MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF SERBIAN MEDIA SCENE

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U 2011. godinu, medijski sektor je ušao opterećen nagomilanim problemima, praćenim odlaganjem rada na Medijskoj strategiji, za koju su mnogi verovali da će doneti dugo očekivana rešenja i medijske reforme. Skoro devet meseci kasnije, u trenutku kada završavamo ovu Publikaciju, slika medijske scene Srbije je gotovo ista, o čemu govore rezultati pravnog monitoringa u tom periodu. Sumirajući ih, ističemo najvažnije:

Napadi, pretnje i različiti pritisci na novinare i medije su nastavljeni i pored zakonskih odredbi koje to zabranjuju ili kažnjavaju. Tome su doprineli: postojeća regulativa sa blagom kaznenom politikom u takvim slučajevima; opstrukcija, koja postoji, kako za otkrivanje onih koji prete novinarima i napadaju ih, tako i za utvrđivanje njihove odgovornosti; praksa sudova da neadekvatno kažnjavaju učinioce tih napada, a naročito nespremnost sudova da do kraja rasvetle sve relevantne činjenice i razjasne pozadinu napada. Sudovi su tako, umesto na učinioce tih napada, destimulativno uticali na novinare i medije, a dodatno i svojim neujednačenim stavovima i praksom, dugotrajnim procesima i diskutabilnim odlukama, u slučajevima kada su novinari ili mediji tuženi. Rezultat svega toga je porast autocenzure u medijima.

U ovom periodu, medijski pravni okvir, za koga se svi slažu da ima ozbiljne nedostatke, nije bio menjan. Zapravo, jeste na jedan način, ali ne donošenjem novog ili izmenom postojećeg zakona, već prestankom važenja gotovo svih odredbi Zakona o izmenama i dopunama Zakona o javnom informisanju zbog njihove neustavnosti, koja je utvrđena odlukama Ustavnog suda iz maja 2011. i prethodno, iz jula 2010. Tako od ovog zakona, kojim je na grub i protivustavan način pre dve godine promenjen medijski regulatorni okvir, gotovo ništa nije ostalo. Međutim, u ovom periodu je stvoren nov razlog za brigu medijskog sektora u ovoj oblasti. On se odnosi na Medijsku strategiju, odnosno na činjenicu da i pored Nacrta strategije i javne rasprave o njemu, medijska javnost i dalje ne zna autentične namere i planove nadležnog Ministarstva/vlasti u medijskoj sferi, niti kako će izgledati finalni tekst Medijske strategije, od kog zavisi budućnost medijske scene u Srbiji, niti kada će Strategija biti doneta. Naime, distanciranje Ministarstva od Nacrta strategije tokom javne rasprave, kao i njegovo izbegavanje da jasno definiše svoje pozicije i stavove u odnosu na željeni finalni tekst Medijske strategije, doveli su u sumnju spremnost vlasti da donese ovaj dokument, a posebno volju vlasti da njime suštinski promeni stanje u medijskom sektoru i dozvoli prave medijske reforme. Razloga za brigu sve više ima, sudeći po pojedinim nezvaničnim informacijama u medijima, koje govore da u finalnom tekstu Predloga strategije, nisu usvojeni, ili ne na pravi način, suštinski zahtevi medijskih/novinarskih udruženja. Pored Strategije, još jedan razlog za brigu medijskog sektora u ovoj oblasti, predstavlja predloženi tekst Pravilnika o tehničkim zahtevima, kojim se reguliše zakonito presretanje i zadržavanje podataka o elektronskim komunikacijama, jer potencijalno može ugroziti ostvarivanje prava na zaštitu novinarskih izvora, kao i osnovna ljudska prava. Javna rasprava, koja je o njemu vođena tokom leta i argumenti kojima su osporavana suštinska rešenja ovog Predloga, morali bi da dovedu do njegovih korenitih izmena, odnosno povlačenja, a da li će Ministarstvo kulture, informisanja i informacionog društva to i učiniti, ostaje da se vidi.

U Srbiji nije dovoljno samo da postoje zakoni, već je posebno važno da li i kako se oni primenjuju. Nadležni organi ni u ovom periodu nisu odustali od loše prakse potpunog

ignorisanja svojih zakonskih obaveza (npr. iz Zakona o slobodnom pristupu informacijama od javnog značaja) ili kašnjenja u njihovom ispunjavanju (npr. izbor članova Saveta RRA, što je dovelo u pitanje funkcionisanje ovog regulatornog tela). Ali, najdrastičniji primer njihovog ignorisanja obaveza i istovremenog kašnjenja u primeni zakona, sa dalekosežnim i teškim posledicama po medijski sektor, jeste u oblasti privatizacije medija. Ni 4 godine od isteka zakonskog roka, privatizacija medija nije završena. Kolizija normi medijskih i ne-medijskih zakona i dalje opstaje kao alibi za ozbiljno kršenje medijskih propisa. Dok se vlast uopšte ne bavi ovim pitanjem, sami mediji su i dalje podeljeni oko toga da li je privatizacija, ili suprotno, nedovršena privatizacija, uzrok njihovih nagomilanih problema, a pre svega nefunkcionalnog medijskog tržišta. Tako, u uslovima neravnopravne tržišne utakmice medija, državna pomoć, za mnoge od njih, postaje glavni izvor sredstava, što otvara mogućnost različitih uticaja na njihovu uređivačku politiku, bilo da su neprivatizovani, bilo privatni, zbog nepostojanja pravno regulisanog sistema u ovoj oblasti. Pored toga, u ovom periodu je postalo izvesno da Srbija neće potpuno preći na digitalno zemaljsko emitovanje TV programa 4. aprila 2012, čime se i benefiti digitalizacije za sve zainteresovane strane odlažu.

Četiri autorska teksta u ovoj, Petoj Monitoring Publikaciji, odnose se na neka od navedenih važnih medijskih pitanja. Polazeći od uočenog problema, da sudska praksa u medijskim slučajevima uglavnom nepovoljno utiče na položaj i prava medija i novinara, autor prvog teksta, advokat Slobodan Kremenjak, piše o obavezi srpskih sudova da primenjuju sudsku praksu Evropskog suda za ljudska prava, razlozima njenog neprimenjivanja i važnosti ove sudske prakse za pravilno rešavanje sporova u slučajevima koji se odnose na slobodu izražavanja. Polazeći od drugog primetnog problema, da na položaj medija i novinara u Srbiji, veoma često, izuzetan uticaj imaju zakoni koji nisu medijski, autorka drugog teksta, advokat Kruna Savović, analizira koliko će najavljena dekriminalizacija klevete i uvrede doprineti istinskom poboljšanju njihovog položaja, kao i šta je još potrebno da bi ove izmene Krivičnog zakonika imale pravi efekat u pogledu ostvarivanja slobode izražavanja. Treći tekst je posvećen važnom medijskom pitanju – digitalnoj tranziciji televizije, izazovima u ovom procesu i najavljenim promenama u njegovoj realizaciji, a autori ovog teksta, Milena Jocić i Miloš Stojković, savetnici u Ministarstvu kulture, informisanja i informacionog društva, daju odgovore na neka od pitanja i nedoumica, koje se, s tim u vezi, pojavljuju u javnosti. Četvrti tekst u Publikaciji, autora Doc dr Dejana Milenkovića, odnosi se na najvažniji dokument medijskog sektora, Medijsku strategiju, koja, po svemu sudeći, neće biti izraz konsenzusa medijskog sektora i vlasti, već osnov za novo nepoverenje i izvor novih problematičnih rešenja koja neće doprineti razvoju medijskog sektora.

Specijalan dodatak u ovom broju Publikacije čine izvodi iz Informatora sudske prakse Evropskog suda za ljudska prava - sažet prikaz dve presude koje se odnose na primenu člana 10 Evropske Konvencije za zaštitu ljudskih prava i osnovnih sloboda, kojim želimo da doprinesemo upoznavanju svih zainteresovanih sa evropskim standardima u oblasti slobode izražavanja, a posebno boljoj praksi srpskih sudova u medijskim slučajevima. **Prva presuda** se odnosi na slučaj objavljivanja doslovnog intervjua bez prethodne autorizacije intervjuisanog – sud je ocenio da je krivična sankcija, izrečena uredniku tih novina, samo na osnovu činjenice objavljivanja teksta bez autorizacije, a bez razmatranja tačnosti sadržaja objavljenog teksta i bez uzimanja u obzir njegove pažnje u obezbeđivanju tačnosti, koja nije dovedena u pitanje, nesrazmerna i da stoga predstavlja povredu čl.10 Evropske konvencije – prava na slobodu izražavanja; sud je podnosiocu predstavke - uredniku dosudio i odgovarajući iznos na ime naknade štete; **druga** se odnosi na slučaj građanske odgovornosti jednog lista za klevetu učinjenu u izveštavanju o

sudskom postupku, odnosno na njegovo obavezivanje na naknadu štete zbog objavljivanja netačne informacije podesne da povredi čast i ugled drugih – sud je ocenio da, u konkretnom slučaju, ograničenje prava na slobodu izražavanja nije bilo neophodno u demokratskom društvu radi zaštite ugleda drugih, s obzirom da je taj list preduzeo sve razumne mere da proveri tačnost izveštaja o sudskom postupku, a da je novinarka – sudski izveštač, sve vreme postupala u dobroj veri i u skladu sa svojom dužnošću odgovornog izveštavanja, uključujući i javno objavljivanje izvinjenja; ocenjujući da je u konkretnom slučaju povređen član 10 Evropske konvencije - pravo na slobodu izražavanja, sud je podnosiocima predstavke dosudio i odgovarajući iznos na ime naknade štete.

U ovim tekstovima se mogu pronaći mogući odgovori na neka od pitanja koja muče medijski sektor.

26. septembar 2011.

