

MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF SERBIAN MEDIA SCENE

ANEM Publikacija IV
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UVOD

Četvrta Monitoring Publikacija ANEMa, druga u 2010. godini, bavi se temama na koje je, kao značajne za medijski sektor Srbije, ukazao prethodni petomesečni pravni monitoring stručnog tima advokatske kancelarije „Živković&Samardžić“.

Period Jul - Novembar 2010. godine, prema nalazu monitoring tima, nije doneo značajnije promene u medijskom sektoru. Problemi koji odavno opterećuju medije i medijske profesionalce, ni u ovom periodu nisu dobili svoje rešenje, a napretka ni u jednoj oblasti nije bilo. Vlast se i dalje ne bavi uzročno, nego samo posledično, povredama slobode izražavanja i to na neadekvatan način, koji nije odvrćajući za ubuduće, što je doprinelo nastavku pretnji i pritisaka, sve češćim fizičkim napadima na novinare, kao i porastu broja medijskih profesionalaca koji su zbog ugroženosti morali da budu stavljeni pod neposrednu policijsku zaštitu. Za njih sloboda izražavanja postaje gotovo neostvariva, jer su onemogućeni da nesmetano obavljaju svoj posao, dok se počinioci napada na novinare kažnjavaju na granici zakonskog minimuma, ili čak i ispod nje, što bitno doprinosi daljoj autocenzuri medija. Na medije obeshrabrujuće utiče i neujednačena sudska praksa u istim ili sličnim slučajevima, ali i sve češće ugrožavanje slobode izražavanja od strane nosilaca javnih funkcija, koji prema ličnoj proceni ili interesima određuju granice informisanja javnosti, naročito u unutrašnjosti Srbije. Ovim razlozima za ličnu i pravnu nesigurnost novinara i medija pridodat je još jedan – nastavak važenja odredbi spornog Zakona o izmenama i dopunama Zakona o javnom informisanju, iako je Ustavni sud još 22. jula svojom odlukom većinu njih proglasio neustavnim. Odluka Suda, iz nepoznatih razloga, do danas nije objavljena u Službenom glasniku Srbije, zbog čega su te odredbe još uvek na snazi. Tako je „krovni“ medijski zakon i dalje izvor posebnog pritiska na medijski sektor, umesto da bude osnov za ostvarivanje slobode javnog informisanja. Ni drugi zakoni koji čine medijski pravni okvir ne pružaju dovoljno sigurnosti medijima, kako zbog prevaziđenosti odredbi, tako i zbog njihovog različitog tumačenja i selektivne primene. Poseban slučaj predstavlja Zakon o autorskom i srodnim pravima, čija je primena u najvažnijem delu za emitere – kod utvrđivanja tarifa kolektivnih organizacija – već mesecima blokirana, jer Vlada još uvek nije formirala nadležnu Komisiju koja ima ključnu ulogu u tom procesu, zbog čega trpe sve zainteresovane strane. Još jedan slučaj kašnjenja vlasti u ispunjenju zakonskih obaveza ima štetne posledice po emitere. Naime, iako je u ovom periodu konačno imenovan direktor Javnog preduzeća „Emisiona tehnika i veze“, prolongiranje donošenja te odluke dovelo je u pitanje održivost predviđenog datuma za analogni switch off (04.04.2012), jer se kasni sa važnim pripremnim aktivnostima za digitalnu tranziciju televizije. U slučaju privatizacije medija, međutim, više se ne može govoriti o kašnjenju, nego o ozbiljnom kršenju medijskih zakona sa izuzetno teškim posledicama za ceo medijski sistem. Medijsko tržište i dalje ne funkcioniše na normalan način, ugrožena je samoodrživost mnogih privatnih medija, koji ne mogu da se izbore za svoje mesto u neravnoj utakmici, ali su istovremeno dovedene u pitanje i osnovne medijske slobode neprivatizovanih medija koji su posebno izloženi pritiscima i uticajima njihovih osnivača – lokalnih samouprava. Dodatni problem predstavlja i to što za privatizaciju medija više ne pokazuju interes ni investitori, što značajno otežava položaj onih medija koje ni lokalne vlasti više ne žele da zadrže u svom vlasništvu.

Mnogi su očekivali da će izlaz iz zamršenih i mnogobrojnih problema medijskog sektora biti pronađen u ovom periodu. Dugo najavljivana Medijska strategija trebalo je odavno da bude u formi Nacrta dostupna javnosti i njenom sudu, kako bi krajem godine bila i doneta. Međutim, to se nije dogodilo. Nakon junskog predstavljanja Medijske studije kao osnova za izradu Strategije, u septembru je usledila iscrpljujuća serija od pet okruglih stolova na kojima se raspravljalo o preporukama njenih autora – nezavisnih eksperata, angažovanih od strane Evropske unije. Ovi skupovi, posvećeni izradi Nacrta medijske strategije, pokazali su nekoliko stvari: prvo, da su sva značajna medijska i novinarska udruženja, izuzev jednog, bez obzira na međusobne različitosti, prepoznala značaj ovog dokumenta i uspjela da se ujedine oko suštinskih principa za koje smatraju da treba da budu osnov buduće Medijske strategije; drugo, da je Ministarstvo kulture ušlo nespremno u ovaj proces i da nije umelo da odgovori na sve izazove ovakvog zadatka; treće, da ni autori Studije nisu uspjeli da pronađu čarobnu formulu za srpski medijski sistem, jer nisu mogli za kratko vreme da prepoznaju i savladaju sve njegove nijanse i specifičnosti. Nakon tog dinamičnog septembra, nije usledio željeni rezultat – Nacrt strategije. Ispostavilo se da Ministarstvo/država još ne zna prave odgovore na nagomilane probleme, ili nije spremna da ih da, a još manje zna kako da izađe na kraj sa izazovima tehnoloških promena koje iz korena menjaju medijsko okruženje. Tako, umesto Strategije i krajem novembra ostaje samo nagoveštaj mogućih promena u medijskom sektoru, za koje se ne zna ni kakve će biti, ni kada će biti.

Tekstovi u ovoj Publikaciji, odnose se na neka od navedenih važnih medijskih pitanja. Autor prvog, advokat Slobodan Kremenjak, piše o odnosu vlasti prema medijskom sektoru, fokusirajući se na jedan segment tog odnosa – kako se prave zakoni koji čine regulatorni okvir za rad medija. Advokat Nebojša Samardžić, autor drugog teksta, bavi se digitalnom tranzicijom i razlozima koji mogu ugroziti uspešnost celog procesa. U trećem tekstu, autorka Prof. dr Snježana Milivojević, daje retrospektivu dosadašnjeg rada na Medijskoj strategiji, ističući važnost i potrebu donošenja tog dokumenta za dalje medijske reforme. Četvrti tekst, Mr Maje Raković, koji sadrži prikaz aktuelne diskusije u Evropi na temu – kakva medijska politika je potrebna za digitalno medijsko okruženje, može dati važne smernice u daljem radu na izradi srpske Medijske strategije. Doprinos ovoj Publikaciji je dao i Medija centar Beograd, ustupanjem dva autorska teksta koja su objavljena u „onlajn“ izdanjima njihovog Newsletter-a: prvi, Dr Jovanke Matić, govori o okviru koji je za Strategiju medijskog razvoja postavila Medijska studija, kao i o potrebi da se u ovom strateškom dokumentu odraze specifičnosti našeg sistema; u drugom, novinar Miloš Vasić piše o sudskoj praksi u medijskim slučajevima i njenom uticaju na slobodu izražavanja.

Kada pročitate ove tekstove, biće vam jasnije zašto se u medijskom sektoru Srbije ni u 2010. godini gotovo ništa nije promenilo.

Prepreke na putu do novog regulatornog okvira za medijsku scenu u Srbiji

Slobodan Kremenjak, advokat¹

Osećajući potrebu da menja, modernizuje i usaglašava sa evropskom praksom medijske propise u Srbiji, Ministarstvo kulture je formiralo još u 2008. godini radnu grupu čiji je zadatak bio da pripremi odgovarajuće nacрте. Ova grupa je pripremila tokom 2008. godine nacrt akta koji je tretirao transparentnost vlasništva medija i medijsku koncentraciju, te, u nešto izmenjenom sastavu, nastavila rad na novom Zakonu o radiodifuziji. Rad grupe je bio posebno težak iz više razloga. Prvi se ogledao u odsustvu podrške Ministarstva za radikalna rešenja koja je radna grupa predlagala radi obezbeđivanja transparentnosti medijskog vlasništva. Drugi, u pritiscima iz medijske industrije, posebno od izdavača štampanih medija, koji su se protivili donošenju bilo kakvih posebnih pravila koja bi regulisala medijsku koncentraciju i instirali na primeni isključivo opštih rešenja iz Zakona o zaštiti konkurencije. Ni Ministarstvo nije bilo načisto s tim koliko daleko želi da ide rad na novom Zakonu o radiodifuziji, to jest da li je cilj izmena samo da odgovore na uočene nedostatke važećeg Zakona o radiodifuziji kako bi se oni privremeno prevazišli do očekivane digitalizacije, ili pak pisanje potpuno novog zakona primerenog izazovima koje digitalizacija pretpostavlja. Sve ovo rezultiralo je nejasnim mandatom datim radnoj grupi. Kao rezultat, do leta 2009. godine, niti je Nacrt Zakona o nedozvoljenom objedinjavanju i javnosti vlasništva javnih glasila uopšte ušao u proceduru usvajanja, niti je rad na novom Zakonu o radiodifuziji daleko odmakao. O radu na izmenama Zakona o javnom informisanju, čime je radna grupa takođe u jednom trenutku trebalo da se pozabavi, nije se u grupi još ni razgovaralo. Tada, bez ikakve najave i uz potpuno ignorisanje radne grupe od ministarstva koje ju je formiralo, Vlada Republike Srbije predlaže Narodnoj skupštini usvajanje Zakona o izmenama i dopunama Zakona o javnom informisanju za koji se do danas pouzdano ne zna iz čije je „kuhinje“ izašao.

Posledice su više nego očigledne. Zakon o izmenama i dopunama Zakona o javnom informisanju usvojen je uprkos protivljenju i članova radne grupe i medijskih i novinarskih udruženja. Ustavni sud jeste, godinu dana kasnije, našao da je većina rešenja ponuđenih tim izmenama neustavna, ali je medijskim profesionalcima to bilo od male utehe kada se u obzir uzme kreirana atmosfera straha i narasla autocenzura u medijskoj sferi. Nepoverenje kreirano između Ministarstva i radne grupe uticalo je i na nastavak rada na novom Zakonu o radiodifuziji, koji još nije okončan.

O tome da vlasti u Srbiji nisu izvukle pouke iz neslavne epizode sa Zakonom o izmenama i dopunama Zakona o javnom informisanju, svedoče kontroverze vezane za još dva akta od velikog značaja za medijsku scenu u Srbiji, na kojima se sada radi. Jedan od ta dva akta je Strategija razvoja medijskog sektora u Srbiji, a drugi je novi Zakon o oglašavanju.

¹ Advokatska kancelarija „Živković&Samardžić“

Podsetimo, Ministarstvo kulture, još prošlog leta, izloženo kritikama povodom Zakona o izmenama i dopunama Zakona o javnom informisanju, prihvatilo je predlog medijskih i novinarskih udruženja da se uđe u postupak donošenja Strategije razvoja medijskog sektora u Srbiji. Jedna od prvih stvari koja je na tom planu započeta bila je formiranje radne grupe za izradu Strategije, u koju su uključeni predstavnici medijskih i novinarskih udruženja koji su donošenje takve Strategije i tražili. Nakon jednog ili dva inicijalna sastanka, na radnu grupu je zaboravljeno. Ona nije sazvana ni nakon objavljivanja Medijske studije, na čijoj su izradi radili eksperti koje je angažovala Evropska komisija, a koja je najavljivana kao osnov za izradu Medijske strategije. Radna grupa nije sazvana ni nakon okončanja serije okruglih stolova koje je organizovao OEBS u saradnji sa Ministarstvom kulture Republike Srbije i Delegacijom Evropske unije u Srbiji, uz podršku Ambasade Velike Britanije u Beogradu, a na kojima se o Medijskoj studiji raspravljalo. Predstavnici medijskih i novinarskih udruženja obavesteni su, još pre održavanja serije okruglih stolova, da će Ministarstvo nakon svakog pojedinačnog okruglog stola objavljivati zaključke sa rasprava. Od ovih zaključaka, međutim, nismo videli ništa. Najavljeno je i da će, odmah nakon poslednjeg okruglog stola, Ministarstvo kulture izaći sa Nacrtom Strategije, pa ni od toga nije ostalo ništa. Napokon, Ministarstvo je angažovalo konsultantsku kuću *PricewaterhouseCoopers* da napiše Nacrt Strategije, ali ni ta verzija Nacrta nije objavljena, a prema poslednjim izjavama iz Ministarstva kulture, ono što je napisano, a što niko van Ministarstva nije video, zapravo je samo deo Strategije, i to onaj deo koji se odnosi na „obaveze Srbije na evropskom putu“, dok se čekaju još finansijske analize tržišta kako bi ovaj dokument bio upotpunjen.

Ne sporeći da su vladajuće stranke dobile izbore, pa samim tim i priliku da do narednih kreiraju i vode javnu politiku, postavlja se pitanje šta je to što te iste vladajuće stranke i ministarstva koja su formirala u Vladi, navodi da ponovo osnivaju radne grupe od nezavisnih eksperata i predstavnika medijskog sektora, uporno ističući svoju zainteresovanost za transparentnost rada i zajedničko iznalaženje rešenja koja bi bila u najboljem interesu i javnosti i medijske industrije, da bi na kraju od tih istih radnih grupa odustajale i najvažnije akte donosile na krajnje netransparentan način. Da li je moguće da i danas, u 2010. godini, srpske vlasti toliko oskudevaju u argumentima kojima bi potkrepile osnovanost i kvalitet zakona i strategija koje donose, da bi morale da ih pišu inkognito, da bi morale da kriju nacрте i da ih objavljuju tek kada stvari toliko odmaknu da medijska i novinarska udruženja i stručna javnost ponovo budu dovedeni pred svršen čin?

