



REPORT FROM ANEM ROUND TABLE II

“Legal Monitoring of Serbian media scene”

ANEM Round Table II “Legal Monitoring of Serbian media scene” was held on November 11, 2009 in the Belgrade Media Center. At this public event, the second printed edition of ANEM identically - named Publication were presented to media and professional public along with the results of the previous three-month legal monitoring. Monitoring, all issues of the Publication and the round tables as well are made possible with the support of USAID and IREX Serbia.

Numerous representatives of state institutions attended the round table, namely: the Ministry of Culture, Serbian Parliament’s Culture and Information Committee, the Ombudsman and the Commissioner; representatives of regulatory bodies - RBA and RATEL; media experts; representatives of media and journalists’ associations (NUNS, UNS, APRES, NDNV, Lokal Press), civil society, international organizations and the donor community as well as media representatives.

The roundtable had two segments. Authors of texts in Publications II presented their articles in the first segment, while the second part was opened for a discussion about the media situation based on the monitoring results from the previous quarter.

The presentation of the Publication began with an address by **Snjezana Milivojevic**, a *Professor of Belgrade's Faculty of Political Sciences and author of the text "Media Strategy for a Digital Era"*. The topic of her presentation was the completely different media world that is in the making and the ways how to respond to the changes it brings, since this moment is defining for the media, in her opinion. Ms. Milivojevic said these changes were not political in nature, as it was the case in previous years; they were rather technology changes that affected market conditions, the economic environment; the cultural context, namely the way we were using the media; and finally, the political environment in terms of public policies and the ways how the state should tackle all these challenges. The fact that these changes are occurring simultaneously is making us think about a strategy that should extend beyond 2012. Everyone involved in the media in Serbia are having a hard time keeping pace with the intensity and the speed of the changes coming from Europe and the world; at the same time, the way we are using the media is changing radically and the audiences are faced with the principle of abundance, Ms. Milivojevic added. She pointed that different social institutions and media communities “were afraid” of the growing changes in the media, which they did not perceive as a new opportunity. The state, namely the Government, which has its line ministries – the Ministry of Culture and the Telecommunications and Information Society Ministry – must be enabled to respond to these challenges and to start defining the issues, because this is the right time to discuss these matters. According to Ms. Milivojevic, Serbia as a society must not go into self-isolation, waiting to merely copy-paste existing European standards, which in the meantime will be redefined and changed; we should rather participate in these discussions and our contribution should be to create a strategy corresponding to the environment and society we live in. Ms. Milivojevic believes such strategy should be a visionary document; not merely a debate about the themes that have been left untackled in the last ten years of transition, but a coherent response of the entire Government – not just of line ministries – to the coming changes. The drafting of the strategy should involve the joint participation of all stakeholders – the media community in the narrow and wider sense; media experts; representatives of public authorities and other important social players, for this is a wider social theme. Ms. Milivojevic indicated that the

role of public authorities, namely the creators of media policies, was not to bring about legislation from the 19th century, make attempts at stifling freedom of expression or tackling occasional and sporadic problems, but to foresee the trends in media development prepare for these trends and enables us, as a society, to prepare ourselves as well.

The following presentation was by **Nevena Ruzic**, *Chief of Staff of the Commissioner for Information of Public Importance and Personal Data Protection* and author of the text “(Right to) Information in Service of Freedom of Media”. She elaborated on the duty of the media to inform the public about every issue of public interest and the obligation of the state to ensure the conditions for the media to be able to fulfill their duty. Mrs. Ruzic indicated that the exclusive feature of our Constitution was that it contained a provision representing a passive right of the citizens to be informed about matters of public interest, accompanied by the duty of public media to respect and make possible the exercise of that right. The above is defining a human right as the duty of private persons (the media) that are not part of the government apparatus, towards other private persons (the citizens), whereby constitutional norms concerning freedom of expression are applied in private legal relations between the said persons. If the Constitution has stipulated for the media not only the right, but also the duty to inform the public, then the state is obliged to provide a legal and social framework enabling the media to fulfill that duty. This does not involve merely the passive role of the state that is obliged to provide information only at request, but also the active role of public authorities, either at or without request, to make available information of public interest. Data classifying as a restraint of the right to freedom of information must be an exception, which, in turn, may be completely clear only with the existence of a legal framework. The media must know what they may and may not publish and have equal access to information, for the rules must be equal for all. The existence of a positive, active obligation of the state in terms of ensuring all conditions for the exercise of the freedom of expression and media is proven by an abundant case law of the European Court of Human Rights. Namely, there were two new important verdicts this year, detailed in the Publication. These sentences have for the first time established (in the first sentence), namely upheld (in the second) the right to free access to information as a fundamental human right guaranteed by the European Convention, as a part of freedom of expression. Such stance by the Court imposes the obligation to the Republic of Serbia to fulfill all conditions for the free exercise of each right, including rights in the domain of media. At the same time, it is important to bear in mind that the European Court's position is that all norms of a particular legislation must be interpreted through the prism and in the interest of human rights, which also applies to ratified international treaties.

