LEGAL MONITORING OF SERBIAN MEDIA SCENE

ANEM Publikacija I
ANEM Publication I

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UVOD

Za razvoj svakog društva i njegovu demokratizaciju, sloboda izražavanja i sloboda medija predstavljaju neophodan uslov.

Iako se mediji u Srbiji već devet godina razvijaju u demokratskom okruženju, očigledno je da reforme u ovom sektoru nisu sprovedene u skladu sa međunarodnim standardima. Politički i ekonomski uticaj na rad medija je i dalje veoma jak. Promene su nedovoljne i spore, a strategija razvoja medijskog sektora i dalje ne postoji. Medijski zakoni se donose parcijalno, radi rešenja pojedinih pitanja, pa su i odredbe nekih zakona u direktnoj međusobnoj koliziji. Proces menjanja i usvajanja novih zakona je dug i komplikovan, a često je izložen političkim pritiscima ili podređen interesima uticajnih pojedinaca ili grupa. Stoga, mnoga važna medijska pitanja još uvek nisu regulisana, ili su neadekvatno regulisana, kao što su: nedozvoljena koncentracija medijskog vlasništva, regulisanje kablovske i satelitske distribucije (zakonom predviđene dozvole za emitovanje se u praksi ne izdaju) ili široko rasprostranjena radiodifuzna piraterija. Proces digitalizacije je tek otpočeo usvajanjem strategije, ali je još dug put do njene realizacije. Veliki problem predstavlja i nedoslednost u primeni postojećih propisa, što doprinosi konfuziji na medijskoj sceni. Privatizacija medija je zaustavljena, kako zbog kolizije propisa, tako i zbog jakog političkog uticaja. To je uslovilo i deformaciju medijskog tržišta, na kojem paralelno egzistiraju javni servisi, privatni i javni emiteri, za koje važe različiti pravni režimi, što onemogućava ravnopravnu utakmicu medija. Brojnost medijskih subjekata nije praćena i pluralizmom ideja, već je prisutno uglavnom uniformisano izveštavanje, sa pojedinim izuzecima. Najzad, regulatorna tela za oblast radiodifuzije nisu dovoljno transparentna i nezavisna u svom radu, a samoregulacija kod štampanih medija, potpuno je zakazala.

Shvatajući značaj koji mediji imaju za demokratizaciju društva, a svestan gore opisanog realnog stanja u medijima u Srbiji, ANEM je predvideo konstantan, profesionalni i sveobuhvatni pravni monitoring medijskog sektora, kao novo sredstvo javnog zalaganja za nastavak medijskih reformi. Počev od maja 2009, monitoring sprovodi ANEMova advokatska kancelarija „Živković&Samardžić“, u saradnji sa ANEMom i uz podršku USAIDa i IREXa Srbija. Monitoringom uočena problematična pitanja i nedostaci, ukazuju šta je potrebno menjati u medijskoj regulativi i praksi, za stvaranje povoljnijeg okruženja za razvoj medija.

Do sada sprovedeni monitoring ukazuje na nekoliko važnih činjenica.
Sloboda izražavanja i sloboda medija, ne ostvaruju se još uvek na zadovoljavajućem nivou. Brojni su primeri i oblici njihovog narušavanja, a posebno je karaktiristično vođenje kampanja medija protiv medija, kao odraz interesa pojedinih uticajnih pojedinaca ili grupa, koji se iza toga skrivaju. Sudska praksa i pored generalne usklađenosti propisa sa evropskim standardima, često odstupa od prakse Evropskog suda za ljudska prava u primeni člana 10 Evropske konvencije.
Krhki **medijski regulatorni okvir**, u poslednje vreme se ozbiljno narušava, donošenjem novih zakona, kao i izmenama postojećih, naprečac i bez javne rasprave. Ovakvi postupci vlasti pokazuju da je, nažalost, vlast spremna na efikasno delovanje, samo kada je to u njenom interesu. Majskim izmenama Zakona o porezu na dohodak građana, kojima su povećani porezi na autorske honorare, skupštinska većina je pokazala odsustvo minimuma razumevanja za ekonomski položaj medija, a izmenama Zakona o radiodifuziji, realizovala je nameru da obezbedi mehanizme apsolutne kontrole izbora članova sektorskog regulatora za radiodifuziju. Dva zakona o kojima Parlament treba da glasa 31.08.09, značajno ugrožavaju položaj medija. Zakon o nacionalnim savetima nacionalnih manjina, protivan je medijskim zakonima i kreira dodatne probleme u sferi

privatizacije medija i funkcionisanja medijskog tržišta, otvaranjem prostora za opstanak državnih i paradržavnih medija. Izmene Zakona o javnom informisanju, zbog postupka izrade i samih rešenja u njemu, prete da, koliko god izazvane realnim problemima u medijskoj sferi i izrazitom neodgovorošću jednog broja tabloida, budu neproporcionalne cilju koji se njima želi postići i objektivno ugroze slobodu izražavanja. S druge strane, neki drugi zakoni, od značaja za poboljšanje položaja medija, iako spremni, još uvek nisu na dnevnom redu Parlamenta, zbog nezainteresovanosti ili suprotnog interesa nadležnih, kao što je slučaj sa Zakonom o medijskoj koncentraciji i javnosti vlasništva medija ili sa novim Zakonom o autorskom i srodnim pravima.
Monitoring rada nadležnih organa i organizacija, pokazao je da oni do sada nisu uspeli da obezbede povoljno okruženje za nesmetano funkcionisanje medija. Pored navedenih loših promena regulatornog okvira, urušavanju medijske scene značajno doprinose i sporost i neefikasnost u rešavanju bitnih pitanja za razvoj medija. Neka od njih su: nastavak i završetak medijske privatizacije; zatvaranje piratskih emitera; smanjenje naknada koje emiteri plaćaju regulatornim telima i kolektivnim organizacijama za zaštitu autorskog i srodnih prava na realan nivo, proporcionalan onome što dobijaju ili koriste od njih; nejednak tretman medija i povlašćeni položaj nekih od njih; regulisanje kablovske i satelitske distribucije i dr. Akutni problem (ne samo) medija, jeste ekonomska kriza. Iako je Vlada 25.06.09. donela Zaključak o interventnim merama za pomoć medijima u uslovima krize, koje se tiču nekih od gore navedenih problema medija, nije do sada uspela da obezbedi mehanizme za njihovo sprovođenje. U meri u kojoj su sprovedene, mere nisu dale dovoljne rezultate - Republička radiodifuzna agencija (RRA) je donekle snizila svoje naknade, ali s nejednakim efektom na sve emitere, a rezultati Konkursa Ministarstva kulture za sufinansiranje medijskih projekata, još nisu poznati, niti su ta sredstva dovoljna za poboljšanje situacije u kojoj su mediji.

Osnovni nalaz prethodnog tromesečnog monitoringa, jeste da nepostojanje jasne i konsekventne strategije razvoja medijskog sektora, rezultira stvaranjem nestabilnog okruženja za razvoj medija i medijskog tržišta.

Rezultati tromesečnih monitoringa su, između ostalog, osnova za izbor tema, koje će posebno biti obrađene u specijalizovanoj Publikaciji ANEMa. Kvartalna izdanja ove Publikacije će sadržati stručne autorske tekstove, koji obrađuju pitanja, ocenjena kao značajna za medije, kroz prethodno sprovedeni monitoring.

Oslanjajući se na rezultate sprovedenog monitoringa u periodu maj-jul 2009, ovo prvo izdanje specijalizovane Publikacije, nudi sledeći sadržaj: Uvek važno **pitanje ostvarivanja slobode izražavanja**, obrađeno je kroz studije slučaja, u prvom tekstu ove Publikacije. Drugi tekst se odnosi na **izmene Zakona o radiodifuziji**, koje se tiču samo postupka izbora članova Saveta RRA i predstavljaju prvo grubo menjanje regulatornog okvira u posmatranom periodu. Hronologija dosadašnjih izmena ovog zakona, sa posebnim osvrtom na poslednje, pojašnjava njihov smisao i posledice. Treći i četvrti tekst se takođe odnose na regulatorni okvir za razvoj medija, ali se tim propisima, on menja na pozitivan način. Nova rešenja **Zakona o autorskom i srodnim pravima**, koji je obrađen u trećem tekstu, značajno će popraviti položaj elektronskih medija u odnosu prema kolektivnim organizacijama, ukoliko bude usvojen u predloženom tekstu. Četvrti tekst se odnosi na **Strategiju digitalizacije**, koja je od izuzetnog značaja za elektronske medije, jer je njome dat okvir postupka prelaska sa analognog na digitalno emitovanje, koji se mora sprovesti do 04.04.2012. godine, kao dana „switch off"a. Poslednji, peti tekst, je dokument Saveta Evrope, **„Indikatori za medije u demokratiji",** koji će pomoći da pravilnije sagledamo koliko smo daleko ili blizu evropskih standarda, kada je reč o slobodi izražavanja i slobodi medija.

I ovo i sva sledeća izdanja Publikacije, predstavljaju još jedan vid ANEMovog nastojanja da doprinese nastavku medijskih reformi u Srbiji, koje su, više nego očigledno, potrebne da bi se demokratizacija društva nastavila.

Studije slučaja: Kršenje slobode izražavanja

Slobodan Kremenjak, advokat[1]

Uvod

Članom 18. Ustava Republike Srbije, predviđeno je da se ljudska prava, zaštićena Ustavom i potvrđenim međunarodnim ugovorima, neposredno primenjuju, uz tumačenje odredbi u korist unapređenja vrednosti demokratskog društva, saglasno važećim međunarodnim standardima ljudskih i manjinskih prava, kao i praksi međunarodnih institucija koje nadziru njihovo sprovođenje. To važi i za slobodu izražavanja, zajemčenu Ustavom i ratifikovanom Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda ("Službeni list SCG" - Međunarodni ugovori, br. 9/2003, 5/2005), u odnosu na koju su, srpski sudovi dužni da neposredno primene odredbu člana 10. Evropske konvencije i to u skladu sa praksom Evropskog suda za ljudska prava.

Nažalost, u sudskoj praksi u Srbiji, i dalje dolazi do presuda kojima se očigledno ograničava sloboda izražavanja, u suprotnosti, kako sa nacionalnim propisima i sa potvrđenim međunarodnim ugovorima, tako još i više, u suprotnosti sa sudskom praksom Evropskog suda za ljudska prava.

Slučaj 1.

U Opštinskom sudu u Nišu, u aprilu 2009. godine, sudija Jasmina Andrejević je prvostepenom presudom, obavezala novinarku Draganu Kocić i glavnog i odgovornog urednika niških "Narodnih novina", Timošenka Milosavljevića, da plate milion dinara, na ime naknade štete, majoru Žarku Šurbatoviću, bivšem načelniku Vojne direkcije za pravnoimovinske poslove Vojske Srbije, i njegovoj supruzi Gordani Šurbatović. Sudija Andrejević, postupajući po tužbi Šurbatovića za novčanu naknadu za pretrpljene duševne bolove zbog povrede časti i ugleda, našla je da su Dragana Kocić i Timošenko Milosavljević odgovorni, što su objavili sadržaj optužnice protiv supružnika Šurbatović, koja je podignuta u Okružnom javnom tužilaštvu u Nišu.

U skladu sa odredbom člana 82. Zakona o javnom informisanju Srbije, novinar i odgovorni urednik ne odgovaraju za štetu, čak ni ako je informacija neistinita ili nepotpuna, ako je ona verno preneta iz javne skupštinske rasprave ili javne rasprave u skupštinskom telu ili iz sudskog postupka ili iz dokumenta nadležnog državnog organa, a što je ovde slučaj. Ono što čitavu ovu stvar čini još paradoksalnijom, jeste da je major Šurbatović, po istoj optužnici čiji je sadržaj objavljen u niškim "Narodnim novinama", osuđen na zatvorsku, a njegova supruga Gordana Šurbatović i još jedno lice na uslovne kazne, jer su zloupotrebom položaja omogućili Gordaninoj majci, Šurbatovićevoj tašti, da protivzakonito naplati odštetu od 8,2 miliona dinara za objekat u Uroševcu na Kosovu, koji su koristili i navodno oštetili pripadnici vojske u proleće 1999. godine. U postupku za traženje odštete, Šurbatović, kao vojni pravobranilac, nije sebe izuzeo iz procesa, čak je, u ime tašte, sa suprugom sam pisao zahtev za odštetu od vojske. Nakon što je sud u Leskovcu odlučio da se njegovoj tašti isplati odšteta, a Okružni sud u Nišu odbio žalbu Vojske, Šurbatović je naložio da se već napisana revizija ne šalje Vrhovnom sudu, suprotno interesu Vojske. Dragana Kocić i Timošenko Milosavljević su najavili žalbu. Očekuje se da će, prilikom odlučivanja po žalbi, Okružni sud u Nišu ukinuti presudu Opštinskog suda.

[1] Advokatska kancelarija "Živković&Samardžić", Beograd

Ono što, međutim, posebno brine je što ovo nije jedini slučaj u kome srpsko pravosuđe ignoriše i važeće nacionalne propise i potvrđene međunarodne ugovore i praksu Evropskog suda za ljudska prava.

Samo protiv jedne od članica ANEM-a, beogradske nacionalne radio i televizijske stanice "B92" i njenih urednika i novinara, u ovom trenutku se vodi više sudskih postupaka, koji podsećaju na postupak koji se protiv Dragane Kocić i Timošenka Milosavljevića vodio u Nišu.

Slučaj 2.