Da ova praksa nije specijalitet samo Ministarstva kulture svedoči i postupak u kome se priprema novi Zakon o oglašavanju. Nadležno ministarstvo, ovoga puta Ministarstvo trgovine i usluga, formiralo je radnu grupu za izradu Radne verzije Zakona o oglašavanju u decembru 2009. godine. U grupu su uključeni, između ostalih, i predstavnici medijskog sektora. Tokom prve polovine 2010. godine u okviru navedene grupe je razmatrano šta treba da bude sadržaj budućeg Nacrta, njegova struktura, a formirane su i podgrupe u cilju efikasnijeg rada na pojedinim delovima Zakona, te čak i urađene prve verzije čitavog niza odeljaka. Krajem maja, na ovu grupu izvršen je pritisak da radnu verziju završi u nerealno kratkim rokovima. Kako grupa takve rokove nije mogla da prihvati, Ministarstvo je u junu prestalo da poziva njene članove, novi sastanci se nisu zakazivali, a članovima radne grupe više se nisu dostavljali materijali, niti im se predočavala bilo kakva informacija vezana za dalji rad na Zakonu. Ovakva

situacija je trajala sve do druge polovine novembra, kada se ispostavilo da je Ministarstvo trgovine i usluga samo, mimo radne grupe, proizvelo svoj Nacrt. Ostaje pitanje koji su razlozi ovakvog postupanja. Eventualna sporost radne grupe to nikako ne može biti, jer da je njenim članovima krajem maja predočeno da Nacrt treba pripremiti do sredine novembra, oni sa tim rokom, najverovatnije, ne bi imali nikakav problem. Naprotiv, ono što je od njih krajem maja traženo, da Nacrt završe za dve do tri nedelje, ni Ministarstvo samo nije uspelo da izvede.

Analiza Nacrta koji je Ministarstvo objavilo krajem novembra pokazuje nešto drugo. Ovaj dokument u potpunosti ignoriše napore koji se već godinu dana ulažu u izradu Strategije razvoja medijskog sektora Srbije. Štaviše, tekst koji je Ministarstvo trgovine i usluga objavilo, podržavajući zatečenu, a pri tome problematičnu praksu u ovoj oblasti, dovodi u pitanje mogućnost implementacije buduće Strategije razvoja medijskog sektora pre nego što je ta Strategija uopšte i usvojena, te samim tim dovodi u pitanje i spremnost države da na novim i drugačijim osnovama kreira povoljnije okruženje za razvoj medija u Srbiji.

Izgubljena motivacija za digitalnu tranziciju

Nebojša Samardžić, advokat¹

Manje od 16 meseci pre planiranog potpunog prelaska na digitalno zemaljsko emitovanje televizijskog programa, Srbija je suočena sa mnogo više nedoumica nego što bi ih u ovoj fazi tranzicije smelo biti. Zašto je tako?

Jedan od mogućih razloga mogla bi biti i pogrešna procena motivacije zainteresovanih strana da se u ovaj proces uđe. Naime, u Strategiji za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji, koju je Vlada Srbije usvojila 2. jula 2009. godine, procenjeno je da interes i motivi za digitalizaciju postoje na svim stranama. U Strategiji se, tako, interes građana vidi u tome što će im digitalizacija omogućiti bolji kvalitet zvuka i slike, raznovrsniji sadržaj, više radio i televizijskih programa. Interes pružalaca usluga je prepoznat u mogućnosti formatiranja sadržaja, mogućnosti pružanja usluga na zahtev, nižim troškovima emitovanja. Interes države bi trebalo da bude efikasnije korišćenje spektra i upotreba njegovog oslobođenog dela za nove usluge.

Ispostavilo se, međutim, da su potrebe građana za boljim kvalitetom zvuka i slike, raznovrsnijim sadržajima, te većim brojem televizijskih programa, u određenoj meri već zadovoljene kroz ponudu kablovskih, DTH i IPTV operatora. Visoka penetracija, bogata ponuda stranih lokalizovanih i kanala iz regiona, te već uvedena digitalna ponuda od pojedinih kablovskih operatora, mogli su uticati na smanjenje interesovanja građana za zemaljsku digitalnu radio-difuziju. Građani kojima kablovska, DTH ili IPTV ponuda nije dostupna iz ekonomskih razloga, i digitalizaciju zemaljskog emitovanja doživljavaju pre svega kao potencijalni izdatak, a ne kao mogućnost da kroz unapređenje medijske ponude unaprede kvalitet života. Pozitivna promotivna kampanja je izostala, tako da su informacije koje građani dobijaju o digitalizaciji po pravilu vezane isključivo za proizvoljne procene troškova kojima bi u tom procesu mogli da budu izloženi.

Ispostavilo se takođe da je i interes pružalaca usluga pogrešno prepoznat. Nerazvijeno medijsko tržište, inflacija kanala u analognoj ponudi, još neiskorenjena piraterija i neregulisano kablovsko tržište kreirali su okruženje u kome postojeći emiteri zaziru od daljeg povećanja broja televizijskih kanala, te neobičnu situaciju u kojoj se od digitalizacije u Srbiji očekuje da, umesto širenja ponude, istu suzi i da na taj način omogući i rast kvaliteta i preživljavanje i ekonomsku održivost makar za neke od postojećih emitera. Takođe, domaći mediji koji su razmatrali mogućnosti formatiranja sadržaja, ovu opciju su već implementirali kroz širenje ponude u kablovskim sistemima (B92 je pokrenuo dvadesetčetvoročasovni kablovski kanal vesti, a Pink specijalizovane muzičke i filmske kanale), odnosno preko satelita (Pink). Mogućnosti pružanja usluga na zahtev, u uslovima neregulisanе i bogate osnovne kablovske ponude, niko nije cenio kao održiv poslovni model. S druge strane i očekivani manji troškovi emitovanja, u vreme kada kasni formiranje emisionog preduzeća koje je trebalo da nastane izdvajanjem emisione tehnike

¹ Advokatska kancelarija „Živković&Samardžić“, Beograd

iz RTS-a, ostali su samo na nivou očekivanja opterećenog brojnim nepoznanicama. Zanimljivo je da su već tokom javnih konsultacija najveći domaći nacionalni emiteri bili svrstani u dva fronta. Sa jedne strane su se našli televizije Pink i B92, koje su se zalagale za održavanje postojećeg broja kanala i širenje digitalne ponude tek nakon što bi ekonomske analize ukazale da potencijali tržišta takvo širenje ponude mogu da podrže. S druge strane, javni servis i televizija Foks, tada u vlasništvu medijskog konglomerata News Corporation, zalagali su se za to da se digitalna ponuda proširi odmah, i to u slučaju RTS-a kroz alociranje dodatnog multipleksa isključivo za njihove potrebe, a u slučaju televizije Foks kroz podelu raspoloživih digitalnih opsega srazmernu postojećoj analognoj podeli, radi uvođenja lokalizovanih verzija međunarodnih televizijskih kanala grupacije News Corporation. Vlada se na kraju opredelila za opciju bližu onome što su predlagali Pink i B92, odnosno da digitalnu tranziciju tretira kao poseban proces, a da pitanje podele dodatnih kapaciteta i načina širenja digitalne ponude tretira tek nakon uspešno sprovedene tranzicije. RTS je nastavio da ističe zahteve za svojim multipleksom radi uvođenja čitavog niza specijalizovanih kanala, a News Corporation je svoju investiciju u Srbiji, televiziju Foks, prodao grčkoj Antena grupi, čiji planovi u procesu digitalizacije još nisu poznati.

Što se interesa države tiče, i tu postoje određene nedoumice. Naime, po planu efikasnijeg korišćenja spektra, država je i u dosadašnjem periodu ozbiljno zakazala, o čemu svedoči njena nesposobnost da se izbori sa i dalje prisutnom radio piraterijom. Upotreba oslobođenog dela spektra za nove usluge dovodi nas i do pitanja digitalne dividende. Strategijom digitalizacije predviđeno je da se korišćenje kanala 61-69 u planiranju mreža za digitalnu radio-difuziju izuzima zbog potrebe da isti ostanu slobodni kako bi se ostavila mogućnost da se taj opseg koristi za formiranje digitalne dividende posle 4. aprila 2012. godine. Iz raspoloživih strateških dokumenata Vlade Republike Srbije i Ministarstva za telekomunikacije i informaciono društvo, ali i iz izjava zvaničnika, proizlazi da je namera da se slobodni deo spektra licencira za bežični širokopojasni pristup Internetu. Ministarstvo ovu ideju potkrepljuje rezultatima istraživanja Svetske banke o tome da 10% rasta broadband internet penetracije rezultira sa 1,3% većim bruto društvenim proizvodom. Po raspoloživim informacijama, država planira da oslobodi 120 MHz, te očekuje i neposredni prihod od jednokratne naknade dobijene za licence, u rasponu od oko 600 miliona do oko milijardu evra. Postoje, naravno, i druge procene, koje su daleko opreznije. Po svemu sudeći, ovaj novac, koliko god da ga na kraju bude, mogao bi biti potrošen i pre nego što ga država naplati. Naime, predajničke lokacije i stubovi emisije tehnike su toliko oštećeni, što u NATO bombardovanju 1999. godine, što zbog višedecenijskog neulaganja u njihovo održavanje i obnovu, tako da će prilagođavanje ovih objekata nameni digitalnog zemaljskog emitovanja u Srbiji biti izuzetno skupo. Kompletan prihod ostvaren od digitalne dividende mogao bi otići za vraćanje kredita neophodnih Emisionoj tehnici da se pripremi za svoju funkciju predviđenu Strategijom digitalizacije.

Na kraju, ostaju i dva dodatna problema čiji uticaj na predviđenu digitalizaciju radio-difuzije nikako ne bi valjalo zanemariti. Prvi se odnosi na činjenicu da se deo spektra namenjenog za buduću digitalnu dividendu koristi i za određene namene Ministarstva odbrane, a drugi da je 2012. godina, za koju je planiran potpuni prelazak na digitalno zemaljsko emitovanje, istovremeno i izborna godina. Eventualni problemi u sprovođenju digitalizacije u izbornoj godini, to jest mogućnost da deo stanovništva ostane bez televizijskog programa možda čak i u

toku predizborne kampanje, nije nešto što bi Vlada sebi mogla da dozvoli. No, ako je pritisak na odvijanje procesa digitalizacije u planiranim rokovima i oslabio nakon poslednjih izjava predsednika Republike u kojima su izbori najavljeni za mart, to jest neposredno pre, a ne nakon planiranog datuma potpunog prelaska na digitalno emitovanje, problem potreba Ministarstva odbrane za delom spektra koji se planira za digitalnu dividendu tek ostaje da se reši.

U svakom slučaju, svi navedeni problemi nameću potrebu da se država hitno pozabavi pitanjima promocije digitalne tranzicije, te posebno i pitanjima iznalaženja dodatnih podsticaja za sve učesnike u ovom procesu, kako bi svi oni zajedno tranziciju napokon prepoznali kao stvar u kojoj mogu da vide i svoj lični interes, a ne samo trošak i nepotrebno opterećenje.

Strategija, Studija, Sažetak

Prof. dr Snježana Milivojević¹

Krajem novembra, Beogradom je kružio SMS kojim se najuporniji učesnici septembarskih okruglih stolova o Medijskoj studiji obavestavaju da se odlaže predstavljanje Strategije medijskog razvoja, zakazano za 22. novembar 2010. godine. Nije mnogo neobično da medijski poslovi ostanu neurađeni, niti da vlast ne održi obećanja, ali ovog puta se ishod očekivao sa mnogo interesovanja. Pa ipak, odlaganje nije izazvalo veće javne reakcije. Zbog svih koji su profesionalno, savesno i građanski odgovorno, redovno učestvovali u okruglim stolovima, formulisali predloge ili se javno oglašavali o njoj, evo jedne retrospektive dosadašnjeg rada na Strategiji. Možda će njena budućnost biti jasnija ako se pogleda u njenu prošlost. A, možda će i pomoći da Strategija ne podeli sudbinu nekih ranijih, zaboravljenih reformskih inicijativa.

Na početku je bilo lako

Dakle, prvo, kako je tekao rad na Strategiji? Početna ideja je nastala pod pritiskom nezadovoljstva javnosti posle usvajanja izmena Zakona o informisanju u leto 2009. godine. Zatečeno neočekivano burnom reakcijom, Ministarstvo kulture je prihvatilo da napravi strateški dokument kojim će definisati razvoj medija u narednih nekoliko godina. To je bila dobra prilika i da se nekako sumira deset godina haotične tranzicije. Tokom nje je koegzistencija loših zakona, zaustavljanje privatizacije, međusobno suprotstavljanje propisa napravilo zbrku u kojoj ponovo treba mapirati poslove, predložiti nove zakone i istinski početi harmonizaciju sa normama EU.

Rad je počeo pre šesnaest meseci najavom nove radne grupe koju će činiti predstavnici medijskih udruženja (*Radna grupa za strategiju razvoja medija, „Politika“, 26.08.2009.*), koja, međutim, nikad nije formirana. Način rada je promenjen kada je odlučeno da se konkuriše za pomoć kod Evropske komisije i zatraži ekspertska Studija o stanju u medijima u Srbiji. To je bila važna i dobra odluka jer je ta vrsta pomoći zaista dragocena. Ovakva studija mogla je imati niz prednosti: olakšati sistematičan pregled evropskog okvira, utvrditi obaveze koje će proizlaziti iz *Acquis Communautaire* kada jednom počnu pregovori o pridruživanju i prikazati iskustva zemalja koja mogu biti korisna u rešavanju domaćih problema. Studija je mogla biti i dobar *pogled sa strane*, upućenih ali ne interesno opterećenih stručnjaka. Na duži rok, mogla je biti i posticaj Ministarstvu da i ubuduće značajne zakonske izmene ili promene politike zasniva na ekspertskim, a ne na političkim predlošcima. *Radna grupa* nije uvek srećno rešenje u pripremi zakona, a i donosioci odluka mogu da ih raspuštaju ili zanemare njihove predloge s istom lakoćom s kojom ih i imenuju.

Efikasna pomoć Evropske komisije je bila presudna za nastanak Medijske studije u veoma kratkom roku tokom proleća 2010. godine. Nekoliko evropskih konzorcijuma je imalo desetak

¹ Profesorka Fakulteta političkih nauka Univerziteta u Beogradu

dana da sastave ekspertske timove, a Kancelarija Evropske komisije u Beogradu izabrala je tim koji je ponudio *COWI Consortium*. Eksperti su dobili dva meseca da urade studiju (dva člana tima po 28 dana, a vođa tima 60 dana). Za tako kratko vreme trebalo je napraviti pregled evropskog okvira, uporednu analizu tri odabrane zemlje i studiju o domaćim medijima. To je bio veoma težak zadatak za tim u kome niko nije imao iskustva sa medijima u Srbiji i kada, izgleda, ni Ministarstvu nije bilo sasvim jasno šta je cilj takve studije. Na to upućuju bar dve stvari koje se vide iz sadržaja Studije.