Ova Publikacija je zaključena dva dana pre telefonske sednice Vlade,
na kojoj je Srbija dobila svoju Medijsku strategiju

Primena prakse Evropskog suda za ljudska prava pred srpskim sudovima

Slobodan Kremenjak, advokat[1]

Članom 18. Ustava Republike Srbije predviđeno je da se ljudska i manjinska prava zajemčena Ustavom, opšteprihvaćenim pravilima međunarodnog prava, potvrđenim međunarodnim ugovorima i zakonima, neposredno primenjuju i u toj primeni tumače u korist unapređenja vrednosti demokratskog društva, saglasno važećim međunarodnim standardima ljudskih i manjinskih prava, te na kraju i saglasno praksi međunarodnih institucija koje nadziru njihovo sprovođenje.

Navedena odredba posebno je bitna u svetlu činjenice da je Srbija ratifikovala Evropsku konvenciju za zaštitu ljudskih prava i osnovnih sloboda. Naime, navedenom Konvencijom ustanovljen je i Evropski sud za ljudska prava, kao organ ili institucija koja nadzire poštovanje obaveza iz Konvencije. U smislu člana 18. Ustava Republike Srbije, na ovaj način je praksa Evropskog suda za ljudska prava u primeni Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, postala obavezujuća za srpske sudove, kada odlučuju o pitanjima ljudskih i manjinskih prava zajemčenih Konvencijom.

Za medije i oblast javnog informisanja uopšte, posebno je značajna bogata praksa koju je Evropski sud za ljudska prava izgradio u primeni člana 10. Evropske konvencije. Podsetimo, članom 10. Evropske konvencije zajemčeno je pravo svakoga na slobodu izražavanja. To pravo uključuje slobodu posedovanja sopstvenog mišljenja, primanja i saopštavanja informacija i ideja bez mešanja javne vlasti i bez obzira na granice, a može se podvrgnuti formalnostima, uslovima, ograničenjima ili kaznama propisanim zakonom i neophodnim u demokratskom društvu u interesu nacionalne bezbednosti, teritorijalnog integriteta ili javne bezbednosti, radi sprečavanja nereda ili kriminala, zaštite zdravlja ili morala, zaštite ugleda ili prava drugih, sprečavanja otkrivanja obaveštenja dobijenih u poverenju, ili radi očuvanja autoriteta i nepristrasnosti sudstva.

Ostaje, međutim, otvoreno pitanje u kojoj meri postojeću praksu Evropskog suda za ljudska prava poznajemo, da bi mogli da je primenimo. U ovom trenutku, na Internet prezentaciji Vrhovnog kasacionog suda, dostupni su prepisi ukupno 42 presude koje je Evropski sud za ljudska prava doneo protiv Srbije i još 44 karakteristične presude donete protiv drugih zemalja. Indikativno je odsustvo velikog broja presuda koje se smatraju ključnim za definisanje prakse Evropskog suda za ljudska prava upravo u primeni člana 10. Konvencije. Ovo nas dovodi u situaciju u kojoj naši sudovi jesu obavezni da norme koje se tiču slobode izražavanja primenjuju i tumače saglasno važećim međunarodnim standardima i saglasno praksi Evropskog suda za ljudska prava upravo u primeni člana 10. Evropske konvencije, ali su sa druge strane, u dobroj meri, prepušteni sami sebi, svojoj ličnoj inicijativi ili svom ličnom poznavanju stranih jezika, kada se postavi pitanje upoznavanja sa standardima i praksom koju su obavezni da primene. Isti problem postoji i kada se stvar gleda iz ugla novinara, čije bi pravo na slobodu izražavanja

[1] Advokatska kancelarija „Živković&Samardžić“, Beograd

moglo biti povređeno. Oni su ovlašćeni da se u postupku pozovu na važeće međunarodne standarde i praksu Evropskog suda za ljudska prava upravo u primeni člana 10. Evropske konvencije, ali su u saznavanju tih standarda i takve prakse, isto kao i sudije, prepušteni sami sebi.

Posledice su brojne i dešavaju se svakodnevno. Upravo ovih dana Apelacioni sud u Beogradu je, odlučujući po žalbama medija protiv dve presude, donete povodom objavljivanja izveštaja Ministarstva unutrašnjih poslova o saznanjima do kojih je policija došla tokom, kako se u izveštaju navodi, „operativne obrade nad kriminalnom grupom Darka Šarića“, jednu potvrdio, a drugu preinačio, tako što je smanjio dosuđeni iznos naknade štete. Naime, odlučujući da smanji dosuđeni iznos naknade štete jednoj od tužilja, Apelacioni sud ispravno ukazuje da funkcija koju ona obavlja u javnoj administraciji, a koja je bila razlog prvostepenom sudu da joj dosudi višu naknadu, ne opravdava dosuđivanje više naknade, drugim rečima, da nosioci javnih funkcija ne mogu biti „više zaštićeni“ od običnih građana. Ali sa druge strane, u delu u kojem su presude potvrđene, Apelacioni sud nalazi da je, bez obzira što je informacija verno preneta iz dokumenta nadležnog organa, novinar bio dužan da sa „pažnjom primerenom okolnostima“, proveri njenu istinitost, što po sudu, u konkretnom slučaju, podrazumeva i „uspostavljanje kontakta sa licem“ koje se u dokumentu Ministarstva unutrašnjih poslova pominje. Apelacioni sud ide čak i dalje i konstatuje da se član 82. Zakona o javnom informisanju, shodno kojem, novinar, odgovorni urednik i pravno lice koje je osnivač javnog glasila, ne odgovaraju za štetu, ako je neistinita ili nepotpuna informacija verno preneta iz dokumenta nadležnog državnog organa, zapravo ima primeniti samo u slučajevima u kojima se informacije verno prenose iz dokumenata koje državni organi zvanično saopšte, a ne i u slučajevima u kojima medij do takvih informacija dođe na drugi način.

Niko ne može znati da li bi u konkretnim slučajevima i Viši sud u Beogradu i Apelacioni sud u Beogradu doneli drugačije presude, da su bili upoznati sa sudskom praksom Evropskog suda za ljudska prava, izraženom kroz presude u slučajevima Bladet Tromsø i Stensaas protiv Norveške ili Colombani protiv Francuske, iz 1999. odnosno 2002. godine, u kojima je taj sud zauzeo stav da novinari imaju pravo da se pouzdaju u sadržaje službenih izveštaja, a ne samo u saopštenja za štampu nadležnih organa, bez obaveze da sprovode nezavisnu istragu, te da bi u drugačijem slučaju, jedna od osnovnih, ako ne i osnovna funkcija medija u demokratskom društvu, a to je funkcija kontrole vlasti, bila onemogućena. Ono što, međutim, znamo, jeste da se ni ove, kao ni mnoge druge važne presude Evropskog suda za ljudska prava, kroz koje je taj sud gradio svoju praksu u primeni člana 10. Evropske konvencije, ne mogu naći ili ne mogu lako naći u srpskim prevodima. Oslanjanje na ličnu inicijativu postupajućih sudija i samih stranaka, kojom bi oni pojedinačno i svako za sebe, dolazili do saznanja prakse koja u ovom slučaju jeste pravo, očigledno nije dovoljno.

Dekriminalizacija klevete i uvrede

Kruna Savović, advokat[1]

Nakon 2005. godine, u Srbiji se ponovo govori o dekriminalizaciji klevete i uvrede. Podsetimo, tadašnje izmene Krivičnog zakonika, nisu iskorišćene kao prilika za dekriminalizaciju. Uprkos zahtevima medijskih i novinarskih udruženja za dekriminalizaciju, usvojeno je polovično rešenje, kojim su kleveta i uvreda ostale u Krivičnom zakoniku, ali je isključena mogućnost da se za njih izriče kazna zatvora. Na prvi pogled, izgledalo je kao da je na taj način učinjen pomak u zaštiti slobode izražavanja. Zapravo, ništa se nije promenilo, budući da se više niko i ne seća kada je u Srbiji poslednji put izrečena zatvorska kazna za klevetu ili uvredu, učinjenu posredstvom medija. Čak i u vreme najoštrije represije Miloševićevog režima, kada novinari jesu bili zatvarani, oni nisu zatvarani zbog klevete. U dva možda najpoznatija slučaja, Miroslav Filipović, dopisnik lista „Danas" i agencije „Frans pres" iz Kraljeva, osuđen je 2000. godine na 7 godina zatvora presudom Vojnog suda u Nišu zbog špijunaže, a Nebojša Ristić, glavni i odgovorni urednik televizije „SOKO", godinu dana ranije, na godinu dana zatvora zbog navodnog širenja lažnih vesti. Filipović je navodno špijunirao, tako što je pod punim imenom i prezimenom objavljivao tekstove na Internetu, na sajtu IWPR-a (Institute for War & Peace Reporting), dok je Ristić navodno širio lažnu vest o tome da štampa u Srbiji nije slobodna, tako što je na prozor svog medija zalepio plakat sa zatvorskim rešetkama, na kome je pisalo: FREE PRESS – MADE IN SERBIA. Međutim, čak ni u tom strašnom vremenu, niko nije bio osuđen na zatvorsku kaznu zbog klevete.

Razlog aktuelizacije ideje dekriminalizacije je najava državnog sekretara Ministarstva pravde Srbije, Slobodana Homena, da će početkom jeseni, ova krivična dela biti brisana iz Krivičnog zakonika. Već iz same činjenice da ovakvu vest prvi obelodanjuje jedan političar, nesumnjivo proizilazi da je dekriminalizacija u Srbiji zapravo stvar političke odluke. Pravnici krivičari, uključeni u rad na izmenama Krivičnog zakonika i dalje nisu sigurni da li je dekriminalizacija uopšte potrebna i za takvo mišljenje iznose iste one argumente koje su iznosili i 2005. godine – da se radi o tradicionalnom krivičnom delu koje poznaju krivična zakonodavstva većine evropskih demokratskih država, uključujući i one na koje se naš pravni sistem tradicionalno oslanjao. Ovo, naravno, jeste tačno, ali bi se moglo reći i da zemlje, kao što su Nemačka ili Francuska, jesu zadržale klevetu u krivičnim zakonima, ali da su je gotovo dekriminalizovale u praksi, budući da u 95 i više procenata slučajeva, u kojima povrede časti i ugleda u medijima dobijaju svoj epilog pred sudom, to biva u parničnim, a ne krivičnim postupcima.