U Prvom opštinskom sudu u Beogradu, u toku je postupak po tužbi Predraga Tarbuka iz Novog Sada, protiv Verana Matića, odgovornog urednika B92 i Brankice Stanković, autorke emisije "Insajder", povodom navoda iz emisije "Insajder", da se u Beloj knjizi MUP-a Srbije, Tarbuk pominje kao vođa jedne od novosadskih kriminalnih grupa, kojoj se pripisuju krađe i preprodaja automobila. U spisima predmeta postoji potvrda Ministarstva unutrašnjih poslova koja svedoči da je reč o navodu, verno prenetom, iz policijskog dokumenta pod naslovom "Kriminalne grupe i pojedinci koji se bave organizovanim kriminalom", u javnosti poznatog kao Bela knjiga. I pored toga što policija potvrđuje da je u konkretnom slučaju reč o informaciji koja je verno preneta iz dokumenta koji je ona u okviru svoje nadležnosti sastavila, što je po Zakonu o javnom informisanju osnov koji isključuje odgovornost, postupak se i dalje vodi, s neizvesnim ishodom.

Slučaj 3.

U Četvrtom opštinskom sudu u Beogradu, u toku je krivični postupak koji je po službenoj dužnosti pokrenulo Četvrto opštinsko javno tužilaštvo, protiv novinarke B92, Ivane Momčilović i urednica, Antigone Andonov i Jasmine Karanac, za krivično delo narušavanje tajnosti postupka. Novinarka i urednice terete se da su povredile tajnost postupka koji se pred Okružnim sudom u Beogradu vodi protiv pripadnika tzv. "drumske mafije", tako što su objavile sadržaj transkripata prisluškivanih razgovora okrivljenih, i to delove tih transkripata koji ukazuju na moguću odgovornost izvesnih visokih funkcionera Vlade Republike Srbije, koji u postupku nisu optuženi. Prema važećim propisima, povreda tajnosti postupka je krivično delo za koje mogu biti odgovorni *samo učesnici u postupku* koji neovlašćeno otkriju ono što su u postupku saznali, a što se po zakonu ne može objaviti ili je odlukom suda ili drugog nadležnog organa proglašeno kao tajna, *a ne i novinari koji nisu učestvovali u postupku* i koji su do informacije o sadržaju transkripata došli mimo postupka i posredno. Pored toga, Zakonom o javnom informisanju je izričito propisano da se informacije o događajima i ličnostima, o kojima javnost ima opravdani interes da zna, slobodno objavljuju, bez obzira na način na koji je informacija pribavljena. I ovaj postupak se i dalje vodi, takođe s neizvesnim ishodom.

Izmene Zakona o radiodifuziji

Slobodan Kremenjak, advokat[1]

Hronologija izmena Zakona o radiodifuziji

Odredbe Zakona o radiodifuziji, koje se tiču izbora regulatornog tela, izmenjene su, ne po prvi put, u maju 2009. godine. Podsetićemo, iste odredbe, u odnosu na prvi nacrt radne grupe Medija centra i NUNS-a, koju su činili domaći stručnjaci podržani od eksperata Saveta Evrope i OEBS-a, prvo je izmenila Vlada, pred usvajanje Zakona u Skupštini, 2002. godine. Odredbe koje se tiču izbora regulatornog tela menjane su i 2004. godine, pa ponovo 2005. godine, onda još jednom 2006. godine i napokon, Zakonom o izmenama i dopunama Zakona o radiodifuziji iz 2009. godine. O čemu se tu zapravo radi i šta je zakonodavac ovolikim izmenama odredaba zakona, koje se tiču izbora sektorskog regulatora, želeo da postigne.

Već pominjani nacrt radne grupe, predviđao je da Savet ima 15 članova, pri čemu većinu predlažu ovlašćeni predlagači iz civilnog sektora. Vlada je taj nacrt izmenila, a Skupština na kraju i usvojila Zakon u tekstu, shodno kojem Savet umesto 15 ima 9 članova, a izmenjen je i spisak ovlašćenih predlagača i to na uštrb civilnog sektora. Po usvojenom rešenju, republičke i pokrajinske skupštine i vlade, predlagale su četiri, od ukupno devet članova Saveta, dva su predlagali univerziteti i crkve, dva nevladine i profesionalne organizacije, a devetog člana – prethodnih osam, pri čemu taj deveti član mora da živi i radi na Kosovu.

Izmene zakona iz 2004. godine, pravdane su potrebom da se prevaziđe blokada u radu prvog saziva Saveta. Do blokade je dovela činjenica da je prvi izbor Saveta, 2003. godine, vršen uz kršenje zakonske procedure, izbegavanjem javnosti u postupku kandidovanja dvojice članova, kao i to da jedan od izabranih članova nije ispunjavao ni formalne kvalifikacije za članstvo. Izmenama zakona, promenjen je ponovo spisak ovlašćenih predlagača, tako što, umesto republičke skupštine i republičke i pokrajinske vlade, predlagač koji predlaže kandidate za čak tri člana Saveta, postaje Odbor za kulturu i informisanje Skupštine Srbije. Izmenama iz 2005. godine, koje su pravdane nemogućnošću da se dužina trajanja mandata članova Saveta odredi žrebom, trojici članova Saveta koje je predložio Odbor za kulturu i informisanje, utvrđen je mandat sa najdužim trajanjem, čime je uticaj Odbora na Savet dodatno ojačan. Izmenama iz 2006. godine, ovlašćeni predlagač umesto rektora Univerziteta, postaje Konferencija Univerziteta, kao telo osnovano novim Zakonom o visokom obrazovanju, a umesto svih crkava i verskih zajednica, samo one koje uživaju status tradicionalnih, čime su male crkve i verske zajednice eliminisane iz procesa kandidovanja.

Poslednje izmene Zakona

Novim izmenama zakona iz maja ove godine, skupštinski Odbor za kulturu i informisanje, ovlašćen je da, u slučaju većeg broja kandidatskih lista nevladinih organizacija, kao i većeg broja kandidatskih lista profesionalnih udruženja (udruženja radiodifuznih javnih glasila, novinara, filmskih i dramskih umetnika i kompozitora), kao i u slučaju kandidatskih lista sa više od dva kandidata, izvrši prethodnu selekciju kandidata. Pri navedenom, Odbor za kulturu i informisanje nije vezan nikakvim kriterijumima takve predselekcije.

[1] Advokatska kancelarija "Živković&Samardžić", Beograd

Usvojene izmene pravdane su odsustvom rešenja u zakonu, za situaciju u kojoj nevladine organizacije nisu uspele da usaglase jednu kandidatsku listu, već su dostavile dve, kao i za situaciju, u kojoj na kandidatskoj listi profesionalnih organizacija nisu bila dva imena, već tri.

Naime, ANEM, NUNS, NDNV i APRES usaglasili su, po prethodnom javnom pozivu predsednice Skupštine, listu sa dva kandidata. Odbor za kulturu i informisanje, međutim, vraća listu uz insistiranje na njenom usaglašavanju sa još dve organizacije, Srpskom TV mrežom i Klubom turističkih novinara. Iako uvereni da Srpska TV mreža i Klub turističkih novinara ne ispunjavaju formalne uslove da budu ovlašćeni predlagači, ANEM, NUNS, NDNV, na insistiranje Odbora za kulturu i informisanje, usaglašavaju, usled nepomirljivih stavova APRES-a, sa jedne i Srpske TV mreže i Kluba turističkih novinara, sa druge strane, kao jedinu moguću, novu kandidatsku listu sa tri imena.

Argumentacija na osnovu koje je Odbor za kulturu i informisanje odbio da odlučuje po dve liste nevladinih organizacija i po jednoj listi sa tri kandidata profesionalnih organizacija, bila je potpuno neosnovana. Prvo, zato što je Zakon, u tekstu važećem pre izmena, izričito predviđao da se, ako nevladine organizacije predlože više od jedne liste kandidata, važećom smatra ona koju potpiše veći broj organizacija koje su u prethodnom periodu imale veći broj sprovedenih akcija, inicijativa i objavljenih publikacija. I drugo, zato što Zakon, u tekstu važećem pre izmena, nije isključivao mogućnost da kandidatska lista ima više od dva kandidata. Naprotiv, isključivao je samo mogućnost da ih bude manje od dva, budući da bi na taj način Skupština, koja treba da izvrši izbor između ponuđenih kandidata, bila dovedena u situaciju da glasa o jednoj ličnosti, bez protivkandidata.

U pokušaju da obezbedi podršku nameravanoj izmeni zakona, Odbor za kulturu i informisanje održao je 18. marta ove godine sednicu, na koju su bili pozvani predstavnici profesionalnih medijskih udruženja i nevladinih organizacija, učesnici u tekućem ciklusu kandidovanja za nove članove Saveta. Upravo na navedenoj sednici Odbora, predstavnici profesionalnih medijskih udruženja i nevladinih organizacija izričito su se izjasnili protiv izmena odredbi koje regulišu izbor članova Saveta, u trenutku dok je taj izbor u toku, te insistirali da Skupština izabere članove Saveta na osnovu kandidatskih lista koje su već podnesene. Odbor je, u situaciji u kojoj je morao, ili da obavesti ovlašćene predlagače da je odbacio njihove liste, ili da im ostavi dodatni rok za usaglašavanje, na internet prezentaciju Skupšine postavio izveštaj koji nije verno odslikavao sadržaj rasprave na sednici. Epilog je da Odbor nije obezbedio, iako je morao, da novi članovi Saveta budu izabrani pre isteka mandata starih. Skupština se, nažalost, na poziv medijskih udruženja i nevladinih organizacija da izabere članove Saveta na osnovu kandidatskih lista koje su već podnesene, oglušila. Izmene Zakona usvojene su, praktično kao alibi za propuste u radu Odbora, na predlog velike grupe poslanika vladajuće većine, uz zaobilaženje nadležnog Ministarstva kulture, a 19. juna predsednica Skupštine objavila je javni poziv za podnošenje novih kandidatskih lista.

Zaključak

Ono što ove zakonske izmene pokazuju, jeste da se u Srbiji, i to kontinuirano, još od 2002. godine pa sve do danas, podrivaju zakonom predviđeni mehanizmi zaštite nezavisnog položaja regulatornog tela. Skupštinska većina, i u prethodnom, kao i u aktuelnom skupštinskom sazivu, izmenama Zakona direktno je uticala na sastav Saveta za radiodifuziju. Prethodni skupštinski

saziv, 2004. godine, izmenio je Zakon, ne bi li sebi omogućio da, umesto ponavljanja postupka u slučaju tri nezakonito izabrana člana, bira čitav saziv Saveta ponovo. Aktuelni skupštinski saziv, izmenio je Zakon umesto da glasa o valjanim kandidatskim listama. Nije postojao ni jedan razlog za izmenu Zakona, osim želje vladajuće većine da spreči da Skupština uopšte glasa o kandidatima koji toj istoj vladajućoj većini nisu odgovarali. Rezultat je nesumnjiv: sužavanje ili čak potpuno isključivanje mogućnosti uticaja civilnog sektora na izbor članova Saveta i akumulacija sve širih ovlašćenja u rukama Odbora za kulturu i informisanje skupštine Srbije.

Posledica poslednjih izmena je da će Odbor, čiji sastav odražava raspored snaga u parlamentu, ubuduće biti u poziciji, ne samo da predlaže kandidate za tri od devet članova Saveta, već i da, nevezan bilo kakvim javnim i prethodno utvrđenim kriterijumima, vrši selekciju kandidata nevladinih organizacija i profesionalnih udruženja. Vladajuća većina, na taj način, obezbedila je sebi mehanizme kojima će u budućnosti efektivno moći da utiče na izbor kompletnog sastava Saveta, dovodeći time u pitanje njegovu nezavisnost.

Novi Zakon o autorskom i srodnim pravima[1]

Mr Vladimir Marić[2]

Uvod

Zakon o autorskom i srodnim pravima iz 2004. godine na celovit način reguliše materiju autorskog i srodnih prava i spada u najkompleksnije zakone u našem pravnom sistemu. Iako sadrži niz rešenja koja na savremen i kvalitetan način uređuju društvene odnose u oblasti autorskog i srodnih prava, nakon četiri godine njegove primene pokazalo se da neka zakonska rešenja, zbog nedorečenosti i nepreciznosti, ne mogu na adekvatan način da odgovore izazovima prakse. Novim Zakonom o autorskom i srodnim pravima (u daljem tekstu: Zakon) otklanjaju se nejasnoće koje su do sada stvarale konfuziju u njegovoj primeni i uvode se novi pravni instituti koji će garantovati više reda i više pravne sigurnosti u ovoj oblasti. Najviše izmena Zakon donosi u delovima pod nazivom "kolektivno ostvarivanje prava" i "srodna prava" i predviđa najbolja rešenja po ugledu na evropske zakone i evropsku praksu.