Speaking about his text “*Amendments to the Law on Public Information - Key Problems and Risks in Reporting*”, ANEM's attorney **Slobodan Kremenjak**, (Zivkovic & Samardzic Law Office) briefly told the conference why he deemed the amendments in question to be controversial. He warned that, regardless of what one might think about it, the Law was producing legal effects while in force. That means that media must bear in mind that non-compliance therewith entails legal consequences. Mr. Kremenjak also said that many obligations of the media, provided for by the Law, already existed (e.g. the presumption of innocence, juvenile rights, publication of the impressum, etc.) but were now accompanied with different sanctions. Accordingly, certain earlier offences have been raised to the level of commercial offence threatened with a potential ban of activity. At the same time, fines for other offences have been dramatically raised. Nevertheless, with increased caution and in consultation with the lawyers about matters unclear to them, the media may reduce the risks of fines to a minimum. Concerning the passing of the Law and the reasons voiced by the Ministry of Culture for the passing of the Amendments to the Law on Public Information, Mr. Kremenjak said that the outcome (of these amendments) was bad. Regardless of the fact that certain media have been doing their job contrary to all regulations and standards – irrespective of the soft penal policy and unacceptable economic and business practice, due to which the sentences in these cases have not been realized –the amendments to the umbrella

media law should not have been prepared and passed in the way they were, in opinion of all media associations, Kremenjak concluded.

Attorney at Law **Nebojsa Samardzic** (Zivkovic & Samardzic Law Office), the author of the text „*In Focus: the Media Privatization in Serbia*” began his presentation with the observation that in Serbia, neither the legislator, nor the proposers or the executive had ever fully understood or accepted the principles established by the Broadcasting Law. This Law has provided for the state property and control over the media to be removed in the process of privatization, as well as for the establishment of an independent regulatory body for the domain of broadcasting. The diminishing of the influence on media editorial policy was supposed to be ensured with the manner of appointment of media directors. However, even in the case of RTS, the Law was not complied with and the Director was appointed by the then Government, instead of the RTS Managing Board, on the basis of a public competition. Such trend has been accepted at the local level, where the directors of public local media were appointed by the local authorities. Moreover, with the colliding provisions of non-media laws (Law on Local Self-Government, the Law on the Capital City, both from 2007; the Law on National Minorities’ National Councils from 2009) with media laws, a basis was created to avoid mandatory privatization. Namely, with the above legislation, the state has been allowed to be the founder of media and to assign its founding rights over minority media. However, privatization has also faced the resistance of certain media and journalists; hence, various ideas emerged about regional and local public services, without any reaction from the Government so far. The entire situation with media privatization, particularly with the said collision of laws, is bringing about several problems: how will the RBA react in case of a request for a license extension by a media outlet that has not been privatized; local media that have already been privatized are in a significantly less favorable position than those funded from the budget; the problem of influence by local power players on editorial policy persists; the mandatory nature of further privatization remains unclear; etc. The recently scheduled auction of 12 public media companies for December 12th is not an outcome of continued media privatization: it has rather become the eternal topic of media professionals with an uncertain outcome, Samardzic said.

In the second part of the round table, the results of the three-month monitoring were presented.

Slobodan Kremenjak, as the keynote speaker, pointed to the main findings of the monitoring, concluding that, as a society, we have failed to clearly define the position of media in Serbia. Therefore, he added, we are in the situation where media regulations are being used as a bargaining chip between politicians. Hence, our primary task should be to defend the media sector from abuse for other purposes unrelated to media and information, Kremenjak said.

In the debate that ensued, the participants have initiated various topics pertaining to the current situation in the media sector.

Privatization:

The initiative of certain local and regional public media to be given the status of public service and be funded from the RTS subscription fee went, in *Kremenjak's* view, a step further. Namely, the request of these media was unclear until now, except for the part where they are voicing their desire to avoid privatization. It remains to be seen how RTS, as well as the competent authorities, will react to this proposal. Professor *Snjezana Milivojevic* stressed that the only way to defend that initiative was for the said media to become part of the Public Service system and hence to be allotted part of the subscription fee. Ms. Milivojevic added that the Public Service needed a thorough reconstruction. Professor *Miroљub Radojkovic*, from the Faculty of Political Sciences, reminded the participants of another model of transition of the media sector – civil sector media, provided for by Article 95 of the

Broadcasting Law. These are non-profit organizations competing for projects and citizens' donations and could perhaps be a model for further transformation of public media. However, *Kremenjak* reminded that the transformation from public property could not be conducted in such a manner – by assigning assets to NGOs free of charge – although this was permitted in the case of minority media by the controversial Law on National Minorities' National Councils. *Suzana Jovanic* from the Open Society Fund said, in respect of the Professor Radojkovic's assertions, that she wasn't surprised at all that the format of media as stations of the civil sector was not implemented, for the idea itself was not sufficiently dissected. The civil sector did not recognize this media format, neither to establish nor to fund such media. Hence, media professionals should focus on a more systematized debate: what media models exist or should exist; what is the current situation with regard to media financing and how should the latter be organized; what are the international models of financing the media; a reconsideration of the existing model of the Public Service, of public media, as well as commercial stations, in terms of financing and issues of editorial independence, etc.