Prva je veoma značajna odluka o izboru zemalja za uporednu analizu. Prema navedenom objašnjenju, odabrane su Danska, zato što ima dualni sistem i dugu tradiciju lokalnih medija koji može biti dobar model za buduću medijsku strukturu u Srbiji; Austrija, jer je po veličini i kulturnom kontekstu slična Srbiji i uz to ima znatna preklapanja jezičkih teritorija, i Nemačka, jer je njeno zakonodavstvo veoma jasno ustrojeno za razliku od drugih velikih zemalja kao što su Velika Britanija ili Francuska. Nijedan od ovih razloga nije ubedljiv argument za izbor, jer ne ukazuje na elemente srodnosti koji su važni za poređenje u ovoj analizi, niti za kasniju relevantnost njihovih iskustava. Naprotiv, veličina tržišta, broj medija, snaga javnih servisa, medijska i politička kultura su u mnogim slučajevima veoma otežale pozivanje na iskustva i čak razumevanje njihovih rešenja. To se u kasnijim raspravama često videlo - nijednom primeri, rešenja ili prakse iz Danske ili Austrije nisu detaljno analizirani, niti razmatrani kao moguća inspiracija. Zato bi rasprave uvek živnule kada su u debatama učestvovali ekspertkinje iz susednih zemalja, mnogo je više bilo interesovanja za iskustva zemalja u tranziciji, i uvek kada su učesnici bili iz Velike Britanije, pre svega jer su impresionirali znanjem i sposobnošću da probleme vide i u razvojnom i u evropskom ključu.

Drugi razlog koji ukazuje na nejasno postavljene ciljeve je veoma slaba ekonomska osnova analize, posebno potpuno ignorisanje finansijskih aspekata preporuka i izvodljivosti sugerisanih rešenja. Zbog toga i preporuke, a posebno SWOT analiza, uglavnom deluju neubedljivo i ne nude nikakve indikatore opravdanosti i izvodljivosti. Očigledno je da su autori studije najteže dolazili do podataka o finansiranju, ekonomskoj snazi i potencijalu i medija i medijskog tržišta. Utoliko je i propuštena prilika da se pokaže značaj ekonomske analize, koja u ovdašnjim medijskim debatama nikada nije tema. *Argument isplativosti*, naravno, nije čak ni najvažniji u medijskim razgovorima, ali ne sme se ni svaki razgovor o *važnosti tržišta* odbacivati kao komercijalizacija. Zato je važno porediti iskustva različitih zemalja. Prema Studiji, regionalne televizije u Danskoj u proseku pokrivaju oblast sa oko 700.000 stanovnika, a u Nemačkoj čak sa 9,5 miliona. Prema broju dozvola, regionalne televizije u Srbiji pokrivaju u proseku 225.000, a ukoliko se ubroje i lokalne, prosek je još manji, oko 50.000 stanovnika. Da li su građani Srbije toliko bolje informisani od građana Danske ili Nemačke? Ili, RTS jedva uspeva da prikupi oko 50 miliona evra od pretplate (još oko 35 miliona od oglašavanja), a ima otprilike isti broj zaposlenih kao danska ili austrijska javna televizija koje imaju budžet od 750 miliona, odnosno 850 miliona evra. Da li to znači da RTS uspeva da sa mnogo ljudi i malo para pravi podjednako dobar program, ili je program mnogo manje kvalitetan i raznovrstan? RTS jeste veoma siromašna javna televizija u poređenju sa televizijama u EU, pa i u regionu, ali njen kombinovani prihod od pretplate i oglašavanja je veći nego zbirni prihod svih ostalih televizija u Srbiji zajedno, koje legalno žive od oko 60 miliona evra godišnje. Da li medijsko tržište održava i novac koji nije poznat ni medijskim ni poreskim organima? Rasplitanje

komplikovanih tokova novca u ovoj oblasti je veliki izazov i za dobro upućene a, izgleda, i za Ministarstvo kulture.

Sa druge strane, Studija se pokazala veoma vrednom kao dokument u kome su objedinjeni mnogi uvidi. Takođe, dovela je medijske teme u vezu sa industrijom oglašavanja, proizvodnjom sadržaja, elektronskim mrežama, IP pravima, digitalizacijom i korišćenjem medija. Pokazala je da je za pisanje Medijske strategije važna analiza veza između svih ovih oblasti, a ne naklonost političara ili blizina sledećih izbora.

Odložena Strategija

Na osnovu malobrojnih novinskih tekstova o ovoj temi, vidi se da je, dok je rok za završetak posla bio dalek, sve izgledalo jasno i lako: „Sredinom godine biće završena i javnosti predstavljena Medijska strategija, koja bi konačno trebalo da uredi našu medijsku scenu“, najavljuje u intervjuu za „Novosti“ ministar kulture i informisanja Nebojša Bradić (*Sprečićemo monopol u medijima*, „Večernje novosti“, 27.03.2010.). Narednih par meseci glavni, glavni posao Ministarstva bio je da povremeno najavljuje naizmenično Strategiju i ekspertsku Studiju: *Medijska strategija stiže na leto* (07.05.2010.), *Naredne sedmice stiže Medijska studija* (16.06.2010.), *Sledeće nedelje javna rasprava* (27.08.2010.). U međuvremenu je, u saradnji sa OEBS-om i Britanskom ambasadam, pripremljena i javna debata i jesen je počela serijom od pet okruglih stolova o ključnim oblastima iz Medijske studije.

Međutim, kvalitet Studije, zanemarivanje štampanih medija, većina preporuka, pre svega, budućnost RTV Vojvodine, mreže regionalnih javnih servisa i TANJUG-a, nagovestili su da Studija nije tekst koji se jednostavno može prepisati u Strategiju. Uz to, najveća medijska udruženja su tokom leta usaglasila stavove i ušla u javnu raspravu sa zajedničkom platformom, pa je bilo sasvim jasno da će pisanje Strategije biti komplikovan posao. Iz Ministarstva su i dalje stizale najave o vrlo preciznom radnom kalendaru za naredna dva-tri meseca, čak i uz neočekivanu, a dobrodošlu racionalizaciju:

U tekstu *Giljotina medijskih propisa do kraja godine*, Nataša Vučković-Lesendrić, pomoćnica ministra kulture zadužena za medije, kaže: „...biće potrebno menjati većinu medijskih zakona, tako da ćemo predložiti da se uradi giljotina propisa u ovoj oblasti.“ Ona objašnjava da će Ministarstvo kulture predložiti i ekonomsku studiju izvodljivosti, jer će to podrazumevati određene troškove i prihode. „Veliki sam optimista i očekujem da ćemo do kraja oktobra imati taj predlog, a da ćemo do kraja godine imati čistu situaciju na medijskoj sceni.“ („Danas“, 02. 09. 2010.)

Zanimljivo je utvrditi na čemu je Ministarstvo zasnivalo svoje hrabro i ambiciozno obećanje da će do kraja godine predložiti Strategiju, uraditi studije izvodljivosti, završiti javnu raspravu, obezbediti da Vlada usvoji Strategiju i usput giljotinirati propise. Za sudbinu Strategije presudno je važno ustanoviti koliko je Ministarstvo kulture zaista sposobno da proceni i

strateški osmisli razvoj u oblasti medija kada ovako očigledno nije u stanju da proceni vlastite resurse i obećanja za naredna dva-tri meseca.

Najverovatnija pretpostavka je da je u tom poslu očekivalo pomoć, koju nije dobilo. Samo nekoliko dana pred početak okruglih stolova, Ministarstvo je raspisalo prilično maglovito formulisan kokurs za neki posao u oblasti razvoja medija. Na prvom okruglom stolu, i na direktno postavljeno pitanje, nagovešteno je da je taj posao već dobila, ili već radi, konsultantska kuća *PricewaterhouseCoopers*. Ovog puta nije reč o tome kako su oni počeli rad pre nego što je konkurs formalno okončan, kako su i na osnovu kojih referenci izabrani, niti koliko je taj angažman koštao. Ovde je reč o tome da je Ministarstvo pokušalo da *outsorsuje* već *outsorsovani* posao, dakle da se potpuno distancira od svog osnovnog rada u oblasti za koju je nadležno. Nikakve studije i sažeci ne mogu zameniti ulogu Ministarstva u definisanju razvojnih prioriteta i odgovarajuće politike u medijskoj oblasti. To umesto njega neće uraditi ni eksperti ni konsultanti. Dakle, odlaganje u izradi Strategije počelo je tada, u trenutku kada je Ministarstvo pokazalo da neće biti u stanju da Medijsku studiju koju je tražilo i predloge učesnika sastavi u jedan strateški dokument.

Druga moguća pretpostavka je da je Ministarstvo ostalo bez podrške i jasne odluke Vlade o tome kako da usmeri medijski razvoj. Sudeći prema novinskim izveštajima, teško je reći da li se i kada to desilo. Kada je rok prvi put odložen, stigla je najava novog:

„Iako je Nacrt medijske strategije trebalo da bude predstavljen u ponedeljak 4. oktobra na poslednjem okruglom stolu u okviru javne rasprave, donošenje Nacrta je odloženo za dva meseca i trebalo bi da se taj dokument nađe pred Vladom do 1. decembra“, kaže za „Danas“, Nataša Vučković-Lesendrić, pomoćnica ministra kulture zadužena za medije.“(*Medijska studija pred Vladom do decembra*, 04. 10. 2010.)

Prema tekstu postavljenom na sajtu Ministarstva, *Nacrt medijske strategije gotov početkom novembra*, odlaganje nije umanjilo optimizam i planove ministra kulture: „...posle okruglih stolova koji su bili veoma plodotvorni - vođena je živa diskusija sa predstavnicima novinarskih udruženja, medijskih asocijacija, zainteresovanih pojedinaca, grupacija i stigle su veoma dobre i konstruktivne primedbe. U ovom trenutku pripremamo ceo taj materijal koji ćemo predstaviti javnosti tokom oktobra.“ (07.10.2010.)

Kada je drugi put najavljeni rok istekao, u Ministarstvu su odlučili da stvar reše elegantnije i objavili da više neće licitirati rokovima: „Nakon završenih okruglih stolova rezimiran je materijal i uočili smo da nema toliko sadržaja, egzaktnih podataka i argumenata koji bi mogli da nam pomognu u izradi strategije. U fazi smo prikupljanja podataka o tome koliko se sredstava sliva u medije i iz kojih sve izvora, kako bismo pronašli konačan model povlačenja države iz vlasništva medija. Prikupljanje tih podataka će malo potrajati, a najviše problema po tom pitanju imamo sa lokalnim samoupravama“, ističe Vučković-Lesendrićeva. (*Politički interesi koče strategiju*, „Danas“, 24.11.2010.)

Ogroman profesionalni napor i socijalna energija su uloženi u izradu Studije i debatu o njoj. Kako se dogodilo da Ministarstvo kulture na osnovu toga ne može da sastavi jedinstven dokument, i da će, posle rada ekspertskeg tima i posle konsultantskog sažetka, morati samo da radi dodatne analize? Ako je to već bilo u stanju da uradi samostalno, zašto to nije uradilo pre godinu dana i skratilo put do dobre analize? Ako uz angažovanje svih ovih organizacija, timova, konsultanata i dalje nema dovoljno validnih podataka, onda su domaći mediji za Ministarstvo kulture potpuna *terra incognita*.

Mediji su u Srbiji u središtu političkih sukoba dvadeset godina, a poslednjih deset su i objekat prilično komplikovane tranzicije. Nikada za sve to vreme nije se o njima vodila ovako iscrpna javna rasprava. Medijska udruženja, zaposleni u medijima, istraživači, aktivisti nevladinih organizacija dolazili su redovno i u velikom broju na svih pet okruglih stolova organizovanih u septembru. Bilo je upadljivo više onih koji su zainteresovani za sudbinu medija nego onih kojima je medijska politika posao. Iz nedelje u nedelju, diskutovali su, predlagali, nastojali da doprinesu formulisanju zajedničkih stavova. Predstavnici medija nikada nisu jasnije i jedinstvenije nastupali ni u jednoj akciji kojom se regulišu odnosi u medijima. Sav taj kapital ne bi trebalo da ostane neiskorišćen. Sposobnost da se različita medijska udruženja samostalno organizuju i dogovore o jedinstvenom nastupu ogromna je dobit od ove javne rasprave. U stvari, iz zajedničkog nastupa izdvojila se Asocijacija medija, udruženje koje okuplja medijske vlasnike, uglavnom vlasnike štampanih medija. Njeni članovi su arogantno izostali iz ovih razgovora i čak netaktilčno tražili da se o budućnosti medija u ime industrije samo oni pitaju. Ali, i to je pokazatelj da se medijska debata pomerila sa početne tranzicione tačke i da su i u medijima interesi vidljivo različiti. Šteta je što okrugli stolovi nisu bili otvoreni za javnost i što ovaj značajan trenutak u sazrevanju medijske scene nije dobio veću podršku i značaj.

Još nenapisana Medijska strategija se već zbog toga ispostavila kao značajan dokument. Tačno je, sve dok nema volje da se mediji regulišu u skladu s demokratskim standardima, ni evropska efikasnost ne može naterati domaću vlast da uradi ono na šta se obavezala. Ali, godina koju je vlast koristila samo da pokaže svoju nekompetentnost pomogla je medijima da definišu svoje nove prioritete.

Novi mediji – nove politike?

Mr Maja Raković¹

U jeku debate u domaćoj stručnoj javnosti o Medijskoj strategiji i o tome kako regulatorni okvir za medije uskladiti sa evropskim standardima ne bi trebalo zanemariti diskusiju koja se uporedo odvija u Evropi na temu - kakva medijska politika je potrebna za digitalno medijsko okruženje.