Nova rešenja

Pravo izdavača štampanih izdanja na posebnu naknadu

Zakon predviđa uvođenje novog srodnog prava u korist izdavača štampanih izdanja. Reč je o pravu na posebnu naknadu koju će spomenuti izdavači uživati pod istim uslovima koji važe i za autore. Autor ima isključivo pravo da drugome dozvoli ili zabrani iskorišćavanje svog autorskog dela. Ipak, opisani ekskluzivitet nije apsolutan već poznaje i izvesna ograničenja. Jedno od njih kaže da je "dozvoljeno fizičkom licu da bez dozvole autora i bez plaćanja autorske naknade umnožava primerke objavljenog dela za lične nekomercijalne potrebe". Ova "privilegija" koju Zakon priznaje fizičkim licima afektira interese autora i izdavača, danas više nego ikada pre. Zahvaljujući tehnološkom razvoju i veoma pristupačnim cenama uređaja koji služe za umnožavanje autorskih dela, mogućnost njihovog brzog, jeftinog i kvalitetnog multiplikovanja postala je dostupna velikom broju ljudi. Zakon iz 2004. godine predvideo je zato da autori i nosioci srodnih prava imaju pravo na posebnu naknadu od prodaje uređaja koji su podobni za umnožavanje autorskih dela i predmeta srodnih prava, kao i od prodaje nosača zvuka, slike i teksta. Spomenuti Zakon nije međutim takvo pravo priznao i izdavačima štampanih izdanja, koji zbog opisane prakse takođe trpe štetu, pa je to ispravljeno novim Zakonom. U praksi će autori i izdavači štampanih izdanja ostvarivati pravo na posebnu naknadu preko svoje kolektivne organizacije. Zakonom je takođe rešeno i pitanje raspodele tako ubrane naknade. Predviđeno je da se ona između autora i izdavača deli na jednake delove što predstavlja evropski standard u oblasti kolektivnog ostvarivanja ovih prava. Solidarni dužnici opisane posebne naknade su proizvođači i uvoznici uređaja za tonsko snimanje, vizuelno snimanje, uređaja za fotokopiranje i drugih sličnih uređaja, kao i proizvođači i uvoznici praznih nosača zvuka slike i teksta. Zakon iz 2004. godine takođe predviđa da su solidarni dužnici posebne naknade uvoznici nosača zvuka, slike i teksta, ali ne precizira da se uvoz i prodaja moraju odnositi na "prazne" nosače zvuka. Ta nedorečenost otklonjena je novim Zakonom.

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[1] Nacrt Zakona o autorskim i srodnim pravima je prošao javnu raspravu i upućen je na dalje razmatranje nadležnim organima i Vladi Republike Srbije, nakon čega ulazi u skupštinsku proceduru za usvajanje

[2] Načelnik Odeljenja za žigove u Zavodu za intelektualnu svojinu Republike Srbije

Ograničenje autorskog prava u korist osoba sa invaliditetom

Zakonom je predviđeno novo ograničenje autorskog prava u korist osoba sa invaliditetom. Prema novom Zakonu, moguće je bez dozvole autora i bez plaćanja autorske naknade, umnožavanje i stavljanje u promet primeraka autorskog dela u formi koja je prilagođena potrebama lica sa invaliditetom. Na primer, štampanje književnog dela u formi Brajeve azbuke. Ovim ograničenjem obezbeđeno je da monopolsko pravo autora ne predstavlja nerazumnu ili diskriminatornu prepreku za pristup autorskim delima od strane osoba sa invaliditetom. Formulacija novog ograničenja autorskog prava, uz doslednu primenu zajedničkih odredbi o ograničenju autorskog prava, u potpunosti će osigurati da ovo ograničenje bude primenjivano samo u posebnim slučajevima koji nisu u suprotnosti sa uobičajenim iskorišćavanjem dela i na način da se ne vređaju legitimni interesi autora.

Formiranja tarife organizacija za kolektivno ostvarivanje autorskog i srodnih prava

U oblasti kolektivnog ostvarivanja autorskog i srodnih prava, proteklih godina pojavili su se problemi koji se tiču načina formiranja tarife organizacija za kolektivno ostvarivanje autorskog i srodnih prava. Zakon iz 2004. godine daje slobodu organizacijama za kolektivno ostvarivanje autorskog i srodnih prava da potpuno samostalno odrede tarifu naknada za iskorišćavanje autorskog i srodnih prava. Trenutno, one nemaju obavezu da o tom važnom pitanju pregovaraju sa korisnicima autorskih dela i predmeta srodnih prava zbog čega su korisnici primorani da organizaciji plate onu naknadu koju im organizacija nametne. To s razlogom dovodi do njihovog nezadovoljstva. Zakon u tom delu, po ugledu na evropsku praksu kolektivnog ostvarivanja autorskog i srodnih prava, predviđa suštinske promene. Dok je prema Zakonu iz 2004. godine tarifa izraz volje samo jedne strane - organizacije, prema novom Zakonu ona će biti rezultat sporazuma između organizacije i reprezentativnog udruženja korisnika. Time se ukida monopol koji trenutno postoji na strani organizacija i nameće princip dogovaranja između njih i korisnika autorskih dela. Nakon postignutog sporazuma, organizacija objavljuje tarifu u Službenom glasniku Republike Srbije te ona postaje obavezujuća za sve istovrsne korisnike autorskih dela i predmeta srodnih prava u našoj zemlji, bez obzira da li su učestvovali u pregovorima ili ne. Ovakav način određivanja tarife naknada prisutan je zakonskim rešenjima mnogih evropskih zemalja, na primer u Nemačkoj, Švajcarskoj, Hrvatskoj, Sloveniji, Rumuniji i tako dalje.

Ukoliko dogovor između organizacija i reprezentativnog udruženja korisnika o tarifi izostane, ili ukoliko nema reprezentativnog udruženja korisnika iz određene delatnosti, predlog tarife određuje upravni odbor organizacije za kolektivno ostvarivanje autorskog i srodnih prava. Tako određen predlog tarife dostavlja se Komisiji za autorsko i srodna prava na saglasnost. Reč je o telu koje se prvi put ustanovljava u istoriji kolektivnog ostvarivanja autorskog i srodnih prava kod nas. Slične institucije već postoje u razvijenim zemljama, a uvođenje jedne takve u pravni život naše zemlje garantovaće više reda i više pravne sigurnosti za sve aktere u procesu određivanja tarife naknada za iskorišćavanje autorskih dela i predmeta srodnih prava. U svakom slučaju, tarifa mora da bude odraz jednog pravednog balansa između privatnog i javnog interesa, gde bi autori i nosioci srodnih prava bili adekvatno nagrađeni za svoj rad, a korisnici sigurni da legalno koriste autorska dela i predmete srodnih prava. Ukoliko taj balans ne bude ostvaren u pregovorima, onda se u donošenje odluke o tarifi mora uključiti treća strana: Komisija za autorsko i srodna prava. Članovi Komisije biće birani iz reda istaknutih stručnjaka koji poznaju problematiku autorskog i srodnih prava, a predloženim rešenjem je omogućeno zainteresovanim licima, odnosno registrovanim kolektivnim organizacijama i reprezentativnim udruženjima korisnika da daju svoje predloge za izbor članova Komisije.

Obavezno kolektivno ostvarivanje prava na naknadu od emitovanja i javnog saopštavanja interpretacija zabeleženih na izdatim fonogramima

Zakon predviđa i obavezno kolektivno ostvarivanje prava na naknadu od emitovanja i javnog saopštavanja interpretacija zabeleženih na izdatim fonogramima. Nosioci prava na naknadu, interpretatori i proizvođači fonograma, ne mogu da znaju ko, gde, kako i koliko često koristi izdati fonogram, odnosno na njemu zabeleženu interpretaciju. Stoga je ostvarivanje ovog prava preko kolektivne organizacije jedino moguće rešenje. Još jedan razlog za uvođenje obaveznog kolektivnog ostvarivanja ovih prava je i taj što u Republici Srbiji već postoje organizacije koje kolektivno ostvaruju prava proizvođača fonograma i prava interpretatora.

Prema Zakonu iz 2004. godine, pravo na naknadu od emitovanja i javnog saopštavanja fononograma i na njima zabeleženih interpretacija pripada interpretatorima i proizvođačima fonograma, a te dve naknade ubiraju se od korisnika kao jedinstvena naknada. Da bi se obezbedila jedinstvena naplata ovih naknada zadržano je rešenje prema kojem naknadu od korisnika koji emituju ili javno saopštavaju izdati fonogram, odnosno na njemu zabeleženu interpretaciju, naplaćuje jedna organizacija. Međutim, za razliku od dosadašnjeg rešenja po kojem je jedinstvenu naknadu ubirala organizacija proizvođača fonograma, sada je predviđeno da se organizacija koja će naplaćivati jedinstvenu naknadu odredi ugovorom između organizacije interpretatora i organizacije proizvođača fonograma. Tako je omogućeno organizaciji interpretatora da ravnopravno učestvuje u određivanju tarife naknada zajedno sa organizacijom proizvođača fonograma. Zakonom su precizno propisani i uslovi raspodele ubrane jedinstvene naknade između organizacija za slučaj da organizacije to same ugovorom ne odrede. U vreme kada je donet Zakon iz 2004. godine postojala je organizacija proizvođača fonograma. Danas pored nje u našoj zemlji postoji i organizacija interpretatora, pa više nema razloga da zakon propisuje koja će od njih dve naplaćivati jedinstvenu naknadu od korisnika. Zakon prepušta organizacijama da ugovorom reše, kako je rečeno, koja će od njih vršiti naplatu, koliki će biti iznos troškova naplate i koliko često će organizacija koja je određena da vrši naplatu predavati deo jedinstvene ubrane naknade drugoj organizaciji. Tek pošto se ugovorom reše nabrojana pitanja i ugovor objavi u Službenom glasniku Republike Srbije, organizacija koja je sporazumno određena da naplaćuje jedinstvenu naknadu, može otpočeti sa poslovima naplate jedinstvene naknade.

Pravo autora da dozvoli ili zabrani emitovanje svog autorskog dela

Pravo autora da dozvoli ili zabrani emitovanje svog autorskog dela spada u njegova imovinska prava i garantovano je Zakonom iz 2004. godine. Emitovanje je vrsta javnog saopštavanja autorskog dela. Ono se odvija tako što se sadržaj autorskog dela uz pomoć odgovarajućih uređaja pretvara u radijske ili televizijske signale, pa se onda žičnim ili bežičnim putem, ili putem satelita, na daljinu prenosi do krajnjih korisnika. Televizijska ili radio emisija (broadcasting) svima su dobro poznati primeri emitovanja autorskog dela.

Emitovanje i reemitovanje autorskih dela

Novi Zakon donosi nekoliko izmena u delu koji reguliše emitovanje i reemitovanje autorskih dela. Izmenjena je definicija emitovanja i usklađena sa definicijama iz Direktive Evropske Unije o satelitskom emitovanju i kablovskom reemitovanju (Direktiva 93/83). Emitovanje je sada određeno kao "javno saopštavanje dela žičnim ili bežičnim prenosom radijskih ili televizijskih programskih signala namenjenih za javni prijem (radio-difuzija i kablovska difuzija)". Zakon iz 2004. godine govori o javnom saopštavanju dela "prenosom elektromagnetnih, električnih i drugih signala na daljinu." Takođe, izmenjen je i termin „emisiono preduzeće" i umesto njega uveden termin

„organizacija za radiodifuziju“.

Izvesne novine odnose se na reemitovanje autorskih dela. Novi Zakon predviđa da autor ima isključivo pravo da drugome dozvoli ili zabrani da se autorsko delo koje je emitovano radiodifuzijom, istovremeno saopšti i putem kablovskog reemitovanja. To pravo autor može da ostvari samo preko organizacije za kolektivno ostvarivanje autorskog i srodnih prava. Direktiva Evropske Unije o satelitskom emitovanju i kablovskom reemitovanju propisuje jedan izuzetak od ovog pravila koji je sada predviđen i u novom Zakonu. Organizacije za radio difuziju neće imati obavezu da kolektivno ostvaruju svoja prava kada je reč o kablovskom reemitovanju njihovih sopstvenih emisija. Ovo pravilo važiće bilo da je reč o njihovim autorskim emisijama, bilo da se radi o emisijama na kojima su prava stekle ugovorom. Ovim izmenama ne samo da je Zakon usklađen sa pomenutom Direktivom Evropske Unije, već se otklanjaju i primedbe stranih proizvođača emisija koji su isticali potrebu zaključivanja individualnih ugovora sa domaćim kablovskim operaterima (a ne kolektivnih ugovora na koje je upućivao Zakon iz 2004. godine), ukazujući na svoju ustaljenu praksu u Evropskoj Uniji.

Najzad, Zakonom je predviđeno da će se prava autora u vezi sa reemitovanjem njihovih dela ostvarivati individualno sve dok u Republici Srbiji ne bude osnovana odgovarajuća organizacija za kolektivno ostvarivanje prava, a najkasnije do dana pristupanja Republike Srbije Evropskoj Uniji. I Zakonom iz 2004. godine bila je odložena obaveza kolektivnog ostvarivanja ovih prava na dve godine, računajući od dana stupanja zakona na snagu. Takvo rešenje nametala je činjenica da u vreme stupanja na snagu Zakona iz 2004. godine nije postojala odgovarajuća organizacija za kolektivno ostvarivanje prava. Proteklo je više od četiri godine od kako je Zakon iz 2004. godine stupio na snagu, a organizacija za kolektivno ostvarivanje autorskog prava na audiovizuelnim delima koja bi kablovskim operaterima ustupila pravo emitovanja dela sa svog repertoara, još uvek nije osnovana. Ovo je dovelo do situacije da su pojedini kablovski operateri odbili da plaćaju naknadu za emitovanje audiovizuelnih dela, pozivajući se na to da oni nemaju pravo da zaključuju individualne ugovore sa pojedinim nosiocima prava pošto je to u suprotnosti sa Zakonom iz 2004. godine, po kome se ova prava ostvaruju kolektivno. Da bi se izbegao sličan problem, novim Zakonom taj rok je sada vezan za datum osnivanja odgovarajuće organizacije za kolektivno ostvarivanje prava autora audiovizuelnih dela, a najkasnije to bio datum pristupanja Republike Srbije Evropskoj Uniji. Datum pristupanja Evropskoj Uniji naveden je iz razloga što će tada biti omogućeno inostranoj organizaciji za kolektivno ostvarivanje ovih prava da deluje u Srbiji.

