekom

Najveći operatori elektronskih komunikacionih usluga su naročito aktivni u medijskom biznisu i to ne samo u oblasti distribucije medijskih sadržaja (usluga elektronskih komunikacija) nego i u samom pružanju medijskih usluga. Po svemu sudeći, dva najveća operatora poštuju zakonsku obavezu obavljanja delatnosti medija preko povezanog lica i ne mešaju distribuciju sa medijskom uslugom.

¹ Advokatska kancelarija „Živković&Samardžić“, Beograd

Serbia Broadband (SBB) se povezuje sa nekoliko kablovskih televizija, kao što su Sport klub, Cinemania, Ultra i N1, a Telekom sa programima ARENA sport. Zakon o elektronskim medijima propisuje kao zaštitni mehanizam obavezu operatora da *distribuiraju medijske usluge na pravičan, transparentan i nediskriminatoran način u odnosu na pružaoce medijskih usluga*. Međutim, već sada je jasno da Arena sport nije dostupna u SBB mreži, a Sport Klub u Telekom mreži. Iako se „bitka” dva operatora predstavlja kao tržišna utakmica, ima implikacije i na slobodu izražavanja kao prava na pristup programskim sadržajima (naročito kod prenosa bitnih sportskih događaja, poput Lige šampiona u fudbalu ili Evropske lige u košarci). Posebno je zanimljivo to što je Telekom još uvek preduzeće u javnom vlasništvu, bez obzira na njegovu korporativnu formu, pa je sporno da li bi uopšte mogao da bude vlasnik medija. Što se tiče „SBB programa”, nije jasno da li se radi o domaćim ili stranim programima, odnosno ne zna se da li su i gde registrovani. Regulatorno telo za elektronske medije ima na raspolaganju brojne zakonske mehanizme da „obezbedi” medijski pluralizam, od monitoringa poštovanja obaveza operatora u vezi sa distribucijom medijske usluge, preko obaveze prenosa kao mere za zaštitu medijskog pluralizma, pa do kreiranja liste najvažnijih događaja koji su od posebnog značaja za sve građane. Do sada nijedan od pomenutih mehanizama nije iskorišćen. Posebno treba istaći da se radi o dva najveća igrača u distribuciji medija, koji predstavljaju operatore sa značajnom tržišnom snagom (ZTS), pa je neophodno da reaguje i Republička agencija za elektronske komunikacije koja ima ovlašćenje da utvrdi da li postoji dovoljno konkurencije na tržištu distribucije medijskih sadržaja i da potom, po Zakonu o elektronskim komunikacijama, nametne određene regulatorne obaveze operatorima sa ZTS, a u cilju zaštite korisnika usluga. Iako se ovde radi o aspektu pristupa telekomunikacionoj usluzi operatora, regulatorne mere mogu da podstaknu i druge operatore da distribuiraju medijsku uslugu na način koji više pogoduje korisnicima, a dva najveća da nateraju da počnu da se ponašaju tržišno, a ne monopolistički.

Slučaj promene vlasničke strukture u RDP B92

Ovaj slučaj je prvi u kojem je Regulatorno telo za elektronske medije vodilo postupak ocene da li se radi o nedozvoljenoj medijskoj koncentraciji između dva elektronska medija po novoj medijskoj legislativi. Promena u vlasničkoj strukturi je izvršena tako da i RDP B92 i Prva television d.o.o. u vlasničkoj strukturi sada imaju istu kompaniju - Antena Stream TV Ltd, koja je deo Antena grupe. Regulatorno telo za elektronske medije je sprovelo postupak, utvrdilo da je udeo u gledanosti ispod zakonskog maksimuma (35 %), te zaključilo da nema prepreka za planiranu koncentraciju. Potom je i Komisija za zaštitu konkurencije dala „zeleno svetlo” za ovaj vid integracije, te je tokom septembra zvanično objavljeno da je Antena grupa preuzela RDP B92, u čijem sastavu se nalaze TV B92, TV B92 Info, Internet portal b92.net i Radio Play (nekadašnji Radio B92).

U programskom smislu, RDP B92 već duže vreme „skreće” ka zabavnim i muzičkim sadržajima (što je naročito uočljivo kod promene koncepta radija tokom leta 2015. godine), a taj trend je započeo još početkom ekonomske krize tokom 2008. godine. Iako je prepoznatljivost po informativnom programu zadržana u godinama koje su usledile, ova medijska kuća je evidentno počela da napušta svoj hibridni koncept „privatnog javnog servisa” koji je do tada promovisala, a nakon izvršene dokapitalizacije, nastavljen je dalja komercijalizacija. Dalja sudbina RDP B92 zavisiće od strateškog opredeljenja Antena grupe, a vreme će pokazati da li će ova koncentracija dovesti do balansa između tržišnih zahteva i potrebe za raznovrsnim programskim sadržajima, te obaveza koje proističu iz statusa „korisnika nacionalne frekvencije”, odnosno da li će u sadržinskom smislu doći do gubljenja razlika između dva pružaoce medijske usluge, ili će svaki zadržati svoju individualnost i specifičan uređivački koncept.

Adria Media

Prvi slučaj unakrsne koncentracije, koji je najavio izdavač dnevnog lista „Kurir” Adria Media, podrazumeva akviziciju kablovskog pružaoce medijske usluge televizije Moja TV. Za ocenu postojanja

nedozvoljene medijske koncentracije, po Zakonu o javnom informisanju i medijima, biće nadležno Regulatorno telo za elektronske medije koje mora da utvrdi da li „Kurir” ima realizovani tiraž veći od 50.000 na godišnjem nivou. Kako se godinama unazad „Kurir” „reklamira” kao najtiražniji dnevni list, biće jako teško ispuniti zakonske uslove, pa bi u slučaju prekoračenja praga, Adria Media, kao izdavač dnevnog lista „Kurir”, mogla eventualno da stekne samo 49 % vlasništva u pomenutom pružaocu medijske usluge televizije. S druge strane, i ako koncentracija uspe, biće jako zanimljivo pratiti kako će izdavač štampanog medija uspeti da se snađe na tržištu elektronskih medija. Vrlo lako može da se desi da se ta nova televizija shvati kao „produžena ruka” dnevne novine „Kurir”, što onda neće biti nikakva nova vrednost, a može se lako desiti da propadne kao neuspeli eksperiment.

Privatizacija medija u javnoj svojini

U prethodno opisanim slučajevima neizvesno je kako će koncentracije uticati na programsku ponudu i medijsku raznovrsnost, ali se ipak može ustanoviti da iza akvizicija stoji kakva-takva tržišna logika. Maratonski proces privatizacije i iskustvo iz prethodnih privatizacionih ciklusa vode zaključku da se preostali mediji u javnoj svojini kupuju zbog motiva koji nisu tržišni.

Radoica Milosavljević, bivši pomoćnik gradonačelnika Kruševca i član SPS-a, inače aktivan u oblasti reciklaže otpada, koji se u medijima dovodi u vezu sa ministrom odbrane Bratislavom Gašićem, zaključio je ugovore o prodaji kapitala za 8 medija (JRDP Pančevo, JP Centar za informisanje Novi Kneževac, JP Radiotelevizija Kragujevac, JP Radio-televizija Brus, JIP Radio-televizija Caribrod, JP Televizija Požega, Televizija Piroć i RTV Kruševac). Uprava za sprečavanje pranja novca i Regulatorno telo za elektronske medije dali su „zeleno svetlo” novom vlasniku; sada samo ostaje da se vidi da li će i na koji način biti ispoštovana zakonska obaveza o održavanju medijske delatnosti u roku od 5 godina. Dakle, formalno-pravno su ispunjeni zakonski uslovi, a o motivima koje je za ovakve akvizicije imao neko ko se do sada nije bavio medijima, može samo da se nagađa.

S druge strane, Kopernikus je za cenu od 531.000 evra (75 puta veću od procenjene vrednosti) kupio Radio Šid, malu radio stanicu koja emituje na teritoriji opštine Šid i koja ima i lokalni kablovsko-distributivni sistem sa 3.000 korisnika. Ovde su nadležna tela takođe dala neophodne dozvole, pa je i tu formalno-pravno situacija čista. Vlasnici Kopernikusa tvrde da su motivi za kupovinu lokalnog radija isključivo komercijalni i da je to bio jedini način da se „šire” nakon što je RRA odbila da im izda dozvolu na nacionalnom konkursu. Ova kompanija se u prethodnom periodu bavila medijima, budući da poseduje nekoliko kablovskih televizijskih kanala i kablovsko-distributivni sistem. Ipak, iskustvo u oblasti radija ne poseduje. Pored toga, treba podsetiti da je jedan od TV kanala koji posluje u okviru kompanije Kopernikus, po izveštaju RRA koji se odnosi na praćenje predizborne kampanje 2012. godine, označen kao pristrasan u odnosu na izbornu listu tada opozicione SNS. Na kraju, Studio B je prodat kompaniji Maxim Media d.o.o, koja je u vlasništvu porodice Krdžić, poznate u radio biznisu budući da su njihove povezane firme izdavači 4 radija (TDI, JAT, HIT FM i Karolina). Studio B se nedavno našao u problemu, jer je Nezavisno udruženje novinara Srbije podnelo prijavu REM-u zbog sumnje da je prenosom proslave sedmogodišnjice vladajuće SNS prekršena zabrana političkog oglašavanja van predizborne kampanje, propisana članom 47. Zakona o elektronskim medijima. Dakle, privatizacija medija i politika imaju određene veze, i to nije samo slučaj sa aktuelnom vlašću, budući da su i prethodne pokušavale da preko privatizacije „kupe medijski uticaj”. Većina tih privatizacija je propala, a mediji su gašeni ili vraćani u okrilje Agencije za privatizaciju. Imajući sve to u vidu, teško je očekivati da će novi vlasnici uspeti da „održe” delatnost, uprkos zakonskoj obavezi i monitoringu Regulatora.

Umrežavanje lokalnih medija

Ukidanje ograničenja u odnosu na umrežavanja programa omogućilo je lokalnim medijima da zajednički kreiraju i ulažu u programske sadržaje. Tako su nastale Nova mreža Srbije, koju čini 11 lokalnih televizija iz Obrenovca, Pančeva, Loznice, Čačka, Šida, Novog Pazara, Novog Sada, Užica,

Valjeva, Kragujevca i Vranja, kao i Radijska mreža Naxi Nacional, koju čine 30-ak radio stanica sa teritorije Srbije .

Televizije u okviru Nove mreže Srbije će emitovati 4-časovni zajednički program, za sada u periodu „*prajm tajma*“, od 19-23h, koji će, bar po najavama, obuhvatiti većinu sadržaja (informativni, zabavni, serijski, dokumentarni i naučni). Činjenica da su lokalne televizije prelaskom na digitalno emitovanje postale praktično regionalne, kao i to da ovih 11 medija pružaju uslugu u različitim zonama pokrivanja, te činjenica da će raznovrsni program emitovati u *prajm tajmu*, ukazuju na to da bi nacionalne televizije mogle da dobiju konkurenciju, što bi moglo povratno da utiče i na njih da više pažnje posvećuju programskim žanrovima koje su do sada zanemarivale.

Okosnicu programa Radio mreže Naxi Nacional će, po najavama predstavnika ove mreže, činiti emisije Naxi radija, informativni i zabavno-muzički program. Radio tržištem dominiraju radio stanice koje mahom emituju muzičke sadržaje. Zbog toga nije izvesno koliko će umrežavanje tematski sličnog radio programa predstavljati novu vrednost za medijsku scenu Srbije.

Zbog nedostatka proaktivne politike u oblasti medija došlo je do toga da na kraju 2015. godine niko ne može da kaže da li će integracija na medijskoj sceni doneti ikakvo dobro medijima, a još manje da li će medijski konzumenti osetiti boljitak. Ukрупnjavanje nekog tržišta ima opravdanje sa aspekta tzv. ekonomije obima, kratkoročno može privući investicije i možda čak i doprineti kvalitetu usluge i podstaći konkurenciju. Međutim, medijska scena nije samo tržišna utakmica, nego ima mnogo veze i sa ostvarivanjem ustavnog prava na slobodu izražavanja. Imajući u vidu raznovrsnu praksu, teško se može predvideti da li će pozitivni efekti integracije nadvladati negativne. Ono što je sigurno je to da će broj medijskih igrača biti manji, što može da znači više novca za preostale aktere, što opet znači da taj „višak“ može da bude uložen u raznovrsne programske sadržaje. Da li će tako biti i da li će medijski pluralizam u pravom smislu reči zaživeti, zavisi od mnogo faktora. Svakako, ako se ukрупnjavanje zaustavi samo na tome da se broj medija svede na prihvatljiv nivo, dobićemo još gori rezultat nego do sada - manji broj medija i siromašniju ponudu sadržaja.

Javni interes u oblasti javnog informisanja

Prof. dr Snježana Milivojević¹

Usvajanje tri medijska zakona u leto 2014. godine označilo je početak drugog talasa medijske tranzicije u Srbiji. Glavni fokus ove faze je uređenje medijskog tržišta kroz proces privatizacije, uvođenje sistema projektnog sufinansiranja i liberalizaciju režima medijske koncentracije. Taj katalog poslova se donekle razlikuje od onog u prvoj fazi prelaska iz autoritarnog u demokratsko društvo (i prvih medijskih zakona iz 2002-2003 godine), u kojoj je glavni normativni cilj bio ukidanje političke kontrole i izgradnja novih institucija. Novi zakonski okvir dobio je sve pohvale, i domaće i međunarodne, i političke i profesionalne, najpre zbog obaveze povlačenja države iz medijskog vlasništva i zbog toga što je „prvi put definisao javni interes u oblasti informisanja”.

U toku prve godine njihovog važenja, međutim, svi indeksi ukazuju na ozbiljan pad medijskih sloboda. Prema *World Press Freedom Index-u* organizacije *Reporteri bez granica*, Srbija je na 67. mestu od 180 država, što je pad za 13 mesta u odnosu na 2014. godinu. U *Freedom of the Press Index-u*, koji pravi *Freedom House*, Srbija je u grupi delimično slobodnih zemalja, sa 40 poena, što je pad u odnosu na 37 poena, koliko je imala u prethodnoj godini. U *Nations in Transit* pregledu *Freedom House-a* rangirana je kao polu-konsolidovana demokratija, sa demokratskim indeksom 3.68. On je, takođe, niži nego prethodne godine, kada je bio 3.64, upravo zbog pada u kategoriji 'nezavisnost medija' (sa 4.00 na 4.25), jer je u svih ostalih šest kategorija indeks ostao nepromenjen u odnosu na 2014. godinu.