U Srbiji, poslednjih meseci, tek jedan slučaj presude za klevetu zaokupio je pažnju javnosti. Mediji su, naime, u martu objavili da je Osnovni sud u Čačku našao da je Stojan Marković, direktor i odgovorni urednik „Čačanskih novina", komentarom „Dolazi vreme za polaganje računa: Davidović, Jocić, Šarančić, neka se spremi..." i humoreskom „Zanemoćali mandarin", objavljenim u februaru 2009. godine, oklevetao bivšeg ministra Velimira Ilića. Presudom je Marković kažnjen sa 100.000 dinara. Već tokom leta, Apelacioni sud u Kragujevcu, ukinuo je ovu presudu. Međutim u parničnom postupku za naknadu štete, koji se vodio povodom istih tekstova, aprila prošle godine, Viši sud u Čačku, obavezao je Markovića da Iliću plati 180 hiljada dinara naknade štete, zbog pretrpljenih duševnih bolova nanetih povredom časti i ugleda. Ovu

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

presudu Apelacioni sud je potvrdio, a Stojan Marković uložio je i ustavnu žalbu koja je još uvek u postupku pred Ustavnim sudom Srbije. Ovakav ishod, u dobroj meri, odslikava situaciju koja u Srbiji generalno postoji. Novinari u Srbiji danas, po pravilu, bolje prolaze u krivičnim postupcima, nego u parničnim. I dalje se podnosi veliki broj tužbi za klevetu, ali osuđujuće presude retko postaju pravosnažne, a čak i kada postanu, kazne su, po pravilu, niže od naknada štete koje se povodom istih tekstova, emisija ili izjava, izriču u parničnim postupcima.

Sve ovo, naravno, ne znači da dekriminalizacija klevete i uvrede nije dobra stvar. Naprotiv. I medijska i novinarska udruženja, ali i svi oni koji su se u Srbiji borili i koji se i dalje bore za poštovanje prava na slobodu izražavanja, pozdravili su najavljenu dekriminalizaciju, te ukazali da je ona od izuzetnog značaja za razvoj građanskih prava i sloboda i veliki iskorak zakonodavca u pravcu širenja slobode informisanja. Apsolutno je nesporan uticaj koji i sama mogućnost izricanja kazni može imati na slobodu izražavanja. U Srbiji za to ne treba bolji dokaz od činjenice, kojoj smo, od leta 2009. godine, svi bili svedoci. Tadašnje visoke novčane kazne, predviđene Zakonom o izmenama i dopunama Zakona o javnom informisanju, za koje je Ustavni sud kasnije našao da su neustavne, uticale su na jačanje autocenzure u medijima, iako ni u jednom slučaju nisu bile izrečene. Sama pretnja bila je dovoljna da u dobroj meri otupi oštricu srpskih medija. Međutim, teško je poverovati da bi dekriminalizacija klevete i uvrede sada bila dovoljna da pogura klatno u drugu stranu. Naprotiv, novinari danas više zaziru od tužbi za naknadu štete i parničnih postupaka. Upravo zato, odgovorna javna politika u Srbiji, koja bi istinski težila jačanju medijskih sloboda i slobode izražavanja uopšte, ne bi smela da se zadovolji samo dekriminalizacijom. Dekriminalizacija bi morala biti praćena sveobuhvatnim reformama pravnog okvira koje bi garantovale robustniju zaštitu slobode izražavanja. Drugim rečima, morala bi biti praćena izmenama i drugih zakona, pored krivičnog, kojima bi se obezbedilo, ne samo da Stojan Marković ni u prvom stepenu ne bude osuđen za klevetu zbog kritike političkog moćnika, već da on, ali i svaki drugi novinar, dobije delotvorne mehanizme zaštite od tog istog, ili nekih drugih moćnika i u parničnim postupcima.

Izazovi u procesu digitalizacije

Milena Jocić i Miloš Stojković[1]

Uvod

Proces digitalizacije televizije podrazumeva proces prelaska sa analognog na digitalno emitovanje zemaljskog TV signala. Ovaj proces odnosi se isključivo na zemaljsko emitovanje i ne podrazumeva, ni kablovsko, ni satelitsko emitovanje TV programa.

Digitalna TV nudi mnogo bolju i kvalitetniju sliku i zvuk u odnosu na analognu televiziju, veći broj programa, a takođe omogućava i mnoštvo novih usluga.

Strategija za prelazak sa analognog na digitalno emitovanje radio i televizijskog programa u Republici Srbiji usvojena je u julu 2009. godine. Njom su specificirani standardi za kompresiju (MPEG-4 v.10) i prenos TV signala (DVB-T2). Pored toga, u februaru ove godine je usvojen Pravilnik o prelasku sa analognog na digitalno emitovanje televizijskog programa i pristupu multipleksu u terestričkoj digitalnoj radiodifuziji.

Ministarstvo za telekomunikacije i informaciono društvo je tokom 2008. i 2009. godine konkurisalo i dobilo projekat kojim se iz pretpristupnih fondova EU finansira nabavka opreme za razvoj mreže za distribuciju i emitovanje TV signala, odnosno mreže sadašnjeg ETV-a. Kao rezultat uspešno završenog tendera, dobijena je kvalitetna oprema u vrednosti od osam miliona evra. Iz istih fondova, finansiraju se i konsultantske usluge za sprovođenje procesa digitalizacije. Na tenderu koji se odnosio na konsultantske usluge pobedio je BBC World Trust, čiji se eksperti sada nalaze u Beogradu i učestvuju u pripremi sprovođenja procesa digitalizacije. Tim Ministarstva radi sa konsultantima, koji svojim iskustvom pomažu da se proces sprovede što bolje i sa što manje problema.

Ulaganja države u digitalizaciju

Mreža za digitalno zemaljsko emitovanje i distribuciju TV programa se projektuje prema utvrđenoj arhitekturi koja je razvijena u Ministarstvu. Jedan deo opreme je već finansiran iz IPA fondova, a preostali deo opreme, mnogo veći, biće nabavljen putem kredita, za koji će država pružiti bankarske garancije. Pored opreme, neophodno je pripremiti i lokacije na kojima će ta oprema biti instalirana. To su lokacije koje su nekada bile vlasništvo RTS-a, a danas su u vlasništvu Javnog preduzeća Emisiona tehnika i veze (ETV). U navedene lokacije dugi niz godina ništa nije ulagano i pored oštećenja uzrokovanih bombardovanjem. Ministarstvo je 26. avgusta objavilo tender koji predviđa obnovu 25 lokacija.

[1] Savetnici u Ministarstvu kulture, informisanja i informacionog društva Republike Srbije

Istovremeno, Strategijom za prelazak sa analognog na digitalno emitovanje programa je predviđeno da nabavka STB-ova bude subvencionisana za 300.000 građana koji su socijalno ugroženi.

Ukupne troškove ulaganja u proces digitalizacije nije moguće tačno odrediti u ovom trenutku, s obzirom da tenderi za obnovu preostalog dela lokacija ETV-a, kao i za nabavku preostalog dela predajničke opreme, antenskih sistema i headend-ova tek treba da budu pripremljeni.

Konverzija dozvola za emitovanje televizijskog programa i obaveze emitera

Promena same tehnologije obrade i prenosa TV signala dovodi do promena regulatornog okvira. Iz tog razloga je u procesu prelaska sa analognog na digitalno emitovanje TV programa veoma bitna saradnja nadležnog ministarstva, Republičke agencije za elektronske komunikacije (RATEL-a), Republičke radiodifuzne agencije (RRA) i ETV-a.

U analognoj tehnologiji, svaka TV stanica ima svoju predajničku opremu, kao i frekvencijski kanal na kome emituje program. U digitalnom domenu, situacija se drastično menja. Programi TV stanica iz jedne oblasti se skupljaju u centru koji se naziva headend i tu se nalazi multiplekser, uređaj koji omogućava kombinovanje različitih ulaznih signala u jedan zajednički za potrebe prenosa i emitovanja. Izuzetno efikasnim metodama obrade signala, moguće je postići da se u opsegu jednog frekvencijskog kanala, koji u analognoj tehnologiji služi za prenos jednog programa, prenese do čak 20 programa u digitalnom domenu u standardnoj rezoluciji. Emiteri samim tim više nisu korisnici radio frekvencija i oni postaju takozvani pružaoci medijskih sadržaja, odnosno odgovorni su samo za programske sadržaje koje nude. Operator elektronske-komunikacione mreže u procesu digitalizacije zemaljske televizije postaje jedini nosilac prava korišćenja radio frekvencija.

Na osnovu Zakona o elektronskim komunikacijama, Javno preduzeće „Emisiona tehnika i veze“[2] je jedini operator mreže i multipleksa[3] u našoj zemlji. Shodno tome, ETV ima obavezu da uspostavi mrežu za emitovanje digitalnog televizijskog programa, omogući pristup multipleksu u okviru te mreže i distribuira televizijski signal, a sve to u skladu sa izdatim dozvolama za emitovanje programa. Da bi se ova mreža uspostavila, obaveza RATEL-a je da ETV-u dodeli dozvolu za korišćenje radio frekvencija u opsegu koji je namenjen emitovanju televizijskog programa[4]. Što se tiče dozvola emiterima, na osnovu Zakona o radiodifuziji, dozvola za emitovanje televizijskog programa izdaje se po sprovedenom javnom konkursu i u ovom postupku zajedno učestvuju i RRA i RATEL. Sastavni deo dozvole za emitovanje televizijskog programa je i dozvola za radio-stanicu. Donošenjem Zakona o elektronskim komunikacijama, dozvola za radio-stanicu zamenjena je dozvolom za korišćenje radio-frekvencije. Zbog toga je potrebno da se izvrše promene u samim dozvolama za emitovanje

[2] Osnovano odlukom Vlade Republike Srbije o osnivanju javnog preduzeća za upravljanje emisionom infrastrukturom („Službeni glasnik RS“, broj 84/09)

[3] JP ETV je jedini operator multipleksa do prelaska sa analognog na digitalno emitovanje, dok je u budućnosti moguće zamisliti da će se pojaviti još operatora koji će se baviti multipleksiranjem i distribucijom signala.