Proces prelaska sa analognog na digitalno emitovanje programa u Republici Srbiji

Mr Jelena Surčulija[1]

Uvod

Republika Srbija je na Regionalnoj konferenciji o radio-komunikacijama, u organizaciji Međunarodne unije za telekomunikacije (ITU), održanoj 2006. godine u Ženevi, potpisala sporazum GE06 i time se obavezala da najkasnije do 17. juna 2015. godine pređe na digitalno emitovanje radio i televizijskog signala, što su dužne da urade i sve druge evropske zemlje. U međuvremenu, Evropska Unija je predložila svojim članicama da potpuno pređu na digitalno emitovanje programa do početka 2012. godine.

Ministarstvo za telekomunikacije i informaciono društvo (u daljem tekstu Ministarstvo) je u saradnji sa Ministarstvom kulture (u daljem tekstu MK), Republičkom Agencijom za telekomunikacije (u daljem tekstu RATEL) i Republičkom radiodifuznom agencijom (u daljem tekstu RRA), 9. oktobra 2008. godine, osnovalo Međuresornu radnu grupu, radi izrade predloga Strategije i Akcionog plana za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji.

U međuvremenu, Vlada Republike Srbije je, na predlog Ministarstva za telekomunikacije i informaciono društvo, 25. decembra 2008. godine, usvojila Zaključak o izdvajanju emisionog sistema iz Radiodifuzne ustanove Radio televizija Srbije, a 22. januara 2009. godine, Zaključak o usvajanju dokumenta "Osnove za izradu Strategije za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji".

Javne konsultacije, međunarodna konferencija i javna rasprava pre usvajanja Strategije i Akcionog plana

Ministarstvo je, odmah nakon zaključaka Vlade, odlučilo da pokrene javne konsultacije o temama koje će biti obuhvaćene Strategijom i Akcionim planom za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa. Javne konsultacije trajale su od 23. januara do 27. februara 2009. godine, u kom periodu su pribavljena dragocena mišljenja stručne i šire javnosti u vezi procesa izrade Strategije i Akcionog plana.

Kako bi se pozicionirali u odnosu na susedne zemlje i zemlje iz šireg regiona, Ministarstvo je, u saradnji sa Međunarodnom Unijom za telekomunikacije, organizovalo Regionalni seminar i Ministarski okrugli sto o prelasku sa analognog na digitalno emitovanje televizijskog programa. Konferenciju je otvorio generalni sekretar Međunarodne unije za telekomunikacije dr Hamadun Ture (Hamadoun Toure), a delegacije i eksperti iz preko 20 zemalja Centralne i Istočne Evrope pokušali su da daju odgovore na regulatorne, tehničke i ekonomske izazove prelaska sa analognog na digitalno emitovanje programa kako u Srbiji tako i u regionu.

[1] Pomoćnik Ministra za međunarodnu saradnju i evropske integracije u Ministarstvu za telekomunikacije i informaciono društvo Republike Srbije

Agenda i prezentacije sa konferencije su dostupne na web sajtu Unije: www.itu.int/ITU-D/eur/europe/2009-MRT-Broadcasting/index.html

Međuresorna grupa je na osnovu rezultata javnih konsultacija i međunarodne konferencije pripremila Nacrt Strategije i Akcionog plana. Ministarstvo je odmah organizovalo javnu raspravu koja je trajala od 22. maja do 12. juna 2009. godine. Osim primedaba i sugestija iznetih na okruglim stolovima u Beogradu, Novom Sadu i Nišu, pristiglo je i trinaest pisanih komentara koji su dostupni na web sajtu: http://www.mtid.gov.rs/aktivnosti/javne_konsultacije/strategija_i_akcioni_plan_za_prelazak_na_digitalno_emitovanje.521.html .

Strategija za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji[1]

Cilj Strategije jeste, pre svega, obezbeđivanje nesmetanog terestrijalnog (zemaljskog) prijema programa, nakon prelaska na digitalno i potpunog gašenja analognog emitovanja programa na teritoriji Republike Srbije. Strategija predviđa regulatorni okvir neophodan za uspešno sprovođenje digitalizacije, daje opredeljenja za tehničke standarde, sugeriše nove programske sadržaje, ekonomske aspekte kao i način informisanja građana o procesu digitalizacije. Kako bi strategija bila uspešno sprovedena, kao i da bi javnost mogla da prati ispunjenost predviđenih rokova, Akcioni plan sa detaljnim aktivnostima, odgovornim telima za njihovo sprovođenje, preciznim rokovima i očekivanim rezultatima su sastavni deo Strategije.

Građanima će digitalizacija omogućiti bolji kvalitet zvuka i slike, raznovrsniji sadržaj, više radio i televizijskih programa, nove usluge za osobe sa invaliditetom i za starije osobe, unapređene dodatne usluge, portabl i mobilni prijem programa, kao i konvergenciju usluga. Pružaocima usluga digitalizacija će dati mogućnost prilagođavanja sadržaja prema potrebama različitih ciljnih grupa, interaktivnost, kao i mogućnost pružanja usluga na zahtev, niže troškove emitovanja i konvergenciju usluga. Državi će digitalizacija omogućiti efikasnije korišćenje radio-frekvencijskog spektra, upotrebu oslobođenog dela spektra za nove usluge, promociju razvoja tehnologije i nova radna mesta, unapređenu konkurenciju i više mogućnosti za unapređenje stvaralaštva i očuvanje kulturnog identiteta.

Republika Srbija se opredelila da pređe na digitalno emitovanje televizijskog signala do srede, 4. aprila 2012. godine. MPEG-4 je izabran kao metod kompresije podataka, dok je DVB-T2 izabran standard za emitovanje digitalnog televizijskog signala.

Postojeći regulatorni okvir Republike Srbije, koji će se primenjivati tokom prelaska sa analognog na digitalno emitovanje programa, čine, pre svega, Zakon o javnom informisanju, Zakon o radiodifuziji, Zakon o telekomunikacijama, kao i Strategija razvoja radiodifuzije u Republici Srbiji do 2013. godine i Strategija razvoja telekomunikacija u Republici Srbiji od 2006. do 2010. godine. Međutim, postoji i niz zakonskih i podzakonskih akata koje je neophodno usvojiti u skladu sa međunarodnim i evropskim standardima, istovremeno imajući u vidu specifične potrebe Republike Srbije. Akcioni plan predviđa neophodnost usvajanja Završnih akata Regionalne konferencije o radio-komunikacijama za planiranje digitalne terestričke radiodifuzne službe u delovima Regiona 1 i 3, u frekvencijskim opsezima 174-230 MHz i 470-862 MHz (ITU RRC-06).

[1] Strategija je usvojena na sednici Vlade Republike Srbije, 2. jula 2009.godine.

Skupština Republike Srbije je 29. juna 2009. godine, na predlog Ministarstva kulture, usvojila Zakon o potvrđivanju Evropske konvencije o prekograničnoj televiziji, čime je konvencija konačno ratifikovana od strane svih država članica Saveta Evrope. U nadležnosti MK ostalo je da Skupštini predloži na usvajanje Zakon o potvrđivanju Evropske konvencije za zaštitu audio-vizuelne baštine, kao i izrada novog Zakona o elektronskim medijima koji će biti usklađen sa Direktivom Evropske Unije o audiovizuelnim medijskim uslugama. Što se tiče regulatornih prioriteta u implementaciji postojećeg regulatornog okvira Republike Srbije, Ministarstvo za telekomunikacije i informaciono društvo ima zadatak da Pravilnikom definiše prava i obaveze komercijalnih emitera u procesu prelaska na digitalno emitovanje, uz poštovanje prava koja imaju u skladu sa dozvolama koje važe duže od roka predviđenog za isključivanje analognog signala, kako bi RATEL na osnovu tog dokumenta mogao da donese rešenje o izmenama i dopunama postojećih dozvola, na način koji ne dira u programski aspekt, ne menja servisnu zonu i ne skraćuje rok važenja dozvola.

Razvoj pravnog okvira će omogučiti razvoj tržišta, raznovrsnost i pluralizam na medijskoj sceni, ali i vladavinu prava u oblasti elektronskih medija i zbog toga je poštovanje zadatih rokova neophodno za uspešan prelazak na digitalnu radiodifuziju.

Strategija precizira i programske, to jest različite vrste multimedijalnih sadržaja koji će biti dostupni u digitalnom okruženju, kao što su audio, video, tekst, interaktivne usluge i kombinacija navedenih sadržaja. Digitalno okruženje će omogućiti stvaranje uslova za razvoj slobode izražavanja, informisanja i medijskog pluralizma, uvođenje novih usluga u audiovizuelnom sektoru, a sve uz očuvanje i promovisanje kulturnih različitosti i ostvarivanje prava osoba sa invaliditetom. Digitalizacija će građanima omogućiti pristup i korišćenje komunikacionih, informacionih i interaktivnih usluga, a pre svega širokopojasnih usluga, prenos multimedijalnih i video aplikacija do pokretnih, mobilnih i fiksnih monitora, usluge javne sigurnosti, kao što su usluge u slučaju opasnosti. Očekuje se bogatija ponuda programskih sadržaja iz specijalizovanih oblasti kao i poboljšani elektronski vodič kroz programe. Od interaktivnih usluga, najpopularnije će verovatno biti elektronska trgovina i bankarstvo, interaktivne igre i kvizovi, informacije na zahtev, video na zahtev, usluge Interneta i glasanje.

Sa ekonomskog aspekta, proces prelaska sa analognog na digitalno emitovanje programa planiran je kao tržišno orijentisan proces zasnovan na načelima transparentnosti, nediskriminacije i tržišne ravnopravnosti sa jasno definisanim ciljevima i procedurama za postojeće operatore radiodifuznih usluga i pružaoce programskih sadržaja. Država će se opredeliti za jedan od predložena tri modela subvencionisanja dela troškova nabavke „set-up-box“-ova (adaptera): pomoć domaćinstvima čije praćenje televizijskog programa zavisi isključivo od terestrijalnog prijema, zatim subvencionisanje domaćinstava koji redovno plaćaju televizijsku pretplatu ili pomoć socijalno ugroženim kategorijama stanovništva. Važno je da građani koji televizijski signal primaju terestrijalno mogu da, uz pomoć adaptera, neometano prate digitalni program i na svojim starim televizorima, dok se građanima koji imaju kablovsku televiziju neće menjati uslovi prijema programa.

Cilj informativno-promotivne kampanje je informisanje gradjana o značaju, razlozima, prednostima i načinu prelaska sa analognog na digitalno emitovanje programa. Istovremeno, kampanja će obuhvatiti i odgovore na pitanja šta je digitalna televizija, koje su prednosti digitalne televizije u odnosu na analognu kao i koji su načini korišćenja usluga koje nova tehnologija donosi. Biće izloženi dinamika i detalji procesa prelaska sa analognog na digitalno emitovanje televizijskog programa, kao i način na koji će po prelasku na digitalno emitovanje svakom građaninu biti omogućeno nesmetano praćenje televizijskog programa.

Medijski javni servis je određen kao nosilac promotivne kampanje, dok za komercijalne emitere promocija procesa digitalizacije neće ulaziti u dvanaest minuta, koliko emiteri inače imaju na raspolaganju u toku jednog sata u komercijalne svrhe. Ministarstvo za telekomunikacije i informaciono društvo je preuzelo obavezu da izradi Internet portal o procesu digitalizacije, plan informativno-promotivne kampanje, plakate i brošure sa informacijama značajnim za proces digitalizacije kao i da omogući građanima mogućnost korišćenja besplatnog telefonskog broja putem kojeg se mogu informisati o digitalnoj televiziji.

Zaključak

Kao što se iz napred rečenog vidi, proces izrade Strategije je bio sveobuhvatan – veliki trud je uložen da se privuče što više učesnika koji će doprineti njenom boljem formulisanju. Emiteri su često dolazili na okrugle stolove u više gradova kako bi učestvovali u diskusiji ili samo čuli šta njihove kolege ili stručna javnost misli o određenim pitanjima. Važno je istaći da su B92, Pink i Fox, emiteri sa nacionalnim pokrivanjem, poslali zajednički komentar na Nacrt Strategije i Akcionog plana. Radio televizija Srbije je aktivno učestvovala u svim nivoima izrade strategije, a svoj prilog su dali i Telekom Srbije, Telenor, VIP, Erikson, kao i stručnjaci koji su želeli da iznesu svoje mišljenje. Svi pristigli komentari su dostupni na gore navedenom web site-u Ministarstva.

Kako bi se ispoštovali rokovi predviđeni akcionim planom, potrebno je maksimalno angažovanje svih učesnika u procesu digitalizacije, uključujući lokalne i regionalne emitere.
Za kraj, treba podvući da strategija reguliše samo proces *prelaska* sa analognog na digitalno emitovanje programa, što znači da će na dan switch off-a, odnosno gašenja analognog signala, mesto u multipleksu biti omogućeno samo emiterima sa važećim dozvolama za emitovanje programa, čime će se istovremeno uvesti i red u etru.

Indikatori za medije u demokratiji[1]

**Ovaj tekst nije zvaničan prevod Saveta Evrope, već prevod ANEMa*

Parlamentarna skupština Saveta Evrope (PACE) je 3. oktobra 2008. usvojila Rezoluciju 1636 (2008) i Preporuku 1848 (2008), zajednički imenovane kao "Indikatori za medije u demokratiji", koje su bazirane na istoimenom izveštaju.