Uprkos atmosferi stalnih pohvala zbog velikog napretka na putu ka Evropskoj Uniji i Srbiji kao najboljem mestu za reforme na Zapadnom Balkanu, u Izveštaju Evropske komisije o napretku za 2015. godinu kaže se da u prethodnoj godini „nije ostvaren nikakav napredak u oblasti prava na slobodu izražavanja”. Oni koji Izveštaj čitaju u procentima tvrde da je sa medijima sve u redu, sem tih nekoliko zamerki o slobodi izražavanja, i obećavaju da će se to uskoro popraviti.

Suština nesporazuma ovde nije sa ocenjivačima iz Evropske komisije, već sa domaćom javnošću i shvatanjem demokratije. Sve pohvale u Poglavlju 10 „Informaciono društvo i mediji” su iz oblasti komercijalnog delovanja medija (autorsko pravo, tehnički pristup medijima, digitalizacija); sve zamerke iz Poglavlja 23 „Pravosuđe i osnovna prava” odnose se na slobodu izražavanja i ulogu medija u oblasti fundamentalnih ljudskih sloboda i prava. Tako su mediji sve bolji na tržištu, tamo gde rade za svoje vlasnike/ce, ali sve lošiji u javnosti, tamo gde rade za građane/ke. Ovo bi se moglo formulisati i kao izraz napetosti između privatnog vlasništva i javnog dobra, između medija kao industrije i kao društvene institucije, između tretiranja korisnika kao potrošača ili kao građana. Nije ovo ni prva ni jedina zemlja u kojoj se to dešava. Naprotiv, po tome je Srbija u velikoj grupi 'delimično slobodnih država', ali je problem što se ovde to predstavlja kao napredak, a ne znak za uzbunu.

Zato je glavno pitanje koje je postavio novi regulativni okvir: kako je moguće da su zakoni sve bolji, a sloboda izražavanja, medijske slobode i medijski kvalitet sve gori?

Tranzicija i sloboda

Medijski sistem u Srbiji je, kao i širom Jugoistočne Evrope, takav da je uticaj države vidljiv i nezavisno od vlasničke strukture, a vlast nalazi veoma kreativne načine da kontroliše medije. Zakasnela, duga i komplikovana tranzicija doprinela je izgradnji nekoherentnog sistema, koji je oblikovan pod različitim uticajima, ali je u kulturnom, institucionalnom i profesionalnom pogledu najslabiji 'mediteranskom tipu' (*političko-pluralizovani model*). U svim zemljama 'mediteranskog modela' komercijalni mediji često nisu nezavisni (zavise od veze sa državom, najčešće preko političkih partija, kao u slučaju

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Berlusconi) čak i kad su visoko profitabilni; javni mediji (radiodifuzni) su visoko politizovani (postavljanje upravljačkih organa, finansijska zavisnost); novinarska profesija je neautonomna i slabo razvijena ('zastupničko' novinarstvo); tiraži štampe su vrlo niski (manje od 100 čitalaca novina na 1000 stanovnika), a gledanost televizije vrlo visoka.

Kombinovani ishod ovih procesa u Srbiji je doveo do spore svojinske transformacije (zavisnost od državnog finansiranja, koncentracija industrije oglašavanja itd.), niske medijske autonomije (političko uplitanje u rad regulatornih tela, visok stepen klijentelizma itd.) i niskog kvaliteta medijskog sadržaja (dominacija jeftinog sadržaja, tabloidizacija, pad profesionalizma itd.). Međutim, glavni cilj medijskih promena koje donose novi zakoni nije da se ovo stanje uredi. Naprotiv, njihov cilj je da obezbede konsolidaciju i komercijalizaciju, odnosno da omoguće razvoj medija koji će biti poslovno uspešni (privatni interes) bez obzira na kvalitet (javni interes).

Nije posebno iznenađenje što takvi mediji već doprinose uobličavanju neliberalnih tendencija u Srbiji u poredak koji ima mnoge odlike 'novog autoritarizma': (uspešne) reforme u ekonomiji, a zaostajanje u političkom razvoju. Privatizacija javnog prostora kroz javno informisanje obavlja se kroz dva procesa simultano: vlast koristi medije za svoju promociju, a medijski vlasnici dobijaju povlašćen pristup javnim resursima zbog doprinosa u blokiranju kontrolne uloge medija. U slučaju potrebe, medije mogu koristiti i za promociju ličnih interesa i hirova, ili za svoje privatne ratove. Zavisna i nestručna regulatorna tela, pre svega REM, ćutanjem ili odlukama diskredituju i usvojene zakone i regulativni proces.

U takvom ambijentu vodeći mediji nisu u službi javnog interesa, a njihov glavni posao je da onemoguće mehanizme kontrole vlasti. Tome služi izrugivanje demokratiji i hajka na političke protivnike u 'debatnim programima', neprekidno gostovanje premijera na svim medijima, i konferencije za štampu kao zamena za novinarski rad. Vlasti koja ih kontroliše, ni novinari ni mediji više nisu potrebni, ona sama može na konferencijama za štampu sve bolje, jasnije i duže da objasni 'svom narodu'.

Medijsko tržište je visoko kontrolisano, a mediji su zavisni od industrije oglašavanja koja je personalnim vezama čvrsto povezana sa svetom politike. Visoko koncentrisana industrija oglašavanja izrasla je na bliskim vezama kupaca medijskog prostora (media buyers) i oglašivačkih agencija sa političkim strankama. Verovanje da je 'slobodno tržište' jednako 'slobodni mediji' pokazalo se kao iluzija, a zbog komplikovane i duge tranzicije, u Srbiji je proizvelo dobro uhodan klijentelistički sistem koji se nasleđuje dolaskom na vlast.

Tu javni interes nema ko ni da zastupa ni da brani.

Javni interes i mediji

Javni interes i javno informisanje imaju zajednički koren u ideji 'javnosti'. U stvari, javni interes, javnost i mediji su osnova javne sfere, onog društvenog prostora u kome se građani 'okupljaju' da podele svoje privatne zabrinutosti o javnim stvarima, kako je to formulisao Jirgen Habermas (Jürgen Habermas). I to je tako od antičke Agore do sajber kafea i društvenih mreža. Javno mnjenje koje se u njoj formira nije samo zbir pojedinačnih mišljenja, nego je, čak i kada se spontano podudara sa većinskim mišljenjem, ono uvek zajednički proizvod javnih razgovora i debata. Mediji su neophodni da to omoguće, a „posao medija je da javnost zainteresuju za javni interes”, kako je još prvih decenija 20. veka govorio američki filozof Džon Džui (John Dewey).

Velike i burne debate o javnom interesu od tada ne prestaju da se vode u oblasti medija. U normativnim teorijama o medijima 'javnost' je u centru pažnje, a njen interes trebalo bi da pomiri napetost između činjenice da jedna komercijalna industrija (mediji) proizvodi robu (informacije) koje su ključne za građansku participaciju i demokratski poredak. Čitav prošli vek protekao je u izgradnji ovog krhkog, ali ubojitog demokratskog aranžmana: sloboda medija je Ustavom zaštićena zato što

mediji obavljaju posao od javnog značaja i građanima obezbeđuju neophodne informacije i platformu za razgovor o javnim temama. Taj aranžman izgrađen je medijskom politikom, zakonima, regulativnim instrumentima i institucijama koje štite javni interes u javnom informisanju.

Javni interes se u stvari odnosi na dobrobit koju mediji imaju za društvo u celini, na onaj interes koji deli ili oko koga je saglasno društvo kao zajednica. Reč je o pojmu koji nije lako definisati i oko koga ne postoji saglasnost, pa je ovaj pristup jedan od tri međusobno prilično suprotstavljena shvatanja javnog interesa.

Po prvom stanovištu, javni interes je interes većine, odnosno 'ono što narod hoće'. U osnovi mu je 'argument većine', po kome zajednički /opšti/ javni interes nije ništa drugo nego zbir individualnih/pojedinačnih izbora. Ovakvo shvatanje javnog interesa u medijskoj politici zagovaraju pobornici liberalnog medijskog sistema, deregulacije i tržišta kao glavnog regulatora. Tržište će nagraditi pobednike, konkurencija će podići kvalitet medijske ponude i ojačati potrošače koji će svojim izborima proizvesti razvoj prema javnom interesu. Jedino uplitanje države u tržišne odnose potrebno je radi ograničenja monopola i podsticanja konkurencije, a šta će mediji proizvoditi stvar je onih koji ih poseduju/prave, i publike koja to kupuje. U medijskom svetu za sada je ovako potpuno deregulisana samo štampa, koja je poslednjih godina ojačala mehanizme samoregulacije da bi izbegla spoljnu regulaciju. Posle velikog tabloidnog skandala u Velikoj Britaniji ovaj sistem samoregulacije ozbiljno je uzdrman.

Drugi pristup tvrdi da javni interes ne određuje brojnost, već da ga određuju neki apsolutni standardi vrednosti, nezavisno od toga šta građani žele. Interes javnosti prevazilazi pojedinačne interese upravo radi ostvarenja nekih viših vrednosti ili javnog dobra. U medijskom svetu, javni radio-televizijski servisi su umnogome zasnovani na ovom principu: strogo regulisani programski, organizacioni i upravljački aranžmani; za uzvrat, povlašćen položaj, izuzimanje od izloženosti tržištu i stabilno finansiranje koje omogućava koncentraciju na kreativnost i kvalitetnu produkciju. Ovo mišljenje se često kritikuje kao idealističko ili paternalističko, u najoštrijim verzijama kao autoritarno. Ko to može formulisati ili definisati javni interes, kada javnost niti bira niti može da 'ovlasti' bilo koga da to radi?

Konačno, treći, 'realistični', 'srednji put', kako kaže Denis Mek Kvejl (Denis McQuail), definiše javni interes kao 'informativne, kulturne, i socijalne dobiti za šire društvo, koje pravazilaze neposredne, parcijalne ili lične interese'. On ispravno podseća da i sam princip slobode štampe mora da se podrži argumentom dugoročne dobiti koju donosi društvu, a koja ne mora biti ni neposredno vidljiva niti očigledna svakom pojedincu. Društva imaju dugoročne koristi od principa koje prihvataju i pridržavaju ih se svi, čak i kad dobit od njih nije trenutna. Dakle, ovako shvaćen javni interes u informisanju odnosi se na dobrobit koju ima za demokratsku participaciju građana, ali i za kulturne, ekonomske i socijalne dobrobiti svih. Ovo stanovište oslanja se na ideju javnog dobra, društveno-tržišni pristup i ulogu države kao zaštitnika opštih interesa u svetu medija.

Mediji i javni interes povezani su prvi put 20-tih godina prošlog veka, kada je, u vreme pojave radija, Federalna komisija za komunikacije (FCC) uvela 'javni interes' kao jedan od kriterijuma licenciranja radio stanica. Sledeći važan trenutak bio je Izveštaj Hačinson komisije (Hutchinson Commission) iz 1947. godine, za koji profesor Džejms Karan (James Curran, Goldsmiths, University of London) kaže da je možda najelegantniji regulativni dokument ikada usvojen. U njemu se jasno navodi da mediji nisu društveno odgovorni kada deluju samo u vlastitom komercijalnom interesu. Doktrina o društvenoj odgovornosti štampe koju je tako uveo, zajedno sa Fairness Doctrine-om koja je obavezivala da se u televizijskim programima vreme deli po jednakom principu različitim stranama (koja je važila od 1949. do 1987. godine), obezbeđivale su da to radi 'objektivno i nepristrasno novinarstvo'.

To je i novinarstvu obezbedilo status 'javnog dobra', čija se autonomija mora braniti kao sastavni deo profesije. Kada je Majkl Šadson (Michael Schudson), profesor na Univerzitetu Kolumbija, pre par godina objavio studiju u kojoj se založio za razne oblike pomoći novinarstvu (uključujući i državnu), neko je napisao da bi se Tomas Džeferson prevrnuo u grobu kada bi čuo da ljudi iz medija prizivaju

državu u pomoć. Danas možda najuticajniji politički ekonomista medija Robert MekČesni (Robert McChesney), profesor na Univerzitetu Ilinoi, smatra da je novinarstvo javno dobro koje mora da se pomaže javnim resursima. Ako demokratija hoće da sačuva informativne medije i kvalitetno novinarstvo, onda mora da ih pomogne javnim sredstvima. On je, na primer, predložio da svaki građanin dobije poreski kredit ili oslobođenje od poreza za prvih 200 dolara koje potroši na pretplatu za dnevne novine. Na taj način, javni novac ne bi išao određenom mediju ili vrsti novinarstva, već bi građani sami odlučivali koji medij žele da čitaju, ali bi tako svi zajedno pomogli jednu važnu demokratsku instituciju. Sličnim argumentom je tadašnji predsednik Francuske Nikola Sarkozy obrazlagao 2009. godine svoju odluku da svaki građanin Francuske za 18-ti rođendan dobije besplatnu pretplatu na jedne dnevne novine, po ličnom izboru.

Pojava komercijalnih televizija i talas deregulacije tokom 80-tih godina prošlog veka pokrenuli su nove rasprave o opravdanosti države da interveniše u medije u ime javnog interesa. Početkom 21. veka tehnološka revolucija, globalizacija i duboka ekonomska kriza temeljno su izmenile medijski svet, a javni interes u javnom informisanju ponovo je postao 'tema dana'. Konvergencija je takođe dovela do promena, pa se debate više ne vode u zavisnosti od tehnologije, nego su usmerene na sadržaj koji dolazi do javnosti preko različitih platformi i uređaja. Vrtoglave tehnološke promene na početku 21. veka dovele su do promene pristupa u medijskoj politici, u kojoj se zaštita javnog interesa više ne reguliše institucionalno, nego programski.

Pošto je Zakonom o javnom informisanju i medijima 'prvi put definisan javni interes', bilo bi važno da se počne i sa vođenjem medijske politike čiju okosnicu, u konkretnim uslovima neoliberalnog sveta (privatizacija, deregulacija, komercijalizacija, liberalizacija), čini javni interes.

Uloga medija u razvoju slobode misli i stvaranju odgovorne javnosti

Docent dr Jovo Bakić¹

Zašto su sloboda misli i stvaranje odgovorne javnosti bitni? Naizgled, tu čovek nema nešto naročito novo da kaže nakon što su liberalni mislioci u poslednjih par vekova o tome napisali tomove knjiga. Pa ipak, čini se da autoritarni i oligarhijski režimi uvek iznova izazivaju razmišljanja o interesu javnosti i ulozi sredstava masovnog opštenja u oblikovanju odgovorne javnosti i zrelog javnog mnjenja.