Priča o konvergenciji, digitalizaciji i „novim medijima“ već dugo nije nova ni u teoriji medija i komunikacija, niti u (evropskim) medijskim politikama. Konvergencija telekomunikacija, medija i informacionih tehnologija nastala tokom devedesetih godina uticala je na postepenu transformaciju medija, koja se pre svega ogleda u brisanju granica između tradicionalnih mas-medija i pojavu novih vidova komunikacije. U novom medijskom i komunikacionom okruženju je došlo do promene u načinima pristupa informacijama, sakupljanja, kreiranja i distribucije informacija i medijskih sadržaja. Mogućnost interaktivnog korišćenja medija stvorila je nove aktere. Korisnici (medijska publika) više nisu samo konzumenti, već i proizvođači sadržaja. Takođe, pojavili su se i novi posrednici između pošiljalaca i primalaca informacija i sadržaja, poput internet provajdera ili onlajn pretraživača.

U teoriji, suština promena se opisuje kao: povećana brojnost i raznolikost vrsta kanala komunikacije; veća sloboda, uporedo sa većim mogućnostima za nadgledanje i kontrolu; nepostojanje jasnih granica između javnog i privatnog;² dominacija interaktivnosti, multimedija i nelinearnosti;³ fragmentacija medijske publike i prelazak sa širokog domašaja („broadcasting“) koji obuhvata radiodifuziju, štampu i izdavaštvo, na precizno ciljani uski domašaj („narrowcasting“).⁴

U praksi - medijskoj politici i regulativi - na promene se odgovara na način tipičan za pojavu novih medija (svi mediji u određenom istorijskom periodu bili su „novi mediji“): (1) najpre nema nikakve reakcije; (2) zatim sledi pokušaj da se na novi medij primeni regulatorni okvir razvijen za stare medije; (3) nakon toga dominantna je debata i razvoj novog regulatornog okvira primerenog novom mediju; (4) i na kraju stupa na snagu novi regulatorni okvir. U evropskom kontekstu, medijska politika je sada između debate i razvoja novog regulatornog okvira.⁵

¹ Član Nadzornog komiteta za medije i nove komunikacione usluge Saveta Evrope (CDMC)

² McQuail, D. (2006). *New Horizons for Communication Theory in the New Media Age*. A Companion to Media Studies, Ed. Angharad N. Valdivia. Oxford: Blackwell Publishing.

³ Pavlik, J.V. (2008). *Media in the Digital Age*. New York: Columbia University Press

⁴ Hirst, M. and Harrison, J. (2007). *Communication and New Media: from Broadcast to Narrowcast*. Oxford: Oxford University Press.

⁵ Jakubowicz, K. (2009). *A New Notion of Media?* Strasbourg: Council of Europe.

http://www.coe.int/t/dghl/standardsetting/media/Doc/New_Notion_Media_en.pdf

Evropska unija i Savet Evrope

Za medijsku politiku Srbije ključne međunarodne reference predstavljaju standardi Saveta Evrope i pravo Evropske unije.⁶ Po svom osnovnom usmerenju i ciljevima ovi okviri evropskih medijskih politika se razlikuju, ali su međusobno komplementarni.

Medijska politika Evropske unije se razvijala na osnovu osnivačkih ugovora Evropske unije, a njen primarni cilj je usmeren na ekonomske aspekte, to jest na zajedničko tržište.⁷ Kada su mediji u pitanju, zajednička politika Evropske unije obuhvata uski krug pitanja (u najvećoj meri u vezi sa elektronskim medijima), dok su ostale oblasti medijske politike u domenu nacionalnih politika zemalja članica i tu postoje veoma velike razlike u okviru same Unije.

Kao odgovor na konvergenciju, već krajem devedesetih godina su pokrenute javne konsultacije o potencijalnim implikacijama razvoja novih usluga najavljujući novu politiku i pristup ovim oblastima. Uz konstataciju da globalna priroda komunikacionih platformi, a naročito interneta, pružaju ključ za integraciju svetske ekonomije, navodi se da će Evropska unija - ukoliko bude uspela da prati promene kreirajući okruženje koje će podržavati a ne usporavati ovaj proces - stvoriti moćan pokretač ekonomskog rasta, mogućnosti za zaposlenje i veći izbor za potrošače i unapređenje kulturne raznolikosti.⁸ Ubrzo nakon toga počela je postepena reforma zakonodavnih okvira.

Osnovni dokument Evropske unije koji se odnosi na medijski sadržaj, Direktiva o televiziji bez granica iz 1989. godine, revidirana je najpre 1997, a zatim i 2007. godine kada je preimenovana u Direktivu o audiovizuelnim medijskim uslugama⁹. Nastala sa ciljem da se stvore neophodni uslovi za slobodan protok televizijskog programa u Evropskoj uniji, direktiva obuhvata pravila koja se između ostalog odnose na zaštitu maloletnika, oglašavanje, pristup događajima od opšteg značaja (sportskim, kulturnim, društvenim), promociju proizvodnje i distribucije evropskih sadržaja. Uzimajući u obzir tehnološke promene do kojih je u međuvremenu došlo, revizijom direktive obuhvaćene su sve audiovizuelne usluge (linearne, poput tradicionalne televizije, i nelinearne, u koje spada video na zahtev), a pravila su definisana s obzirom na stepen kontrole koju korisnici imaju nad medijskim sadržajem (fleksibilnija i manje restriktivna pravila za nelinearne medijske sadržaje).

⁶ Iako ne treba zaboraviti ni dokumenta Uneska, ITU-a, OEBS-a, OECD-a, u kontekstu procesa evrointegracija najrelevantniji su Acquis communautaire i standardi Saveta Evrope.

⁷ Kao potencijalni kandidat za članstvo u Evropskoj uniji i potpisnica Sporazuma o stabilizaciji i pridruživanju, Srbija se u okviru procesa pridruživanja obavezala na usklađivanje domaćeg zakonodavstva sa zakonodavstvom EU.

⁸ Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for Regulation - Towards an information society approach, /* COM/97/0623 final */.

<http://www.ictregulationtoolkit.org/en/Publication.1500.html>

⁹ Iako je rok za transponovanje AVMSD u zakone zemalja članica EU bio decembar 2009, ispostavilo se da ovaj proces nije bilo moguće završiti predviđenom brzinom. Vidi:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1983&format=HTML&aged=0&language=EN&guiLanguage=en>

Za oblast novih medija značajan je i set zakona poznatih kao „Telekom paket“ koji tretiraju pitanja prenosa i infrastrukture. Od tri postojeća nivoa „pružanja“ sadržaja - (1) usluge medijskog sadržaja, (2) usluge elektronske komunikacije (koja prenosi programske signale od emitera do korisnika i obrnuto, u slučaju interaktivnih usluga) i (3) infrastrukture (komunikacione mreže) - „reformisani Telekom paket“¹⁰ odnosi se na poslednja dva, dok se na prvi nivo primenjuje Direktiva o audiovizuelnim medijskim uslugama.¹¹

Smernice politike Evropske unije do 2020. godine su definisane Digitalnom agendom¹², koja naglašava sedam prioriternih oblasti: stvaranje jedinstvenog digitalnog tržišta, veću interoperabilnost, unapređenje bezbednosti i rast poverenja u internet, brži pristup internetu, više investicija u istraživanja i razvoj, poboljšanje digitalne pismenosti i inkluzije, korišćenje informaciono-komunikacionih tehnologija za rešavanje različitih društvenih izazova.

Medijska politika Saveta Evrope - čiji su osnovni principi i oblast delovanja ljudska prava, vladavina prava i demokratija - razvijala se na osnovu Evropske konvencije o ljudskim pravima i sudske prakse Evropskog suda za ljudska prava, sa ciljem zaštite slobode izražavanja i prava na informisanje.¹³ U skladu sa Članom 10 Konvencije, tokom proteklih decenija usvojene su desetine deklaracija, preporuka, rezolucija i konvencija iz oblasti medija koje predstavljaju evropske standarde i služe kao osnova zemljama članicama pri definisanju nacionalnih medijskih politika.

S promenama u sferi medija i komunikacija standardi su prilagođavani novim okolnostima, pa su prethodnu deceniju obeležili dokumenti koji se odnose na pitanja i probleme zaštite ljudskih prava u informacionom društvu.¹⁴ Pažnja kreatora medijskih politika sve manje je usmerena na štampu, radiodifuziju, novinarstvo u tradicionalnom smislu, a sve više na digitalne sadržaje, internet kao javno dobro, kritične resurse interneta, telekomunikacionu infrastrukturu i menadžment protoka saobraćaja na internetu, internet domene, IP adrese i slična pitanja koja sa rastućim značajem interneta za sve segmente savremenih društava postaju sve manje tehnička, a sve više politička i pitanja ljudskih prava.

Nedavni slučaj Vikiliksa i globalna debata koju je objavljivanje poverljivih dokumenata američke administracije pokrenulo, način na koji su informacije distribuirane i blokirane jasno ilustruju zašto fokus debate o slobodi izražavanja i javnom interesu polako napušta tradicionalne novinarske redakcije, štamparije, TV studija, i pažnju usmerava na kablove, servere, viralnu distribuciju, filtriranje i blokiranje digitalnih sadržaja...

¹⁰ Usvojen je 2009, a do 2011. treba da bude transponovan u zakonodavstva zemalja članica EU.

¹¹ Schweda, S. (2009). The „Telecoms Review“: New Impetus for Audiovisual Media?, in *Communications Regulation: Between Infrastructure and Content*. Strasbourg: European Audiovisual Observatory.

¹² [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245(01):EN:NOT)

¹³ Kao jedna od 47 zemalja članica Saveta Evrope i kao potpisnica *Evropske konvencije o ljudskim pravima i osnovnim slobodama*, Srbija ima obavezu poštovanja medijskih standarda Saveta Evrope. Takođe, sve zemlje članice EU ujedno su i članice Saveta Evrope i potpisnice *Evropske konvencije o ljudskim pravima*, a upravo su u toku pregovori između Saveta Evrope i Evropske komisije o pristupanju EU konvenciji.

¹⁴ www.coe.int/media

Osnovni stav Saveta Evrope je da standardi zaštite ljudskih prava koji se odnose na takozvano „oflajn“ okruženje treba da važe i u „onlajn“ okruženju. Međutim, postavlja se pitanje na koji način vrednosti, principi i standardi koji su razvijeni za tradicionalne forme mas-medija mogu da se primene na nove usluge i pružaoce usluga. Ovo pitanje u kontekstu međunarodne saradnje i definisanja zajedničkih politika podrazumeva najpre saglasnost o tome koji se sve oblici novih komunikacionih usluga mogu smatrati medijima (u smislu prava i odgovornosti), a zatim i određivanje načina na koji je moguće razviti regulatorne okvire adekvatne za nove medije.¹⁵

Ka novom konceptu medija

U poređenju sa zaštitom slobode izražavanja pojedinaca, zbog svog značaja za demokratiju, mas-mediji su tradicionalno imali poseban status u smislu prava, sloboda i odgovornosti. Ovaj značaj je proizlazio iz karakteristika medija (uticaj na mase, uređivačka odgovornost, profesionalni i etički standardi) i njihove funkcije u društvu (svrha informisanja, zabave i edukacije; pokretanja javne debate o stvarima od opšteg interesa; kontrola vlasti). U cilju zaštite slobode medija, ali i ljudskih prava koja mogu biti ugrožena pojedinim medijskim aktivnostima, razvijani su medijski standardi koji se odnose na zaštitu novinara i novinarskih izvora, pravo na odgovor, privatnost, zaštitu maloletnika, pravila reklamiranja itd. Funkcija i značaj medija za društvo nisu se promenili razvojem novih tehnologija. Promenili su se medijski akteri i manifestacija tih funkcija.

Aktuelni zakonodavni okviri uglavnom su nastali manjom ili većom modifikacijom zakona koji su svojevremeno bili namenjeni televiziji ili štampi i nisu suštinski drugačiji od tradicionalnih zakonodavnih pristupa. Međutim, sve više postaje očigledno da u novom komunikacionom okruženju medijska politika, koja medije tretira na osnovu platformi distribucije sadržaja (štampa, radio, televizija, internet) ili na osnovu medija kao organizacija (izdavači, emiteri) nije u stanju da adekvatno odgovori na sve nove izazove i pojave, jer su uloge pojedinih aktera u vezi sa pristupom, proizvodnjom i distribucijom digitalnih sadržaja isprepletene na način koji je potpuno drugačiji od tradicionalnih podela u smislu odgovornosti i organizacione strukture.

U ovom kontekstu naročito je zanimljiva pozicija takozvanih „internet posrednika“ i njihova uloga u vezi sa slobodom izražavanja. Pojam „internet posrednika“ obuhvata širok spektar pružalaca internet usluga. Trenutno preovlađuju zakonodavna rešenja prema kojima posrednici ne mogu biti odgovorni za sadržaje trećih lica koje prenose ukoliko nisu upoznati sa tim sadržajem.¹⁶ Međutim, sudska praksa ukazuje na sve veću neizvesnost i nejasnoće u vezi sa

¹⁵ Političkom deklaracijom, Rezolucijom „Ka novom poimanju medija“ i pratećim Akcionim planom usvojenim 2009. godine upravo je preispitivanje tradicionalnog koncepta medija određeno kao jedna od dominantnih aktivnosti Saveta Evrope u ovoj oblasti u narednom periodu. Dostupno na: [http://www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf)

¹⁶ Princip „mere conduit“ i „notice and takedown“ procedure.

odgovornošću za sadržaje na internetu.¹⁷ Takođe, sa razvojem novih tehnologija, internet posrednici sve više imaju mogućnosti ili potrebe (na primer, usled zahteva policije tokom istraga visokotehnološkog kriminala ili iz komercijalnih razloga) da intervenišu u vezi sa sadržajima koje prenose - indeksiranje, inspekcija, blokiranje, uklanjanje, samo su neki od oblika koji svoje analogije mogu imati u tradicionalnim pojmovima uređivačkog izbora, cenzure, autocenzure...

Diskusija o novom poimanju medija sve više se kreće u pravcu posmatranja medijskih funkcija, koje novi pružaoci usluga preuzimaju u potpunosti ili delimično, i određivanja stepena odgovornosti i zaštite u skladu s tim.

Ostaje da se vidi na koji način će se u narednim godinama transformisati evropski regulatorni okviri koji se odnose na medije. Činjenica da su promene u medijskoj sferi toliko velike, brze i radikalne i za mnogo razvijenije medijske sisteme, za zemlju poput Srbije - koju sve navedene promene zatiču u trenutku kada ni „stare“ tranzicione reforme nisu u potpunosti završene - ne mora nužno biti nedostatak. Naprotiv, možda može biti i prilika za direktno i aktivno uključivanje u nove procese. Za takav optimistički scenario neophodna su najmanje dva preduslova. Jedan se odnosi na potrebu odgovornog i proaktivnog delovanja svih aktera medijske scene - države, industrije, civilnog društva; a drugi na važnost stalnog podsećanja na to zašto je sloboda izražavanja dragocenost koju treba pažljivo čuvati.