Rezolucija naglašava značaj slobode izražavanja, informisanja i medija u demokratskom društvu i nudi listu od 27 "osnovnih principa", kao odgovarajuću osnovu za analizu stanja u medijima, u državama članicama Saveta Evrope. Ova lista sadrži široki spektar medijskih i novinarskih sloboda garantovanih ili promovisanih drugim dokumentima-standardima Saveta Evrope.

Rezolucija 1636 (2008)

1. Parlamentarna skupština ponovo podseća na značaj slobode medija. Pravo na slobodno izražavanje i informisanje u medijima je suštinski uslov demokratije. Učešće javnosti u demokratskom procesu odlučivanja, zahteva da javnost bude dobro informisana i da ima mogućnost slobodnog raspravljanja različitih mišljenja.

2. Sve države članice Saveta Evrope su se obavezale na poštovanje demokratskih standarda. Demokratija i vladavina prava su neophodni uslovi za članstvo u Savetu Evrope. Stoga, same države članice moraju neprestano da prate stanje demokratije u svojim državama. Međutim, demokratski standardi su, takođe, i deo univerzalno priznatih ljudskih prava u Evropi, i stoga nisu samo unutrašnje pitanje jedne države. Države članice Saveta Evrope moraju, isto tako, analizirati stanje demokratije i u svim ostalim zemljama članicama, posebno na nivou Skupštine.

3. Savet Evrope je postavio, na nivou Evrope, standarde koji se tiču medijskih sloboda, a koji su sadržani u članu 10. Evropske konvencije o ljudskim pravima i u mnogim odgovarajućim preporukama Komiteta ministara, kao i u rezolucijama i preporukama Parlamentarne skupštine.

4. Skupština, takođe, prati stanje medijskih sloboda pred nacionalne izbore i pravi analizu na osnovu standarda koje je postavio Savet za demokratske izbore, koji se sastoji od predstavnika Evropske komisije za demokratiju putem prava (Venecijanske komisije), Kongresa lokalnih i regionalnih vlasti Saveta Evrope i Parlamentarne skupštine.

[1] [1] Tekst Rezolucije 1636 (2008) i Preporuke 1848 (2008), preuzeti su u potpunosti i bez promena, sa sajta Parlamentarne Skupštine Saveta Evrope (http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1636.htm i http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/EREC1848.htm), a publikovani su uz odobrenje Kancelarije Saveta u Beogradu

5. Skupština pozdravlja komparativne procene nacionalnih okruženja za razvoj medija, koje su pripremili, npr. „Reporteri bez granica”, Pariz (“Reporters Without Borders“); „Međunarodni institut za štampu”, Beč (“International Press Institute”); „Član 19”, London (“Article 19”), kao i druge organizacije. Ovakav rad obezbeđuje važan javni nadzor medijskih sloboda, ali to ne oslobađa nacionalne parlamente i vlade, njihovih političkih dužnosti da prate stanje u medijima u svojim državama.

6. Skupština, takođe, pozdravlja UNESKO indikatore za razvoj medija, napisane uz konsultacije sa ekspertima organizacija „Član 19”(“Article 19”), the “West African Newsmedia and Development Centre” i drugih, koji će pomoći u određivanju komunikacionih razvojnih strategija, u kontekstu celokupnog nacionalnog razvoja.

7. Skupština smatra da je u demokratskom društvu neophodno poštovati brojne principe, koji se tiču medijskih sloboda. Lista takvih principa će olakšati analize nacionalnih okruženja za razvoj medija, u smislu poštovanja medijskih sloboda, kroz koje se mogu prepoznati problematična pitanja i potencijalni nedostaci. Ovo će omogućiti državama članicama da, na evropskom nivou, diskutuju, o mogućim merama za rešenje ovih problema.

8. Skupština poziva nacionalne parlamente da redovno analiziraju stanje u medijima u svojim državama, na objektivan i komparativan način, kako bi mogli da identifikuju nedostatke u svojoj nacionalnoj medijskoj regulativi i praksi i preduzmu odgovarajuće mere da ih otklone. Takve analize bi trebalo da budu zasnovane na sledećoj listi osnovnih principa:

> 8.1. pravo na slobodu izražavanja i informisanja u medijima mora biti zagarantovano nacionalnim propisima i ostvarivanje ovog prava mora biti obezbeđeno. Veliki broj sudskih slučajeva koji su u vezi sa ovim pravom, pokazatelj su problema u implementaciji nacionalne medijske regulative, što bi trebalo da zahteva izmenu samih zakona ili prakse;
>
> 8.2. državni zvaničnici ne smeju biti zaštićeni od kritike i uvreda više nego što su to obični građani, na primer, kroz propisivanje viših zakonskih kazni. Novinari ne bi smeli biti pritvarani, niti mediji zatvarani, zbog kritičkih komentara;
>
> 8.3. kazneni zakoni kojima se reguliše zabrana podsticanja govora mržnje ili zaštita javnog reda ili nacionalne bezbednosti, moraju poštovati pravo na slobodu izražavanja. Ako su kazne propisane, one moraju biti u skladu sa principima nužnosti i proporcionalnosti. Ako učestalost i težina izrečenih kazni ukazuju na politički motivisanu primenu tih zakona, medijska regulativa i praksa se moraju menjati;
>
> 8.4. Za bavljenje novinarskom profesijom, država ne sme postavljati neprimerene uslove;
>
> 8.5. političke partije i kandidati moraju imati pravičan i ravnopravan pristup medijima. Njihov pristup medijima treba da bude olakšan u vreme izbornih kampanja;
>
> 8.6. stranim novinarima ne bi smele biti odbijene vize za ulazak ili radne vize zbog njihovog potencijalnog kritičkog izveštavanja;
>
> 8.7. mediji moraju imati slobodu da plasiraju svoj sadržaj na jeziku, koji oni odaberu
>
> 8.8. mora se poštovati poverljivost novinarskih izvora informacija;

8.9. pravo na ekskluzivno izveštavanje o događajima od izuzetnog javnog značaja, ne sme zadirati u pravo javnosti na slobodu informisanja;

8.10. zakoni o zaštiti privatnosti i državnoj tajni ne smeju neopravdano ograničavati pristup informacijama;

8.11. novinari treba da imaju adekvatan ugovor o radu uz odgovarajuću socijalnu zaštitu, kako ne bi bila dovedena u pitanje njihova nepristrasnost i nezavisnost;

8.12. novinarima se ne sme zabraniti da osnivaju udruženja kao što su sindikalne organizacije za zaključenje kolektivnih ugovora;

8.13. uređivačka politika medijskih kuća bi morala biti samostalna i nezavisna od vlasnika medija, na primer, postizanjem dogovora sa vlasnicima o kodeksu uređivačke nezavisnosti, što bi osiguralo da se vlasnici medija ne uplića u dnevnu uređivačku politiku ili da ne kompromituju nepristrasno novinarstvo;

8.14. novinari moraju biti zaštićeni od fizičke pretnje ili napada zbog posla kojim se bave. Policijska zaštita mora biti obezbeđena kada je zatraži novinar koji se oseća ugroženo. Tužioci i sudovi moraju adekvatno i pravovremeno postupati i rešavati slučajeve, koji se odnose na primljene pretnje ili napade na novinare;

8.15. regulatorni organi za elektronske medije moraju raditi na nepristrasan i efikasan način, npr. kada dodeljuju dozvole za emitovanje. Od štampanih medija i Internet-medija ne bi trebalo zahtevati posedovanje državne licence, koja prevazilazi običnu registraciju preduzeća ili poresku prijavu;

8.16. mediji moraju imati pravičan i ravnopravan pristup distribucionim kanalima, bilo da je u pitanju tehnička infrastruktura (na primer, radio frekvencije, transmisioni kablovi, sateliti) ili komercijalna (distributeri novina, poštanske i usluge dostave);

8.17. država ne sme ograničiti pristup stranim štampanim ili elektronskim medijima, uključujući i Internet;

8.18. vlasnička struktura medija i ekonomski uticaj na medije moraju biti transparentni. Zakoni se moraju primenjivati u borbi protiv medijskih monopola i dominantnih pozicija na medijskom tržištu. Dodatno, treba preduzimati konkretne akcije za promovisanje medijskog pluralizma;

8.19. ukoliko mediji prime direktnu ili indirektnu finansijsku podršku, države moraju tretirati ove medije na pravičan i neutralan način;

8.20. javni radiodifuzni servis mora biti zaštićen od političkog uticaja, u svom svakodnevnom vođenju poslova i svom uređivačkom radu. Visoke upravljačke pozicije ne bi smele biti dostupne ljudima sa jasnim partijskim političkim vezama;

8.21. javni radiodifuzni servisi bi trebalo da donesu interne novinarske kodekse i kodekse uređivačke nezavisnosti od političkog uticaja;

8.22. privatne medije ne bi smela da poseduje, niti vodi država, kao ni kompanije koje su pod državnom kontrolom;

8.23. članovi Vlade ne bi trebalo da obavljaju profesionalne medijske poslove, dok su na toj funkciji;

8.24. Vlada, Parlament i sudovi moraju biti otvoreni za medije na pravičan i ravnopravan način;

8.25. trebalo bi da postoji sistem medijske samoregulacije, uključujući i pravo na odgovor i ispravku ili dobrovoljno izvinjenje novinara. Mediji treba da ustanove sopstvena samoregulatorna tela, kao što su komisije za žalbe ili ombudsmani, i odluke ovih tela treba da budu izvršavane. One treba da budu pravno priznate od strane sudova;

8.26. novinari treba da ustanove sopstveni profesionalni kodeks ponašanja koga treba da se pridržavaju. Novinari treba da objave svojim gledaocima ili čitaocima bilo kakvu političku i finansijsku podršku kao i svaku saradnju sa državnim organima, kao, na primer, u slučaju reportera zvanično dodeljenih vojnim jedinicama;

8.27. nacionalni parlamenti treba da rade periodične izveštaje o medijskim slobodama u njihovim zemljama, na osnovu gore navedenih principa i međusobno diskutuju o njima na evropskom nivou;

9. Skupština poziva Komesara za ljudska prava Saveta Evrope, da napravi informativne izveštaje o državama članicama u kojima postoje problemi u implementaciji gore navedene liste osnovnih principa, koji se tiču slobode izražavanja.

10. Skupština, takođe, poziva medijske profesionalce i kompanije, kao i medijska udruženja, da primenjuju i dalje razvijaju, gore navedenu listu osnovnih principa važećih za medije.

Preporuka 1848 (2008)

Parlamentarna skupština se poziva na svoju Rezoluciju 1636(2008) o indikatorima za medije u demokratiji i preporučuje Komitetu ministara:

1.1. da usvoji listu osnovnih principa sadržanu u napred navedenoj Rezoluciji;

1.2. da uzme u obzir ovu listu kada procenjuje stanje medija u državama članicama;

1.3. da ustanovi indikatore za funkcionisanje okruženja za razvoj medija u demokratiji, bazirane na ovoj listi i sačinjava periodične izveštaje o stanju u medijima u državama članicama, sa osobenostima za svaku od njih.

INTRODUCTION

Freedom of expression and freedom of the media are an essential requirement of each society's development and democratization.

Even though the media in Serbia have been developing in a democratic environment for nine years, it is evident that reforms in this sector were not conducted in full compliance with international standards. Political and economic influence on the media is still strong. Changes are insufficient and slow and there is a lack of comprehensive media development strategy. Media laws are adopted as a partial solution of certain media issues. Therefore laws are occasionally in mutual collision. The procedure for amending existing laws and adopting the new ones is long-lasting and complicated, so it is often affected by political influence or subjected to the interests of influential individuals or groups. Consequently, many important media issues are yet to be regulated or are inadequately regulated, such as unlawful media ownership concentration, regulation of cable and satellite distribution (the broadcasting licenses stipulated by law are not being issued in practice) or the widespread broadcasting piracy. The process of digitalization has just started with the adoption of a Strategy, but it will take some time before its realization. Likewise, major problem is also the inconsistency in applying existing laws, contributing to confusion in the media sphere. The privatization of the media has been stopped both due to a collision of regulation and strong political influence. This has led to a deformation of the media market where public broadcasting services, private and public broadcasters, simultaneously operate. These media outlets are subjected to different legal regimes which prevent them from operating on favorable competitive principles. However, the high number of media outlets is not accompanied by a pluralism of ideas: on the contrary, reporting is quite uniform, with a few exceptions. Finally, broadcasting regulatory authorities are not transparent and independent enough in their work while self-regulation of print media has utterly failed.

Considering the significant role of media for the democratization of society, but realizing the above mentioned real situation in media sphere, ANEM has envisaged a continuous, professional and comprehensive legal monitoring of the media sector as a new advocacy tool for the continuation of media reforms. As of May 2009, the monitoring is being conducted by ANEM's law office „Zivkovic&Samardzic", in cooperation with ANEM and with the support of USAID and IREX Serbia. Identified problematic issues and shortcomings will suggest what should be revised in media legislation or practice in order to create favorable media environment.