Erdogan u Turskoj, Vladimir Putin u Rusiji, Milo Đukanović u Crnoj Gori, Viktor Orban u Mađarskoj, Aleksandar Vučić u Srbiji predstavljaju, primerice, tek najnovije kontrolore sredstava masovnog opštenja, a time i gušitelje slobode misli i govora. Oni se trude da od građana naprave maloletne podanike koji bezuslovno podržavaju vlast. Nasuprot tome, razvijanje odgovorne javnosti podrazumeva postojanje slobodnih i što potpunije obaveštenih građana koji stalno procenjuju da li vlast radi u javnom interesu. Mislili smo, naivno, ovde u Srbiji, da će s odlaskom režima Slobodana Miloševića u prošlost sloboda misli i govora procvetati, i da nikada više neće biti ometanja ovih osnovnih sloboda koje je prosvetiteljska politička tradicija podarila modernoj civilizaciji. No, nije đukanizacija, putinizacija ili erdoganizacija, neka bira svako naziv koji mu je najmiliji, glavni problem današnjeg periferno-kapitalističkog društva. Naime, ovi nazivi se odnose na autoritarno upravljanje celokupnim društvima, pa i na pokušaje potpunog kontrolisanja sredstava masovnog opštenja posredstvom kojih građani treba da budu što potpunije obaveštavani o stvarima koje spadaju u opšti interes. Činjenica je, međutim, da ni u tzv. liberalno-demokratskim društvima, a koja neodoljivo podsećaju na antičke oligarhije jer u njima vladaju najbogatiji u njihovom sopstvenom sebičnom interesu, nema dovoljno slobode mišljenja, odnosno da se ona dozira u onim količinama za koje upravljači i bogataši misle da neće škoditi interesima krupnog kapitala i suštinski oligarhijskog režima s tek formalnom demokratskom legitimacijom.

Ipak, ako u centru svetskog kapitalističkog sistema vlada oligarhija koja dozira slobodu misli, pa se jedan Noam Čomski može pojavljivati samo na lokalnim, a nikako ne i na nacionalnim radio ili televizijskim stanicama u SAD, dotle se na (polu)periferiji svetskog kapitalističkog sistema nalaze otvoreni ili prikriveni autoritarni vlastodršci koji masovno drže novinare u kazamatima (npr. Turska), u kojima, katkad, novinari koji se usude da pišu protiv vlasti stradaju u nerazjašnjenim nezgodama ili atentatima (npr. Rusija i Crna Gora), ili se zastrašuju s vrha vlasti i ponekad gube posao (Mađarska i Srbija). Radi se tek o nasumično nabrojanim i poznatijim primerima, jer mogao bi čovek da pomene Irak i Saudijsku Arabiju, Afganistan i Iran, Kinu i Burmu, Ukrajinu i Belorusiju itd. U svim pomenutim primerima vlast ograničava ili uopšte ne dozvoljava slobodu misli, govora i štampe, neophodnih za oblikovanje građanske svesti, te zrele i odgovorne javnosti, jer smatra da sve to dovodi u pitanje same temelje vlasti. No, ako slobodna misao i reč, koje objavljuju neustrašiva sredstva masovnog opštenja na osnovu smelog i profesionalnog novinarskog istraživanja, mogu ugroziti temelje vlasti, onda ti temelji i nisu naročito čvrsti.

Naravno, svaka vlast, a naročito ona koja bi želela da se pohvali demokratskom legitimacijom, počiva i na odobravanju javnog mnjenja, a ono je promenljivo, i ne može se doveka njime manipulirati. Činjenica da neka autoritarna vlast, npr. autoritarni socijalizam Josipa Broza Tita, ostaje u dobrom sećanju velikog dela javnosti i decenijama nakon upokojenja, svedoči prvenstveno o slabom učinku oligarhijskih kapitalističkih struktura koje su je nasledile. Drugim rečima, koruptivne oligarhije koje podstiču rast društvenih nejednakosti umeju biti nepodnošljivije od autoritarne vlasti koja je znatno ubrzala društveni razvoj i društveno ujednačavanje. Pa ipak, najgora je kombinacija autoritarne vlasti i

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oligarhijskih privrednih struktura, koja se, izgleda, pomalja na horizontu tmurne periferno-kapitalističke stvarnosti Srbije.

Međutim, bez obzira na prirodu društveno-ekonomskog sistema i tip vlasti, postojanje novinarske profesije je nužno u posredovanju različitih mišljenja do najšire javnosti. Novinari su, naime, barem u teoriji, zajedno s intelektualcima, najvažniji „agenti” koje javnost ima u jednom od najznačajnijih mogućih poslova – sa stanovišta i u interesu same javnosti odnosno građana koji je čine – kontrolisanja vlasti i opozicije odnosno celokupnog političkog sistema, te ukazivanja na bitne društvene, privredne i kulturne probleme. Nažalost, današnja situacija u čitavom svetu nije za novinare ohrabrujuća, jer oni masovno ginu u ratnim područjima, ali i u terorističkim ili nerazjašnjenim napadima.¹ Onda, pak, gde su novinari slabo plaćeni, egzistencijalno i životno ugroženi, nema dobro obaveštene i odgovorne javnosti, a gde nedostaje takva javnost o demokratskom idealu se samo sanjati može, jer ne postoje ni neophodni uslovi da mu se približimo.

U Srbiji, primerice, kada Brankica Stanković godinama nema privatnost, pošto su joj je ukinuli mafijaši, s blagoslovom bivše i sadašnje vlasti Srbije, onda je to činjenica koja bi morala da brine, obespekovi i najdublje zaokupi celokupnu javnost Srbije. Naime, ova hrabra osoba je pre nekoliko godina rizikovala i naposljetku izgubila svoju privatnost upravo zbog toga što je branila interes javnosti Srbije da zna kakve su veze „navijačkih grupa” Partizana i Crvene Zvezde sa narko-klanovima, desničarskim ekstremistima i vodećim političarima u Srbiji. Pošto joj je prećeno smrću, morala je da dopusti da joj policajci čuvaju fizičku bezbednost odnosno život, a to je značilo napuštanje sopstvene profesije i odricanje od privatnosti zarad čuvanja života. Veći deo javnosti Srbije, međutim, nije to shvatio ozbiljno, jer očividno nije dovoljno zreo da bi bio odgovoran, a posledično ni saosećajan. Da jeste, bio bi svestan da je inteligentna Novinarka² Stanković branila interese javnosti, tj. svih građana Srbije, stavljajući zbog toga na kocku ne samo svoju privatnost nego i sam život, i zahtevao bi, vođen osećajem dužnosti i blagodarnosti prema kuražnoj zastupnici javnosti, od svake vlasti da hitno obezbedi normalan život jednoj ličnosti koja je vredno i odgovorno i u interesu svih nas radila svoj posao.

Slično tome, kada je Olji Bečković autoritarna vlast Aleksandra Vučića, uz oligarhijsko sadejstvo vlasnika televizija s nacionalnom pokrivenošću, uskratila mogućnost da obavlja svoj posao na način na koji ga je obavljala četvrt veka pod različitim vlastima, onda je dužnost građana da pritisnu vlast kako bi se oštromnoj Novinarki omogućilo da zastupa interes javnosti. U protivnom, nije samo Novinarka izgubila posao, već je i javnost izgubila vrsnu zastupnicu, pa će i nepočinstva i svakovrsne gluposti jedne u velikoj meri nestručne vlasti (a i mnogih beslovesnih i beskrupuloznih opozicionara) prolaziti bez dovoljno motrenja, jer nema zastupnice javnosti da na njih u svom stilu, ironično i sarkastično, skrene pažnju.

Nažalost, nabranjanju nije kraj, jer i Danica Vučenić, pronicljiva Novinarka pred kojom su razni vlastodršci decenijama strepeli usled ogrešenja o interese javnosti na koja bi ona ukazivala, morala je napustiti novinarstvo kako bi sačuvala lično dostojanstvo. Pomenute Novinarke nisu pristajale da im vlast i bogataši određuju koje goste smeju pozvati a koje ne. One su profesionalno i časno zastupale interese javnosti, a javnost ih nije odgovorno zaštitila kada je autoritarna vlast nasrnula na njihov posao i na interes same javnosti. One se odlikuju hrabrošću i profesionalnom čašću, a javnost u Srbiji (čast izuzecima) ne krasi u ovom trenutku takve osobine. U svim slučajevima radi se o televizijskom novinarstvu koje je najviše pod udarom vlasti zbog snage svoga uticaja na javnost.³

Prema tome, novinari i javnost nalaze se u međusobno uslovljavajućem položaju: nema odličnih, odgovornih i hrabrih novinara (radi se prevashodno, ali ne i isključivo o televizijskom novinarstvu, kao

¹ *Reporters without borders*, <https://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2015>, pristupljeno 8. XI 2015.

² Ono početno „N” namerno je veliko, jer etička norma ima prednost nad pravopisnom.

³ U ovom kontekstu se može primetiti i nestajanje pojedinih autora i TV emisija sa Studija B, poput Đorđa Mičića i njegove emisije *U centru*, u kojoj se negovala kultura dijaloga, i javljanje propagandističkih sadržaja, poput *Beograd na vodi* Irine Veljković.

što upozorava npr. i slučaj Srđana Škora, koji je smenjen sa mesta šefa deska u „Večernjim novostima“ nakon što je rekao par kritičkih reči o vlasti u jutarnjem programu RTS-a), u nezainteresovanoj, intelektualno i moralno otupeloj i ravnodušnoj javnosti, ali nema ni zrele javnosti ako ona nema svojih neustrašivih i visoko-profesionalnih zastupnika spremnih da brane njene interese pred vlašću i opozicijom. Novinar je „naš čovek“, odnosno profesionalac čija je profesija, po definiciji, u službi javnosti. On treba da otkriva zloupotrebe vlasti, što ne znači *a priori* zastupanje interesa opozicije. No, pošto je vlast često sklona zloupotrebi moći koju po prirodi stvari ima, to znači da opozicija i novinari mogu imati sasvim legitimni motiv u ukazivanju javnosti na ogrešenja vlasti o njene interese. Svima njima se, naime, interesi poklapaju utoliko ukoliko se i opozicija (vođena njenim posebnim interesom) i novinari (kao zastupnici javnosti) slažu u ukazivanju na ogrešenja vlasti o javni (opšti) interes. Najsvetiji zadatak novinara, pak, pod uslovom da ga nije kupila niti vlast niti opozicija niti krupni kapital, već da je ostao istinski zastupnik javnosti, jeste da otkriva nepočinstva (nezakonite radnje) sadašnjih ili potencijalnih nosilaca moći, bilo da se radi o sadašnjim vlastodršcima, bilo da je reč o sadašnjim ili bivšim opozicionarima a budućim nosiocima državnih funkcija koji svoju priliku trenutno čekaju u opoziciji, ili da je reč o bogatim korporacijama i pojedincima.

Istovremeno, interes javnosti nije da zna sve o privatnom životu političara ili poslovnih ljudi, pa ni novinar ne treba za takve stvari da pokazuje interesovanje, osim ako privatno delanje političara ili poslovnih ljudi može ugroziti javni interes. Inače, privatnim stvarima javnih ličnosti bave se poverenja i poštovanja nedostojni voajeri, sledbenici i poklonici „kuće velikog brata“ i drugih istinski zaglupljujućih sadržaja (*realities*) kojima se truje i etički anestetizira javnost u svim kapitalističkim društvima, a naročito na svetskoj kapitalističkoj periferiji, pa posledično i u Srbiji i okolnim zemljama.

Treba uvideti da je mnoštvo stvarnih gluposti na televizijama s nacionalnom pokrivenošću, te njihovo prenošenje po tabloidima u funkciji intelektualnog i etičkog zatupljivanja javnosti. Umesto da se na televizijama s nacionalnom pokrivenošću raspravlja o ozbiljnim društvenim problemima, kao što su sve intenzivnije starenje stanovništva, sve raširenija narkomanija po varošima i selima Srbije, očajan položaj penzionera, besperspektivnost omladine, poniženost prosvete i zdravstva, i posledično, bolesno i neprosvećeno stanovništvo, društvena oligarhizacija ispoljena u dalekosežnom privrednom urušavanju i ukorenjenom političkom šibicarenju koji zajedno porađaju sve izrazitiju društvenu nejednakost, kulturno provincijalizovanje itd, voajerski se uživa u banalnostima koje priređuju kriminalci, promašeni ili osiromašeni pevači i pevačice, praznoglave silikonske mučenice (tzv. starlete), „omiljeni opozicionari“, ali i vodeći političari na režiranim konferencijama za štampu ili „političkim emisijama“ u kojima padaju (pre)teške reči. U ovim prilikama „novinari“ čitaju pitanja koja im autoritarni vođ unapred dostavi, srećni što se on sam pozvao baš kod njih u goste. On je, takođe, vrlo srećan, jer tada može i samom sebi da postavi niz drugih pitanja, pa onda, katkad razložno a katkad besno, da na njih u zamornim svađalačkim monolozima odgovara, obračunavajući se sa stvarnim, zamišljenim, ponekad i izmišljenim neprijateljima, uz obavezno klimanje mudrih „novinarskih“ glava. No, klimoglavi novinar ne može se novinarom zvati, jer ne zastupa interes javnosti, nego udvorički pravda interes svoga gospodara. Isto važi i za novinare koji brane interese bogataša, zapostavljajući interes javnosti. U oba slučaja se radi o propagandistima, manje ili više darovitim, ali nikako ne i o novinarima. Sve je više propagandista, a sve manje zastupnika javnosti, pa i sama javnost deluje sve zatupljenije. No, izgled može i da vara.

Nemoguće je, na sreću, kontrolisati sva sredstva masovnog opštenja, baš kao što će uvek biti i Novinara koji će se suprotstavljati pokušajima suzbijanja slobode misli i držanja javnosti u stanju maloletnosti. Sloboda misli znači i slobodu kritike vlasti, a da bi se ona zajemčila, potrebno je da sredstva masovnog opštenja budu otvorena za one koji se ne slažu sa vlastodršcima niti sa trenutnom većinom u društvu. Manjina je, istorija zorno o tome svedoči, neretko u pravu, a mogućnost da jasno ispolji svoje mišljenje omogućava javnosti da oblikuje mnjenje na osnovu jasno predočenih argumenata za i protiv neke pojave ili stava. Štaviše, pametna vlast se trudi da podstiče slobodu misli, jer kritika je tera da radi bolje no što je dotad činila. Kritika, ukazujući na greške, može služiti vlasti da ih u hodu ispravlja. Isto tako, pripadnici većine će razmisliti o argumentima s kojima se trenutno ne slažu i mogu promeniti mišljenje.