[4] Od 174-230 MHz (VHF područje) i 470 do 862 MHz (UHF područje).

programa, ali na način na koji bi se zaštitila stečena prava emitera. U tom smislu je saradnja Ministarstva i regulatornih agencija u ovoj fazi projekta itekako bitna. Promene su da: 1) više nema dozvole za radiodifuznu stanicu, već dozvole za korišćenje radio frekvencije (u skladu sa Zakonom o elektronskim komunikacijama), 2) korisnik ove dozvole neće biti emiter, već JP ETV kao operator mreže i multipleksa, a emiteri će imati zagarantovano mesto u multipleksu do isteka roka na koji su im izdate dozvole za emitovanje programa i 3) moguće je da će se nekim od sadašnjih emitera povećati zona pokrivanja.[5] Dobijanje veće zone pokrivanja bi teorijski značilo i plaćanje veće naknade, a neopravdano je da se emiterima nameću obaveze koje nisu postojale u trenutku dobijanja dozvole za korišćenje radio frekvencija. Iz tog razloga je potrebno da se u prelaznom periodu omogući mehanizam po kome bi emiteri preko operatora mreže dobili novo pokrivanje bez obaveze plaćanja veće naknade, ali uz obavezu da sa danom prelaska sa analognog na digitalno emitovanje isključe svoj analogni signal. Međutim, ovo rešenje je moguće propisati samo zakonom i to onim koji reguliše oblast elektronskih medija[6]. S druge strane, Zakon o radiodifuziji, ne pravi razliku među različitim formama emitovanja i ukazuje da, sa dozvolom za emitovanje televizijskog programa, emiter stiče pravo da posredstvom zemaljskih radiodifuznih stanica emituje TV program. Zbog toga dozvole za emitovanje programa ne treba menjati u delu koji se odnosi na ovo ovlašćenje koje su emiteri dobili po osnovu sprovedenog javnog konkursa. Sadašnji emiteri će u digitalnom domenu pripremati svoj program na uobičajeni način, kao i do sada, a signal će doturati do najbližeg headend-a u mreži ETV-a. Emiter će praktično u digitalnom domenu biti dužan da plaća doturanje signala do headend-a, prostor u multipleksu, distribuciju svog programa ETV-u i kao i do sada, dozvolu RRA za programski sadržaj. Mrežni operator ETV će cenovnik za svoje usluge formirati na troškovnom principu, a njihova regulacija se, prema Zakonu, vrši u Regulatornoj agenciji za elektronske komunikacije.[7] Takođe, pojedine obaveze koje emiteri imaju po Zakonu o radiodifuziji postaju bespredmetne zbog drugačijih karakteristika digitalnog pokrivanja. Tako, na primer, obaveza obezbeđivanja kvalitetnog prijema televizijskog signala za najmanje 90 % stanovništva u zoni pokrivanja za Javni radiodifuzni servis, odnosno 60 % za komercijalne radiodifuzne servise, više ne postoji, jer ta obaveza prelazi u nadležnost JP ETV. Željena zona opsluživanja će se poklapati sa zonom raspodele. Obaveza plaćanja naknade za korišćenje radio-frekvencije[8] prelazi sa emitera na ETV.

Uspostavljanje korisničke osnove za prelazak sa analognog na digitalno emitovanje televizijskog programa

Pravilnik o prelasku sa analognog na digitalno emitovanje televizijskog programa i pristupu multipleksu u terestričkoj digitalnoj radiodifuziji je zasnovan na nekoliko pretpostavki za prelazak sa analognog na digitalno emitovanje. Prva se odnosi na uspostavljanje mreže za

[5] Završnim aktima Regionalne konferencije o radio-komunikacijama za planiranje digitalne terestrijalne radiodifuzne službe u delovima regiona 1 i 3, u frekvencijskim opsezima 174-230 MHz i 470-862 MHz (RRC-06), Srbija je podeljena na 16 zona raspodele (alotmenta). Iz tehničkih razloga, zona pokrivenosti signalom će se poklopiti sa zonom raspodele, što će dovesti do toga da će lokalni emiteri praktično postati regionalni.

[6] Oblast koja je sada regulisana Zakonom o radiodifuziji, prim. aut.

[7] U skladu sa pravilima koja se odnose na regulatorne obaveze operatora sa značajnom tržišnom snagom.

[8] Naknada koja su do sada emiteri plaćali RATEL-u.

multipleksiranje i distribuciju, dok je druga uspostavljanje korisničke osnove za prijem digitalnog signala. Suštinski, uspostavljanje korisničke osnove se odnosi na informisanje javnosti o aktivnostima koje korisnik treba da sprovede da bi mu bilo omogućeno da prima televizijski program koji se emituje u digitalnoj tehnologiji. To praktično znači obezbeđivanje odgovarajuće količine STB-ova (set-top-box) koji podržavaju izabrani standard. Zbog toga je neophodno da se svi učesnici na tržištu, uključujući i prodavce i korisnike ponašaju odgovorno i kupuju samo one STB-ove koji odgovaraju standardu koji je izabrala naša država. Takođe, po prelasku sa analognog na digitalno emitovanje, TV prijemnici koji se nalaze u prodaji bi morali da budu adekvatno označeni kako se kupci ne bi dovodili u zabludu.[9]

Građani koji TV program primaju zemaljskim putem, moraju da imaju ili novi televizor, koji podržava standarde koje je Srbija izabrala (DVB-T2/MPEG-4), ili STB, koji će digitalni signal odabranog standarda pretvoriti u oblik koji je pogodan za emitovanje na svim tipovima starih televizora, bilo da su analogni ili digitalni. Ovi će se uređaji pojaviti u vreme eksperimentalnog emitovanja i u našim prodavnicama. Televizore ili STB uređaje bi trebalo kupovati što kasnije, jer će njihova cena u novom standardu padati.

Datum prelaska sa analognog na digitalno emitovanje

Preporukom Evropske komisije (2005) 204[10], predviđeno je da sve zemlje Evropske unije završe proces prelaska sa analognog na digitalno emitovanje do 2012. godine. Aktima Regionalne konferencije o radio-komunikacijama (RRC-06) Međunarodne unije za telekomunikacije, predviđena je zaštita analognih frekvencija do juna 2015. godine. To podrazumeva obavezu svih država da do predviđenog datuma završe proces digitalizacije, ali istovremeno podrazumeva i obavezu zaštite analognih frekvencija.[11] Zbog toga evropske države imaju period od tri godine da završe prelazak sa analognog na digitalno emitovanje. Zbog brojnih organizacionih i tehničkih problema, tek će nekolicina država Evropske unije taj proces završiti u roku predviđenom pomenutom preporukom EU. Ako posmatramo zemlje iz našeg okruženja, jedino su Hrvatska i Slovenija završile uspešno prelazak sa analognog na digitalno emitovanje. Bugarska i Rumunija su odložile prelazak za 2015. godinu.[12] Strategijom prelaska sa analognog na digitalno emitovanje je kao datum za prelazak na isključivo digitalno emitovanje programa u Srbiji određen 4. april 2012. godine. Imajući u vidu da je, u međuvremenu, taj mesec određen kao izborni u Republici Srbiji, kao i da neposredno posle izbora počinju važne sportske manifestacije, neophodno je da se sa isključivanjem analognog programa krene tek posle Olimpijade u Londonu. Isključivanje će

[9] Potrebno je naznačiti ako TV prijemnik nije pogodan za prijem digitalnog signala, ili ako nije pogodan za prijem signala koji se vezuje za odabrani standard. Treba napomenuti da je ovo razlikovanje relevantno samo za prijem signala preko zemaljske radiodifuzije, a ne i za kablovsko ili satelitsko emitovanje.

[10] Ova preporuka je politički akt, tako da, zbog toga, rok za prelazak do 2012. godine nije pravno obavezujući, pa je moguće i u EU produžiti prelazak sve do 2015. godine.

[11] Ove akte su ratifikovale sve države Evrope, tako da je to jedina pravna obaveza za zemlje Evrope u smislu završetka procesa digitalizacije do 2015. godine.

[12] Bugarska ima problema zbog kašnjenja izmeštanja bugarske vojske iz opsega koji se koriste za digitalno emitovanje, a Rumunija ima organizacione probleme zbog neadekvatne saradnje nadležnog ministarstva i regulatorne agencije.

se vršiti po pojedinim regionima, po pojedinim zonama raspodele, o čemu će javnost biti obaveštena. Treba napomenuti da je jedan od najvećih problema u postupku prelaska na digitalno emitovanje nedostatak slobodnog spektra. U Republici Srbiji postoji izuzetno mnogo televizijskih programa. U digitalnom emitovanju taj problem nije toliko izražen. Prelazak na digitalno emitovanje, međutim, zbog popunjenosti svih kanala, predstavlja veoma složen zadatak koga će rešavati nadležno ministarstvo i Regulatorna agencija za elektronske komunikacije.

Planom ETV-a predviđeno je da signal u pilot mreži bude emitovan sa 15 lokacija širom Srbije. Predajnici koji će se koristiti u njoj su malih snaga, jer trenutno, zbog velikog broja televizijskih emitera, ne postoje tehničke mogućnosti za korišćenje većih snaga, niti boljih lokacija. Pilot mreža će biti eksperimentalna mreža, na osnovu koje će ETV ispitivati odabrane mrežne parametre, i raditi sa novom opremom. Predviđeno je da emitovanje signala u pilot mreži počne krajem ove godine.