The monitoring implemented so far points to several important facts.
Freedom of expression and freedom of the media are still not exercised on a satisfactory level. Violations of these freedoms are many and take different forms. A noteworthy example is the campaigns waged by one media against other media outlet instigated by certain powerful individual or groups, hidden behind campaigns. Regardless of the fact that legal framework is mostly harmonized with international standards the practice of indigenous courts often diverges from that of the European Court of Human Rights when it comes to the application of the Article 10 of the European Convention.
The fragile **media regulatory framework** has lately been seriously contravened with the passing of new laws, as well as with the amendments to the existing ones, hastily and without public debate. Such actions of the authorities show that, unfortunately, prepared to act effectively only when the matter is in their own interest. By amending the Personal Income Tax Law the parliamentary

majority displayed a lack of understanding for the economic position of media and by amending the Broadcasting Law it also managed to provide the mechanisms of absolute control over the election of RBA Council members, the regulatory broadcasting body. Two laws the Parliament voted on August the 31st, 2009 are a major threat to the position of the media. The draft Law on National Minority Councils is contrary to media laws and is creating additional problems in the domain of media privatization and the functioning of the media market, by opening the door for the survival of state and quasi-state media. The changes to the Public Information Law, due to the procedure of its drafting and proposed solutions, might not be proportional to the desired goal and may objectively threaten freedom of expression, even if caused by genuine problems in the media sphere and extreme irresponsibility of certain tabloids. On the other hand, some other laws significant for improving the situation of the media are yet to be on agenda of the Parliament, although they have been prepared for quite some time. The latter is the consequence of a lack of interest of the competent authorities or even opposed interests, such as in the case of the Law on Unlawful Media Concentration and Transparency of Media Ownership or the new Law on Copyright and Related Rights.

The monitoring of the activities of the competent authorities and organizations has shown that these bodies in charge have not yet ensured a favorable environment for unhindered operation of the media. In addition to the said negative changes to the regulatory framework, the tardiness and inefficiency in addressing issues relevant for the media development are also contributing to the increasing collapse of the media sector. Some of these issues include: the continuation and completion of media privatization; closing down of pirate broadcasters; the reduction of the fees charged by regulatory bodies and collective societies for the protection of copyrights and related rights - to a more realistic level, in proportion to the benefits the broadcasters obtain from these bodies and organizations; unequal treatment of the media and a more favored position of some media outlets; the regulation of cable and satellite distribution. Another pressing problem the media (and not only the media) are to face with is the economic crisis. Although the Government passed on June 25 2009, the Conclusion on Regulatory Measures for Assistance to the Media in Crisis, which pertains to some of the above cited media problems, it has failed to put in place the mechanisms to implement these measures. To the extent they were implemented, they have produced insufficient results: the Republic Broadcasting Agency (RBA) has somewhat reduced its fees, but with unequal effect on all broadcasters; the results of the Competition of the Ministry of Culture for the co-funding of media projects are yet to be disclosed, but these funds are not sufficient for improvement of the situation in the media.

The main findings of the previous three-month monitoring are that the lack of a clear and consistent strategy for the development of the media sector is creating an unstable environment for the development of the media and the media market.

The results of three months monitoring are, among others, the basis for the choice of the themes which will be further detailed in specialized ANEM Publication. Quarterly editions of this Publication will contain expert authors' texts on issues that have been estimated through previously conducted monitoring as relevant for the media.

Relying on the results of the monitoring implemented in the period May-July 2009, this first edition of the specialized Publication offers the following content: the always relevant **question of exercising freedom of expression** is elaborated through case studies, in the first text of this Publication. The second text pertains to the **amendments to the Broadcasting Law** which regard exclusively to the election of the RBA Council members, as a first rough change to the regulatory

framework in period observed. The chronology of the hitherto amendments to the said Law, with a special oversight of the latest ones, aims to clarify their meaning and consequences. The third and fourth texts also concern the regulatory framework for media development but these regulations are changing the said framework in a positive way. The new solutions of the **Law on Copyright and Related Rights**, which is elaborated in the third text, will significantly improve the position of electronic media before collective societies if adopted in the proposed wording. The fourth text relates to the **Digitalization Strategy**, which is of exceptional importance for electronic media, because it provides a framework for the process of transition from analog to digital broadcasting, which must be completed until the switch-off date, April 04, 2012. The fifth and last text is the Council of Europe document entitled **"Indicators for Media in Democracy"**, which will help us to better understand how far or close we are to European standards in the area of freedom of expression and the media freedoms.

This Publication and all the coming editions are another form of ANEM's efforts to contribute to the continuation of media reforms in Serbia which are more than obviously needed for further democratization of society.

Case Studies: Freedom of Expression Breaches

Slobodan Kremenjak, lawyer[1]

Introduction

Article 18 of the Constitution of the Republic of Serbia stipulates that human rights, protected by the Constitution and validated by international treaties, shall be applied directly and that the provisions thereof shall be interpreted so as to promote the values of democratic society, in accordance with the applicable international human and minority rights standards, as well as the practice of international organizations overseeing their implementation. The same applies to freedom of expression, guaranteed by the Constitution and ratified by the European Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Serbia-Montenegro – International Treaties, no. 9/2003, 5/2005), pursuant to which Serbian courts are obliged to directly apply the provision 10 of the European Convention, in keeping with the case law of the European Court of Human Rights.

Unfortunately, in the judicial practice in Serbia, there are still verdicts that are clearly restricting freedom of expression, in contravention of both national regulations and ratified international treaties, even more so in contravention of the European Court of Human Rights judicial practice.

Case 1

In the Municipal Court in Nis, in April 2009, Judge Jasmina Andrejevic ruled in a first-degree verdict that journalist Dragana Kocic and Editor-in-Chief of the Narodne Novine newspaper, Timosenko Milosavljevic, must pay one million dinars of damages to Major Zarko Surbatovic, the former Head of the Military Directorate for Legal and Property Affairs of the Serbian Army, and to his wife Gordana Surbatovic. Judge Andrejevic, ruling upon Surbatovic's damages claim for mental anguish over stained honour and reputation, has pronounced Dragana Kocic and Timosenko Milosavljevic liable for having published a content of the indictment against the Surbatovics, instituted in the District Public Prosecutor's Office in Nis.

In accordance with the provision of Article 82 of the Public Information Law of Serbia, the journalist and the editor-in-chief are not responsible for the damage, even if the information is untrue or incomplete, if it has been faithfully transmitted from the public parliamentary debate or public hearing in a parliamentary body, or from court proceedings or a document of a competent government authority, which is the case here. What makes the whole matter even more paradoxical is that Major Surbatovic, according to the same indictment, which was published in Narodne Novine, was condemned to a prison sentence and his wife Gordana Surbatovic, together with a third person, was given a conditional sentence, for having enabled Gordana's mother – Surbatovic's mother in law – to unlawfully collect 8,2 million dinars of damages for a house in Urosevac in Kosovo, which was allegedly used and damaged by army troops in the spring of 1999. In the damage proceedings, Surbatovic, as the Military Attorney, failed to exempt himself from the proceedings and he even had,

[1] Law Office "Zivkovic&Samardzic", Belgrade

on behalf of his mother-in-law and together with his wife, written the damages claim from the Army. After the Court in Leskovac awarded the damages to his mother-in-law and the Nis District Court rejected the Army's appeal, Surbatovic ordered the already written review not be sent to the Supreme Court, in breach of the Army's Interest. Kocic and Timosenko announced they would file an appeal. In the appeal proceedings, the Nis District Court is expected to revoke the ruling of the Municipal Court.

However, what is particularly worrying is that this is not the only case in which the Serbian judiciary is ignoring both valid national regulations and ratified international treaties and the European Court of Human Rights judicial practice. For instance, ANEM member – the Belgrade-based national radio and television station B92 – is currently subject to several court proceedings, which remind of the case against Dragana Kocic and Timosenko Milosavljevic in Nis.

Case 2

The First Municipal Court in Belgrade is conducting proceedings in which the plaintiff Predrag Tarbuk from Novi Sad is claiming damages from Veran Matic, the Editor-in-Chief of B92 and Brankica Stankovic, author of the program "Insider", over the claims from that program that, in the "White Book" of the Serbian Ministry of Interior, Tarbuk is mentioned as the boss of one of Novi Sad's criminal groups, suspected of stealing and reselling cars. The files of that case contain a paper in which the Ministry of Interior confirms that Insider's allegations faithfully reflect the contents of a police document entitled "Criminal Groups and Individuals Involved in Organized Crime", better known in the general public as the White Book. In spite of the police confirming that, in the concrete case, the information aired in "Insider", is the one contained in the police document, which the Public Information Law envisages as grounds for excluding liability, the proceedings are still underway and their income is uncertain.

Case 3

The Fourth Municipal Court in Belgrade is conducting criminal proceedings, launched *ex officio* by the Fourth Municipal Public Prosecutor, against B92 journalist Ivana Momcilovic and editors Antigona Andonov and Jasmina Karanac, for the criminal offense of breaching the secrecy of proceedings. The journalist and the editors are accused of having violated the secrecy of the proceedings conducted before the District Court in Belgrade against the members of the so-called "Toll Mafia", by having published the content of transcripts of the defendants' phone intercepts, in the parts pointing to possible involvement of certain high officials of the Serbian Government, which were not included in the indictment. According to the current regulations, breaching secrecy of proceedings is a criminal offense for which liability may *only* rest with the *participants in the proceedings* who disclose, without approval, what they have learned in the proceedings and which may not be disclosed by law or has been declared a secret by the court or other competent authority, but *not the journalists, who have not taken part in the proceedings* and who have obtained the information about the content of the transcripts outside of the proceedings and indirectly. In addition, the Public Information Law explicitly stipulates that information on events and persons, which the public has a reasonable interest to be aware of, regardless of the manner of obtaining such information, may be published freely. These proceedings are also underway, with an uncertain outcome.

Amendments to the Broadcasting Law

Slobodan Kremenjak, lawyer[1]

Chronology of Broadcasting Law changes

The provisions of the Broadcasting Law, concerning the election of the members of the regulatory body, were changed – not for the first time – in May 2009. We hereby remind that the same provisions - as compared as to the first draft of Law of the working group of the Media Center and NUNS comprising domestic experts, assisted by Council of Europe and OESCE experts – were first changed by the Government, prior to the adoption of the Law in Parliament in 2002. The provisions governing the election of the regulatory body were also changed in 2004, then again in 2005 and 2006 and ultimately in 2009 by the Law Amending the Broadcasting Law. What is it all about and what did the legislator want to achieve with all these changes to the provisions of the Law pertaining to the election of the sector regulator?

The already mentioned draft of the working group envisaged the Republican Broadcasting Agency (hereinafter: RBA) Council to have 15 members, whereby the majority of them are proposed by civil society. The Government changed that draft and the Parliament ultimately adopted that text of the Law, according to which the Council has 9 instead of 15 members. The list of authorized proposers was also changed to the loss of the civil sector. Pursuant to the adopted concept, republic and provincial parliaments and governments were entitled to propose four of a total of nine members of the Council; two members were to be proposed by universities and churches; NGOs and media organizations were entitled to propose two members and the ninth member was to be chosen by the remaining eight members, where the ninth member must be living and working in Kosovo.

The changes to the Law from 2004 were justified by the need to overcome the blockade in the activities of the first composition of the Council. The blockage was caused by the fact that the first election of the Council in 2003 was spoiled by a violation of the legal procedure, avoiding the public in the candidacy of two members, as well as by the fact that one of the elected members didn't even meet the formal requirements for membership. Amendments to the Law have again changed the list of authorized proposers. Namely, instead of the republic Assembly and the republic and provincial governments, the authorized proposer of candidates for three Council members, shall be the Culture and Information Committee of the Serbian Parliament. The changes from 2005 - which were justified by the impossibility to determine the term of office of Council members by draw – set the longest term of office to three Council members proposed by the Culture and Information Committee, thereby additionally boosting the influence of the said Committee on the Council. With the changes from 2006, the University Conference, a body established by the new Higher Education Law, became the authorized proposer instead of the Rector of the University. Moreover, instead all churches and religious communities, only those with the status of traditional ones were entrusted with the right to propose Council members, thus eliminating small churches and religious communities from the candidacy process.

[1] Law Office "Zivkovic&Samardzic", Belgrade

The last changes of the Law

The new changes to the Law from May 2009 have entitled the Parliamentary Culture and Information Committee to carry out a short listing of candidates, in the case of a greater number of NGO candidate lists, as well as a greater number of professional association lists (broadcasting media associations, journalists, film and drama artists and composers), as well as in the case of candidate lists with more than two candidates. At that, the Culture and Information Committee is not bound by any criteria of such short listing.

The adopted changes were justified by a lack of solution in the Law governing that situation, in which NGOs did not manage to agree upon one candidate list and instead submitted two, as well as the situation in which on the media organizations' list there were three names instead of two.

Namely, on prior public call by the Parliamentary President, ANEM, NUNS, NDNV and APRES have agreed upon a list which had two candidates. The Culture and Information Committee, however, returned the list, insisting it be coordinated with two additional organizations Srpskom TV mrežom (Serbian TV Network) and Klubom turističkih novinara (Tourism Journalists' Club). Although convinced that the Serbian TV Network and the Tourism Journalists' Club are not formally eligible to be authorized proposers, at the insistence of the Culture and Information Committee, the candidate list with three names have finally agreed upon, as the only viable one – due to irreconcilable positions of APRES on one side and the Serbian TV Network and the Tourism Journalists' Club on the other.

The stated rationale for the Culture and Information Committee to refuse to decide upon two NGOs lists and upon one list with three candidates of media organizations was completely unfounded. First, because the Law, in the text effective prior to the changes, explicitly stipulated that, if NGOs propose more than one candidate list, the valid list shall be list bearing the signatures of a greater number of organizations that in the previous period had a greater number of undertaken events, initiatives and issued publications. And second, because the Law, in its text before the changes, did not exclude the possibility for the candidate list to have more than two candidates. On the contrary, the Law only excluded the possibility to have less than two candidates, since in that way, the Parliament, which must choose among the proposed candidates, would be brought in the situation to vote about a single person, without any contender.