Osim toga, vlast odgovorna javnosti, tj. građanima, smenjuje one njene pripadnike za koje se dokazalo da su plagirali doktorate ili se osorno odnose prema novinarima, a neke prepuštaju i organima gonjenja ako se radi o krivičnim delima koje su novinari otkrili (npr. krađe i pronevere državnog novca, nameštanje tendera članovima porodice, kumovima ili bogatašima itd.). Ako vlast to ne čini, nego zastrašuje, preti i pokušava da kompromituje hrabre novinare (npr. one u BIRNU-u ili KRIK-u) već izlisanom optužbom da su „strani plaćenici” ili odstranjuje zastupnike javnosti s njihovog posla, sama javnost će postupno shvatati da je izigrana, a onda će se i vlast suočiti s ozbiljnim posledicama gubljenja većine. Naime, vlast koja ne dozvoljava slobodu misli i govora, goni novinare kao zastupnike javnosti, maćehinski i neodgovorno gasi TANJUG nakon 72 godine rada, ostajući tako, kao tužni izuzetak na evropskom kontinentu, bez državne agencije, i ne dozvoljava kritički usmerenim intelektualcima da se obrate javnosti, nastojeći da je drži neobaveštenom, s televizija s nacionalnom pokrivenošću, neminovno će se u doglednoj budućnosti suočiti s građanima koji su izgubili strpljenje, jer ne prihvataju da budu posmatrani kao nezrela i beslovesna bića, srećna što im je omogućeno da 24 časa bez prestanka prate zaglupljujuće a bolno stvarne i u primitivizmu ogrezle sadržaje na ružičastim i srećnim televizijama, kao i u kući velikog brata, u koju je, žali bože, pretvorena B92, te da svakodnevno čitaju o istim tim sadržajima u međusobno zakrvljenim tabloidima.

Evropski sud za ljudska prava

Informatori o praksi Suda¹

Informatore br. 182 - februar 2015. godine

ČLAN 10²

Sloboda izražavanja

Sloboda saopštavanja informacija

Osuda novinara zbog tajnog snimanja intervjua sa agentom osiguranja i kasnijeg emitovanja intervjua za potrebe javnog interesa: *povreda prava*

Haldiman i drugi protiv Švajcarske – 21830/09
Presuda 24.2.2015. (Odeljak II)

Činjenice – Sva četiri podnosioca su novinari. Četvrti podnosilac je 2003. godine organizovao intervju sa agentom osiguranja, predstavljajući se kao potencijalni klijent. Intervju je snimljen bez agentovog znanja. On je naknadno obavešten o snimku, ali je odbio da izrazi bio kakav stav o njegovom sadržaju. Inseti iz intervjua, u kojima je agentovo lice pikselizirano, a glas modifikovan, emitovani su kao deo televizijske dokumentarne emisije o praksi u prodaji proizvoda u oblasti životnog osiguranja. Sva četiri podnosioca su bila uključena u pripremu i emitovanje dokumentarne emisije.

Podnosioci su osuđeni za snimanje razgovora trećih lica i za snimanje razgovora bez dozvole. Prva tri podnosioca su novčano kažnjena sa dvanaest dnevnih iznosa između 80 i 290 evra, a četvrtom je izrečena uslovna kazna od četiri dnevna iznosa od oko 30 evra, uz vreme proveravanja od dve godine.

Pravo – Član 10: zadiranje u podnosioceva prava na slobodu izražavanja je propisano zakonom i težilo je zaštititi prava i ugleda drugih, u ovom slučaju agentovog prava na zaštitu njegovog ugleda i stavova.

Sud se već susretao sa slučajevima koji se odnose na povredu ličnog ugleda javnih ličnosti, pri čemu je ustanovio šest kriterijuma u cilju vaganja između slobode izražavanja i prava na privatni život: učešće u diskusiji od javnog značaja, utvrđivanje koliko je poznata osoba o kojoj je izveštavano, kao i sam predmet izveštaja/dokumentarne emisije, prethodno držanje te osobe, način prikupljanja informacija, istinitost, sadržaj, forma i posledice objavljivanja, težina izrečene kazne. Sud je takođe presuđivao u slučajevima klevete koja se odnosi na profesionalne aktivnosti pojedinaca. Međutim, ovaj slučaj se razlikuje od prethodnih zbog toga što, prvo, agent nije poznata javna ličnost, i drugo, cilj sporne dokumentarne emisije nije bila kritika agentove ličnosti, već ukazivanje na specifičnu komercijalnu praksu u njegovoj profesiji. Prema tome, uticaj dokumentarne emisije na agentov lični ugled je ograničen, što je neophodno uzeti u obzir prilikom primene gorenavedenih kriterijuma.

Predmet dokumentarne emisije, navodno slab kvalitet saveta koji daju privatni agenti osiguranja, a stoga i pitanje zaštite prava potrošača u ovoj oblasti, pokrenuo je diskusiju od velikog značaja za javnost. Očigledno, agent koji je snimljen bez njegovog znanja nije javna ličnost. On nije dao saglasnost da bude snimljen i razumno je mogao verovati da je konverzacija privatna. Ipak, fokus dokumentarne emisije nije agent sam po sebi, već je to specifična komercijalna praksa u okviru specifične profesije. Štaviše, intervju nije vođen u agentovoj kancelariji ili bilo kom drugom poslovnom prostoru. Stoga je

¹ Izvodi iz zvaničnih „Informatora o praksi Suda” Evropskog suda za ljudska prava, dostupnih na Internet prezentaciji Suda; prevod uradila advokatska kancelarija „Živković&Samardžić”, Beograd

² Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda

zadiranje u agentov privatni život manje ozbiljno nego da je dokumentarna emisija bila usmerena lično i isključivo na njega.

U domaćem pravu nije postojala apsolutna zabrana upotrebe skrivene kamere, već ona može biti dozvoljena pod striktno definisanim uslovima. Iako agent ima legitimno pravo da tvrdi da je bio obmanut od strane podnosioca, oni ne mogu biti optuženi da su namerno kršili profesionalnu etiku. Oni nisu zanemarili novinarska pravila Švajcarskog novinarskog saveta za ograničavanje upotrebe skrivenih kamera, ali su u stvari zaključili da je cilj njihove dokumentarne emisije bio takav da je opravdavao upotrebu ovih kamera. Švajcarski sudovi nisu uspeli da zauzmu jedinstveni stav po ovom pitanju. Stoga, podnosiocima bi trebalo dati privilegiju sumnje u pogledu njihove želje da postupe u skladu sa pravilima etike koja su primenljiva na ovaj slučaj, a tiču se njihovog načina prikupljanja informacija.

Istinitost prezentovanih činjenica nikada nije bila predmet spora.

Sam snimak predstavlja ograničenu povredu agentovih interesa, s obzirom na to da je bio dostupan samo ograničenom broju lica. Odlučujuće u ovom slučaju je to da su podnosioci pikselizirali agentovo lice, tako da su samo njegova kosa i boja kože bili i dalje vidljivi nakon transformacije slike, a njegov glas je takođe bio izmenjen. Isto tako, iako je njegova odeća bila vidljiva, oni su otklonili sve prepoznatljive karakteristike, a intervju nije vođen u agentovom uobičajenom poslovnom prostoru.

Prema tome, zadiranje u agentov privatni život nije bilo toliko ozbiljno da nadjača javni interes za informacijom o navodnom nesavesnom postupanju u oblasti posredovanja u osiguranju. Uprkos relativnoj blagosti novčanih kazni, izrečena kazna dovodi do toga da mediji budu odvraceni od izražavanja kritike, iako podnosioci nisu sprečeni da emituju svoju dokumentarnu emisiju.

Zaključak: povreda prava (šest glasova prema jednom).

Član 41: nije zahtevana naknada štete

(Pogledati: Aksel Špringer AG protiv Nemačke [GC] 39954/08, 7. februar 2012, [Informator 149](#))

Informator br. 189/oktobar 2015. godine

ČLAN 10¹

Sloboda izražavanja

Hapšenje i osuda novinara zbog nepoštovanja policijskih naredbi tokom demonstracija:

nema povrede

[Pentikäinen protiv Finske](#) - 11882/10
Presuda 20.10.2015. [GC]

Činjenice – 2006. godine podnosilac je izveštavao sa demonstracija u svojstvu novinara i fotografa. Kada su demonstracije postale nasilne, policija je odlučila da spreči kretanje demonstranata i da dozvoli održavanje mirnih demonstracija na licu mesta. Nakon toga su blokirali prostor i naredili demonstrantima da se razidu. Iako je više puta opomenut da napusti prostor, podnosilac je odlučio da ostane sa demonstrantima. Ubrzo nakon toga, uhapšen je zajedno sa jednim brojem demonstranata i

¹ Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda

zadržan preko 17 sati. Naknadno je oglašen krivim za nepoštovanje policijskih naredbi, ali mu nije izrečena kazna. Ta odluka je potvrđena u žalbenom postupku, a podnosiočeva naknadna žalba Vrhovnom sudu je odbijena.

U presudi od 4. februara 2014. godine, sudsko veće je, odlukom od pet glasova protiv dva, odlučilo da nije bilo povrede člana 10 (pogledati [Informator 171](#)). Dana 2. juna 2014. godine slučaj je na podnosiočev zahtev upućen Velikom veću.

Pravo – Član 10: Prilikom procene neophodnosti zadiranja u podnosiočevu slobodu izražavanja, sud mora odmeriti dva suprotstavljena interesa: interes javnosti da dobije informaciju od opšteg značaja i interes policije za održavanje javnog reda tokom nasilnih demonstracija. S tim u vezi, sud je istakao ulogu čuvara javnosti koju mediji imaju u pružanju informacija o načinu na koji se organi vlasti odnose prema javnim demonstracijama i smirivanju nereda. Svaki pokušaj sklanjanja novinara sa lica mesta mora biti podvrgnut strogoj kontroli. S druge strane, zaštita koja se novinarima pruža na osnovu člana 10. uslovljena je njihovim ponašanjem u skladu sa principom odgovornog novinarstva. Shodno tome, novinari koji se koriste slobodom izražavanja podvrgnuti su „obavezama i odgovornostima“, što znači da ne mogu zahtevati imunitet od kaznene odgovornosti iz razloga što su kazneno delo koje je u pitanju učinili tokom vršenja novinarskih poslova.

Što se tiče podnosiočevog hapšenja, spisi predmeta ne dovode u sumnju da su policijske naredbe za rasturanje demonstracija bile zasnovane na razumnoj proceni činjenica. Štaviše, preventivne mere koje su preduzete zbog mogućnosti da se događaji pretvore u nasilne, bile su opravdane. One nisu bile usmerene samo na apstraktnu zaštitu javnog reda, već i na bezbednost pojedinaca koji su bili u blizini demonstracija, uključujući pripadnike medija, te samim tim i podnosioca. Što se tiče podnosiočevog ponašanja, sud je prvo primetio da ga njegov fizički izgled tokom demonstracija nije sasvim jasno razlikovao od demonstranata, s obzirom na to da nije imao odeću ili neku drugu oznaku na osnovu koje bi bio identifikovan kao novinar. Prema tome, pre hapšenja, on nije mogao biti na očigledan način identifikovan kao novinar. Da je želeo da ga policija prepozna kao novinara, morao je uložiti dovoljne i jasne napore da bude identifikovan kao novinar, tako što bi obukao prepoznatljivu odeću, držao svoju legitimaciju na vidljivom mestu sve vreme, ili tako što bi preduzeo druge razumne mere. S obzirom na to da je on novinar koji izveštava o aktivnostima policije, morao je biti svestan pravnih posledica nepoštovanja policijskih naređenja, a s obzirom na to da ih nije poštovao, svesno je preuzeo rizik hapšenja. Štaviše, ništa što se nalazi u spisima predmeta ne sugerise da podnosilac ne bi bio u mogućnosti da izvršava svoju profesionalnu dužnost u neposrednoj blizini da je poštovao naredbu da napusti blokirano područje.

Što se tiče podnosiočevog pritvora, iako je u policijskoj stanici zadržan sedamnaest i po sati, zbog njegovog statusa novinara je bio među prvima saslušan i oslobođen. Dalje, iako nije sasvim jasno kako su tretirane njegova fotografska oprema i memorijske kartice nakon hapšenja, nije izgledalo da je njegova oprema konfiskovana u bilo kom trenutku, a njemu je bilo dozvoljeno da zadrži sve fotografije koje je napravio, bez ograničenja u odnosu na njihovu upotrebu.

Što se tiče osude, iako je podnosilac oglašen krivim za nepoštovanje policije, nije mu izrečena nikakva kazna. Svako zadiranje u njegovu novinarsku slobodu bilo je ograničenog dometa, s obzirom na to da je imao mogućnost da adekvatno pokrije događaj. Sud je naglasio da ponašanje, koje je sankcionisano krivičnom presudom, nije predstavljalo podnosiočevu novinarsku aktivnost kao takvu, već njegovo odbijanje da postupi po nalogu policije na samom kraju protesta, koji je od strane policije okarakterisan kao nered. U tom smislu, činjenica da je podnosilac novinar ne podrazumeva da on zbog toga ima povlašćen, odnosno drugačiji tretman u odnosu na druge na licu mesta. U stvari, zakonodavstvo većine država Saveta Evrope ne dodeljuje specijalan status novinarima kada oni ne postupe u skladu sa policijskim nalogom da napuste mesto demonstracija. Štaviše, koncept odgovornog novinarstva zahteva da, kad god novinari moraju izabrati između generalne obaveze poštovanja odredaba krivičnog prava i njihove profesionalne dužnosti da pribave i prenesu informaciju, a oni odaberu drugu opciju, moraju biti svesni da rizikuju da budu pravno sankcionisani,

uključujući i krivične sankcije. Na kraju, podnosiocu nije izrečena kazna s obzirom na to da su njegovi postupci okarakterisani kao „ekskulpirajući“: kao novinar, bio je suočen sa kontradiktornim očekivanjima koja proizlaze iz obaveza koje su mu nametnuli policija, s jedne strane, i poslodavac, sa druge strane.

Njegova osuda predstavlja samo formalni nalaz da je učinio krivično delo, i kao takva teško da može imati odvraćajući efekat na lica koja učestvuju u demonstracijama. Podnosiočeva osuda smatra se proporcionalnom legitimnim ciljevima kojima se teži.

Zaključak: nema povrede (trinaest glasova prema četiri).

(Pogledati Štol protiv Švajcarske [GC], 69698/01, 10. decembar 2007, [Infomator 103](#); Animal Defenders International protiv Ujedinjenog kraljevstva [GC], 48876/08, 22. april 2013, [Informator 162](#); i Moris protiv Francuske [GC], 29369/10, 23. april 2015, [Informator 184](#)).

LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

INTRODUCTION

The year 2015 was one of great expectations for the media sector in Serbia. The set of media laws, adopted last August and especially the Law on Public Information and Media, promised to solve many problems and usher in the much-needed media reforms. However, at the end of 2015, it is clear that the much-awaited outcomes are not there. There are many reasons for that – from the shortcomings of the laws, the inadequate enforcement thereof, to non-compliance and obstruction by the competent authorities and certain media. Developments on the media scene just only confirmed what has long been known - that the changes may not be ushered in by only one Ministry; cooperation is necessary between all the competent bodies, as is especially the willingness of the highest authorities to implement the changes.

In order to stop the economic decline of the media it was necessary to put into practice legislative concepts that would enable the development of the media market subject to equal rules and opportunities for all participants, as well as to the principles of free and fair competition. Unfortunately, that did not happen. The privatization of media was lagging behind during the entire year, instead of ending before July 1st, 2015, as it was scheduled by Law. The amendments to the Law extended that deadline until October 31 (except for Politika AD, which is on the list of strategically important companies benefiting from a longer deadline for privatization), but for certain media, those that are in the process of transferring the shares to the employees free of charge, privatization is still going on, with no end in sight. The key issue and a point of disagreement between the competent authorities, which has delayed the entire process, is whether the employees in the media will get 100% of the shares or no more than one third. This opens up a series of other questions that remain unanswered for the time being. At that, the delay in the privatization process was also fueled by some of the concerned media, which obstructed the whole process in an attempt to derail the imminent changes, making the situation even more difficult. The exact number of media outlets undergoing the privatization proceedings may not be determined with exactitude. What is known is that, in the privatization procedure by October 31, 34 out of a total of 73 outlets have been sold, most of them at the initial price, while others, however, went at prices that vastly exceeded the initial ones (up to 70 times in the case of Radio Sid); that the buyers included both companies and entrepreneurs from the media sector and from other domains, as well as the persons largely unknown to the public, some of which acquired several media outlets. The fact also is that Tanjug has not found a buyer and that it has formally ceased to exist when the Law on that agency ceased to have effect. This caused a heated debate in the public and nearly stopped the entire privatization process: ones believed it was intolerable, while others claimed that Tanjug had long lost its reputation due to unprofessional and instrumentalized journalism and that it would had stopped operating a long time ago had it not been for considerable budget financing it received every year, shunning competition protection regulations. A concern are also the rumors and indications that persons financially and politically tied to the ruling party are behind the majority of media acquisitions, as well as the reality that the media privatization process has been marred with many irregularities. Finally, what remains a question mark is how this ownership transformation will affect the development of the media scene in Serbia. Will all media outlets finally become equal on the media market or will the new owners of the former state-owned media, assisted by the local governments and party colleagues, continue the “tradition” of unfair competition, as suggested by the results of some open competitions for project co-financing at the local level and in Capital city. This could also jeopardize the other important purpose of privatization – reducing political influence on the media and the overall improvement and professionalization of the media and journalists in general. Certain cases of privatization of the media have shown that the new owners of privatized media outlets will be all but guarantee editorial independence or protection from external pressure.

Problems also arose in the implementation of rules on project co-financing. These rules supposed to ensure the expenditure of public resources allocated to the media in a transparent and non-

discriminatory manner that not undermine market competition, for the purpose of producing media content of public interest and not for direct media financing. However, project co-financing rules are faced with many obstacles threatening the whole concept, while the violation of these rules is particularly favoured by the lack of sanctions for their breach. These obstacles are the consequence of the lack of understanding of legislative provisions, noncompliance with them and the manipulations by local authorities. There is also a lack of preparedness and competence by the media to implement these new rules in this area. In short, almost one third of municipalities failed to call competitions. Where such competitions have been called, there have been examples of good practice, but much more problems: discrimination against media, rigged competitions, unlawful composition and work of the commissions, questionable allocation of funds, etc. Although many municipalities have tried hard to implement the competition procedures in accordance with the Law, many others and especially some towns, namely, their local authorities, viewed these competitions merely as a new channel for funding the media that will produce the content that would help them stay in power. On the other hand, some of the media did not help the said rules to be implemented adequately either; the reasons varied, starting from poor project quality to deliberate participation in undermining the concept of project co-financing in order to satisfy their own interests. An additional problem is the fact that the issue of state advertising in the media is still not regulated, which means that large budget resources are allocated through disputable public procurement procedures to chosen media in a non-transparent manner and without any control whatsoever, by shunning competition rules. It is clear that, despite the ban, media are still being financed (and not media content of public interest) and public resources are still being misused in order to exert influence on the media in the interest of the ruling structures to remain in power.

Therefore, the media market in 2015 is yet to become functional. There is still no level playing field for competition or for the protection thereof and the media continue to decline economically. It strengthens the political and economic influence on the media, especially at the local level, where the outlets greatly depend on budget resources, amid an impoverished economy, which reliance seriously undermines their independence.

What is of a particular concern are the threats, attacks and pressure against the media, especially the fact that pressure is exerted by public and political figures, even the highest ranking, dissatisfied by media reports. Intolerance for media criticism and aggressiveness shown in such situation have revealed that the government views the media as a PR instrument only, as well as a tool for accomplishing their political goals and interests; they do not seem to understand or embrace the controlling role of the media, or the task and obligation of journalists to report on matters of public interest in a professional manner. Besides, the competent authorities, including the prosecutor's offices and courts, either fail to react or react inadequately to such cases, encouraging thereby the new perpetrators to continue to behave in the same manner. Additionally, some journalists in Serbia live under 24/7 police protection for years now, while several cases where journalists were assassinated in the past still remain unsolved. Furthermore, there are an increasing number of cyber attacks against news portals criticizing public officials and authorities. All this has resulted in good professional journalists quitting their profession, quality programs "disappearing" from the air, just like media outlets that used to be the symbols of free journalism, while self-censorship rules over the media. Consequently, the space for open debate in the media about issues of public interest is narrowed; there is an absence of genuine diversity of ideas and opinions in media that would enable the citizens to form an informed opinion about events, developments and people. There is a lack of investigative and quality critical content, also of other meaningful content, such as cultural, documentary, educational, children and youth program. Instead, the "tabloidization" of the media, "uniform" and "copy-paste" reporting are rife, while the media have been reduced to entertainers of the general public with sensationalist and trivial content of poor quality. The media are increasingly being misused for political ends, against those that think differently, including the media, journalists and NGOs. Therefore, it is not a surprise that many international reports assessing the freedom of media in Serbia paint a bleak picture of the media scene. It seems that one of the reasons for such a state of affairs related to media freedoms is the fact that the Law on Public Information and Media, as

an umbrella media law, failed to clearly define the protection of the rights of journalists and media, save on a general level; paradoxically, many statutory obligations and punitive provisions mainly concern the media and journalists and rarely to state authorities and public and political officials. Among other important developments on the Serbian media scene in 2015, we point out the completion of the digitalization process in June, slightly ahead of schedule. Although it was supposed to bring benefits to all – the state, the citizens and the media – when it comes to media, the benefit is not sufficiently clear. Namely, it seems that the biggest burden will be borne by the media, paying the extremely high fees to the Public Company “Broadcasting Equipment and Links” (JP ETV) for the services of signal multiplexing and distribution. To what extent will the media be able to withstand the burden it remains to be seen after 01.01.2017, when significant discounts, approved by ETV to local and regional TV stations, will have expired. Additionally, the state did not foresee the part of the revenue from the digital dividend to be allocated to the development of the media services, although that part of the radio-frequency spectrum was used by the media up till now. A particular problem is also the programming obligations of local broadcasters, which are now becoming regional. A novelty on the media landscape is the networking of local media, which the new regulations allow without any restrictions. Among other reasons, television stations network for the reason of a wider coverage zone, to offer better content to the new viewers, while radio stations mainly have economic motives. It remains to be seen how this process will contribute to the development and quality of the media sector. The year 2015 was also expected to bring the new Advertising Law and a series of bylaws (that were supposed to reinforce the media-related legislative framework) to be adopted by the Regulatory Body for Electronic Media (RBEM). However, the Draft Advertising Law, which was submitted for public debate last January, is yet to be tabled to Parliament; it also suffers from serious shortcomings, especially for narrowing down the scope of enforcement of the general rules on advertising and the absence of regulation of state advertising in the media. RBEM passed several important bylaws, but others are yet to be adopted. Two new strategies – the Media Strategy and the Strategy of the Development of Radio Services and Audiovisual Media Services – were also expected. RBEM produced the blueprint of the second strategy, which was submitted for public debate recently, where it was said to require certain changes and improvements. The drafting of the Media Strategy (by the ministry in charge of information and media) is yet to begin.

From the aforementioned it can be concluded that the discrepancy between fundamentally sound media laws and the poor effects thereof in practice lies in three key factors: certain shortcomings of the laws themselves, the “bad habit” of public officials and politicians as well as the authorities not to enforce the regulations or to enforce them as they see fit, as well as the unwillingness of the government to relinquish their influence on the media. The first problem may be solved easily by amending the laws, stipulating the clear and comprehensive rules that will not allow divergent interpretation; the second is also solvable, if sanctions are prescribed for non-compliance. The third problem, however, is a tricky one: to remedy it much deeper cooperation and solidarity within the media sector is needed in order to successfully tackle the challenges imposed by the government, and for the media to conquer their freedom.

Having in mind all developments on the Serbian media scene in 2015, we selected the following topics for this publication: project co-financing, due to the importance that these rules in the area of media financing have for the success of media reforms – the text about this topic is written by Slobodan Kremenjak, Attorney at Law; the integration of media, due to the significance of the proper application of the new liberal rules in this area – the author of the text is Milos Stojkovic, Attorney at Law; the public interest in the area of public information, since this is the key concept in the media field – this topic is analyzed, in identically-named article, by Snjezana Milivojevic, PhD, from the Faculty of Political Sciences, University of Belgrade; the role of the media in the development of freedom of expression and the creation of a responsible public, since it seems that the government does not understand it and does not accept it, while the media have forgotten it or repressed it – this topic is elaborated on, from his point of view, by docent Jovo Bakić, PhD, Faculty of Philosophy, University of Belgrade. The fifth article contains the short overview of two judgments of the European Court of Human Rights, pertaining to the application of Article 10 of the European Convention for the

Protection of Human Rights and Fundamental Freedoms; the first one relates to the application of four journalists regarding conviction of these journalists for secretly filming and subsequently broadcasting for public interest purposes interview with insurance broker, where the Court established violation of the applicants' right to freedom to impart information; the second one was reached in the case concerning the application of a journalist/photographer related to arrest and conviction he suffered for not obeying police orders during a demonstration, where the Court established no violation of the applicant's right to freedom of expression.

Belgrade, November 2015

Project Co-Financing Rulebook: One Year After

Slobodan Kremenjak, Attorney at Law¹

According to the estimates of Nielsen Audience Measurement, the value of the advertising market in Serbia in 2014 amounted to 156 million euros, which is almost 25% less than in 2008. Although TV advertising accounted for up to 83 million euros, the latter plummeted even more dramatically compared to 2008 – by as much as 27%. Radio advertising accounted for 7 million euros. The aforementioned amounts were spent on public service broadcasters, as well as on another 117 licensed television and 319 radio stations and a number of cable television channels licensed abroad, which are localized and aired in Serbia with domestic advertising. Of the total 83 million euros of TV ads, as much as 89, 9% was spent on stations with national coverage. This means that more than one hundred television channels in Serbia, both local and regional, absorbed a mere 8 million euros of advertising money in 2014. From that standpoint, it's easy to understand the importance of the issue of public source financing of local and regional media. State subsidies are not a reason for them to offer better content of public interest; these subsidies are often their lifeline for survival.

One may also rightfully ask how come there are so many media in Serbia, if the advertising market is so poor and if the latter is dominated to such an extent by national coverage outlets. The fact is, however, that the number of radio and TV stations has been down for already a decade. The Broadcasting Development Strategy in the Republic of Serbia concluded back in 2005 that (at the time) at total of 212 television and 682 radio stations operated in Serbia. Six years later, according to data from the Media Strategy, 134 television and 321 radio stations hold broadcasting licenses. In that relatively short period, Serbia “lost” more than half of its radio stations and more than 40% of TV stations. Clearly, the number of media outlets in Serbia, which is completely disproportionate to the potentials of the advertising market, is not the consequence of the situation that we had in this country in the last ten years. On the contrary, the number of media in the last decade was cut in half. The problem is more “ancient” and has resulted from the developments in the 90s.

However, the different governments in the last 10-15 years also share their part of the responsibility. They didn't offer any strategy or program to support the consolidation and survival of good local and regional media. Stations were disappearing seemingly randomly, but actually in order they were left without financial support that had not been motivated by quality or public interest in the first place. Subsidies, primarily those allocated by local governments, became a lifeline for media outlets, typically those close to the local oligarchies.

Therefore, it doesn't come as a surprise that media and journalist associations' key demand as early as back in 2009, when they initially defined their request to the then Serbian Government for the adoption of the Media Strategy, was to regulate the system of public source media financing and prevent embezzlement of public funds, while ensuring that non-discriminatory support is provided with such funds not to the media as such, but rather to the production of content that is in the public interest.

The Media Strategy from 2011 accepted the request by media and journalist associations, by having the Government commit to regulate, in line with the regulations governing state aid control, the system of co-financing the public interest in the media sector, according to a single methodology, regardless if the provider of state aid is, in a concrete case, the Republic, autonomous province or local self-government unit. According to the 2011 Strategy, the overall funds for that purpose are to be determined and earmarked in their respective budgets, in the amount that will ensure the realization

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of the public interest. Furthermore, these funds are to be allocated in a transparent procedure, under equal and non-discriminatory conditions.

From the formal standpoint, this was put into practice with the adoption of the Law on Public Information and Media in the summer of 2014. The procedure was specified in more detail in the Rulebook on the Co-Financing of Projects for the Realization of Public Interest in the Area of Public Information from November 2014. One year after the adoption of the Rulebook, it seems that we can sum up the first results. The question is, however, how to value these results. If the original idea was to ensure non-discriminatory support (again, not to media as such, but to the production of content relevant for the public interest), then the mere fact that the majority of Serbian media remains in a difficult situation a year or two later, is not *per se* an indicator of the failure of the system of project co-financing. However, the fact that the media haven't offered enough innovative and quality content and the relative absence of pluralism of opinions and ideas is perhaps that realistic indicator showing that project co-financing remains far from realizing its potential and initial purpose.