¹⁷ Na primer, slučaj Gugla u Italiji. Vidi: <http://news.bbc.co.uk/2/hi/8533695.stm>

MC Newsletter, 10. septembar 2010.

Danski kraljevski ram za srpsku sliku

Dr Jovanka Matić¹

Medijska studija (autora Benta Norbija Bonda, Aleksandra Benzeka i Andreja Zmačeka), kao polazna osnova za formulisanje Strategije razvoja medijskog sistema Srbije, pruža veoma koristan pregled medijske regulative EU i uporednu analizu nekih odlika medijskog sistema Srbije i evropskih zemalja. U njoj su na pregledan način predstavljeni normativni ram i medijska praksa u Danskoj, Nemačkoj i Austriji i na osnovu njihovih iskustava formulisane preporuke za medije u Srbiji.

Centralni fokus Studije na evropskoj regulativi i iskustvima evropskih zemalja istovremeno je njena najjača i najslabija strana. Poređenje srpske medijske scene sa evropskom pruža veoma dobar uvid koliko se domaće iskustvo razlikuje od stranog i koliko je širok reformski zahvat koji Srbiji predstoji. Ono istovremeno pokazuje da su se odabrane EU zemlje opredelile za različite modele u nekim delovima medijskog sistema, pa je i Srbiji moguće da izabere one koji joj najviše odgovaraju. Međutim, Medijska studija u celini počiva na jednoj centralnoj ideji: najefikasnija opcija koju Srbija ima za razvoj medijskog sektora jeste kopiranje postojećih evropskih rešenja. Slabost ove strategije jeste ignorisanje specifičnosti domaćeg, i društvenog i medijskog, konteksta.

Među istraživačima koji se bave analizom medijskog sistema post-komunističkih zemalja prisutno je mišljenje da je strategija imitacije (kopiranja, preslikavanja) evropskih institucija bila najpogodniji pravac transformacije. Međutim, ne postoji opšte slaganje oko uspešnosti „mimetičke“ strategije, kako je zove Karol Jakobovič, vodeći analitičar medijske transformacije. Ona se pokazala uspešnom kada je proces tranzicije već daleko odmakao. Slaganje, međutim, postoji da je mimetička orijentacija bolja od „atavističke“, tj. zadržavanja rešenja iz starog sistema, koji se želi reformisati.

U domaćem medijskom sistemu ima mnogo primera „atavizama“. Jedan od zadataka Medijske strategije svakako treba da bude identifikacija tih starih, prevaziđenih rešenja i ponuda novih.

Nova rešenja ne moraju nužno da budu imitacija i transplantacija onih koja su se uspešno razvila u drugim zemljama. Ona moraju da uvažavaju neke posebne odlike domaćeg društva i njegovih medija. Ukoliko to ne čine, ram modernih institucija postavljen na domaću siromašnu i

¹ Naučni saradnik Instituta društvenih nauka u Beogradu

nediverzifikovanu ekonomiju i nerazvijenu demokratsku političku kulturu može da se izvrgne u karikaturu reformskih ideja.

Srbija se mnogo razlikuje od Danske i Austrije, čak i kada je uporediva geografski i demografski, a teško je uporediva i sa većinom post-komunističkih evropskih zemalja. Srpska tranzicija je počela veoma kasno, još nije završena i ne postoji stabilan konsenzus oko njenog pravca, tempa i metoda. U Srbiji nije još uvek uspostavljena država sa jasnim granicama i stabilan demokratski sistem, niti je dovoljno razvijeno civilno društvo i odgovarajuća novinarska kultura za puko presađivanje evropskih modela.

Mediji u Srbiji su još uvek veoma važan agens demokratizacije i razvoja demokratske političke kulture. Medijska strategija stoga mora da iznađe rešenja za njihovo efikasno funkcionisanje upravo kao važnih faktora demokratskog razvoja zemlje i afirmacije novih vrednosti. Potpuno komercijalizovani mediji nisu stimulator demokratskih promena. Njihova uloga je velika u održavanju već konsolidovanog društva u kome postoji čvrst konsenzus oko pravca kretanja, jer oni ne dovode u pitanje bazične vrednosti društvenog konsenzusa.

Mediji u Srbiji su se razvili kao odgovor na posebne društvene i istorijske okolnosti. Nezavisne agencije, na primer, nisu nastale kao deoničarska društva novinskih izdavača - najpogodniji oblik za zadovoljavanje njihovih ekonomskih interesa, kao u SAD i Evropi, već kao rezultat inicijative grupa novinara radi pružanja alternativnih informacija u cilju kredibilnog informisanja. Visoko kvalitetna štampa, iako marginalizovana, imala je i ima veliki značaj kao glavni nosilac „watch-dog“ funkcije i u nacionalnoj i u lokalnim zajednicama. Novinarsko vlasništvo nad medijima, tradicija već prevaziđena u Evropi, u značajnom broju slučajeva pokazuje se kao uspešna brana slobode medija u Srbiji. Ove i druge domaće specifičnosti moraju se odraziti u Medijskoj strategiji da bi novi normativni i institucionalni okvir služio kao katalizator promena medija u pravcu uvažavanja evropskih standarda.

MC Newsletter, 2. jul 2010.

Ako ne možeš da ga pobediš – tuži ga

Miloš Vasić, novinar¹

Već je primećeno i notorno je poznato da broj privatnih krivičnih i građanskih tužbi protiv novinara dramatično raste od 2001. do danas. Tu je vidljiv još jedan trend: veliki deo krivičnih tužbi novinari dobijaju, ali zato gube veliki broj građanskih sporova zasnovanih na istom činjeničnom stanju. To – ukratko – smrdi na puzajuće gušenje slobode štampe.

¹ Novinar nedeljnika „Vreme“

Tu opet imamo razliku, veoma bitnu za ovu stvar: razliku između pravičnosti i prava. Ako parnični sudovi sistematski donose nepravične presude protiv novinara i duševnim bolesnicima dosuđuju ogromne novčane naknade za njihove (bez izuzetka nedokazane) „duševne bolove“, a krivični sudovi novinare po istim privatnim tužbama oslobađaju (nadam se u nameri da državu poštede sramote pred Evropskim sudom za ljudska prava u Strazburu) – onda tu nešto nije u redu.

Vratimo se pomenutoj razlici između pravičnosti i prava. Od sudija se s pravom očekuje da tu razliku uklanjaju koliko je to moguće – a moguće je. Na primer: niko sudiji ne brani da očigledno nezakonitu, slaboumnu, bezobraznu i/ili neblagovremeno izjavljenu tužbu odbaci; štaviše, sudija na to ima puno pravo. Ima – naravno – i pravo i dužnost da odbranu novinara razmotri nepristrasno i imajući u vidu, kako Zakon o javnom informisanju, tako i praksu Evropskog suda za ljudska prava. Problem je (i to se sve bolje vidi) u tome što zabrinjavajuće veliki broj sudija Zakon o javnom informisanju ne poznaje, a za Evropski sud ih je baš briga. Nekada, za vreme „komunističke diktature“, postojale su specijalizovane sudije za „štamparke“, kako se to u pravosudnom žargonu zvalo; znali su zakon napamet i po pravilu su sudili mnogo pravičnije od ovih današnjih (znam, jer sam pratio niz takvih postupaka). Događalo se čak da sudija telefonom zamoli privatnog tužitelja da odustane, jer da mu je tužba glupa.

Danas imamo situaciju koja je još gora nego za vreme nenarodnog režima Slobodana Miloševića, njegovih fašističkih pomagača i kamarile domaćih izdajnika, sa izuzetkom, naravno, Vučićevog podlačkog zakona iz 1998. Sudije danas plašljivo prihvataju svaku, pa i najblesaviju i neblagovremenu tužbu; osuđuju novinare suprotno odredbama Zakona o javnom informisanju; odbijaju ekskulpatorne (oslobađajuće) dokaze; i na kraju apelaciona veća bez analize takve presude potvrđuju.

Molim vas: Zakon jamči novinaru pravo da reči narodnog poslanika izrečene za skupštinskom govornicom prenese i na njih se pozove; Zakon jemči novinaru da se osloni na izvor kome ima sve razloge da poveruje i na dokumenta koja su nesporno proverena; da koristi ranije objavljenu, a nikada u zakonskom roku utuženu informaciju; da konstatuje belodano očiglednu činjenicu; da postoji razlika između vrednosnog i činjeničnog iskaza; itd.

Ako bismo sada nabrajali samo pravosnažne presude kojima su navedene zakonske garancije prekršene, trebalo bi nam mnogo više prostora, ali se nadam da čitalac čita novine, pa mu je jasno. Notorni kriminalci tuže za klevetu (poneki i iz pritvora) i dobiju parnicu, iako je sud dobio službene policijske podatke o njihovoj kriminalnoj karijeri. Ona neka sojka tuži jer su objavili sliku na kojoj ona diže Slobin portret u masi na mitingu; tada se ponosila, a danas se stidi – i dobija parnicu. Lažljivi general tuži sa debelim zakašnjenjem za stvar potpuno nespornu, pa mu jedva jedvice dokažu da je u debeloj zastari, posle nekoliko meseci. Kriminalac dobije odštetu za „duševni bol“ i onda zaglavi zatvor zbog onoga za šta je sud rešio da ga boli. Svaka i jedna tužba novinara pred Evropskim sudom za ljudska prava dobijena je, a biće i dalje, koliko vidimo.

Da bih izbegao optužbu za „kritizerstvo“ (kako su to zvali komunisti), ponizno ću predložiti „pozitivnu alternativu“ (isto):

Kao prvo: smesta otpočeti obuku izvesnog broja dostojnih sudija na nivou viših, apelacionih i Kasacionog suda, a iz oblasti Zakona o informisanju, medijskog prava i člana 10. Evropske konvencije o ljudskim pravima, koje se drži Evropski sud. Tako bismo dobili sudije obučene, profesionalne i dostojne za tu specifičnu materiju.

Kao drugo: uvesti praksu po kojoj sudije umešanih sudova (viših, apelacionih i Ustavnog kao krajnje instance) gube mesto ako im presuda padne u Strazburu.

Kao treće: da takve sudije moraju da nadoknade štetu Republici Srbiji za povredu časti i ugleda, kao i štetu nastalu oštećenim strankama zbog njihovih loših presuda.

Skromno mislim da bi ovi predlozi uveli red u medijska prava, osigurali slobodu štampe i uveli pravnu sigurnost – ne samo za novinare.

* Tekstovi su u integralnoj verziji preuzeti sa web sajta www.mc.rs i publikovani uz odobrenje Medija centra Beograd, kome se zahvaljujemo na doprinosu ovoj Publikaciji.

INTRODUCTION

The Fourth ANEM Monitoring Publication, the second in 2010, deals with topics indicated as important for the media sector in Serbia in the previous five-month legal monitoring conducted by the expert team of the “Zivkovic&Samardzic” law office.

According to the findings of the monitoring team, the period *July-November 2010* did not bring any major changes in the media sector. The problems that have long been tormenting the media and media professionals have not been resolved and no progress whatsoever was recorded in any sphere. The government continues to tackle violations of freedom of expression, albeit inadequately and focusing on the consequences rather than on the root causes. Since their actions are not deterring in any way, the threats against and pressure on journalists have continued; the number of physical attacks on journalists has soared, as has the number of reporters that have been put under police protection. These journalists were unable to enjoy freedom of expression because they were prevented to do their job, while the perpetrators are being sentenced to minimum or below-minimum sentences by the courts, which results in further self-censorship in the media. The media are also discouraged by uneven practices of the courts in identical or similar cases, as well as by the increase of freedom of expression violations committed by holders of public office, particularly local self-government officials, who are arbitrarily setting boundaries to public information, often in line with their personal interests. Finally, another reason for the personal and legal uncertainty of journalists and the media is the continued effectiveness of the provisions of the controversial Law on Amendments to the Public Information Law. Namely, the Constitutional Court declared most of the said provisions unconstitutional back on July 22. However, for reasons unknown, the Court’s decision is still unpublished in the Official Gazette of Serbia and thus the disputed provisions remain in effect. Hence, the umbrella media law remains the source of pressure on the media, instead of being the foundation for freedom of public information. The media may not find security in other laws from the set of media legislation either: these are either obsolete or differently interpreted and selectively implemented. A case in point is the Law on Copyright and Related Rights, the application of which in its most important part for the broadcasters – laying down the tariffs of collective organizations – has been stalled for months. Namely, the Government has not yet appointed the competent Commission that has a key role in the process and all stakeholders are suffering because of this omission. Similarly, in the case of the Public Company “Broadcasting Equipment and Communications”, the Government has taken its time in appointing the Director of the said company, which has put at risk the sustainability of the analog switch-off date (April 4, 2012), as the key preparatory activities for digital switchover are consequently delayed too. In the case of the privatization of media, however, one may not talk about delaying anymore, but rather about serious violations of media laws with severe consequences for the entire media system. The media market is still not functioning normally; the self-sustainability of many private media is threatened which are unable to compete in an unbalanced match. At the same time, the fundamental freedoms of still non-privatized media are jeopardized, as they are under sway from their founders – the local self-governments. Another problem is the fact that investors’ interest for media privatization has cooled down, which makes survival even

more difficult for those media outlets that are not interesting enough for even the local government to keep them in their property.

Many have expected that the previous period would see a solution for the many complicated problems plaguing the media industry. The long-announced Media Strategy should have been released a long time ago in the form of a draft accessible to the general public and media professionals and the adoption thereof was supposed to take place by the end of the year. This, however, didn't happen. After the Media Study – which is supposed to be the basis for drafting the Strategy – was presented in June, September saw an exhausting series of five round tables debating the recommendations of the Study's authors – independent experts hired by the European Union. These round tables, dedicated to the making of the Draft Media Strategy, pointed to several factors: first, all (but one) major media and journalists' associations have, regardless of their differences, recognized the significance of that document and managed to agree upon the fundamental principles they believed should be the foundation of the future Media Strategy. Secondly, the Ministry of Culture had embarked on this process unprepared and was unable to respond to all the challenges of such a task. Thirdly, the authors of the Study failed to find a magic formula for the Serbian media system, for they were unable, in such a short time, to recognize and seize all its nuances and specificities. The dynamic activities undertaken in the month of September failed to produce the desired outcome – the Draft Strategy. The Ministry and the state have proven incapable to deal with the accumulated problems and even less to keep pace with technological changes that are substantially changing the media environment. Consequently, instead of having a Media Strategy, in late November we have merely a hint of the potential changes in the media sector. However, the nature of these changes or the timing thereof remains unknown.