Implementation of the Law on Public Information:

Sasa Mirkovic reminded the participants of the round table of journalists and judges held in Country Club Babe, Sopot, organized by the OSCE, USAID and IREX, after which a misinterpreted information was leaked to the public about how trade courts' judges and prosecutors' offices would not apply the Law on Public Information. The Ministry of Culture, trade courts and prosecutors' offices later denied that information. *Kremenjak* explained that trade courts and prosecutors' offices had only conveyed in Babe what was observed at a previous meeting with the Ministry of Culture – that certain provisions of the Law were controversial due to the collision with general regulations adhered to by these bodies, which did not mean that the Law itself would not be applied. The risk of misinterpretation would have been reduced had the public been timely made aware of that meeting and its conclusions, the participants agreed.

Media sector strategy:

The Participants wanted to know about the current state of affairs with respect to drawing up of the media strategy. *Sasa Mirkovic* said that the still to be appointed working group for this task would probably hold its third meeting next week, although this was yet to be officially confirmed.

Appointment of RBA Council members:

Sasa Mirkovic said that the media associations had once again agreed upon the list of two candidates (*Gordana Susa* for NUNS and NDNV, with the support of ANEM and APRES and *Branko Zujovic*, proposed by UNS) for their representative in the RBA Council, which they had submitted to the Serbian Parliament' Culture and Information Committee. The Secretary of that Committee *Dragoljub Petkovic* informed the participants that a total of five candidate names were notified by the end of the candidacy procedure (November 10th). In addition to *Susa* and *Zujovic*, the Academy of Performers of Serbia and Association of Film Artists of Serbia (UFUS) have proposed *Bozidar Zecevic* and *Dragomir Brajkovic*, the latter at the same time being the candidate of the Association of European Journalists of Serbia, while the Association of Drama Artists of Serbia proposed *Srboljub Bozinovic*. The Committee shall act according to the procedure and most probably return the lists to the proposers for further adjustment, so that they can agree upon a list with two candidates. *Petkovic* informed the participants of the conference that the agenda of the current session of the Parliament anticipated the voting for members of the RBA Council under the proposal of the civil sector. *Milovan Vitezovic* and *Goran Petkovic* were selected by the Committee out of six civil sector candidates, exercising its legal authority. *Natasa Govedarica* from the Civil Initiatives informed the participants that about 30 most prominent NGOs had submitted a request for canceling that Decision to the Committee, for the candidates *Vitezovic* and *Petkovic* did not

enjoy their support. *Petkovic* said he was not aware of that initiative and that the Committee did not decide about it. He informed the conference that the agenda of the current Parliament session also included the election of the Program Committee of the Public Service, consisting of 19 members, of which 12 are elected by the RBA, while the remaining seven would be selected from the ranks of members of Parliament. In procedure is also the public call for the election of three members of the RBA Council, whose term of office will expire next year and whose members are proposed by the Vojvodina Parliament (which has submitted a list with two candidates: Goran Karadzic and Velimir Kostadinov), traditional churches and religious communities (they are proposing Bishop Porfirije Peric and Vladan Tatalovic). The list of candidates of the Universities' Conference is yet to be submitted, *Petkovic* said.

Digitalization:

Slobodan Kremenjak spoke about the establishment of a new company "Broadcasting Equipment and Communications", which was created by broadcasting equipment and technique separation from RTS, stressing that this company should soon be registered with the Business Registers Agency. However, broadcasting facilities are yet to be taken over officially. The media that have had contracts with the RTS will have to enter into new arrangements and it is still unclear if the new contracts will have to be redefined or whether the new conditions will be more favorable.

Illegally broadcasting:

The President of APRES *Zoran Mihajlovic* indicated, at the end of the session, that pirate broadcasting was the biggest problem in the media sector and that there was a lack of determination to address it. Hence, *Mihajlovic* said, pressure needs to be put on the competent authorities to properly do their job. *Slobodan Kremenjak* reminded that there was a provision in the Penal Code for confiscating the transmitters of pirate broadcasters, which required the readiness of the prosecutor's office and the police to tackle this issue.

This round table has shown that there are many problems in the media sector that last for too long and are not resolved at all, or rather not in the right way, thus leaving an impression of the vicious circle. The Government is obviously not ready to provide favorable conditions for the development of this sector; hence it needs to formulate its own demands and possible ways to accomplish them. Monitoring and such meetings contribute significantly to gradual building up of mutual positions and proposals of the media sector to regulate all the important media issues.