The responsibility undoubtedly lies with the political oligarchies. One third of the municipalities in Serbia haven't even called open competitions. The funds earmarked for the media in the local budgets are most often insufficient for any serious project. There is still discrimination against certain media outlets, most often those that are registered outside of the territory of the local government that called the open competition. In many local governments they still don't understand that co-financing is not a replacement for direct financing media from the local budget. On the contrary, it's the complete opposite and the public interest should not be associated with "monitoring the work of the bodies of the local government". However, even in cases where there was no clear embezzlement and favoritism, there seems to be a tendency to divide the exact funds earmarked in the budget so as to give a small chunk to everybody and make everyone happy. However, small projects rarely make a difference and seldom bring quality. On the other hand, the very system of project co-financing and its concept transfer part of the responsibility to media and journalists' associations. These associations were vested by Law with the right to have the candidates they propose constitute the majority in the expert commissions appraising projects in open competitions. One may rightfully ask how the aforementioned majority was used and what kind of projects these commissions supported; it is the question also what was the quality of the projects proposed in these competitions. Regardless of the efforts invested by the media associations to train their members, media owners, editors and journalists for writing projects and how much the latter were encouraged to offer projects that will be innovative and different to make the media landscape in Serbia more diverse, it is clear that a lot more may and must always be done.

Project co-financing is only a mechanism. Will this mechanism be used in the interest of the public, which deserves more than a mere array of media and lack of quality content, is for real people to determine in practice. These people sit in the competent ministries and bodies of local self-government, but the people writing projects and producing content are also in this picture, as well as those sitting in expert commissions evaluating these projects.

Integrative Processes in the Serbian Media Sector: Is Media Concentration the new Value of the Media Scene?

Miloš Stojković, Attorney at Law¹

The media market in Serbia (whose value is estimated in the last few years at around 150 million euros) sees a competition of all media regardless of their coverage (national, regional or local), ownership form (private or public), type (radio, television, print), the distribution platform they use (terrestrial, cable, satellite, radio, Internet) and whether they are registered or not. In the “transition year” 2015 (according to data from the media register), there are almost 1400 media outlets in Serbia, of which almost 600 print outlets, 300 radio stations, 100 television stations and 300 independent electronic outlets (registered online portals). On top of that number, there are many online portals and domestic cable channels that are not registered. The experience of the Serbian media landscape after the year 2000 has shown that the multitude of media outlets by no means guarantees pluralism and diversity of content. On the contrary, during the financial crisis the media tried to emulate their more successful competitors, disregarding the true needs of the media consumers. This has led to the present situation where all national commercial stations have reality shows promoting doubtful values. Meanwhile, every radio station wants to imitate those relying exclusively on music content, with very few talk programs, and online portals steal news and other content from each other. Since endless copies of the same service don't create any new value, it would be natural to view the consolidation of the media landscape as a positive process. However, the developments in the media sector in recent years have accustomed us to the possibility of the best idea being distorted. Hence, the reduction of the number of media outlets may be either positive or negative, depending on who are the protagonists of such consolidation, the circumstances of the concrete case and the motives thereof.

Regulatory basis for media consolidation

The media laws adopted in August 2015 completely removed the regulatory obstacles for the association of media and consolidation of distribution and media services. Electronic media may merge if their cumulative audience share is below 35% in the coverage zone in the year preceding the merger. In the current situation, exceeding the threshold of media concentration is more a theoretical than a practical possibility. The merger of print and broadcast media is even more simpler (cross integration), since forbidden concentration exists only if it results in more than 50% of “cross ownership” and if it involves a publisher of a daily newspaper with a circulation of more than 50.000 annually, publishing information from all walks of life, on one side, and the publisher of an electronic media outlet, on the other. Vertical integration of the media service distributor and the media service provider, in spite of the concept that existed in the draft media laws, is not prohibited. The Law only stipulates that the media service shall be provided through an affiliate. Finally, the Law on Electronic Media completely removed the restrictions to so-called networking of media services. Therefore, the conclusion may be that the regulations fully encourage media concentration and supports the decrease of the number of media outlets.

SBB and Telekom

The biggest operators of electronic communication services are particularly active in the media business, which includes not only the distribution of media content (electronic communication services), but also the provision of media services. Two of the largest operators apparently respect their statutory obligation to engage in media activities through an affiliate, stopping short of “mixing”

¹ “Živković&Samardžić” Law Office, Belgrade

distribution with media services. Serbia Broadband (SBB) is connected with several cable channels, such as Sport klub, Cinemania, Ultra and N1, while Telekom with ARENA sport. The Law on Electronic Media provides for a safeguard in the form of the duty of the operators to *distribute media services in an equitable, transparent and non-discriminatory manner relative to media service providers*. However, it's already clear that Arena sport is not accessible in the SBB network; the same goes for Sport klub on Telekom's network. Although the battle of the two operators is depicted as market competition, it also has implications on the right to access programming content (especially in the case of live broadcasts of important sport competitions such as the Champion's League in football and the basketball Euroleague). It is particularly interesting that Telekom remains a public company, regardless of its corporative form and one may rightfully ask if Telekom is allowed to own a media outlet in the first place. As for the SBB program, it's not clear if it offers domestic or foreign channels. Furthermore, the question is are these channels registered at all and if yes, where? The Regulatory Body for Electronic Media (RBEM) has many legal mechanisms at its disposal to ensure media pluralism – from monitoring of the operators' compliance in respect of media services distribution, to the must-carry obligation as a measure for protecting media pluralism and the creation of list of events of special importance for all citizens. To date, these mechanisms remain unused. It particularly needs to be emphasized that two of the biggest players in media distribution are operators of significant market strength (SMS) and the Republic Agency for Electronic Communications should react, since it is authorized to determine if there is sufficient competition on the media services distribution market, before imposing certain regulatory obligations to SMS operators under the Law on Electronic Communications, with the aim to protect the service users. Although this is an aspect of access to the operators' telecommunication services, the regulatory measures might also encourage other operators to distribute media services in a way that is more suited for the consumers, as well as force the two largest players to act according to the rules of the market and not in a monopolistic manner.

The case of the changed ownership structure in RDP B92

This case is the first one in which RBEM proceeded to assess if it entailed (according to the new media legislation) prohibited media concentration between two broadcast media. The change in the ownership structure resulted in both RD B92 and Prva Television Ltd having the same company in their ownership structure – Antena Stream TV Ltd, which is part of the Antena Group. RBEM conducted the proper procedure, determined that the audience share is below the statutory minimum (35%) and concluded that the planned concentration could take place. The Competition Protection Commission followed suit approving such form of merger and in September it was officially announced that Antena Group had taken over RDP B92, which comprised TV B92, TV B92 Info, the b92.net web portal and Radio Play (formerly Radio B92).

In the programming sense, RDP B92 started quite a while ago to shift towards entertainment and music content (which was particularly visible when the concept of the radio station changed in the summer of 2015), a trend that started at the beginning of the economic crisis in 2008. Although the trademark news program was retained in the ensuing years, B92 clearly started abandoning its hybrid concept of “private public service broadcaster” it hitherto promoted, while further commercialization continued after the recapitalization. The future fate of RDP B92 will depend on the strategic commitment of the Antena Group and time will show if this concentration will lead to a balance of market requirements and the need for diverse programming content, as well as the obligation stemming from the status of “user of national frequency”, namely will the difference between the two media service providers, content wise, will fade or if they will retain their individuality and specific editorial concept.

Adria Media

The first case of cross-concentration, announced by the publisher of the daily “Kurir” Adria Media, involves the acquisition of the cable media service provider Moja TV. Under the Law on Public

Information and Media, RBEM will be competent for determining the existence or absence of prohibited media concentration, namely if “Kurir” has a circulation exceeding 50.000 at the annual level. Since “Kurir” has been advertising itself for years as the daily newspaper with the highest circulation, Adria Media, as the publisher of the daily “Kurir”, may acquire only 49% of the ownership of Moja TV. On the other hand, even if the concentration takes place, it will be very interesting to see how the publisher of the print outlet will manage to fare on the electronic media market. It might easily happen that the new television station is labelled an extended hand of the daily “Kurir”, which will then be of no new value whatsoever and it might well end up as a failed experiment.

Privatization of public media

In the cases described above, it is uncertain how the concentration will affect the programming offer and media diversity. Nonetheless, it may be determined that the acquisitions are motivated by some market logic. The lengthy privatization process and the experience from previous privatization circles lead to the conclusion that the remaining media are acquired for non-market motives.

Radoica Milosavljevic, the former Deputy Mayor of Krusevac and member of the Socialist Party of Serbia, otherwise very active in the waste management business, which the media associated to the Defense Minister Bratislav Gasic, concluded agreements on the sale of capital for eight media outlets (JRDP Pancevo, JP Centar za informisanje Novi Knezevac, JP Radiotelevizija Kragujevac, JP Radio-televizija Brus, JIP Radio-televizija Caribrod, JP Televizija Pozega, Televizija Pirot and RTV Krusevac). The Anti-Money Laundering Office and RBEM gave the green light to the new owner; it now only remains to be seen if and how the statutory obligation to maintain media activity in the next five years will be complied with. Hence, all the statutory requirements have been fulfilled and one can only speculate about the purchasing motives of a person that has never been involved in the media business.

Meanwhile, for the price of 531.000 euros (which is 75 times the estimated value), Kopernikus acquired Radio Sid, a small radio stations broadcasting on the territory of the Sid Municipality, which also has a local cable distribution system with 3000 users. In this case, the competent bodies issued the required permits and hence the legal case is clear. Kopernikus’ owners say that the motives for buying a local radio are purely commercial and that it was the only way for them to “expand”, after the RBA refused to grant them a national license. That company has indeed been engaged in media business, possessing several cable television channels and a cable distribution system. Nonetheless, it has no experience in radio. Furthermore, it needs to be reminded that one of the channels operating as part of the Kopernikus company was accused (in the RBA Report on the monitoring of the 2012 election campaign) of bias towards the ballot list of the then opposition party SNS. Finally, Studio B was sold to the company Maxim Media Ltd, owned by the Krdzic family, known in the radio business since their affiliates are the publishers of four radio stations (TDI, JAT, HIT FM and Karolina). Studio B recently found itself in a problem, since the Independent Journalists’ Association of Serbia (NUNS) reported it to RBEM, alleging that the live broadcast of the 7th anniversary of the ruling SNS violated the ban on political advertising outside of the election campaign, prescribed by Article 47 of the Law on Electronic Media. Therefore, the privatization of media and politics has certain connections and that is not only the case with the current government, since previous ones too attempted to “buy media influence”. Most of these privatizations failed, while the media were dismantled or restored to the aegis of the Privatization Agency. Bearing all this in mind, it is difficult to expect that the new owners will manage to “maintain” the media activity, despite the statutory obligation and the regulator’s monitoring.

Networking of local media

The revoking of restrictions against channel networking enabled the local media to jointly create and invest in programming content. This led to the creation of the New Network of Serbia, consisting of 11

local televisions from Obrenovac, Pancevo, Loznica, Cacak, Sid, Novi Pazar, Novi Sad, Uzice, Valjevo, Kragujevac and Vranje, as well as the radio network Naxi Nacional, comprising 30-some radio stations throughout Serbia.

The stations from the New Network of Serbia will air a 4-hour joint program, presently in prime time between 7 PM and 11 PM, which is announced to contain diverse content (news, entertainment, series, documentaries and science). Since with the digital switchover most stations practically became regional and in view of the fact that the aforementioned 11 media outlets provide their services in different coverage zones and in prime time, they could become serious competition to the national broadcasters. At the same time, such status could make national TV stations focused more on genres they had hitherto neglected.

The core of the program of Naxi Nacional radio network will consist (as announced by the representatives of the network) of the programs of Naxi Radio, news program and entertainment. The radio market is dominated by stations that mainly air music content. Therefore, it is uncertain to what extent the networking of thematically similar radio programs will represent a new value for the Serbian media scene.

Due to a lack of proactive media policy, nobody can say at the end of 2015 if the mergers on the media landscape will bring anything good to the media and even less to the consumers. The consolidation of a market is justified from the aspect of economies of scale and may attract investments on the short-term, boosting service quality and competition. However, the media landscape is not only a market competition; it is also deeply connected to the realization of the constitutional right to freedom of expression. Bearing in mind the diverse practices and experiences, it is difficult to predict if the positive effects will outweigh the negative ones. What is certain is that the number of media players will shrink, which could mean more money for the remaining ones. This, in turn, means that the "surplus" resources could be invested in diverse programming content. Will this really happen and will media pluralism really take root depends on many factors. However, if the consolidation will have consisted merely of reducing the number of outlets to an acceptable level, the results will be even worse than before: less media outlets and poor content range.

The Public Interest in the Area of Public Information

Prof. Snježana Milivojević, PhD¹

The adoption of three media laws in the summer of 2014 marked the start of the second wave of transition of the Serbian media. The main focus of this phase is the regulation of the media market through the privatization process, the introduction of the system of project co-financing and the liberalization of the regime of media concentration. That catalogue of tasks somewhat differs from the one in the first stage of transitioning from an authoritarian to a democratic society (and the first media laws from 2002-2003), where the main normative goal was revoking political control and building new institutions. The new legal framework received praise from both the domestic and international professional (and political) community, first and foremost for the commitment of having the state withdraw from media ownership and for “having defined, for the first time, the public interest in the area of public media”.

During the first year in effect, however, all indexes pointed to a dramatic plunge of media freedoms. According to Reporters without Borders’s *World Press Freedom Index*, Serbia is at the 67th place out of a total of 180 states, down by 13 places compared to 2014. In Freedom House’s *Freedom of the Press Index*, Serbia’s in the group of partly free countries with 40 points, which is three points down from last year (37). In FH’s *Nations in Transit* review, it’s ranked as a semi-consolidated democracy, with a 3.68 democratic index. Moreover, that index is lower than last year, when it was 3.64, precisely due to Serbia’s descent in the “independence of media” category (from 4.00 to 4.25), since in the remaining six categories the index remained unchanged from 2014.

Despite constant praise for the major progress achieved on the path towards the European Union and Serbia becoming “the best place for reforms in the Western Balkans”, the European Commission Progress Report for 2015 says that “no progress was achieved in the previous year in the field of right to freedom to expression”. Those that interpret that report in percentages claim that the media are fine, except for the few objections concerning freedom of expression, and promise these issues will soon be ironed out.

The key misunderstanding here is not with the appraisers from the European Commission, but with the Serbian public and its understanding of democracy. All the praise in Chapter 10 – “Information Society and Media” concern the commercial operations of the media (copyright, technical access to media, digitalization); all objections from Chapter 23 – “Judiciary and Fundamental Rights” concern freedom of expression and the role of media in the field of fundamental freedoms and rights. Hence, the media fare increasingly better on the market, where they work for their owner, but increasingly poorly in the public, where they serve the citizens. This could also be formulated as an expression of the tension between private ownership and the public good; between the media as an industry and as a social institution, between treating their users as consumers and seeing them as citizens. Serbia is neither the first country where it is happening, nor the last. On the contrary, Serbia is, in that respect, in the company of “partly free countries”. However, the problem lies in the fact that this is presented as progress and not a reason for concern.