The texts in this Publication concern some of the already mentioned important media issues. The author of the first text, attorney at law Slobodan Kremenjok, writes about the attitude of the government towards the media, focusing on one segment in particular – how the laws that constitute the media regulatory framework are made. Nebojsa Samardzic, attorney at law, who authored the second text, tackles digital transition and the reasons that might hamper the entire process. In the third text, Professor Snjezana Milivojevic PhD gives an overview of the work on the Media Strategy so far, emphasizing the significance and the necessity of adopting such a document for further media reforms. The fourth text by Maja Rakovic is an overview of the ongoing debates in Europe on the same topic – what kind of media policy is needed for the digital media environment, and may provide useful guidelines in drafting the Serbian Media Strategy. The Media Center Belgrade (MC) has also contributed to this Publication with two author texts published in the online version of the MC's newsletter: the first, by Jovanka Matic PhD, about the framework set by the Media Study for the Media Development Strategy, as well as the need for this strategic Document to reflect the specific features of our media system; in the second text, journalist Milos Vasic writes about the court practice in media-related cases and the overall impact thereof on freedom of expression.

After reading these texts one might have a clearer picture of why there have been almost no changes in the Serbian media sector in 2010.

Obstacles on the Road towards a New Regulatory Framework for the media in Serbia

Slobodan Kremenjak, attorney at law¹

Having recognized the need to amend and modernize media regulations in Serbia in order to align them with European practice, the Ministry of Culture set up, back in 2008, a working group tasked with preparing draft regulations. This group produced in 2008 a draft law concerning media ownership transparency, which prohibited the concentration thereof. It also continued working, albeit in a slightly different composition, on the new Broadcasting Law. The task of the working group was quite challenging due to several reasons. The first reason was the lack of support from the Ministry for the radical solutions proposed by the working group in order to ensure transparency of media ownership. The second reason was the pressure coming from the media industry itself. Namely, the publishers of print media opposed the passing of any special rules regulating the concentration of media ownership and insisted on enforcing merely general concepts from the Law on Protection of Competition. Concerning the activities on the new Broadcasting Law, the Ministry itself was unsure as to how far it wanted to go: was the goal of the amendments only to remedy the identified shortcomings of the then Broadcasting Law before the expected digitalization process or to write a brand new law that would tackle the challenges entailed by digitalization? The above dilemma resulted in an unclear mandate assigned to the working group. As a result, by the summer 2009, the Draft Law on Unlawful Concentration and Transparency of Media Ownership was not tabled for adoption and the work of the new Broadcasting Law was stalled. Although it was supposed to work on the amendments to the Public Information Law, the working group failed to even discuss this topic. At that moment, suddenly and in total disregard of the working group it had established, the Government of the Republic of Serbia proposed to the Parliament to adopt the Law on Amendments to the Public Information Law, whose true author remains unknown to this day.

The consequences are more than obvious. The Law on Amendments to the Public Information Law was adopted in spite of the opposition of members of both the working group and media and journalists' associations. Indeed, the Constitutional Court did find most concepts provided for in these Amendments to be unconstitutional a year later, but it was hardly a solace for media professionals in view of the resulting rise in fear and self-censorship in the media. The resulting distrust between the Ministry and the working group also affected the ensuing work on the new Broadcasting Law, which is yet to be completed.

The controversy surrounding two important documents – the Serbian Media Sector Development Strategy and the new Advertising Law – shows that Serbian authorities have failed to learn their lessons from the rows related to the Law on Amendments to the Public Information Law.

¹ Law office "Zivkovic&Samardzic", Belgrade

We remind that the Ministry of Culture, in the face of harsh criticism over the Law on Amendments to the Public Information Law last summer, accepted the proposal of media and journalists' associations to start the procedure of enacting the Media Sector Development Strategy. One of the first things that was started in that respect pertained to the establishing of the working group for drafting the Strategy, which included the representatives of media and journalists' associations who had called for the adoption of such Strategy in the first place. After a couple of initial meetings, the working group was ultimately forgotten. Even after the release of the Media Study, which was produced with the assistance of experts hired by the European Commission and which was called the pillar for making the Media Strategy, the working group was never reconvened. The same happened after the end of a series of round tables that discussed the Media Study, in the organization of the OSCE Mission to Serbia in cooperation with the Ministry of Culture of the Republic of Serbia and the European Union Delegation in Serbia, with the support of the British Embassy to Belgrade. The representatives of media and journalists' associations were informed even before the round tables were held that the Ministry would publish conclusions after the end of each round table. However, we are yet to see any of these conclusions. The Ministry of Culture also announced that it would present the Draft Strategy immediately after the last round table, but nothing happened. Finally, the Ministry hired *PricewaterhouseCoopers* to write the Draft Strategy, but that version also remained unreleased. According to the latest information from the Ministry of Culture, what has been written so far – albeit unseen by anyone but the Ministry – is merely part of the Strategy pertaining to the “obligations of Serbia on the road to Europe”, while the completion of the entire document depends on the pending results of the financial analysis of the market.

It is clear that, after their electoral victory, the ruling parties have embraced the opportunity to shape and drive public policy. However, what is puzzling is the fact that the same ruling parties and ministries have been repeatedly establishing working groups – consisting both of independent experts and media representatives – showcasing in the process their commitment for transparency and finding solutions in the best interest of the public and media industry, only to ultimately shun these same working groups and adopt the most important documents in a non-transparent manner. Is it possible that at the present time, in the year 2010, the Serbian authorities are not able to produce a single argument in favor of the constitutionality and quality of the Law and the Strategy they are about to pass to the extent that they must write them *incognito*, conceal the drafts and release them at the latest possible stage in the form of a *fait accompli* for the media and journalists' associations and media professionals?

The above described practice does not seem to be the *modus operandi* of the Ministry of Culture only. Just take a look at the procedure of preparing the new Advertising Law. The competent ministry, in this case the Ministry of Trade and Services, set up in December 2009 a working group for drafting the working version of the Advertising Law. The working group comprised, among others, the representatives of the media sector. In the first half of 2010, the group considered the content of the future Draft and the structure thereof. Subgroups were also established in order to ensure more effective work on segments of the Law, resulting in the completion of early version of a series of chapters. In late May, the Government pressurized the working group to finish the working version in an unrealistic amount of time. Since the

working group was unable to accept such a request, the Ministry suspended all contacts with its members as of June. No new meetings were scheduled and members of the working group ceased to receive any materials or information related to further activities on the Law. Such state of affairs persisted until the second half of November, when it was revealed that the Ministry of Trade and Services had produced its own Draft, independently from the working group. The reasons for such behavior remain unknown. It could not possibly be the potential tardiness of the working group, since, if the members of the group had been told to complete the Draft until mid-November, they would most probably have done it within the said deadline. At the same time, the Ministry itself was unable to observe the deadline they had previously imposed to the working group (2-3 weeks).

The analysis of the Draft released by the Ministry in late November has shown something else. This document completely ignores the efforts invested in drafting the Media Strategy in the past year. What's more, the text released by the Ministry of Trade and Services has cemented the existing problematic state of affairs in this area, jeopardizing the possibility to implement the future Media Strategy before it is even adopted. Hence, one may legitimately challenge the sincerity of the government's commitment to create a more favorable environment for the development of media in Serbia.

Lost Motivation for the Transition to Digital

Nebojsa Samardzic, attorney at law ¹

Less than 16 months before the switchover to digital terrestrial television broadcasting, Serbia is facing much more dilemmas than expected in this phase of the transition. Why is this so?

One of the reasons may be the misconception about the motivation of the stakeholders to engage in this process. In the Digital Switchover Strategy, adopted by the Serbian government on July 2, 2009, it was estimated that all sides had an interest to switch to digital broadcasting. According to the Strategy, the citizens are motivated by the prospect of a better sound and picture quality, more diverse content and additional radio and television channels. The service providers were believed to be motivated by lower broadcasting costs, the opportunity to format content and to provide on-demand services. Finally, the interest of the state should have been to have a more efficient use of the spectrum and the release of a part thereof for new services.

However, the above described needs of the citizens have been already fulfilled in part by cable, DTH and IPTV operators. The citizens' enthusiasm for terrestrial digital broadcasting has cooled down due to high penetration, a wealth of regional and foreign localized channels, as well as the digital services already offered by certain cable operators. The citizens who cannot afford cable, DTH or IPTV services, see digitalization as a potential expense rather than an opportunity to enjoy better media content and thus a better quality of life. In the unfortunate absence of a positive promotion campaign, the only information the citizens have received so far is by rule related to the costs they may have in this process.

It turned out, however, that the interest of the service providers was misjudged. An underdeveloped media market, the saturation of analog channels, the still present piracy and the unregulated cable market have created an environment in which the existing broadcasters are unwilling to accept an increase in the number of television channels. In that context, we have a paradoxical situation in which digitalization in Serbia is expected to narrow down the offer instead of extending it, and to ensure at the same time better quality and the survival and economic sustainability for at least part of the existing broadcasters. Furthermore, the domestic media that have been considering the formatting of content have already implemented that option by expanding their offer within cable systems (B92 has launched a 24/7 news channel while Pink has specialized music and film channels), namely via satellite (Pink). Furthermore, nobody regarded the possibility to provide on-demand services, in the context of unregulated and extensive basic cable offer, as a sustainable business model. On the other hand, the expected lower broadcasting costs, in the context of the delay in the establishing of the broadcasting company that was supposed to be created with the disjoining of the broadcasting equipment from RTS, remained merely an expectation with many unknowns. Interestingly, during the public consultations, the biggest national broadcasters were already divided in two

¹ Legal Office "Zivkovic & Samardzic", Belgrade

fronts. On one hand we had TV Pink and TV B92, which advocated the keeping of the existing number of channels and the expansion of the digital offer only after the sustainability of such model was confirmed by a relevant market analysis. On the other hand, RTS and the Fox television, at the time still owned by the News Corporation conglomerate, were in favor of an immediate expansion of the digital offer. The RTS wanted an additional multiplex to be allocated solely for their needs, while Fox's request was to divide the available digital bands in proportion to the existing analog allocation, in order to introduce the localized versions of News Corporation's international television channels. The government finally opted, leaning toward what was proposed by Pink and B92, to consider digital transition as a separate process and to handle the allocation of additional capacities and the expansion of the digital offer only after the switchover was successfully completed. RTS continued to insist on their own multiplex in order to introduce a range of specialized channels, while News Corporation ultimately sold Fox Television to the Greek Antenna Group, whose plans related to digitalization remained unknown.

Dilemmas also remain concerning the interest of the state. Namely, the state was unsuccessful as to the plan on a more efficient use of the spectrum, as confirmed by its inability to tackle radio piracy. The use of the released part of the spectrum for new services raises the question of the digital dividend. The Digitalization Strategy has ruled out the use of channels 61-69 in the planning of digital broadcasting networks. Accordingly, these channels will remain "free" in order to leave the possibility to use that band for the formation of the digital dividend after the April 4, 2012. According to the available strategic documents of the Government of the Republic of Serbia and the Ministry of Telecommunications and Information Society, as well as from what government officials have said, the intent is apparently to license the free part of the spectrum for wireless broadband Internet access. The Ministry backed up this plan by pointing to the results of a World Bank survey according to which a 10% growth in broadband penetration results in a 1.3% GDP growth. According to information that has been made available, the state intends on releasing 120 MHz and expects also revenue from the one-time license fees, in the amount of between 600 and one billion Euros. Other estimates are far more conservative. All things considered, these proceeds are likely to be spent even before collected by the state. Namely, the condition of transmitter sites and broadcasting equipment pillars is disastrous – due to destruction inflicted during the NATO bombing in 1999 and as a consequence of decades of neglect and poor maintenance – and it will be extremely costly to adapt this equipment to the needs of digital terrestrial broadcasting. The overall revenue from the digital dividend might be used for repaying the loans the company "Broadcasting Equipment and Communications" needs for preparing for its role envisaged by the Digitalization Strategy.

Finally, two additional problems remain, the effects of which on the planned digitalization of broadcasting should not be underestimated. The first concerns the fact that part of the spectrum intended for the future digital dividend is currently used by the Ministry of Defense. The second problem is the fact that the year 2012, which has been set as the deadline for complete digital switchover, also happens to be an election year. Namely, the government will not allow any problems to happen in the implementation of digitalization in an election year, e.g. that part

of the population be deprived of television program, perhaps even during the election campaign. However, if the pressure to meet the digitalization deadlines has waned after the latest declarations of the President, who has announced the elections to be held in March 2012 – immediately prior and not after the date of the digital switchover – the problem of the need of the Ministry of Defense to retain part of the spectrum envisaged for the digital dividend remains.

In any case, all the above problems point to a pressing need for the state to start promoting the digital switchover and find additional incentives for all stakeholders in this process, in order for them to finally recognize the potential benefits and stop considering digitalization as merely a unnecessary cost.

Strategy, Study, Summary

Snjezana Milivojevic, PhD¹

In late November, a text message was circulating around Belgrade, informing the most persistent participants of the round tables about the Media Study that the presentation of the Media Development Strategy – initially planned for November 22 – was being postponed. It is not unusual for media-related affairs to remain unfinished or having the government failing to deliver on its promises, but this time, the outcome was awaited with much interest. Nevertheless, the delay did not cause significant public reaction. For the sake of all of those who have, in a professional and civically responsible way, diligently taken part in the round tables, formulated proposals or made public statements about the debate, here is a retrospective of the activities that have been undertaken on the Strategy so far. Perhaps the future thereof will be clearer if we look at its past. And it will perhaps help avoiding the Strategy to suffer the fate of some former forgotten reform initiatives.