Neke kontroverze i dileme u vezi sa donošenjem Medijske strategije Srbije

Doc dr Dejan Milenković[1]

Više od dve godine, u Republici Srbiji radi se na izradi Medijske strategije. Iako je bilo najavljeno da Strategija treba da bude usvojena do kraja 2010. godine, to se nije desilo. Novoformirano Ministarstvo kulture, informisanja i informacionog društva, napokon je početkom juna 2011. godine predstavilo Nacrt strategije, u vezi sa kojim je održano više javnih rasprava u nekoliko gradova Srbije. U toku leta 2011. godine, formirana je nova Radna grupa Vlade, koja je nakon javne rasprave trebalo da priredi njen konačni tekst. Finalni tekst Predloga strategije razvoja sistema javnog informisanja u Republici Srbiji do 2016. godine, koji je usvojen 8. septembra 2011. godine, u momentu pisanja ovog teksta još uvek nije javno objavljen, pa ni dostupan široj stručnoj javnosti. Zašto je to tako i da li postoje neke prikrivene „namere" vlasti, postepeno otkrivamo ovih dana kroz priloge i tekstove koje ovim povodom objavljuju pojedini mediji,[2] kao i iz pristiglih komentara na Predlog strategije koje je uputila Evropska komisija.[3] Ono što na ovaj način nezvanično saznajemo, jeste da se država neće tako lako odreći svog uticaja na medije, jer nije spremna da se odrekne svojih osnivačkih prava i vlasništva, pa samim tim ni uticaja u nekim od njih. U prethodnoj konstataciji već možemo i tražiti odgovor na pitanje zašto je sam rad na izradi Medijske strategije toliko dugo trajao, odnosno zašto „posao" na izradi Medijske strategije, koji je započet pre više od dve godine, nije završen mnogo ranije. Čini se da je ceo ovaj proces bio vođen logikom: jedan korak u napred, dva u nazad. „Fingiranje" da predstavnici novinarskih udruženja i medijskih asocijacija učestvuju u radnoj grupi koja je pripremila Nacrt, a zatim da se oko krucijalnih rešenja obrazuje posebna Radna grupa Vlade koja će dati svoj „finalni sud" i u kome će Vlada, čini se, odustati od rešenja na kojima su insistirali medijski stručnjaci, samo govori u prilog tezi nespremnosti vlasti da se odrekne svog uticaja. U ovom tekstu su analizirani samo oni aspekti Predloga, koji su postali dostupni javnosti i odnose se uglavnom na osnivanje, vlasništvo i uticaj države na medije.

Najpre, veliku zabrinutost izaziva, čini se, konačno opredeljenje vlasti da u Predlogu strategije utvrdi koncept šest javnih regionalnih RTV servisa čiji će osnivač biti Republika. Modalitet njihovog budućeg finasiranja, ali i način na koji će se njima u budućnosti upravljati, svakako dodatno opterećuje ovaj koncept. Za razliku od Nacrta strategije iz juna meseca, kojim je bilo predviđeno da javne obaveze i funkcije javnog servisa ostvaruju javne radiodifuzne ustanove na republičkom i pokrajinskom nivou, prema novom dokumentu, ako takav ostane, postojaće i regionalni javni radiotelevizijski servisi.

Ovom konceptu, od početka procesa izrade Strategije, oštro se suprotstavljaju novinarska udruženja i asocijacije medija. Suštinski stav kog su od samog početka zastupali ANEM, NUNS,

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[2] *Medijska strategija: Šest regionalnih javnih servisa*?, NUNS Newsletter, No. 20 od 15.09.2011. godine u kojem je prenet tekst iz dnevnog lista „Večernje novosti"
http://nunsnewsletter.blogspot.com

[3] *EK kritikuje Medijsku strategiju*, Izvor: B-92, 22.09.2011. godine
http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=22&nav_category=12&nav_id=543799; Tekst se može naći i na veb stranici ANEM:a http://kampanje.anem.rs

UNS, NDNV, Lokal pres i drugi, je povlačenje države iz medijskog vlasništva, kako bi se sprečio politički uticaj na njihov programski sadržaj i obezbedio ravnopravan položaj medija, kao i transparentno trošenje budžetskih sredstava. Koncept regionalnih javnih servisa u celosti je u suprotnosti sa ovim stavom, a medijske asocijacije i novinarska udruženja su još jednom, u svom zajedničkom saopštenju od 14. septembra 2011. godine, ocenili takav predlog potpuno neprihvatljivim i neodrživim, tražeći da se deo Predloga strategije o regionalnim javnim servisima izbriše.[4]

Ovaj koncept, prema informacijama objavljenim u pojedinim medijima, kritikuje i Evropska komisija. U komentarima na Predlog strategije, Komisija je ozbiljno zabrinuta da novi regionalni javni servisi neće biti finansijski održivi, te da način na koji će se realizovati eventualno osnivanje regionalnih javnih servisa mora da bude precizno i detaljnije razrađen, uključujući u to i organizacione aspekte, kao i preciznija pravila o državnoj pomoći koja mora da obezbedi njihovu održivost. Takođe, traži se da se isključi mogućnost uticaja vlasti na njihove medijske sadržaje. Komisija je istovremeno ukazala da postoje i drugi alternativni načini da se potrebe za regionalnim programima od javnog interesa zadovolje, kroz poštovanje odgovarajućih preporuka Saveta Evrope.

Svakako da u pojedinim zemljama Evropske unije postoje i regionalni javni servisi i to niko ne negira, ali argumentacija da se „... radna grupa za njega odlučila kako bi obezbedila jednakopravnost građana i mogućnost da građani svuda u Srbiji dobiju informacije od javnog interesa“,[5] jeste krajnje polemična, naročito ako se posmatra „geneza“ medijske politike u Srbiji od demokratskih promena iz 2000. godine.

U ovom procesu, imali smo i imamo tri zainteresovane strane: prva je vlast, drugu čine mediji, strukovna udruženja i nevladine organizacije, a treći su sami građani, odnosno javno mnenje, kao krajnji „konzument“ informacija. U interesu građana je da je informacija koju mediji prenose, istinita, blagovremena i objektivna. U interesu najvećeg dela medija, strukovnih udruženja i nevladinih organizacija je da se unaprede i zaštite medijska prava i slobode i stvore jasni, precizni i nediskriminatorni uslovi rada medija na ograničenom medijskom tržištu, kao i da zakonodavni okvir i regulativa daju pouzdan osnov za to. Na žalost, brojni primeri u poslednjih 10 godina u Srbiji, pokazuju da interes vlasti, koja ima suštinski i odlučujući uticaj na kreiranje javne medijske politike, nije da rešava probleme u medijskoj sferi, već da zadrži određeni uticaj, pa i političku kontrolu u njoj. Pomenuti „dušebrižnički“ stav predstavnika vlasti o „jednakopravnosti“ građana, kojim se „opravdava“ koncept regionalnih javnih servisa, na to u velikoj meri i podseća.

Drugi problem odnosi se na pravo nacionalnih saveta nacionalnih manjina da mogu biti osnivači javnih glasila na jeziku nacionalne manjine za koju su osnovani.[6] NUNS, UNS i NDNV i medijska udruženja ANEM, Lokal pres i Asocijacija medija, su u svom zajedničkom saopštenju, izrazili nezadovoljstvo što će nacionalni saveti nacionalnih manjina, prema Predlogu strategije, imati mogućnost da budu osnivači medija i to ne samo štampanih, pri čemu su izrazili bojazan da to

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[4] *Novinarske i medijske organizacije nezadovoljne predlogom medijske strategije*, NUNS Newsletter, No. 20 od 15.09.2011. godine u kojem je preneta informacija agencije Fonet http://nunsnewsletter.blogspot.com

[5] *Jelena Trivan o odnosima u koaliciji, glasanju, uslovima Brisela, Medijskoj strategiji*, Večernje novosti, 22.09.2011. godine: Tekst se može pronaći na veb stranici ANEM-a: http://kampanje.anem.rs

[6] B. Cvejić, *Saveti nacionalnih manjina mogu da osnivaju medije*, „Danas“, 14.09.2011 http://www.danas.rs/danasrs/drustvo/saveti_nacionalnih_manjina_mogu_da_osnivaju_medije.55.html?news_id=223649

rešenje znači da će nacionalni saveti praktično monopolizovati manjinsko informisanje. Jedan od članova radne grupe koji je radio na izradi Nacrta medijske strategije, ukazao je da će saveti nacionalnih manjina takođe moći da osnuju svoje medije, ali da „... oni tako neće biti u rukama manjina, već manjinskih oligarhija...", te da oni ne smeju da budu pod kontrolom nacionalnih saveta, jer oni nisu ništa drugo osim paradržavne institucije.[7]

To u izvesnoj meri potvrđuje i grupa vojvođanskih mađarskih intelektualaca, koja je početkom septembra uputila pismo ministru kulture, u kojem su protestovali zbog načina na koji nacionalni saveti upravljaju medijima čiji su osnivači i u kome su iskazali nezadovoljstvo zbog namere vlasti da u tim odnosima ništa ne menja. Autori pisma, doduše, smatraju, da u ovom trenutku manjinski nacionalni saveti treba da ostanu osnivači manjinskih medija, odnosno listova, ali su dodali da bi se u Medijskoj strategiji moralo razraditi rešenje koje bi garantovalo da se uticaj elite na uređivačku politiku svede na najmanju moguću meru ili da se u potpunosti otkloni. Intelektualci su ocenili da se garancije uređivačke autonomnosti i nezavisnosti ovih javnih glasila moraju pronaći, kako u Strategiji, tako i u izmenjenom Zakonu o nacionalnim savetima nacionalnih manjina i ukazali su na slučaj nekada veoma cenjenog dnevnika „Mađar so", u kojem je nacionalni savet Mađara smenio glavnog urednika, jer nije dovoljno pratio aktivnosti jedne od mađarskih partija.[8]

Evropska komisija, takođe ukazuje na ovaj problem u svojim komentarima na Predlog medijske strategije. Komisija kao problematičnu smatra mogućnost da se mediji nacionalnih saveta nacionalnih manjina finansiraju iz budžeta, zbog političke prirode nacionalnih saveta i mogućih uticaja na uređivačku politiku takvih medija. U komentarima se ukazuje i da postoje alternativni modeli finansiranja manjinskih medija, tamo gde za to postoje potrebe.