That is why the key question posed by the new regulatory framework is how it is possible to have increasingly better laws, while the freedom of expression, media freedoms and quality of media is “going south”?

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Transition and freedom

The media system in Serbia, just like those throughout Southeast Europe, is such that the influence of the state is visible irrespective of the ownership structure. The government resorts to very creative methods to control the media. A delayed, lengthy and complicated transition contributed to the building of an incoherent system, shaped under different influences. In terms of culture, institutional setup and professionalism, the latter is most similar to the Mediterranean type (*political-pluralized model*). In all the countries of the “Mediterranean model”, commercial media are often not independent (they depend on the connection to the state, most often through political parties, as in the Berlusconi case), even when they are highly profitable; public (broadcast) media are highly politicized (appointing of management boards, financial dependency); the journalist profession is poorly developed and lacks autonomy (“advocacy journalism”); the circulation of print media is very low (less than 100 newspaper readers for 1000 inhabitants), while the TV ratings are very high.

The combined outcome of these processes in Serbia resulted in a slow ownership transformation (reliance from state funds, concentration of the advertising industry, etc.), low media autonomy (political interference with the work of regulatory bodies, high degree of clientelism, etc.) and low quality of media content (prevalence of cheap content, tabloidization, plummeting in professionalism). However, the main goal of the media changes enshrined by the new laws is not to put order in such a situation. On the contrary, the goal of these laws is to enable consolidation and commercialization, namely to allow a development of media that will become profitable (private interest), regardless of the quality provided (public interest).

It does not come as a particular surprise that such media already contribute to the emergence of anti-liberal tendencies in Serbia, in a system which already bears many characteristics of “new authoritarianism”: successful reforms in the economy, while lagging behind in terms of political development. The privatization of public space through public media takes place through two simultaneous processes. The government uses media for its own promotion, while media owners obtain privileged access to public resources for their contribution to blocking the controlling role of the media. Where needed, they may also use the media for promoting personal interests and whims, but also for waging their private wars. Dependent and unprofessional regulatory bodies, particularly RBEM, discredit the already adopted laws and the regulatory process as a whole by staying silent or passing incompetent decisions.

In such an environment, the leading media are not in the service of the public interest and their main task is to undermine watchdog mechanisms. They do it by making a mockery of democracy and smearing political opponents in talk shows; having the Prime Minister appear 24/7 in all media and replacing real journalism work with press conferences reports. The government that controls them does not need journalists or media anymore; it does a much better job explaining what it wants to the people on lengthy press conferences.

The media market is a highly controlled one and the media depend on the advertising industry, which has been firmly anchored to politics by the means of strong personal ties. A highly concentrated advertising industry has emerged on the basis of close ties between media buyers and advertising agencies and the political parties. The belief that “free market” equals “free media” has proven to be an illusion and due to a complicated and delayed transition, it has created in Serbia a well-oiled clientelistic system inherited by those that come to power.

In such a system, there is nobody to represent or defend the public interest.

The public interest and the media

The public interest and public media are rooted in the concept of “public”. In fact, the public interest, the public and the media are the foundations of the public sphere, the social space where the citizens

“gather” to share their private concerns on public matters, as formulated by Jürgen Habermas. This is how things have been back from Ancient Agora to cyber cafes and social networks. The public opinion formed in such public sphere is not a mere sum of individual opinions. It is rather (even when it spontaneously coincides with the majority opinion) a joint product of mainstream discussions and debates. The media are needed to enable that and their “job is to get the public interest in the public interest”, as the American philosopher John Dewey said in the early 20th century.

Tumultuous debates about the public interest in the media sphere have not ceased since. In normative theories about the media, the focus is on the “public”, while the interest thereof should alleviate the tension between the fact that a commercial industry (the media) produces goods (information) that are key for civic participation and democracy. It took the entire 20th century to build this fragile, but effective democratic arrangement: the freedom of media is guaranteed by the Constitution because the media play a role of public interest, providing the necessary information to the citizens, as well as a platform for debating public topics. That arrangement was built from media policies, laws, regulatory instruments and institutions protecting the public interest in public media.

In fact, the public interest pertains to the well-being generated by the media for society as a whole; the interest agreed upon by the whole community. It’s a concept that is difficult to define and there is no general consensus around it. Hence, this approach is one of the three mutually quite opposite understandings of public interests.

According to the first viewpoint, the public interest is the interest of the majority, “what the people wants”. Basically, it’s the “majority argument”, according to which the joint/general/public interest is nothing but a sum of individual choices. Such concept of public interest in media policy is promoted by the proponents of a liberal media system, deregulation and the market as the main regulator. The market will reward the winners; competition will increase the quality of media content and empower the consumers, who will, with their choice of product, channel development towards the public interest. The state needs to interfere with market relations only to restrict monopolies and boost competition. What the media will make is a matter for those that own/produce them and the public buy these products. For the time being, only the press is completely deregulated in that fashion, which has in recent years strengthened self-regulation mechanisms in order to avoid external regulation. After the great tabloid scandal in the UK, such self-regulation system has been seriously undermined.

According to the second approach, public interest is not determined by numbers, but rather by some absolute value standards, irrespective of what the citizens want. The interest of the public overrides particular interests, precisely for the sake of achieving some higher values or the public good. In the media world, public service broadcasters are mainly based on this principle: strictly regulated programming, organizational and managing arrangements in consideration for a privileged position, exemption from market exposure and stable financing, which, in turn, enables the media to focus on creativity and quality production. This opinion is often criticized as idealistic or paternalistic, and even authoritarian. Who can formulate or define the public interest, if the public doesn’t elect or can’t even “authorize” anybody to do it for them?

Finally, the third, ‘realistic’, ‘middle way’, as Denis McQuail says, defines the public interest as “informational, cultural and social benefits to the wider society transcending direct, partial or personal interests”. He rightfully reminds that the very principle of freedom of press must be supported by the argument of a harmony of long-term benefits it brings to society, which is not necessarily visible or obvious to everyone. Societies enjoy long-term benefits from the principles they accept and adhere to, even when the benefits are not instantaneous. Hence, such a conception of public interest in news media concerns the benefits it produces for the democratic participation of citizens, as well as for cultural, economic and social well-being of all. This standpoint relies on the concept of public good, the socio-market principle and the role of the state as the protector of the general interest in the world of the media.

The media and the public interest were associated for the first time in the twenties of the XX century, when, during the emergence of radio, the Federal Communications Commission introduced the “public interest” as one of the criteria for licensing radio stations. The next milestone was the Report of the Hutchinson Commission from 1947, which professor James Curran (Goldsmiths, University of London) called “perhaps the most elegant regulative document ever adopted. The Report clearly says that the media are not socially responsible when they only serve their own commercial interests. The doctrine on the social responsibility of the press the Report thereby introduced, along with the Fairness Doctrine, introducing the obligation to divide the time in television programs equally to all parties (which was in effect from 1949 to 1987), ensured the existence of “objective and impartial journalism”.

This ensured the status of “public good” for journalism, the autonomy of which had to be defended as an integral part of that profession. When Michael Schudson, Professor at the Columbia University, released a study a few years back, advocating for various forms of aid to journalism (including state aid), someone wrote that Thomas Jefferson would roll in his grave if he heard that people from the media call the government to come to their rescue. Today, arguably the most influential political economist of the media Robert McChesney (University of Illinois) believes journalism to be a public good that must be supported with public resources. If democracy wants to preserve news media and quality journalism, it must help them with public resources. For example, McChesney proposed that each citizen benefit from a tax credit or tax exemption for the first 200 dollars spent on subscribing to a daily newspaper. In such a way, public money would not be allotted for a specific media outlet or type of journalism, but the citizens would decide for themselves which media they want to read; at the same time, they would all together support an important democratic institution. Former French President Nicolas Sarkozy explained with a similar argument in 2009 his decision for every French citizen to receive, on their 18th birthday, free subscription to a newspaper of their choice.

The advent of commercial TV stations and the wave of deregulation in the 80s led to new debates about the justification of state intervention in the media on behalf of the public interest. At the beginning of the 21st century, the technological revolution, globalization and deep economic crisis have thoroughly changed the media landscape and the public interest and news media again became the main topic. Convergence also led to changes and debates are not waged anymore depending on technology; they are rather focusing on the content that’s reaching the public through various platforms and devices. Mindboggling technological changes at the beginning of the 21st century led to changing approaches to media policy, where the protection of public interest is not regulated institutionally anymore, but at the programming level.

Since the Law on Public Information and Media “defined the public interest for the first time”, it would be important to start pursuing a media policy at the core of which, in the specific conditions of the neoliberal world (privatization, deregulation, commercialization, liberalization), is the public interest.

The Role of the Media in the Development of Freedom of Expression and Creation of a Responsible Public

Docent Jovo Bakić, PhD¹

Why are freedom of expression and creating a responsible public important? Seemingly, there is nothing particularly new to say after the liberal thinkers wrote scores of books about it in the last few centuries. Nonetheless, it seems that authoritarian and oligarchic regimes keep provoking reflection about the interest of the public and the role of mass media in shaping a responsible public and mature public opinion.

Erdogan in Turkey, Vladimir Putin in Russia, Milo Djukanovic in Montenegro, Viktor Orban in Hungary, Aleksandar Vucic in Serbia are, for example, only the latest controllers of public media, stiffeners of free opinion and speech. They aim at transforming the citizens into underage serfs that unconditionally support the government. As opposed to such concept, developing a responsible public involves the existence of free and informed citizens, which constantly watch the government to see if it's working in the public interest. Here in Serbia, we naively thought that the demise of Slobodan Milosevic would result in a flourishing freedom of opinion and speech and that the fundamental freedoms brought to modern civilization by the humanist political tradition would never again be obstructed. However, "Djukanization", "Putinization" or the "Erdoganization" – feel free to choose the expression that suits you best – is far from being the biggest problem of today's capitalistic society. Namely, these names concern the authoritarian style of governing entire societies, as well as attempts to fully control mass media supposed to inform the citizens on matters of public interest. The fact, however, is that not even the liberal-democratic societies (which very much remind of ancient oligarchies, since they are ruled by the wealthiest in their own selfish interest) have enough freedom of opinion; the latter is rather administered in the doses the rulers and the wealthy think will not hurt the interests of big capital and the formally democratic, but essentially oligarchic regime.

Nonetheless, while the center of the world capitalist is ruled by an oligarchy "dosing" freedom of thinking, meaning that a certain Noam Chomsky may on local media only and not on mainstream outlets in the USA, the "suburbs" of the global capitalistic system are ruled by overtly (or secretly) authoritarian rulers, which imprison journalists *en masse* (e.g. Turkey). In such countries, journalists who dare speak against the government get killed in shady accidents and assassinations (e.g. Russia and Montenegro) or are threatened by the government, laid off from work, etc (Hungary and Serbia). These are only the best known examples cited randomly, since Iraq and Saudi Arabia also come to mind, as well as Afghanistan, Iran, China, Myanmar, Ukraine or Belarus. In all these cases, the government restricts freedom of thinking, speech and press or stifles it completely. The powers that be believe that these freedoms, indispensable for shaping civil conscience and a mature and responsible public, undermine the very foundations of power. However, if free thought and word, published and aired by fearless mass media based on bold and professional investigative journalism, may endanger the foundations of power, then these foundations are clearly not that solid.

Of course, all governments, and particularly those that want to be considered democratic, are founded upon public approval and the latter is variable and may not be manipulated with forever. The fact that an undemocratic system, e.g. authoritarian Socialism formerly practiced by Josip Broz Tito, remains in good memory of a major part of the public decades after the late dictator's death, is primarily the testimony of the poor performance of capitalistic structures that have inherited Tito's Socialism. In other words, the corrupted oligarchies that foster social inequality may be even more intolerable than the authoritarian system that accelerated social development considerably and lessened social inequalities. Still, the worst combination is the convergence of authoritarian government and oligarchic economic structures, which looms large on the capitalistic horizon of Serbia.

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However, regardless of the nature of the socio-economic system of government, the existence of the journalist profession is indispensable for transmitting different opinions to the general public. In theory at least, journalists are, along with intellectuals, the most important “agents” the public has in one of the most important jobs (from the standpoint of the public and the citizens and in the interests of the latter) – controlling of both the government and the opposition, as well as of the entire political system and pointing to crucial social, economical and cultural problems. Unfortunately, the present situation in the entire world is not encouraging for journalists, which are killed in significant numbers in war zones, as well as in terrorist attacks and unexplained incidents¹. On the other hand, in countries where the journalists are poorly paid and their subsistence and livelihood are threatened, there is no well-informed and responsible public. In such a situation and in such conditions, one can only dream of about reaching an ideal democratic model.

In Serbia, for example, the fact that Brankica Stankovic has been robbed of her privacy for years now by mobsters with the consent of the former and current governments, should be of great concern for the entire Serbian public. That brave person risked her privacy years back and finally lost it after she defended the interest of the Serbian public to know about the reality of the connection between the football fans of Partizan and Red Star to drug networks, right-wing extremists and the leading politicians in Serbia. After they threatened her with her life, she had to agree to be put under police protection, which basically meant leaving her job and renouncing privacy in order to stay alive. The major part of the public, however, didn't get this seriously, being insufficiently mature to be responsible and emphatic. Had it been the contrary, they would have understood that Journalist² Brankica Stankovic protected the interests of the public, risking not only her privacy, but also her life and would have demanded that the courageous advocate of the rights of the public be ensured a normal life for responsibly doing her job in the interest of all of us.

Similarly, when the authoritarian government of Aleksandar Vucic, in oligarchic synergy with the owners of national TV stations, prevented Olja Beckovic from doing her job and producing her famous talk show that prevailed for a quarter of a century under various governments, it was the duty of the citizens to put pressure of the government to allow the lucid Journalist to represent the interests of the public. Since it did not happen, not only had the Journalist lost her job, but the public lost an excellent advocate and hence the incompetent government (and many unscrupulous opposition politicians) will unfortunately keep getting away with their many mischiefs without sufficient control, since the said advocate is not there anymore to point a finger at them with her well-known irony and sarcasm.