The beginning was painless

So, how it all began? The initial idea emerged under the pressure of public discontent over the adoption of the amendments to the Public Information Law in the summer of 2009. Faced with unexpectedly harsh criticism, the Ministry of Culture agreed to produce a strategic document to define the development of the media in the following couple of years. It was a good opportunity to somehow sum up ten years of chaotic transition. During that period, due to a combination of poor laws, suspended privatization and mutually conflicting regulations, the media were in disarray and there was a pressing need to again map out the tasks, propose new legislation and start genuine harmonization with EU standards. The work on the Strategy began 16 months ago, when the Government announced it would set up a working group consisting of representatives of media associations (*Media Development Strategy Working Group, "Politika"*, August 16, 2009). However, the working group was never established. The method was changed when it was decided to apply for assistance with the European Commission and seek an expert study about the state of the media in Serbia. It was an important decision, for that kind of help is extremely valuable. Such study could have brought many benefits: facilitate a systemic overview of the European framework; lay down the obligations that will be stemming from the *Acquis Communautaire* after the start of the accession talks; and present the experience of other countries that may be useful for Serbia in tackling its domestic issues. The Study could have also been a good *external look* by knowledgeable and unbiased experts. On the long term, it could also have given a boost to the Ministry so as to introduce future legal or policy changes on the basis of professional and not political considerations. *Working groups* are not always an

¹ Professor at Faculty of Political Sciences, University of Belgrade

ideal solution in preparing legislation, since decision makers may ignore their proposals or disband them altogether as easily as they decided to set them up.

Effective assistance from the European Commission was crucial for the drafting of the Media Study in a very short time in spring 2010. Several European consortiums were given ten days to set up an expert teams and the European Commission Office in Belgrade appointed a team proposed by the *COWI Consortium*. The experts had two months to produce the Study (two team members 28 days each and the team leader 60 days). In such a short period of time, they were tasked with making an overview of the European framework, a comparative analysis of three selected countries and a study of Serbian media. It was a challenging task for a team with no experience and knowledge whatsoever about Serbian media. At the same time, it seemed that the Ministry itself was not sure of the aim of such a Study. The latter might have been concluded from at least two things in the content of the Study.

The first is very important decision about the selection of countries for the comparative analysis. As it was explained, Denmark was picked for its dual system and long tradition of local media, which might be a good model for the future media structure in Serbia; Austria, for its comparable size and cultural context, along with major overlaps of language territories; and Germany, for its very clear legislative framework, contrary to other large countries such as the UK or France. However, the above reasons may not be considered as convincing arguments for choosing the said countries, for they point to generic elements that are not relevant for comparison in the analysis of Serbian media. On the contrary, the size of the markets, the number of media outlets, the force of public service broadcasters and the media and political culture have, in many cases, made more difficult the invoking of experiences, and even the understanding of these countries' concepts. The latter was often obvious in subsequent debates – the examples, concepts or practice from Denmark or Austria were not analyzed or considered in detail as a possible model. The debate would suddenly become livelier every time experts from neighboring countries and countries in transition would speak up. The UK experts have also impressed the participants with their knowledge and ability to see the problems from both European and developmental perspective.

The second reason indicating that the goals have been vaguely set is the poor economic foundation of the analysis and particularly the failure to consider the financial aspects of the recommendations and the feasibility of the proposed concepts. For that reason, the recommendations and the SWOT analysis in particular were unconvincing, failing to offer any indicators of justifiability and feasibility. It is obvious that the authors of the Study have had difficulties to obtain information about the financing, economic power and potential of the media and media market. Consequently, they failed to provide the much needed economic analysis that is never the topic in domestic debates about the media. That is not to say that the *cost-effectiveness argument* is the most important one in media deliberations, but it must not be discarded. It is therefore important to compare the experiences of various countries: according to the Study, regional television stations in Denmark cover an area of about 700.000 inhabitants, while that number in Germany is 9.5 million. As per the number of licenses, regional stations in Serbia cover an average of 225.000 people. This number is even lower (about 50.000) if local

stations are taken into account. Are Serbian citizens that much better informed than those in Denmark or Germany? Or, for instance, the RTS barely manages to collect 50 million Euros from the subscription fee (and another 35 million from advertising), while having more or less the same number of employees as the Danish or Austrian public television, which have a budget of 750 and 850 million Euros, respectively. Does this mean that the RTS is able to produce equally good television with many employees and scarce resources or could it be that the quality and diversity of the content they provide is much lower? RTS is indeed a very impoverished public service broadcaster compared to EU stations or even regional televisions, but its combined revenues from the subscription and advertising exceed the combined revenue of all other stations in Serbia (60 million Euros). Is the media market financed from funds unknown to the media or the taxation authorities? Making sense out of the complicated trail of money in this area is a big challenge even for knowledgeable individuals, including the Ministry of Culture itself. On the other hand, the Study proved to be a valuable collection of various insights. Furthermore, it was written in a modern style and has also established the connection between media related issues and the advertising industry, content manufacturing, electronic networks, IP rights, digitalization and the use of media. It has shown that the analysis of the links between all these areas is important for drafting the Media Study, more so than the benevolence of politicians or the proximity of the next elections.

Delayed Strategy

From the very few newspaper articles on this topic, it is clear that, while the completion deadline was still far away, everything seemed clear and easy: “By the middle of the year the Media Strategy will be completed and introduced to the general public and it will finally put order in our media scene”, the Culture and Information Minister Nebojsa Bradic announced in an interview for “Novosti” (*We will not Tolerate Monopoly in the Media*, “Vecernje Novosti”, on March 27, 2010.). In the next few months, the main task of the Ministry was to occasionally announce alternately the Strategy and the Media Study: *the Media Study Comes in the Summer* (May 7, 2010), *The Media Study set to be released Next Week* (June 16, 2010), *Public Debate set for Next Week* (August 27, 2010). In the meantime a public debate was prepared in cooperation with the OSCE and the British Embassy and autumn started with a series of five round tables about the key areas from the Media Study.

However, the quality of the Study, the disregard for print media and most recommendations, the issues of the future of RTV Vojvodina, the network of regional public service broadcasters and TANJUG, suggested that the Study was simply not a text that might simply be copied into the Strategy. Moreover, the biggest media associations synchronized their positions during the summer and came forward with a joint platform for the public debate and hence it was obvious that the writing of the Strategy would be a complicated job. The Ministry kept repeatedly announcing a very detailed working calendar for the following two to three months, even hinting about an unexpected, but welcomed purge of regulations.

In the text *Guillotine of Media Regulations by the End of the Year*, Assistant Culture Minister in charge of the media Natasa Vuckovic-Lesendric said: "...most media laws will have to be changed and thus we will propose a guillotine of regulations in this domain". She went on explaining that the Ministry of Culture would also propose an economic feasibility study, for the said guillotine involved certain costs and revenues." I am optimistic and I expect that by the end of October we will have that proposal, as well as a clear situation on the media scene by the end of the year." ("Danas", September 2, 2010)

It is interesting to establish what was the foundation of the Ministry's bold promise to propose the Strategy by the end of the year, produce the feasibility studies, finish the public debate, ensure the adoption of the Strategy by the Government and guillotine the regulations along the way? It is of key importance to find out to what extent the Ministry is truly capable of assessing and strategically formulating the development of media, when it is obviously not capable of weighing its own resources and promises for the next two to three months?

The Ministry most probably counted on getting help, but help never came. Only days before the kick-off of the round tables, they called a vaguely formulated open competition for a job in the domain of media development. At the first round table, after a direct question was asked, the Ministry hinted that contract had been already awarded or that the job was already being performed by *PricewaterhouseCoopers*. At stake here is not the fact that the latter had started working even before the competition was closed, the question on the basis of what references the consultant has been selected or how much their services would cost. It is about the fact that the Ministry tried to outsource an already outsourced job. No studies or abstracts may replace the role of the Ministry in defining development priorities and policies in the media domain. Experts and consultants will not do it for them. So, the delaying of the Strategy began at that moment, when the Ministry demonstrated that it would not manage to merge the Media Study it had requested and the proposals of the participants into one single strategic document.

The second assumption is that the Ministry was left without the support and clear commitment of the Government as to what course the media development should take. Judging from media reports, it is hard to tell whether and when that has occurred. When the deadline was postponed for the first time, the Ministry had immediately set a new one:

"Although the Draft Media Strategy was supposed to be released on Monday, October 4, it was postponed at the last round table by two months, which means that the Strategy will be tabled to the Government by December 1," Natasa Vuckovic-Lesendric told the daily "Danas" (*Media Study to be tabled to the Government by December*, October 4, 2010).

According to the text posted on the Ministry's website *Draft Media Strategy to be Completed in Early November*, the delay did not diminish the optimism and plans of the Culture Minister: "After the round tables that were very fruitful, a lively debate took place with the representatives of journalists' and media associations, interested individuals and groups and very good and constructive remarks were heard. At this moment we are preparing this entire material that we will present to the public in October." (October 7, 2010)

After the deadline expired for the second time, the Ministry opted for a more sophisticated approach, saying they would not speculate with dates anymore:

“After the completion of the round tables, we reviewed the material and concluded that it did not contain enough substance, exact data and arguments that could help us in drafting the Strategy. We are in the phase of collecting information about how many resources are the media using and from which sources, in order to determine a lasting model for the withdrawal of the state from media ownership. Data collection will take time and in that process, most problems occur with the local self-governments”, said Vuckovic-Lesendric (*Strategy Hampered by Political Interests*, “Danas”, November 24, 2010).

Tremendous professional efforts and social energy have been invested in making the Study and in the debate that proceeded. How did it happen that the Ministry was unable to benefit from that and merge all the inputs into one single document and would it have to perform additional analysis on its own after the work of the experts’ team and the abstract of the consultant? If the Ministry was capable of doing that independently, why didn’t they do it a year ago – had it been the case, we would have already had a good analysis on the table. If there is still not enough relevant data after the efforts of all these organizations and the hiring of experts and consultants, then it is safe to say that the domestic media are *terra incognita* for the Ministry of Culture.

The media in Serbia have been at the heart of political disputes for the last two decades, while the last ten years they have been subject to a complicated transition. They have never, however, been the topic of such an exhaustive public debate. Media associations, media personnel, researchers and NGO activists came in great numbers to all five round tables in September. Those who were interested in the fate of the media strikingly outnumbered the ones whose job was to formulate media policies. Week by week, they debated, proposed and tried to contribute to formulating a joint position. Media representatives have never been clearer and more united together on a media-related event. All that “capital” should not remain untapped. The ability of various media associations to organize themselves and agree upon a joint position is the greatest benefit of this public debate. With the exception, that is, of the Media Association (MA) – the organization of media owners, mostly of print media. MA members arrogantly shunned the talks and even dared to request that they be the only ones to have a say on behalf of the media industry about the future thereof. Nonetheless, this is too an indicator that the media debate has moved from the initial transition baseline and that the media themselves have clearly differing interests. It is a pity that the round tables were not open to the public and that this important moment in the coming of age of the media scene did not get more media coverage and support.

For all the above reasons, the still unwritten Media Strategy has become a crucial document. True, until there is the required political will to regulate the media in accordance with democratic standards, not even European institutions can make the Serbian government deliver on its own promises. However, the year, in which the authorities have demonstrated their incompetence, has helped the media to define their new priorities.

New Media – New Policies?

Maja Rakovic, MA¹

Heated debate over the Media Strategy in Serbia and alignment of regulatory frameworks with European standards should not neglect an ongoing debate in Europe – what kind of media policy is needed for digital media environment?

The story about convergence, digitalization and “new media” is not new anymore, in media and communications theory or in the European media policies. The convergence of telecommunications, media and information technologies that emerged in the nineties led to a gradual transformation of mass-media: the borders between traditional media blurred and new types of communication have been developed. In new media and communications environment, the ways in which information is gathered and the content is created, distributed and accessed, have changed. The possibility of interactive use of media created new actors. Users (the audience) are not merely consumers anymore, they have become content creators. New intermediaries emerged, such as ISPs or search engines.

In theory, the changes are described as: the increasing proliferation of channels of communication; more freedom, but also more opportunities for surveillance and control; unclear borders between public and private;² domination of interactivity, multimedia and nonlinearities;³ fragmentation of the audience and the shift from broadcasting (including print and broadcast media) to a precisely targeted „narrowcasting“.⁴

In practice – media policy and regulation – the changes are addressed in a way typical for the emergence of new media (all media were initially „new media“ in a given historical period): “(1) at first, there is no reaction; (2) then there is an attempt to assimilate the new medium under a legal framework developed for older media; (3) this is followed by debates on, and development of, a new legal framework, suited to the new medium; (4) and finally by the enactment of the new framework.” In the European context, the media policy is currently situated somewhere in between the debate and the actual development of the new regulatory framework.⁵

¹ Member of the Steering Committee on the Media and New Communication Services of the Council of Europe (CDMC)

² McQuail, D. (2006). *New Horizons for Communication Theory in the New Media Age*. A Companion to Media Studies, Ed. Angharad N. Valdivia. Oxford: Blackwell Publishing.

³ Pavlik, J.V. (2008). *Media in the Digital Age*. New York: Columbia University Press

⁴ Hirst, M. and Harrison, J. (2007). *Communication and New Media: from Broadcast to Narrowcast*. Oxford: Oxford University Press.

⁵ Jakubowicz, K. (2009). *A New Notion of Media?* Strasbourg: Council of Europe.
http://www.coe.int/t/dghl/standardsetting/media/Doc/New_Notion_Media_en.pdf

The European Union and the Council of Europe

The key international references for Serbia's media policy are media standards of the Council of Europe and the EU *acquis* in the field of media and information society.⁶ These two frameworks are in many ways different, but complementary.

The EU media policy, based on the founding treaties of the Union, is focused on economic aspects and internal market.⁷ The common policy is developed for relatively narrow set of issues (mostly regarding electronic media), and the rest is subject to member states' national policies, with variety of regulatory options and many differences within the EU.

As a response to the convergence, in the late nineties public consultations were launched to tackle the potential implications of the development of new services, announcing a new policy approach to this field. Recognizing the global nature of communication platforms, internet in particular, as key factors for the integration of the world economy, the EU underlined that providing enabling environment for this process would create a powerful driver of economic growth, new job opportunities, better choices for consumers and promotion of cultural diversity.⁸ Reforms of the regulatory frameworks gradually started to unfold.

The main EU document related to media content, Television without Frontiers Directive (TVwF), was adopted in 1989, revised in 1997 and then again in 2007, when it was renamed into Audiovisual Media Services Directive⁹. Developed with the aim to create the conditions for a free flow of television programs in the EU, the Directive includes rules regulating protection of minors, advertising, covering events of major importance for society (sports, cultural and social events) and the promotion of the production and distribution of European content. In view of the technological changes that have happened in the meantime, the Directive was revised so as to include all audiovisual services (linear, such as traditional television, and nonlinear, including video on demand), while the rules were defined as per the degree of control available to the users over the media content (flexible and less restrictive rules for nonlinear media content).