Država u još jednom segmentu Predloga strategije, pokazuje da nije „voljna" da se tako lako odrekne svog uticaja na medijsku sferu. Već više godina, novinarska udruženja i asocijacije medija stoje na stanovištu da državna novinska agencija „Tanjug", koja sada posluje kao javno preduzeće, mora biti privatizovana. U Nacrtu strategije koja je predstavljena na javnoj raspravi i u čijoj su izradi učestvovali i stručnjaci, bilo je predviđeno da državna novinska agencija mora biti privatizovana, te da u slučaju neuspešne privatizacije, vlasnici postanu građani, kojima bi bile podeljene akcije. Prema nezvaničnim dostupnim informacijama, u Predlogu Strategije, koga je utvrdila Vlada, više se ne govori o njegovoj privatizaciji, već „vlasničkoj transformaciji". Ovo se ne mora nužno protumačiti samo kao „igra" reči, već „igra" sa ozbiljnom implikacijom, jer po nekim tumačenjima, „vlasnička transformacija" bi mogla da podrazumeva, ne njegovu privatizaciju, već transformaciju u jedan drugi organizacioni oblik javne službe – javnu ustanovu. Da gde ima „dima", ima i „vatre", govori i dostupni komentar Evropske komisije, koja je zahtevala dodatno preciziranje Strategije u delu koji se odnosi na mehanizam privatizacije Tanjuga.

Kada je reč o novinskim agencijama, ali i štampanim medijima, možemo pozdraviti stav koji proizilazi iz Predloga Strategije da će Republika Srbija i lokalna samouprava, kao oglašivači, na svim nivoima na transparentan i nediskriminatoran način raspodeljivati oglase (javni pozivi, konkursi, oglasi javnih preduzeća, itd.), te da će država putem konkursa, sufinansiranjem

[7] Rade Veljanovski, *Država će i dalje kršiti zakon*, Reč plus, Blic, 16.09.2011, str. 4.

[8] *Uticaj nacionalnih saveta svesti na minimum*, NUNS Newsletter, No. 20 od 15.09.2011. godine u kojem je preneto pismo objavljeno u dnevnom listu „Dnevnik" a potpisali su ga: Laslo Vegel, Žužana Serenčeš, Bela Garai, Čaba Presburger i dr. http://nunsnewsletter.blogspot.com

medijskih sadržaja u javnom interesu, kao i kupovinom agencijskih servisa za sopstvene potrebe, podsticati njihov razvoj i razvoj novinskih agencija. Međutim, Evropska komisija povodom ovih stavova jeste skeptična i ukazuje da odredba, kojom se predviđa da će država podsticati novinske agencije tako što će kupovati njihove servise za sopstvene potrebe, nije dovoljno jasna i ostavlja prostor za neprimeren uticaj. Brisel takođe skreće pažnju da je neophodno predvideti jasna pravila za državno oglašavanje, tim pre što su izvori finansiranja medija u Srbiji koncentrisani u rukama malog broja učesnika, te je zato neophodno primeniti pravila o zaštiti konkurencije, kako bi se koncentracija marketinških budžeta i njihova distribucija, na način koji može da rezultira zloupotrebom dominantnog položaja i uticajem na profesionalni i finansijski integritet medija, sprečila.

Dosta polemike izazvao je i deo Predloga strategije, kojim je predviđeno da država može biti osnivač javnog glasila na srpskom jeziku za potrebe stanovništva Kosova i Metohije. Prema nekim izvorima, Predlogom je predviđeno da „... u cilju blagovremenog i kvalitetnog informisanja stanovništva na Kosovu i Metohiji, Republika Srbija zadržava osnivačka prava nad javnim preduzećem za novinsko izdavačku delatnost „Panorama“, u okviru kojeg izlazi nedeljno javno glasilo „Jedinstvo”.“[9] Pošto je reč o javnom preduzeću, ponovo se postavlja pitanje, kako njegove uređivačke politike, tako i njegovih organa (upravnog odbora, nadzornog odbora i direktora), koje će, u ime osnivača, „postavljati“ Vlada Republike Srbije, pa je, u tom kontekstu, prepoznatljivo kakva će u budućnosti biti i funkcija i uređivačka politika ovog javnog glasila. Prema komentarima iz Brisela, postojanje ovakvog državnog medija za Kosovo nije neophodno. Takođe, Evropska komisija je već prethodno ukazala da medijima u državnom vlasništvu mora biti, ili obezbeđena uređivačka i finansijska nezavisnost, ili oni moraju biti privatizovani, pa se ovaj stav svakako odnosi i na JP „Panorama“.

Medijska strategija je dokument koji je svakako nužan i potreban. Predstavljeni Nacrt strategije je imao svoje dobre strane i one će se svakako naći i u Strategiji, čije se usvajanje očekuje. Ipak, njen finalni sadržaj (u smislu kakva će biti konačna verzija Strategije), kao što se iz prethodnog može uočiti, ali i njena buduća sudbina (u smislu njenog realnog sprovođenja), prvenstveno će zavisiti od političke volje sadašnjih ili budućih aktera srpske političke scene. Ono što je izvesno je, da će tek kada nosioci vlasti budu zaista spremni da se odreknu svog posrednog ili neposrednog uticaja na medijsku sferu, biti moguće ostvariti suštinski osnov medijske politike, kome jedna savremena evropska medijska strategija treba da doprinese i teži. A ona je izražena još u rečima izgovorenim u praskozorje petooktobarskih promena u Srbiji: *mediji moraju biti slobodni, a vlast se neće mešati u nezavisnost medija*.

[9] B. Cvejić, *Saveti nacionalnih manjina mogu da osnivaju medije*, „Danas“, 14.09.2011 www.danas.rs.

Evropski sud za ljudska prava[1]
Informator o sudskoj praksi

Br. 143 /Jul 2011

Član 10 Konvencije za zaštitu ljudskih prava i osnovnih sloboda

Sloboda izražavanja

Osuda urednika novina zbog objavljivanja doslovnog intervjua bez prethodne autorizacije intervjuisanog: *povreda*

Wizerkaniuk – Poljska/Poland/Pologne –
18990/05 Presuda/Judgment/Arrêt 5.7.2011 [Odeljak IV]

Činjenice – Podnosilac predstavke je glavni i odgovorni urednik i suvlasnik novina. U februaru 2003. godine, dva novinara tog lista, intervjuisala su poslanika u parlamentu koji je, kada je video tekst, odbio da ga autorizuje za objavljivanje. Bez obzira na to odbijanje, list je objavio delove intervjua doslovno, ali je naveo da je poslanik odbio autorizaciju. Po prijavi poslanika, podnosilac predstavke je gonjen u skladu sa Zakonom o štampi iz 1984. godine, pod optužbom objavljivanja intervjua bez saglasnosti intervjuisanog. Osuđen je na novčanu kaznu. Potom je pokušao, bezuspešno, da ospori ustavnost Zakona o štampi. Uprkos mišljenju Javnog tužioca, predsednika Skupštine i Zaštitnika građana koji su svi smatrali da zakon nije u skladu sa Ustavom, Ustavni sud je našao da pravna sredstva građanskog prava ne predstavljaju efektivnu kompenzaciju za povrede ličnih prava, da su novinari imali mogućnost da sumiraju navode intervjua bez traženja autorizacije i da je autorizacija, kao zakonski uslov objavljivanja, garancija čitaocima da su izjave, navodno izrečene tokom intervjua, autentične.

Zakon – Čan 10: Dok sud teško može da prihvati da je cilj predmetnog ograničenja zaštita reputacije poslanika, jer osuda nije zasnovana na suštini ili sadržaju spornog članka, već na nedostatku autorizacije za njegovo objavljivanje, to je ipak spreman da pretpostavi da je ograničenje služilo legitimnom cilju. U prethodnim slučajevima Sud je bio pozivan da ispita da li su ograničenja slobode izražavanja bila „neophodna u demokratskom društvu“, polazeći od suštine i sadržaja činjeničnih navoda ili vrednosnih sudova za koje su podnosioci predstavki na kraju kažnjeni u skladu sa građanskim ili krivičnim zakonom. Bitna razlika u slučaju podnosioca predstavke je da su domaći sudovi izrekli krivičnu sankciju iz razloga koji su potpuno nevezani za suštinu spornog članka. Sud je konstatovao, najpre, da, iako domaći zakon predviđa mogućnost privatne krivične tužbe u slučajevima koji se tiču manje ozbiljnih krivičnih dela, krivični postupak protiv podnosioca predstavke je pokrenut od strane javnog tužioca. Dalje, ni u kasnijim fazama postupka nije se pokazalo da su sadržaj ili forma poslanikovih izjava bili menjani na bilo koji način. Naprotiv, sama činjenica objavljivanja bez autorizacije, u skladu sa članom 14. Zakona o štampi, automatski je podrazumevala izricanje krivične sankcije. Shodno tome, prilikom

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

razmatranja slučaja protiv podnosioca predstavke, od domaćih sudova se nije zahtevalo da iznesu bilo kakvo mišljenje o relevantnosti činjenice da je intervjuisana osoba narodni poslanik sa političkom odgovornošću prema svojim biračima. Zaista, oni nisu imali u vidu suštinu objavljenih izjava ili da li iste odgovaraju onome što je rečeno tokom razgovora. Odredbe primenjene u ovom slučaju daju intervjuisanima *carte blanche* da spreče novinara u objavljivanju bilo kog intervjua koji smatraju posramljujućim ili neprijatnim, bez obzira koliko je isti tačan i istinit. Ove odredbe su, takođe, podobne da izazovu i druge negativne posledice, tako što bi navele novinare da izbegavaju postavljanje oštrih pitanja, u strahu da će objavljivanje celog intervjua biti onemogućeno odbijanjem autorizacije. Ovakve odredbe su stoga podobne da izazovu odvraćajući efekat na novinarstvo, dirajući u srž odlučivanja o sadržaju novinskih intervjua. Štaviše, one potiču iz perioda pre pada komunističkog sistema u Poljskoj, kada su svi mediji bili podvrgnuti preventivnoj cenzuri i posledično, način na koji su primenjene u slučaju podnosioca predstavke, ne može biti opisan kao saglasan načelima demokratskog društva.