Unfortunately, this is not the end, since Danica Vucinic, another sharp Journalist feared for decades by many politicians whose mischiefs she used to pick apart, had to leave journalism in order to protect her personal dignity. The aforementioned Journalists did not accept the government and the wealthy to determine to decide as to which guests they may or may not invite in their respective programs. They represented the interests of the public professionally and honorably – a public (with some exceptions) that is far from being courageous and honorable. In all cases, television journalism is the most cracked down on by the government due to its potential to influence the public opinion.³

So, the journalists and the public are mutually dependent: there can be no excellent, responsible and courageous journalists (we are referring here mostly, but not only to television journalism, as in the case of Srdjan Skoro, who was dismissed as head of the newsroom in “Vecernje Novosti” daily newspaper after he uttered a couple of critical words against the government in the morning program of RTS) amid a disinterested and morally and intellectually apathetic public. At the same time, there

¹ *Reporters without borders*, <https://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2015>, accessed on 8. XI 2015

² I have put “Journalist” with a capital J since I think that in this case the ethical considerations have precedence over grammatical ones.

³ In this context, one may note the “disappearance” of certain authors and TV programs from Studio B, such as Đorđe Mičić and his talk show *U centru* that cherished the culture of dialogue, and the emergence of propagandist content, such as Irina Veljkovic's *Beograd na vodi*

can be no mature public without its fearsome and bold professional journalists, prepared to defend the citizens' interests from both the opposition and the government. The journalist is "one of us", a professional whose occupation is, by definition, to serve the public. He is tasked with uncovering government fraud, which does not *a priori* mean defending the interests of the opposition. However, since the government is often prone to abuse its power that means that the opposition and the journalists may have a legitimate motivation to warn the public about government wrongdoing. Their interests coincide to the extent that both the opposition (motivated by its own special interests) and the journalists (as advocates of the public) agree to warn of government violations of the public (general) interest. The holiest task of journalists, provided they are not on the payroll of the government/opposition/big capital (which means that they have remained genuine defenders of public interest) is to uncover wrongdoing by current and former government or opposition politicians, as well as that of wealth corporations and individuals. That said, it is not in the interest of the public to know everything about the private lives of politicians or business people, which means that journalists should not inquire in these matters either, unless the private activities of politicians or business people may undermine the public interest. Otherwise, the private matters of public figures are the topic of interest of unworthy voyeurs, amateurs of Big Brother and similar mind-numbing reality shows poisoning and desensitizing the public in all capitalistic societies and especially in the "suburbs" of capitalism, which means Serbia and its neighbors are not an exception.

One must realize that the array of reality shows on stations with national coverage and the publicity these shows get in tabloids serve the purpose of dumbing down the intellect and ethics of the public. Instead of having national TVs debating about serious social problems (such as the increased aging of the population, the spreading of drug addiction in Serbian villages and towns, the disastrous status of pensioners, total lack of any prospects for young people, the humiliating position of education and healthcare and the ensuing sick and unenlightened populace), in the process of "oligarchization" of society emerging in the form of long-term financial ruin and deeply rooted petty politics resulting in increasing social inequality, cultural provincialism, the public gruesomely enjoys the banalities performed for them by common criminals, wannabee singers or impoverished former celebrities looking to be "recycled" in reality shows, airhead pin-up dolls ("starlettes"), the government's "favourite" opposition leaders, as well as leading politicians on staged press conferences or political talk shows involving (too) hard talk.

In these occasions, the "journalists" read out questions submitted in advance by the authoritarian leader, all too happy he has invited himself to be their guest. He is very happy too, because he has the opportunity to ask himself a series of other questions and the answer the same in (sometimes reasonable, sometimes angry) tiresome argumentative monologues, cracking down on imaginary or fictional enemies, with the journalists nodding their heads in approval. However, the head-nodding journalist shouldn't be considered a journalist, since he is not representing the interests of the public. On the contrary, he engages in sycophantic defense of his master. The same applies to journalists defending the interests of the wealthy, neglecting those of the public. In both cases they are propagandists. They may be more or less talented, which doesn't make them real journalists. The more there are propagandists, the less there are public advocates and the public is increasingly dumbed down. Nevertheless, looks can be deceiving.

Fortunately, it is impossible to control all mass media and there will always be Journalists that will oppose attempts to muzzle free thinking and keep the public in a state of juvenile ignorance. Freedom of opinion implies freedom to criticize power and in order for such freedom to be guaranteed, the mass media must be open to those that disagree with the powers that be and the ruling majority in society. As evidenced by historical examples, the minority is often right and its ability to clearly formulate its opinions enables the public to shape its opinions based on clearly presented arguments in favour of or against a particular phenomenon or view. Furthermore, an intelligent government tries to encourage freedom of opinion and allow criticism, in order to adjust its performance. By pointing out to errors and mistakes, critics allow the power to remedy these mistakes as they go along. Similarly, the members of the majority may reflect about the arguments they presently disagree with

and, in some cases, change their opinion. Apart from that, a government accountable to its citizens must dismiss those of its members for which it has been ascertained that they have plagiarized their doctorates or mistreated journalists. Such a government will let the law enforcement authorities deal with those officials involved (as uncovered by investigative reporters) in fraud and embezzlement, nepotism and cronyism. If the government fails to do that and keeps intimidating and threatening courageous journalists, trying to smear them (like the ones in BIRN or KRIK), calling them “foreign agents” and taking their jobs, the public will gradually realize it’s being played and deceived. Consequently, the government might be faced with a serious threat of losing the ruling majority. A government that suppresses freedom of opinion and speech, cracks down on journalists as advocates of the public, irresponsibly and neglectfully dismantles TANJUG after 72 years (leaving Serbia to be the only country in Europe without a state news agency) and prevents dissenting intellectuals to address the public on the air of national stations, by keeping the citizens clueless, such a government will sooner or later face a public that has lost all patience for having been treated as immature minors, which have been allowed only to watch reality shows on pink and happy stations, as well as in the house of Big Brother, into which B92 was regretfully turned into, as well as to read about that same content in mutually antagonistic tabloids.

European Court of Human Rights Information Notes on the Court's Case-Law¹

Information Note 182 – February 2015

Article 10²

Freedom of expression

Freedom to impart information _____

Conviction of journalists for secretly filming and subsequently broadcasting for public interest purposes interview with insurance broker: violation

[Haldimann and Others v. Switzerland](#) - 21830/09
Judgment 24.2.2015 [Section II]

Facts – All four applicants are journalists. In 2003 the fourth applicant organised an interview with an insurance broker, posing as a potential customer. The interview was recorded without the broker knowing. He was subsequently informed of the recording, but refused to express any views on its content. Excerpts from the interview, in which the broker's face was pixelated and his voice modified, were broadcast as part of a TV documentary on practices in the field of sales of life insurance products. All four applicants had been involved in preparing and broadcasting this documentary.

The applicants were convicted of recording conversations of third persons and of recording conversations without authorisation, respectively. The first three applicants were given monetary penalties of twelve day-fines of between EUR 80 and EUR 290 and the fourth a suspended penalty of four day-fines of approximately EUR 30, coupled with a probationary period of two years.

Law – Article 10: the interference in the applicants' right to freedom of expression was prescribed by law and pursued the legitimate aim of protecting the rights and reputation of others, in this case the broker's right to protection of his image, utterances and reputation.

The Court had already dealt with cases concerning attacks on the personal reputation of public figures, establishing six criteria in order to weigh freedom of expression against the right to private life: contributing to a debate of general interest, ascertaining how well-known the person being reported on was and the subject of the report/documentary, that person's prior conduct, the method of obtaining the information, the veracity, content, form and repercussions of the publication, and the severity of the penalty imposed. The Court had also adjudicated cases of defamation related to individuals' professional activities. However, the present case differed from those previous cases in that, firstly, the broker was not a well-known public figure and secondly, the impugned documentary was not intended to criticise the broker personally but to highlight specific commercial practices in his particular professional category. Therefore, the impact of the documentary on the broker's personal reputation had been limited, which aspect had to be taken into account in applying the aforementioned criteria.

¹ Excerpts from the official "Information Notes on the Court's case-law" of the European Court of Human Rights, available on its web site www.echr.coe.int

² European Convention for the Protection of Human Rights and Fundamental Freedoms

The subject of the documentary, namely the poor quality of the advice provided by private insurance brokers and therefore a question of consumer rights protection in this sector, had concerned a debate of major public importance. Clearly, the broker who had been filmed without his knowledge was not a public figure. He had not consented to being filmed and could therefore have reasonably believed that the conversation had been private. Nevertheless, the documentary at issue had focused not on the broker himself but on specific commercial practices within a specific professional category. Furthermore, the interview had not taken place in the broker's offices or any other business premises. Consequently, the interference in the broker's private life was less serious than if the documentary had concentrated personally and exclusively on him.

There had been no absolute prohibition in domestic law on the use of a hidden camera, which could be authorised under strictly defined conditions. Although the broker could legitimately claim to have been deceived by the applicants, they could not be accused of having acted deliberately in breach of professional ethics. They had not disregarded the journalistic rules laid down by the Swiss Press Council limiting the use of hidden cameras, but had in fact concluded that the aim of their documentary was such as to authorise the use such cameras. The Swiss courts had failed to reach a unanimous position on this question. Consequently, the applicants should be granted the benefit of the doubt regarding their desire to comply with the ethical rules applicable to the present case, as regards their method of obtaining information.

The veracity of the facts as presented had never been disputed.

The recording itself had only constituted a limited infringement of the broker's interests, given that only a restricted group of individuals had had access to it. The decisive point in this case was that the applicants had pixelated the broker's face so that only his hair and skin colour were still visible after this image transformation, and his voice had also been altered. Similarly, even though his clothes were visible, they had lacked any distinctive features, and the interview had not taken place in the broker's usual business premises.

Accordingly, the interference in the broker's private life had not been serious enough to override the public interest in the information on alleged malpractice in the insurance brokerage field. Despite the relative leniency of the monetary penalties, the sentence passed was liable to deter the media from expressing criticism, even though the applicants had not been prevented from broadcasting their documentary.

Conclusion: violation (six votes to one).

Article 41: no claim made in respect of damage.

(See also *Axel Springer AG v. Germany* [GC], 39954/08, 7 February 2012, [Information Note 149](#))

Information Note 189 – October 2015

ARTICLE 10¹

Freedom of expression

Arrest and conviction of journalist for not obeying police orders during a demonstration: *no violation*

[Pentikäinen v. Finland](#) - 11882/10
Judgment 20.10.2015 [GC]

Facts – In 2006 the applicant was sent to report on a demonstration in his capacity as a journalist and photographer. When the demonstration turned violent, the police decided to prevent the demonstrators from marching and to allow a peaceful demonstration to be held on the spot. They later sealed off the area and ordered the protesters to disperse. Despite being repeatedly asked to leave the scene, the applicant decided to remain with the demonstrators. Shortly afterwards he was arrested along with a number of demonstrators and detained for over 17 hours. He was subsequently found guilty of disobeying police orders but no penalty was imposed. That decision was upheld on appeal and the applicant's subsequent complaint to the Supreme Court was rejected.

In a judgment of 4 February 2014 a Chamber of the Court held, by five votes to two, that there had been no violation of Article 10 ([see Information Note 171](#)). On 2 June 2014 the case was referred to the Grand Chamber at the applicant's request.

Law – Article 10: When assessing the necessity of the interference with the applicant's freedom of expression the Court had to weigh two competing interests: the interest of the public in receiving information on an issue of general interest and that of the police in maintaining public order in the context of a violent demonstration. In this connection, the Court stressed the "watchdog" role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder. Any attempt to remove journalists from the scene of a demonstration had therefore to be subjected to strict scrutiny. On the other hand, the protection afforded by Article 10 to journalists was subject to the proviso that they act in conformity with the principles of responsible journalism. Accordingly, journalists exercising their freedom of expression undertook "duties and responsibilities" which meant that they could not claim immunity from criminal liability for the sole reason that the offence in question was committed during the performance of their journalistic functions.

As to the applicant's arrest, the case file disclosed no reason to doubt that the police orders to disperse the demonstration were based on a reasonable assessment of the facts. Moreover, the preventive measures taken against the likelihood of the events turning violent appeared justified. They were directed not only at the "abstract" protection of public order but also at the safety of individuals at or in the vicinity of the demonstration, including members of the media and, therefore, the applicant himself. As to the applicant's conduct, the Court first noted that his physical appearance during the demonstration did not clearly distinguish him from the protesters, as he was not wearing any distinctive clothing or other signs capable of identifying him as a journalist. It was thus likely that he was not readily identifiable as a journalist prior to his arrest. Had he wished to be acknowledged as a journalist by the police, he should have made sufficiently clear efforts to identify himself as such by wearing distinguishable clothing, keeping his press badge visible at all times or by any other appropriate means. As a journalist reporting on police actions, he had to have been aware of the legal consequences of disobeying police orders and so, by not doing so, he had knowingly taken the risk of

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms

arrest. Furthermore, nothing in the case file suggested that the applicant would not have been able to continue to perform his professional duty in the immediate vicinity had he obeyed the order to leave the cordoned-off area.

As to the applicant's detention, although he was held at the police station for seventeen and a half hours, because of his status as a journalist he was one of the first to be interrogated and released. Further, although it was not entirely clear how his camera equipment and memory cards were treated after his arrest, it did not appear that his equipment was confiscated at any point and he was allowed to keep all the photographs he had taken without any restrictions on their use.

As to the conviction, although the applicant was ultimately found guilty of contumacy towards the police no penalty was imposed. Any interference with his journalistic freedom had been of limited extent, given the opportunities he had had to cover the event adequately. The Court emphasised that the conduct sanctioned by the criminal conviction was not the applicant's journalistic activity as such, but his refusal to comply with a police order at the very end of a demonstration which had been judged by the police to have become a riot. In this respect, the fact that the applicant was a journalist did not entitle him to preferential or different treatment in comparison to others at the scene. Indeed, the legislation of the majority of the Council of Europe member States did not confer any special status on journalists when they failed to comply with police orders to leave the scene of a demonstration. Furthermore, the concept of responsible journalism required that whenever journalists had to choose between the general duty to abide by the ordinary criminal law and their professional duty to obtain and disseminate information, and chose the second option, they had to be aware that they assumed the risk of being subject to legal sanctions, including those of a criminal character. Finally, no penalty was imposed on the applicant on the grounds that his act was considered "excusable": as a journalist, he had been confronted with contradictory expectations arising from obligations imposed on him by the police, on the one hand, and by his employer, on the other. His conviction thus amounted only to a formal finding that he had committed the offence and as such could hardly, if at all, have any "chilling effect" on persons taking part in demonstrations. The applicant's conviction could therefore be deemed proportionate to the legitimate aims pursued.

Conclusion: no violation (thirteen votes to four).

(See also *Stoll v. Switzerland* [GC], 69698/01, 10 December 2007, [Information Note 103](#); *Animal Defenders International v. the United Kingdom* [GC], 48876/08, 22 April 2013, [Information Note 162](#); and *Morice v. France* [GC], 29369/10, 23 April 2015, [Information Note 184](#))

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