The set of laws called "the Telecom Package", regulating transmission and infrastructure, is also relevant for the new media. Out of the three levels involved in content provision – (1) provision

⁶ Documents of the UNESCO, ITU, OSCE and OECD should also be taken into account. Nevertheless, in the process of EU accession, the most relevant are *Acquis communautaire* and the Council of Europe standards in the media field.

⁷ As a potential candidate for EU membership and a signatory to the SAA, Serbia has committed to align its national legislation with the EU *acquis*.

⁸ Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for Regulation – Towards an information society approach, /* COM/97/0623 final */.

<http://www.ictregulationtoolkit.org/en/Publication.1500.html>

⁹ Although the deadline for transposing AVMSD in the national legislations of EU member states was December 2009, this was not the case in most of the member states. See:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1983&format=HTML&aged=0&language=EN&guiLanguage=en>

of the actual media content, (2) electronic communications service (transmitting signals from the broadcaster to the user and vice-versa in the case of interactive services), and (3) underlying infrastructure (electronic communications network) – reformed “Telecom Package”¹⁰ pertains directly to the last two, while the first level is subject to the Audiovisual Media Services Directive.¹¹

The EU policy priorities until 2020 are outlined in the Digital Agenda¹², emphasizing seven areas: creating a digital Single Market, greater interoperability, boosting internet trust and security, much faster internet access, more investment in research and development, enhancing digital literacy skills and inclusion, and applying information and communications technologies to address challenges facing society.

The media policy of the Council of Europe – whose main objectives and areas of activities are human rights, democracy and the rule of law – was developed on the basis of the European Convention on Human Rights and the case law of the European Court of Human Rights, with the aim to protect and promote freedom of expression and right to information.¹³ Pursuant to Article 10 of the Convention, in the past decades dozens of declarations, recommendations, resolutions and conventions were adopted becoming the European standards and guidance for member states’ national media policies.

With changes in the media and communications field the standards have been adapted to the new circumstances and the past years are marked by documents pertaining to issues related to the protection of human rights in the information society.¹⁴

Media policy creators have started to gradually shift their focus from print, broadcasting and journalism in the traditional sense to digital content, public service value of the internet, critical internet resources, telecommunications infrastructure and management of internet traffic, domain names, IP addresses and similar issues. With growing importance of internet for all segments of modern societies, these issues are becoming increasingly political and human rights related.

The recent case of Wikileaks and the global debate provoked by the leaks of confidential US documents, as well as the way in which information was disseminated and blocked, clearly demonstrates why the focus of debate about freedom of expression and public interest is slowly

¹⁰ Adopted in 2009 and is supposed to be transposed by 2011 in the national legislations of EU member states.

¹¹ Schweda, S. (2009). The “Telecoms Review”: New Impetus for Audiovisual Media? in *Communications Regulation: Between Infrastructure and Content*. Strasbourg: European Audiovisual Observatory.

¹² [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245(01):EN:NOT)

¹³ As one of the 47 CoE member states and as a signatory to the *European Convention on Human Rights and Fundamental Freedoms*, Serbia is obliged to respect CoE media standards. All EU member states are also members of the CoE and signatories to the *European Convention on Human Rights and Fundamental Freedoms*, Furthermore, the negotiations regarding EU accession to the ECHR are currently underway.

¹⁴ www.coe.int/media

shifting from traditional journalistic newsrooms, printing houses and television studios to cable, servers, viral distribution, filtering and blocking of digital content...

The position of the Council of Europe is that human rights protection should be guaranteed in both “offline” and online environments. But the question is about modalities, i.e. how should values, principles and standards developed for the traditional mass media be applied to new services and service providers.

In the context of international cooperation and common policies, this question presupposes consent as to which forms of new communication services may be considered as “media” (in terms of rights and responsibilities) and then identifying ways of developing regulatory frameworks appropriate for the new media.¹⁵

Towards a New Concept of Media

In comparison to the protection of freedom of expression of individuals, mass media have enjoyed, due to their significance for democracy, a special status in terms of rights, freedoms and responsibilities. The said significance stemmed from their characteristics (impact on the masses, editorial responsibility, professional and ethical standards) and their role in society (to inform, entertain and educate; to set a public debate about issues of public interest; to be a watchdog of democracy). With the aim to protect media freedom, as well as human rights that may be threatened by certain media activities, media standards were developed regarding protection of journalists and their sources, right to reply, protection of privacy, protection of minors, advertising rules, etc. The functions and significance of the media for society did not change with development of new technologies. The actors and manifestations of those functions have changed.

Current regulatory frameworks were mainly developed by lesser or greater modifications of laws initially intended for the press or television and are not essentially different from traditional regulatory approaches. However, it is becoming increasingly apparent that in the new communication environment media policy, which is based simply on understanding media as different distribution platforms (i.e. regarding media as print radio, television, or internet and consequently developing press, broadcasting or internet laws), or regarding media as organizations (publishers, broadcasters) may not respond adequately to all new challenges. Because certain roles of new actors in relation to access, production and dissemination of digital content are interwoven in a completely different way compared to traditional divisions in terms of responsibility and organizational structure.

¹⁵ The Political Declaration, Resolution “Towards a New Notion of Media” and the accompanying Action Plan adopted in 2009 have defined this theme as one of the CoE’s dominant activities in this field in the coming period. Available at [http://www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf)

In that context, the position of internet intermediaries is particularly interesting, as is their role regarding freedom of expression. The term “internet intermediaries” includes a wide range of internet service providers. Currently, prevailing regulatory frameworks treat intermediaries as carriers which are not a priori held liable for illegal content of third parties.¹⁶ However, the emerging case law is increasingly creating legal uncertainties regarding liability for online content.¹⁷ Furthermore, with development of new technologies, internet intermediaries have more opportunities or needs (e.g. due to police requests in cyber crime investigations or for commercial reasons) to interfere with content – indexing, data inspections, blocking or removal are some of the forms that might find analogies with old terms of editing, censorship, self-censorship, etc.

Discussions about new notion of media are focusing on different media functions that are (fully or partially) carried out by new service providers, and are trying to determine level of rights and responsibilities accordingly.

It still remains to be seen how the European regulatory frameworks for media will evolve in the coming years. The fact that these changes are so tremendous even for much more advanced media systems, does not necessarily have to be an obstacle for Serbia, a country facing these changes at a time when even the “old” transition reforms are not fully completed. On the contrary, these changes could be an opportunity for a direct and active participation in new processes. Such an optimistic scenario calls for at least two prerequisites to be met. The first concerns the need to have responsible and proactive action by all media stakeholders – the state, industry and civil society. The second pertains to the need of never forgetting why freedom of expression is such a precious commodity.

¹⁶ The “mere conduit” principle and the “notice and takedown” procedure

¹⁷ For example, the case of Google in Italy. See: <http://news.bbc.co.uk/2/hi/8533695.stm>

MC Newsletter, September 10, 2010

Danish royal frame for the Serbian picture

Jovanka Matic, PhD¹

The Media Study (prepared by authors Bent Norbi Bond, Alexander Benzek and Andrey Zmachek), as a basis for creation of the strategy of development of the media system in Serbia, offers a very useful overview of media legislation in the EU and a comparative analysis of certain characteristics of media systems in Serbia and some European countries. The Study clearly presents the regulatory framework and media practice in Denmark, Germany and Austria and offers recommendations for the media in Serbia based on their experience.

The Study's main focus on European regulation and experiences is at the same time both its strong and weak point. Comparative analysis of Serbian and European media scenes creates a very good insight into the differences between the situation in the local environment and abroad, and proves that Serbia needs wide-ranging reforms. The comparison also shows that certain countries of the EU have chosen different models in some parts of the media system, and that Serbia can select those that are most suitable for her. However, the Media Study has adopted a central concept which entails that the most efficient alternative for Serbia to develop its media sector would be to copy the existing European solutions. The downside of such strategy is that it ignores the specific characteristics of the domestic social and media context.

Among the researchers active in the field of analysis of the media systems of post-communist countries often believe that the strategy of imitation and copying of European institutions was the most suitable way of transformation. However, there is no agreement on the results and success of such "mimetic" strategy, as it was called by Karol Jakubovich, the leading analyst of media transformation. It has shown good results in later stages of the process of transition. Most of the observers agree that a mimetic orientation is always better than an "atavistic" one i.e. preserving parts of the old system whose reform is desired.

Domestic media system has many examples of such "atavisms". One of the goals of the media strategy should be to identify old and obsolescent solutions and to offer new ones.

New solutions do not need to be an imitation and a transplant of those that have successfully been developed in other countries. They have to take into account certain specifics of the local society and its media. If this is not the case, the framework of modern institutions combined

¹ Research Associate at the Institute of Social Sciences in Belgrade

with domestic impoverished and non-diversified economic foundation and undeveloped democratic political culture could lead to undesirable results that are completely different than the original reform ideas.

Serbia differs a lot from Denmark and Austria, even when there are geographic and demographic similarities, while it is also difficult to compare it with most of the post-communist European countries. Serbian transition began very late, it has not been completed yet and there is not a stable consensus on its direction, pace and methods. In Serbia, a state with clear boundaries and a stable democratic system have not been established yet, while the civil society and appropriate journalistic culture have not been sufficiently developed to allow successful transplant of European models.

The media in Serbia are still a very important engine of democratization and development of democratic political culture. Therefore the media strategy must find solutions for their efficient functioning as important factors in the democratic development of the country and affirmation of new values. Fully commercialized media cannot stimulate democratic changes. They have a great role in sustaining already consolidated societies in which there is a strong consensus on the direction of movement, since they do not question the basic values of the social consensus.

The media in Serbia have developed as a response to special social and historic circumstances. Independent agencies, for example, have not taken the form of joint stock companies created by press publishers – which is the form best suited to satisfy their economic interests – like in the USA and Europe, but have been created as a result of initiatives of groups of journalists with intent to offer credible alternative information. High-quality press, although marginalized, has been very significant in its role as a watchdog in national and local communities. Journalistic ownership of the media, which is an archaic tradition in Europe, has proven to be a successful strategy to defend the freedom of the media in Serbia. This, together with other local specific characteristics, must be taken into account by the media strategy in order to create a new regulatory and institutional framework that would serve as a catalyst of media changes that would lead to harmonization with European standards.

MC Newsletter, July 2, 2010

If you can't beat them – sue them

Milos Vasic, journalist¹

It has already become widely known that the number of individual criminal and civil charges against journalists has risen dramatically since 2001. Another trend is noticeable: journalists have won many of the criminal legal cases against them, but lost a great number of the civil

¹ Journalist of the “Vreme” weekly magazine

proceedings based on the same facts. This – in short – reeks of a form of suppression of freedom of the press.

Here we have another difference that is very important in this issue: the difference between justice and the law. If civil cases systematically end with unfair verdicts against journalists and with huge financial compensations awarded to claimants for their emotional pain (in all cases without any evidence of such pain), while at the same time criminal courts acquit journalists of the same charges (hopefully to spare the country of the embarrassment before the European Court of Human Rights in Strasbourg) – then it is obvious that something is wrong.

Let us go back to the already mentioned difference between the justice and the law. The judges are rightfully expected to eliminate this difference as much as possible – and it is indeed possible. For example: judges are allowed to reject any obviously illegal, feeble-minded, impertinent and/or late legal claims; in fact, judges are fully entitled to do that. It is their right and their duty to consider the journalists' defence impartially and taking into account both the Public Information Law and the practice of the European Court of Human Rights. The main problem (which is increasingly more obvious) is that many judges do not know the Public Information Law and could not care less about the European Court. Once upon a time, during the "communist dictatorship", there were specialized judges for the press; they knew the law by heart and their verdicts were usually much more fair (I know from the first hand because I reported on many of such proceedings). There were even cases when judges called private claimants over the phone and asked them to give up on their claims because they felt the case was too senseless.

Today we have a situation that is even worse than it was during the regime of Slobodan Milosevic, his fascist cronies and the bunch of traitors, with the exception of – of course – Vucic's evil law of 1998. Today, judges are filled with fear and accept any claims, even the silliest ones, and even those that are past legal deadlines; they pass verdicts against journalists although the verdicts violate the provisions of the Public Information Law; they reject exculpatory evidence; and, in the end, courts of appeal uphold such verdicts without any further analysis.

The Law stipulates that journalists are allowed to report the words spoken by members of parliament during parliamentary sessions and to refer to them; the Law guarantees that journalists are free to rely on sources they have every reason to believe to and on documents that have been proven accurate beyond doubt, to use previously published and legally unchallenged information, and to state blindingly obvious facts. The Law also sees the difference between factual statements and opinions; etc.

It would take too much space to list all the verdicts that violate the aforementioned legal guarantees, but I hope that readers read newspapers and have formed their own opinion. Notorious criminals (some of them from prison) have brought libel cases against journalists and won, although the courts received official police records of their criminal careers. A woman

sued journalists because they published a picture of her holding Milosevic's portrait during a public rally, which she is now ashamed of; she won her case. A lying general brought charges well past all legal deadlines for an issue that was obvious and beyond any doubt; his case was dismissed only after several months. A criminal has won damages for "emotional pain" and later sentenced to prison for precisely those crimes related to the "emotional pain". All of the journalists' claims filed before the European Court of Human Rights have been won, and this tendency will obviously continue in future.

In order to avoid charges of "negative criticism" (as communists used to call it), I humbly propose a "positive alternative solution":

First: Immediately begin training of a group of worthy judges at the level of higher courts, courts of appeal and the court of cassation. This training should be related to the Public Information Law, media laws and the Article 10 of the European Convention of Human Rights that is accepted by the European Court. In this way we would have judges who are trained, professional and worthy of such specific matters.

Second: Introduce the practice that says that judges of involved courts (higher courts, courts of appeal and the Constitutional Court as the last instance) will be removed from their positions if their verdicts are overturned in Strasbourg.

Third: Such judges will be required to compensate the damage to the Republic of Serbia because of harm done to its reputation, as well as to the damaged parties, caused by their bad verdicts.

My humble opinion is that these proposals would regulate media rights, secure the freedom of the press and establish the rule of law – and not only for journalists.

* The texts were taken over in their integral version from the web site www.mc.rs and published with the approval of the Belgrade Media Center; we hereby thank them for their contribution to this Publication.