Trying to ensure the support for intended change to the law, the Culture and Information Committee held on March 18th a session on which the representatives of professional media associations – participants in the current candidacy cycle for new Council members – were invited. At that session of the Committee, the representatives of professional media associations and NGOs have explicitly stated to be against the changes to the provisions regulating the election of Council members, at the time when this election was underway and insisted that the Parliament chooses the members of the Council on the basis of candidate lists that had already been submitted. In the situation in which the Committee had to either inform the authorized proposers that it has rejected their lists or to leave additional time for their coordination, the Committee posted on the Parliament website a report that did not reflect accurately the discussion on the session. The epilogue was that the Committee failed to secure, although it was its duty, that new Council members be elected prior to the expiry of the "old" members' term of office. Unfortunately, the invitation of media association and NGOs to the Committee to elect the members of the Council from the already submitted candidate lists was ignored. The amendments to the Law have been

adopted, practically as an alibi for the omissions in the work of the Committee, at the proposal of a large number of MPs of the ruling majority, who avoided the competencies of relevant Ministry of Culture, while on June 19th, the President of the Parliament announced a public call for the submission of new candidate lists.

Conclusion

The mentioned amendments show that in Serbia, in a continuous process from 2002 onwards, legally prescribed mechanisms for the protection of the regulatory body's independence are being subverted. The Parliamentary majority, both in the previous and in the current Assembly, has directly affected – by introducing changes to the Law – to the composition of the Broadcasting Council.

The previous Parliament changed the Law in 2004, in order to be able to elect again the entire Council, instead of repeating the procedure in the case of three unlawfully elected members. The current Parliament changed the Law, instead of voting on valid candidate lists. There wasn't a single reason for changing the Law, except for the desire of the ruling majority to prevent the Parliament from voting for the candidates that were not to the liking of that same ruling majority. The result is indisputable: the narrowing or even the cancelling of the possibility for the civil society sector to have any influence whatsoever on the election of Council members and the accumulation of ever increasing authority in the hands of the Culture and Information Committee of the Serbian Parliament.

The consequence of the latest changes is that the Committee, whose composition reflects the distribution of political power in the Parliament, shall in the future be in the position not just to propose candidates for three out of nine Council members, but also to, unbound by any publicly or previously determined criteria, perform the selection of NGOs and media association candidates. The ruling majority has thus provided itself with mechanisms to influence in the future the election of the complete composition of the Council, threatening in that way its independence.

New Law on Copyright and Related Rights[1]

Vladimir Maric, MA[2]

Introduction

The Law on Copyright and Related Rights from 2004 which regulates, in a comprehensive manner, the issues of copyright and related rights is one of the most complex laws in our legal system. Although it includes a number of concepts that regulate, in modern way, societal relations in the area of copyright and related rights, four years of its implementation have shown that certain legal concepts, due to their partiality and lack of precision, can not adequately address real-life challenges. The new Law on Copyright and Related Rights (hereinafter: the Law) removes the unclearness that has been creating confusion in its application and introduces new legal institutes that will guarantee more order and higher legal security in this domain. The bulk of changes are to be found in the parts entitled "Collective Exercising of Rights" and "Related Rights" and envisages the best solutions modelled after European laws and European practice.

New solutions

Right of the publisher of print publications to a special fee

The Law provides for the introduction of a new related right in favour of the publisher of print publications. It is the right to a special fee that the said publishers will enjoy under identical conditions as for the authors. The authors hold the exclusive right to allow or disallow another person from utilizing its work. Nevertheless, the said exclusivity is not absolute and is subject to certain limitations. One of these limitations, according to the Law, is that "the natural person is allowed, without the author's approval and without paying the author fee, to produce copies of the published work for personal, non-commercial purposes". This "privilege" granted by the Law to natural persons affects the interests of the author and the publisher, today more than ever before. Owing to technological progress and very affordable copying devices, the possibility to quickly and cheaply produce quality copies of author's works has become accessible to a large number of people. The 2004 Law therefore envisaged that authors and holders of related rights are entitled to a special fee from the sale of devices that may be used for the copying of author's works and related rights objects, as well as to a fee from the sale of audio-visual and text carriers (CDs, DVDs, etc.). The said Law did not, however, recognize this right to publishers of print publications, which, due to the above described copying practice, are also suffering damage, and the new Law has sought to remedy that. In practice, the authors and publishers of print publications shall enjoy the right to a special fee through their organization. The Law has also addressed the issue of the allocation of such fee: it will be divided equally between the author and publisher, which is a European standard in the area of collective exercising of these rights. The solidary debtors of the said special fee are the manufacturers and importers of sound recording and visual recording devices, Xeroxing machines and other similar appliances, as well as the

[1] Draft on Law on copyright and related rights has passed the public consultations and it is submitted to authorities and Government of Republic of Serbia for further reviewing , thereupon it goes on Assembly procedure for adoption

[2] Head of Department for Trademarks, Intellectual Property Office, Republic of Serbia

manufacturers and importers of empty audio-visual and text carriers. The 2004 Law also stipulates that the solidary debtors of the said special fee are the importers of audio-visual and text carriers, but stops short of specifying that imports and sales must pertain to "empty" sound carriers. This imprecision has been remedied by the new Law.

New restriction of the copyright in favour of persons with disabilities

The Law provides for a new restriction of the copyright in favour of persons with disabilities. According to the new Law, it is possible, without the consent of the author and without paying the author fee, to copy and market author's works in a form suitable for persons with disabilities. An example would be printing a book in Braille alphabet. This restriction aims at preventing a situation in which the author's monopolistic right would represent an unreasonable or discriminatory hurdle for accessing author's works by persons with disabilities. The wording of the new copyright restriction, together with a consistent recourse to collective provisions on copyright restrictions, shall fully provide for this restriction to be applied only in exceptional cases that are not contrary to the typical exploitation of the work and so as to avoid breaching the legitimate interests of the author.

Determining the tariff of organizations for the collective exercising of copyright and related rights

In the area of collective exercising of copyright and related rights, problems have emerged in recent years pertaining to the way of determining the tariff of organizations for the collective exercising of copyright and related rights. The 2004 grants the liberty to organizations for exercising of copyright and related rights to completely independently set the fee for exercising of copyright and related rights. At the present time, these organizations are not obliged to negotiate this very important issue with the beneficiaries of author's works and objects of related rights. For this reason, the beneficiaries are forced to pay the organization a fee imposed by the organizations. This makes the beneficiaries rightfully dissatisfied. In that part, inspired by the European practice of collective exercising of copyright and related rights, the Law introduces fundamental changes. While the 2004 Law stipulates that the amount of the fee is the expression of the will of just one party – the organization - according to the new Law, this fee will be the outcome of negotiations between the organization and the representative beneficiaries' association. That provision is removing the organizations' monopoly and imposing the principle of negotiations between these organizations and author's works beneficiaries. After an agreement has been reached, the organization publishes the tariff of the fee in the Official Gazette of the Republic of Serbia and such tariff becomes binding for all generic beneficiaries of author's works and objects of related rights in our country, irrespective of they have participated in the negotiations or not. Such way of determining the tariff of the fee exists in the legislation of many European countries, namely in Germany, Switzerland, Croatia, Slovenia, Romania, just to name a few.

Failing an agreement on the tariff between the organizations and the representative beneficiaries' association or if a representative association of beneficiaries in a certain activity does not exist, the tariff shall be proposed by the Management Board of the organization for collective exercising of copyright and related rights. Such tariff proposal shall be submitted to the Copyright and Related Rights Commission for approval. The Commission is a body that is established for the first time in the history of collective exercising of copyright and related rights in our country. Similar institutions already exist in more developed countries and the introduction of such an institution in the legal system of our country shall ensure more order and legal security for all players in the process of determining the level of the fees for exploiting author's works and objects of generic

rights. In any case, the tariff must reflect an equitable balance between the private and public interest, whereby the authors and holders of generic rights would be adequately compensated for their work, while the users would be certain to be using author's works and objects of generic rights legally. In the case the said balance is not achieved by negotiations, a third party must joint the talks – the Copyright and Related Rights Commission. The members of the Commission shall be elected from the ranks of renowned experts acquainted with the matters related to author's works and objects of generic rights. The proposed concept also enables interested persons and registered collective organizations and representative beneficiaries' associations to put forward their proposals for the election of Commission members.

Mandatory collective exercising of the right to a fee from broadcasting and public communication of interpretations recorded on published phonograms

The Law also provides for mandatory collective exercising of the right to a fee from broadcasting and public communication of interpretations recorded on published phonograms. The holders of the right to the said fee, performers and producers of the phonograms, can not know who, where, how and how frequently the published phonogram/the interpretation recorded on it is being used. Therefore, exercising these rights through a collective organization is the only possible solution. Another reason for introducing the mandatory collective exercising of these rights is that there are already organizations in the Republic of Serbia that are collectively exercising the rights of phonogram producers and performers.

According to the 2004 Law, the right to a fee from broadcasting and public communication of phonograms and interpretations recorded on them belongs to the producers and performers of the phonogram and these two fees are collected from the users as a single fee. In order to secure a unified collection of these fees, the solution was kept according to which a single organization is collecting the fees from beneficiaries broadcasting or publicly communicating the published phonogram and the interpretation on it. However, as opposed to the current concept, according to which the single fee was collected by the organization of phonogram producers, the new solution provides for the organization that will be collecting the single fee to be determined by an agreement between the performers' organization and the organization of phonogram producers. Hence, the performers' organization has been allowed to participate on equal footing in setting the tariff for the fees together with the organization of phonogram producers. The Law regulates in detail the conditions for the allocation of the collected single fee between the organizations, in the case the latter fail to agree upon the said allocation between them. At the time of passage of the 2004 Law, there was a phonogram producers' organization. Today, in addition to the said organization, Serbia also has a performers' organization and there is no reason anymore for the law to prescribe which one of them will collected the single fee from the beneficiaries. The Law leaves up to the organizations to enter into an agreement regulating, as it was mentioned, which one of them will be collecting the fee, what will be the amount of collection costs and how frequently the organization entrusted with the collection will deliver a part of the collected single fee to the other organization. Only after the said issues are regulated by an agreement and this agreement is published in the Official Gazette of the Republic of Serbia, the organization that has been entrusted with collecting the single fee may begin to carry out the said collection.

The right of the author to allow or disallow the broadcasting of the author's work

The right of the author to allow or disallow the broadcasting of his/her author's work is part of his/her property rights and is guaranteed by the 2004 Law. Broadcasting is a form of public

communication of the author’s work. It is performed by transforming the content of the author’s work, by the means of the appropriate devices, into radio or television signals and then transmitting by wire, wirelessly or by satellite to end users. A television or radio program is a well-known example of broadcasting an author’s work.

Broadcasting and retransmission of author’s works

The new Law introduces several changes in the part governing broadcasting and retransmission of author’s works. The definition of broadcasting has been changed so as to put it in line with the EU Directive on satellite broadcasting and cable retransmission (93/83 EC). Broadcasting is now defined as “communication of work to the public by wire or by air of radio or television programs intended for reception by the public (radio broadcasting and cable broadcasting)”. The 2004 law refers to communication of the work to the public by transmission of electromagnetic, electrical and other signals at a distance”. The term “broadcasting company” was also changed and replaced by the term “broadcasting organization”.

Certain novelties pertain to the retransmission of author’s works. The new Law stipulates that the author has the exclusive right to allow or disallow another party to simultaneously communicate the author’s work that has been broadcasted, by cable retransmission. The author may exercise that right only through an organization for the collective exercising of copyright and related rights. The EU Directive on Satellite Broadcasting and Cable Retransmission provides an exception to that rule, which has been adopted by the new Law. Broadcasting organization shall not be obliged to exercise their rights collectively in the case of cable retransmission of their proprietary programs. This rule shall apply to both their proprietary author’s programs and to the programs which have been contractually acquired. These changes have not only harmonized the Law with the said EU Directive, but they have also addressed the objections of program producers, who have been emphasizing the need for entering into individual contracts with domestic cable operators (and not collective agreements provided for by the 2004 Law), pointing to their custom practice in the EU.

Finally, the Law provides for the rights of authors related to the retransmission of their works to be exercised individually, until the appropriate organization is established in the Republic of Serbia for the purpose of collective exercising of rights and no later by the accession of the Republic of Serbia to the European Union. The 2004 had also postponed the obligation of collective exercising of these rights for two years, counting from the day of the coming into force of the Law. Such solution was imposed by the fact that, at the time of the entering into force of the 2004 Law, Serbia did not have the proper organization of the collective exercising of rights. More than four years have passed since the 2004 Law entered into force and the organization for the collective exercising of rights to audiovisual works, which would assign to cable operators the rights to broadcast works from its repertoire, is yet to be established. This had lead to a situation in which certain cable operators have refused to pay the fee for the broadcasting of audiovisual works, indicating that they are not entitled to enter into individual agreements with certain holders of rights, since the latter would be in contravention of the 2004 Law, which provides for these rights to be exercised on a collective basis. In order to avoid a similar problem, the new Law has associated that term to the date of founding of a given organization for the collective exercising of the rights of audio-visual work authors and no later than the date of Serbia’s accession to the European Union. The date of the prospective EU accession has been referred to because at that time, foreign organizations for the collective exercising of these rights would be allowed to operate in Serbia.

The process of transition from analog to digital broadcasting in the Republic of Serbia

Jelena Surculija, MA[1]

Introduction

At the Regional Conference on Radio Communications, organized by the International Telecommunications Union (ITU) in 2006 in Geneva, the Republic of Serbia signed the GE06 Agreement, thereby committing to switch to digital broadcasting of radio and television signal no later than by June 17th, 2015, the same as all other European countries. In the meantime, the European Union has proposed its members to transfer completely to digital broadcasting by early 2012.