Na posletku, paradoksalno je da, što su novinari doslednije prenosili izjave, to su bivali izloženiji riziku krivičnog postupka zbog propusta da traže autorizaciju. U svakom slučaju, sama činjenica da je podnosilac predstavke bio slobodan da parafrazira reči sagovornika – ali je izabrao da ih doslovno objavi i zbog toga bio kažnjen – ne čini izrečenu kaznu srazmernom. Osuda podnosioca predstavke i novčano kažnjavanje, bez razmatranja tačnosti sadržaja objavljenog teksta i bez obzira na njegovu pažnju u obezbeđivanju tačnosti koja nije dovedena u pitanje, je stoga nesrazmerna.

Zaključak: povreda (jednoglasno).
Član 41: 256 EUR na ime materijalne štete i 4.000 EUR na ime nematerijalne štete.

Br. 142/Jun 2011

Član 10 Konvencije za zaštitu ljudskih prava i osnovnih sloboda

Sloboda izražavanja

Naknada štete protiv lista koji je preduzeo sve razumne mere da proveri tačnost izveštaja o sudskom postupku: *povreda*

Aquilina and Others/i drugi/et autres – Malta/Malte – 28040/08 Judgment/Presuda/Arrêt 14.6.2011 [Odeljak IV]

Činjenice – Prvi podnosilac predstavke bio je urednik, drugi – novinarka (sudski izveštač), a treći podnosilac – štampar nacionalnih novina. Novinarka, kao drugi podnosilac predstavke, je 1995. godine prisustvovala sudskoj raspravi, kako bi izveštavala o slučaju bigamije. Tokom postupka, atmosfera u sudnici u jednom trenutku postala je haotična i drugi podnosilac predstavke verovala je da je sudija jednom od advokata utvrdila meru zbog nepoštovanja suda. Pokušala je da proveri šta je čula, uvidom u sudski zapisnik, ali u tome nije uspela, budući da su sudija i zapisničar već napustili svoje kancelarije. Proverila je, međutim, sa drugim novinarom, koji je takođe bio prisutan u sudnici i koji joj je potvrdio da je i on shvatio da je utvrđeno nepoštovanje suda. Ovo je objavljeno sutradan u novinama pod naslovom „Advokat oglašen krivim za nepoštovanje suda".

Advokat o kome je bila reč, odmah je kontaktirao drugog podnosioca predstavke i protestovao. Ona je proverila u sudskom zapisniku i budući da tamo nije našla da je utvrđeno nepoštovanje suda od strane advokata, novine su objavile izvinjenje. Advokat je ipak tužio u građanskom postupku za klevetu i dosuđena mu je naknada štete u iznosu od 300 malteških lira (oko 720 EUR).

Pravo – Član 10: Presude domaćih sudova predstavljale su ograničenje slobode izražavanja podnosilaca predstavke. To ograničenje je „propisano zakonom", i to Zakonom o štampi i teži legitimnom cilju zaštite ugleda ili prava drugih.

Ocenjujući da li je ograničenje bilo neophodno u demokratskom društvu, sud je ponovio da su potrebni specifični osnovi, u slučaju čije ispunjenosti se mediji mogu osloboditi svoje redovne obaveze da proveravaju činjenične navode koji bi mogli biti klevetnički u odnosu na fizička lica. Da li ti osnovi postoje, zavisi posebno od prirode i težine klevete u konkretnom slučaju i mere u kojoj medij može razumno ceniti svoje izvore i njihove tvrdnje kao pouzdane. Stvarajući utisak kod čitalaca da je advokat oglašen krivim za nepoštovanje suda, naslov je sadržao činjeničnu tvrdnju koja je, budući da se ticala advokatovog ponašanja u vršenju svoje profesije, stvar od javnog interesa. Relevantno za odlučivanje jeste da li je drugi podnosilac predstavke imala mehanizme da proveri činjenice i da li je poštovala svoju dužnost odgovornog izveštavanja.

U odnosu na prvo pitanje, sud primećuje da su zapisnici u postupku po pravilu sumarni, odnosno da ne sadrže detalje o svemu što se dogodilo, te se ne mogu smatrati jedinim izvorom istine za potrebe sudskog izveštavanja. Ograničiti sudsko izveštavanje na činjenice zabeležene u raspravnom zapisniku, te sprečiti izveštaje koji bi se zasnivali na onome što je novinar video i čuo svojim očima i ušima, što su potvrdili i drugi, bilo bi neprihvatljivo ograničenje slobode izražavanja i slobodnog protoka informacija. Iako može postojati pretpostavka da su sudski zapisnici potpuni i tačni, ta pretpostavka može se pobijati drugim dokazima o onome što se dogodilo u postupku. Zaista, svi dokazi, osim raspravnog zapisnika, sugerišu da je za advokata utvrđeno nepoštovanje suda. Iako čak i podaci iz dokumenata tužilaštva, očito relevantni i iz nezavisnog izvora, potvrđuju ono što je drugi podnosilac predstavke navela, nije im posvećeno dovoljno ili nimalo pažnje i nisu dati razlozi za njihovo neprihvatanje.

U odnosu na drugo pitanje, nije bilo razloga sumnji da je drugi podnosilac predstavke, u skladu sa najboljom novinarskom praksom, pokušala da proveri šta se dogodilo u sudnici i da nije bilo razumno očekivati da uradi više, posebno imajući u vidu da vesti imaju kratak „vek" i da je odlaganje objavljivanja vesti moglo da je liši njene vrednosti i aktuelnosti.

Konstatujući, takođe, da je drugi podnosilac predstavke objavila izvinjenje, Sud je utvrdio da je ona sve vreme postupala u dobroj veri i u skladu sa svojom dužnošću odgovornog izveštavanja.

Iz svega iznetog proističe da ograničenje prava na slobodu izražavanja podnosilaca predstavke nije bilo neophodno u demokratskom društvu radi zaštite ugleda drugih.

Zaključak: povreda (jednoglasno).
Član 41: 4.000 EUR na ime nematerijalne štete.

INTRODUCTION

The media sector entered 2011 with a burden of accumulated problems, followed by further delay of work on the Media Strategy, which should have, as many believed, brought long-awaited solutions and media reforms. Nearly nine months later, in the moment of finalizing this Publication, the situation on the media scene in Serbia is just about the same, judging by the results of legal monitoring during this period. Summarizing them, we emphasize the most important:

Attacks, threats and various pressures on journalists and media have continued, despite the legal provisions prohibiting or penalizing them. Such situation has been considerably caused by: the existing legislation that prescribes mild penalties in such cases; evident obstructions both in identifying those who threaten and attack journalists and in determining their accountability; the practice of courts to inadequately punish the perpetrators of these attacks, particularly their reluctance to fully elucidate all the relevant facts and clarify the background of the attacks. With all of these, instead of discouraging perpetrators, the courts have further intimidated journalists and media, in addition to their uneven stands and practices, long processes and questionable decisions in cases against journalists or the media. The result is increased self-censorship in the media.

Media legal framework with, as all agree, serious shortcomings, has not been altered during this period. Actually, it has in one way, but not by adopting a new or amending an existing law, but rather with invalidation of almost all provisions of the Law on Amendments to the Public Information Law for being declared unconstitutional by the decision of the Constitutional Court in May 2011 and previously in July 2010. So, almost nothing was left from this Law that had changed the media regulatory framework in a crude and unconstitutional manner two years ago. Still, a new concern of the media sector in this area has appeared in this period. It refers to a Media Strategy, specifically the fact that, in spite of the Draft Strategy and public debate about it, the media and the public still do not see the authentic intentions and plans of the competent Ministry and government in the media sphere, nor do they know how the final text of the Strategy, which the future of the entire media scene in Serbia depends upon, will look like, or when the document will be adopted at all. Namely, the Ministry's distancing from the Draft Strategy during the public debate, as well as its failure to clearly define its positions and attitudes toward the desired final text of the Strategy, has put doubt on the eagerness of authorities to bring this document, especially their will to substantially change the situation in the media sector with it and allow the real media reforms. Reasons for concern are mounting up, judging by some unofficial information in the media, suggesting that the final text of the Draft Strategy has not included, or at least not in the right way, crucial requirements of the media and journalists' associations. Besides the Strategy, the media sector has yet another reason for concern in this area: a draft text of the Rule Book on Technical Requirements, which regulates the lawful interception and withholding of electronic communications data, since it may potentially jeopardize the right to protection of journalistic sources, as well as fundamental human rights. Public discussion on this Draft Rule Book and arguments that challenged fundamental solutions of this Draft, should lead to its radical changes, or withdrawal. However, it remains to be seen whether the Ministry of Culture, Media and Information Society would indeed do so.

The mere existence of laws in Serbia is not enough; above all, it is important whether and how they are applied. Even in this period, the competent authorities have not abandoned bad practice of completely ignoring their legal obligations (i.e. provided by the Law on Free Access to Information of Public Importance) or delaying their fulfillment (for example, the RBA Council members' election, which challenged the functioning of this regulatory body). However, the most dramatic example of ignoring their obligations and, at the same time, slowness in the implementation of the laws, with far-reaching and severe consequences for the media sector is the privatization of the media. Even 4 years from the expiry of the legally set term for completion of this process, the privatization of media has not yet been brought to an end. A collision of norms of media and non-media laws still prevails as an excuse for a serious violation of media regulations. While the government does not address this issue at all, the media are still divided over whether the privatization, or the opposite, unfinished privatization, is the reason for their many problems, and above all, a cause for dysfunctional media market. Thus, in conditions of unfair market competition of the media, to many of them, the state aid becomes the main source of funding, which only opens the space for various influences on their editorial policies – regardless of being privatized or private media – due to a lack of a legally regulated system in this area. Moreover, during this period, it became clear that Serbia would not completely convert to digital terrestrial broadcasting of TV programs by April 4, 2012, which would only push back the benefits of digitization for all interested parties.