On 9 October 2008, the Ministry of Telecommunications and Information Society (hereinafter: the Ministry), in cooperation with the Ministry of Culture, the Republic Telecommunications Agency (hereinafter: RATEL) and the Republic Broadcasting Agency (hereinafter: RBA) established an inter-ministerial working group with an aim to draw up a Draft Strategy and Action Plan for the transition from analog to digital radio and television broadcasting in the Republic of Serbia.

Meanwhile, on 25 December 2008, upon the proposal of Ministry, the Government of the Republic of Serbia adopted the Conclusion on the exclusion of the broadcasting system from the RTS Broadcasting Company; on 22 January, the Government adopted the Conclusion on „Grounds for Composition of the Strategy for the Transition from Analog to Digital Broadcasting of Radio and Television Program in the Republic of Serbia".

Public consultations, the international conference and public hearing prior to the adoption of the Strategy and Action Plan

Immediately after the Government Conclusions, the Ministry decided to initiate public consultations about the topics to be encompassed by the Strategy for the Transition from Analog to Digital Broadcasting of Radio and Television Program. Public consultations were held from 23 January to 27 February 2009; in this period, valuable opinions on the process of drawing up the Strategy and Action Plan were gathered from experts and the general public.

In order to position ourselves relative to neighboring countries and those from the wider region, the Ministry, in cooperation with the International Telecommunications Union, organized a regional seminar and ministerial round table session on transition from analog to digital TV program broadcasting. The conference was opened by the Secretary General of the International Telecommunications Union Dr. Hamadoun Toure; delegations from more than 20 countries of Central and Eastern Europe tried to provide answers to regulatory, technical and economic challenges related to the transition from analog to digital broadcasting of TV program in the

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Republic of Serbia and in the region. The conference agenda and presentations are available on the Union's website: www.itu.int/ITU-D/eur/europe/2009-MRT-Broadcasting/index.html

On the basis of the results of public consultations and the international conference, the inter-ministerial group prepared the Draft Strategy and Action Plan. The Ministry immediately organized a public debate from 22 May to 12 June 2009. In addition to objections and suggestions voiced at the round table sessions in Belgrade, Novi Sad and Nis, thirteen written comments were submitted, and are available at the following website: http://www.mtid.gov.rs/aktivnosti/javne_konsultacije/strategija_i_akcioni_plan_za_prelazak_na_digitalno_emitovanje.521.html .

The Strategy for the transition from analog to digital radio and television broadcasting in the Republic of Serbia[1]

The first and foremost goal of the Strategy is to provide for unrestricted terrestrial reception of program after the transition to digital broadcasting and total phasing out of analog program broadcasting on the territory of the Republic of Serbia. The Strategy envisages a regulatory framework necessary for successful implementation of digitalization, provides guidelines for technical standards, suggests new program content, economic aspects, as well as the way of informing the citizens on the digitalization process. In order for the Strategy to be successfully implemented, as well as for the public to be able to monitor compliance with the time limits, it includes the Action Plan with detailed activities, authorities in charge of their implementation, precise time limits and deliverables.

Citizens will benefit from digitalization by obtaining better sound and picture quality, more diverse content, a greater number of radio and television programs, new services for persons with special needs and the elderly, advanced additional services, portable and mobile program reception, as well service convergence. Digitalization will enable providers to adapt content to the needs of various target groups, interactivity, as well as the possibility of providing services at request, lower broadcasting costs and service convergence. As for the government, digitalization will allow more efficient use of the radio frequency spectrum, usage of the freed part of the spectrum for new services, promotion of new technologies development and new job positions, promoted competition and more opportunities for improving creativity and preserving cultural identity.

The Republic of Serbia opted for switching to digital television broadcasting by Wednesday, 4 April 2012. MPEG-4 was chosen as the data compression method and DVB-T2 as a standard for digital television broadcasting.

The existing regulatory framework of the Republic of Serbia, which will be implemented during the transition from analog to digital broadcasting, comprises the Public Information Law, the Broadcasting Law, the Telecommunications Law, as well as the Strategy for Development of Broadcasting in the Republic of Serbia by 2013 and the Strategy for Development of Telecommunications in the Republic of Serbia from 2006 to 2010. However, there are a number of

[1] The Strategy was adopted at the session of the Government of the Republic of Serbia on 2 July 2009.

laws and by-laws which need to be adopted in accordance with international and European standards, bearing in mind the specific needs of the Republic of Serbia. The Action Plan provides for the necessity of adopting the Final Acts of the Regional Conference on Radio Communications for planning of the Digital Terrestrial Broadcasting Service in parts of the Regions 1 and 3 at frequency bands 174-230 MHz and 470-862 MHz (ITU RRC-06). On 29 June 2009, upon proposal of the Ministry of Culture, the Parliament of the Republic of Serbia adopted the Law on Ratification of the European Convention on Cross-Border Television, which marked the final ratification of the Convention by all Council of Europe member states. The Ministry of Culture needs only to file to the Parliament for adoption the Law on Ratification of the European Convention on Protection of Audiovisual Heritage, as well as the drafting of the new Law on Electronic Media, which will be harmonized with the EU Directive on Audiovisual Media Services. As for regulatory priorities in implementation of the existing regulatory framework of the Republic of Serbia, the Ministry of Telecommunications and Information Society has the task to pass a Rulebook to define the rights and obligations of commercial broadcasters in the process of transition to digital broadcasting, taking into consideration the rights of such broadcasters granted to them in line with their licenses which are valid for a period longer than the time limit envisaged for switching off of the analog signal. This in necessary to enable RATEL, on the basis of that document, to pass a Decision on additions and amendments to the existing licenses, in a manner so as to avoid interference with the program aspect, changes in the service zone or shortening of the license validity periods.

Development of the legal framework will enable development of the market, diversity and pluralism on the media scene, but also the rule of law in the domain of electronic media; therefore, compliance with the required time limits is crucial for successful transition to digital broadcasting.

The Strategy also provides details of program content, namely various types of multimedia content that will be available in digital setting, such as audio, video, text, interactive services and a combination of the said content. Digital setting will enable creation of conditions for development of freedom of expression, information and media pluralism, introduction of new services in the audiovisual sector, with simultaneous preservation and promotion of cultural diversity and rights of persons with disabilities. Digitalization will provide citizens with access and possibility to use communication, information and interactive services, especially broadband, transmission of multimedia and video applications to mobile and fixed monitors, public security services, such as services in emergency situations. An extensive range of program content from specialized areas is expected, as well as an improved electronic guide through channels. E-trade and e-banking, interactive games and quizzes, information at request, video at request, Internet services, and voting will probably be the most popular interactive services.

From the economic standpoint, the process of transition from analog to digital program broadcasting is planned as a market-oriented process, based on the principles of transparency, non-discrimination and market equality, with clearly defined goals and procedures for existing broadcasting operators and program content providers. The state will opt for one of the three proposed models of subsidizing a part of the costs of purchasing set-up-boxes: assistance to households relying exclusively on terrestrial signal; subsidizing households that are regular payers of television subscription fee; or assistance to socially disadvantaged categories of population. It is important that using a set-up-box, the citizens receiving television signal terrestrially will be able to receive digital program on their old television sets, while the conditions for the citizens enjoying cable television will remain unchanged.

The goal of the information and promotional campaign is to inform the citizens about the significance, reasons, benefits and manner of switching to digital broadcasting. At the same time, the campaign will address issues such as digital television, its advantages as compared to analog television, as well as the ways to use new services brought by the new technology. It will present the dynamics and details of the process of transition from analog to digital television program broadcasting, as well as how each citizen will be enabled, after transition to digital broadcasting, to receive television program without any interference.

The Public Broadcasting Service has been appointed to implement the promotional campaign; for commercial broadcasters, the promotion of the digitalization process will not be included in the twelve minutes apportioned to the broadcasters an hour for commercial purposes. The Ministry of Telecommunications and Informatics Society has undertaken to set up an Internet portal on the digitalization process, an information campaign plan, produce posters and brochures with information relevant for the digitalization process, as well as to enable use of a free telephone number providing information about digital television.

Conclusion

As it may be inferred from the above, the process of drawing up the Strategy is a comprehensive one – major efforts have been invested in order to attract as many participants as possible to contribute to its quality. Broadcasters have often attended round table sessions held in numerous towns, to take part in the discussion or merely listen to what their colleagues or experts think about certain issues. It is important to point out that B92, Pink and Fox – broadcasters with a national frequency – have sent a joint comment on the Draft Strategy and Action Plan. Radio Television of Serbia has actively participated on all levels of the process of drawing up the Strategy; Telekom Srbija, Telenor, VIP, and Erikson together with the relevant experts who wished to express their opinion have contributed as well. All the comments received are available on the Ministry's website indicated above.

In order to act within the deadlines prescribed in the Action plan, it is necessary that all stakeholders in the digitalization process, including the regional and local broadcasters, invest maximum efforts.

Finally, it needs to be emphasized that the Strategy is only dealing with the process of *transition* from analog to digital broadcasting, which means that on the switch-off day, i.e. the day of switching analog signal off, a place in the multiplex will be enabled only to the broadcasters with valid broadcasting licenses which will, at the same time, put the "air" in order.

Indicators for media in a democracy[1]

On 3 October 2008, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1636 (2008) and Recommendation 1848 (2008), both of which are entitled "Indicators for media in a democracy" and are based on an identically-named report.
The Resolution emphasises the importance of freedom of expression, information and the media in democratic society and it puts forward a list of 27 "basic principles" which it regards as a suitable basis for analyses of the media situations in Council of Europe Member States. This (check-)list comprises a wide range of media and journalistic freedoms guaranteed or promoted by other Council of Europe standard-setting texts.

Resolution 1636 (2008)

1. The Parliamentary Assembly recalls the importance of media freedom. Freedom of expression and information in the media is an essential requirement of democracy. Public participation in the democratic decision-making process requires that the public is well informed and has the possibility of freely discussing different opinions.
2. All Council of Europe member states have committed themselves to respecting democratic standards. Democracy and the rule of law are necessary conditions for membership of the Council of Europe. Therefore, member states themselves must permanently monitor their state of democracy. However, democratic standards are also part of universally recognised human rights in Europe and hence are not merely an internal affair of a state. Council of Europe member states must also analyse the state of democracy in all the member states, in particular at the Assembly level.
3. The Council of Europe has set standards for Europe on media freedom through Article 10 of the European Convention on Human Rights (ETS No. 5) and a number of related recommendations by the Committee of Ministers as well as resolutions and recommendations by the Parliamentary Assembly.
4. The Assembly also monitors media freedom before national elections and produces an analysis on the basis of standards set by the Council for Democratic Elections comprising representatives of the European Commission for Democracy through Law (Venice Commission), the Congress of Local and Regional Authorities of the Council of Europe and the Parliamentary Assembly.

5. The Assembly welcomes the comparative assessments of national media situations prepared, for example, by "Reporters Without Borders" (Paris), the "International Press Institute" (Vienna), "Article 19" (London), and other organisations. This work provides for important public scrutiny over media freedom, but it does not relieve national parliaments and governments of their political duty to look at their own media situation.

6. The Assembly also welcomes the UNESCO media development indicators drawn up in consultation with experts from "Article 19", the "West African Newsmedia and Development Centre" and others, which shall help determine communication development strategies within the overall context of national development.

7. The Assembly considers it necessary for a number of principles concerning media freedom to be respected in a democratic society. A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and

potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems.

8. The Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:

8.1. the right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice;

8.2. state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;

8.3. penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed;

8.4. journalists must not be subjected to undue requirements by the state before they can work;

8.5. political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns;

8.6. foreign journalists should not be refused entry or work visas because of their potentially critical reports;

8.7. media must be free to disseminate their content in the language of their choice;

8.8. the confidentiality of journalists' sources of information must be respected;

8.9. exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information;

8.10. privacy and state secrecy laws must not unduly restrict information;

8.11. journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence;

8.12. journalists must not be restricted in creating associations such as trade unions for collective bargaining;

8.13. media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism;

8.14. journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked;

8.15. regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence which goes beyond a mere business or tax registration;

8.16. media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services);

8.17. the state must not restrict access to foreign print media or electronic media including the Internet;

8.18. media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;

8.19. if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality;

8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations;

8.21. public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;

8.22. "private" media should not be run or held by the state or state-controlled companies;

8.23. members of government should not pursue professional media activities while in office;

8.24. government, parliament and the courts must be open to the media in a fair and equal way;

8.25. there should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts;

8.26. journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism;

8.27. national parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.

9. The Assembly invites the Council of Europe Commissioner for Human Rights to draw up information reports on member states where problems exist in the implementation of the above list of basic principles as regards freedom of expression.

10. The Assembly also invites media professionals and companies, as well as media associations, to apply and develop further the above list of basic principles applicable to the media.

Recommendation 1848 (2008)

1. The Parliamentary Assembly refers to its Resolution 1636 (2008) on indicators for media in a democracy and recommends that the Committee of Ministers:

1.1. endorse the list of basic principles contained in the above-mentioned resolution;

1.2. take this list into account when assessing the media situation in member states;

1.3. establish indicators for a functioning media environment in a democracy, based on this list, and draw up periodical reports with country profiles of all member states concerning their media situations.

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[1] Texts of Resolution 1636 (2008) and Recommendation 1848 (2008) are completely and in unchanged form taken from the web site of the Parliamentary Assembly of Council of Europe (available at http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1636.htm and http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/EREC1848.htm) and their publication is authorized by the Office of Council of Europe in Belgrade.