The four authors' texts in this Fifth Monitoring Publication refer to some of these important media issues. In view of the apparent problems that the practice of courts in most media cases harmfully affect the position and rights of media and journalists, the author of the first text, attorney at law Slobodan Kremenjak, writes about the obligation of the Serbian courts to apply the case - law of the European Court of Human Rights, about the reasons for its non-application and its importance for the proper settlement of disputes in cases relating to freedom of expression. In view of the other most evident problem, that often the non-media laws have a profound influence on the position of the media and journalists in Serbia, the author of the second text, Kruna Savovic, attorney at law, analyzes the extent to which the announced decriminalization of defamation and insult would contribute to the actual improvement of their position. The author also elaborates on what else is needed so that these amendments to the Criminal Code take real effect in respect of exercising freedom of expression. The third text treats the important media issue – digital TV transition, challenges in this process and announced modifications in its implementation, while the authors of this text, Milena Jocic and Milos Stojkovic, advisors in the Ministry of Culture, Media and Information Society, give answers to some questions and concerns that have appeared in public in this regard. The fourth text of the Publication, by author Dejan Milenkovic, PhD, refers to the most important document of the media sector, the Media Strategy, which, apparently, will not symbolize the consensus of the media sector and the government, but the basis for new distrust and a source of new problematic solutions that will not contribute to development of the media sector.

Special addition to this issue of the Publication are excerpts from the Information Notes on the European Court of Human Rights' case-law – a summary of two judgments relating to the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. These articles serve to contribute to informing all interested parties with European standards in the area of freedom of expression, in particular the better practice of the Serbian courts in media cases. The **first** refers to the case of publishing the interview verbatim

without prior authorization of the interviewee – the court found that the criminal sanctions imposed on the editor of this newspaper, based only on the fact that the article was published without authorization, without considering the truthfulness of the content of the published text and taking into account the attention that was being paid to providing the accuracy that was not called into question, were disproportionate and therefore presented the violation of Article 10 of the European Convention – the right to freedom of expression; the Court ruled that the applicant – the editor needed to be paid the appropriate amount of damages. The **second** refers to the case of civil liability of a newspaper for defamation made in reporting on court proceedings, namely the paper's committing to pay damages for publishing false information that were likely to harm the honor and reputation of others – the Court said that, in this case, the interference with the applicant's right to freedom of expression had not been necessary in a democratic society for the protection of the reputation of others, given that the said paper had taken all reasonable steps to verify the accuracy of reports on judicial proceedings, and that the journalist – a court reporter, was at all times acting in good faith and in accordance with her duty of responsible reporting, including publication of an apology; noting that in this case there had been a violation of Article 10 of the European Convention – the right to freedom of expression, the Court awarded the applicants with the appropriate amount of damages.

These texts provide the possible answers to some of the problematic issues suffered by media sector.

September 26, 2011

This Publication was completed two days prior to the telephone session of the Serbian Government, at which the Media Strategy was adopted

Application of the European Court of Human Rights Case - law before Serbian Courts

Slobodan Kremenjak, Attorney at Law[1]

Article 18 of the Constitution of the Republic of Serbia stipulates that human and minority rights, enshrined in the Constitution, generally recognized rules of international law and ratified international treaties and laws, shall be directly enforced and that these rules, treaties and laws will in that process be interpreted as an instrument for improving the values of democratic society, in line with applicable international standards concerning human and minority rights and in accordance with the practice of international institutions overseeing the enforcement thereof.

The aforementioned provision is particularly important in view of the fact that Serbia has ratified the European Convention on Human Rights and Fundamental Freedoms. Namely, the said Convention has established the European Court of Human Rights (ECHR) as the institution overseeing compliance with the Convention. Within the meaning of Article 18 of the Constitution of the Republic of Serbia, the case - law of the ECHR has thus become mandatory for Serbian courts in cases concerning human and minority rights guaranteed by the Constitution.

For the media and the field of public information in general, of particular interest is the abundant case - law the ECHR has developed in the enforcement of Article 10 of the European Convention. We remind that Article 10 of the European Convention guarantees the right to freedom of expression that includes the freedom to one's own opinion, to receive and communicate information and ideas, without interference of the authorities and irrespective of state borders. That right may be subject to formalities, conditions, restrictions or penalties provided for by Law, which are necessary in a democratic society for the purposes of defending national security, territorial integrity or public safety, preventing riots or crime, protecting health or public morality, reputation or rights of other persons, preventing the disclosure of information obtained in confidentiality or in order to preserve the authority or impartiality of the judiciary.

However, it remains an open issue how well we know the existing case - law of the ECHR in order to be able to apply it. At the present time, the transcripts of a total of 42 verdicts delivered by the ECHR against Serbia are available on the ECHR website, as well as 44 typical verdicts delivered against other countries. The absence of a large number of verdicts deemed fundamental for defining the case - law of the ECHR in enforcing Article 10 of the Convention is rather indicative. This has resulted in a situation where Serbian courts are bound to enforce and interpret the norms pertaining to freedom of expression in accordance with applicable international standards and the ECHR case - law in enforcing Article 10 of the Convention, while, on the other hand, they are pretty much on their own, subject to their own initiative and fluency in foreign languages, when it comes to being familiar with the standards and case - law they are required to apply. The same problem exists when one looks at the whole picture from the perspective of a journalist, whose rights to freedom of expression might be infringed upon. In legal proceedings, journalists are authorized to invoke applicable international standards and ECHR case - law in the enforcement of Article 10 of the European Convention. At the same time, just like the judges, their familiarity with such standards and case - law depends on their own initiative and skills.

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

The consequences are many and occurring on daily basis. In the case of a complaint by the media against two verdicts delivered regarding the release of a police ministry report about facts learned by the police during actions taken against the criminal group of Darko Saric, the Appellate Court in Belgrade has just recently upheld one of the said verdicts and reversed the other by reducing the amount of the damages. By deciding to reduce the damages awarded to one of the plaintiffs, the Appellate Court rightfully pointed out that the function that plaintiff was carrying out in the public administration, which function motivated the court of first instance to award her higher damages, should not justify awarding higher damages. In other words, holders of public offices may not enjoy "higher protection" than ordinary citizens. On the other hand, however, in the part where the verdicts were upheld, the Appellate Court found that, regardless of the fact that the information had been faithfully transmitted from an official document of the competent authority, the journalist was required to check its authenticity "with due care, as appropriate for the circumstances", which, according to the Court, involved "contacting the person" mentioned in the Police document. The Appellate Court went even further and concluded that Article 82 of the Public Information Law, according to which the journalist, responsible editor and the legal person that is the founder of the public media, shall not be liable for damages if false or incomplete information has been faithfully transmitted from a document of the competent state authority, should be applied only in cases where information had been faithfully transmitted from documents officially released by state authorities, but not in cases where media had obtained such information in some other way.

Nobody can know if the Higher Court in Belgrade and the Appellate Court in Belgrade would have ruled differently in the concrete cases had they been familiar with the case - law of the ECHR, expressed in the verdicts in the cases Bladet Tromsø and Stensaas v. Norway or Colombani v. France from 1999 and 2002, respectfully. In the said cases, the Court was of the opinion that journalists were entitled to rely on the content of official reports and not only the content of the press releases of competent bodies, without being in the obligation to carry out an independent investigation. In the contrary case, the Court said, one of the main, if not the main function of the media in democratic society – to be the watchdog of public authority – would have been precluded. However, what we know is that neither these, nor many other important verdicts of the ECHR, through which the Court has developed its case - law in enforcing Article 10 of the European Convention, may be found in Serbian translations, or at least it is very difficult to find them. Hence, it is obviously not enough to rely on the personal initiative of judges and the parties in legal proceedings to independently familiarize themselves with the applicable case - law.

Decriminalization of Defamation and Insult

Kruna Savovic, Attorney at Law[1]

The decriminalization of defamation and insult has reemerged as a topic in Serbia after 2005. Namely, the then amendments to the Criminal Code were not seized as an opportunity for decriminalization. In spite of calls from media and journalists' associations to that end, the half-solution concept was adopted, under which both defamation and insult remained a criminal offence provided for by the Criminal Code, while the possibility to pronounce prison sentence for these offenses was excluded. At first, it seemed as if this was a step forward in the protection of freedom of expression. In fact, nothing has changed, since nobody recalls anymore when someone was sentenced to imprisonment for defamation or insult in the media. Even during the harshest times of Milosevic's oppressive rule, when journalists were indeed being thrown in prison, they were never imprisoned for defamation. In maybe two of the most famous cases, Miroslav Filipovic, the correspondent of the daily "Danas" and the "France Press" news agency from Kraljevo, was sentenced back in 2000 to seven years in prison by the Military Court in Nis for espionage. A year earlier, Nebojsa Ristic, the Editor in Chief of the "SOKO" television, was sentenced to a year in prison for allegedly spreading false news. Filipovic was allegedly involved in espionage, by having posted, under his full name and surname, texts on the website of the Institute for War & Peace Reporting, while Ristic allegedly spread the false information claiming that press in Serbia was not free, by sticking on the window of his office a poster depicting prison bars and bearing the inscription FREE PRESS – MADE IN SERBIA. However, although the times were indeed terrible, not a single person was sentenced to prison for defamation.

The topic of decriminalization reemerged in the public discourse after the announcements of the State Secretary in the Justice Ministry Slobodan Homen that aforementioned criminal offenses would be deleted from the Criminal Code in early autumn this year. Judging from the fact that such news is first disclosed by a politician, it is safe to infer that decriminalization in Serbia is actually subject to a political decision. Criminal lawyers involved in the work on the amendments to the Criminal Code remain unsure if decriminalization is necessary in the first place. They have been repeating, since 2005, that it is a traditional criminal offense provided for by the criminal legislation of most European democratic states, including those Serbia has traditionally modeled its legislation after. This is of course true, but one could also remind that countries such as Germany or France have indeed kept defamation in their respective criminal codes, but have almost completely decriminalized it in practice, since 95% of the cases of media-related libel get their epilogue in litigation and not in criminal proceedings.

In Serbia, only one case of defamation has been intriguing the public in the last few months. Back in March, the media reported that the Primary Court in Cacak had found Stojan Markovic, the Director and responsible editor of "Cacanske novine", guilty of defamation against former minister Velimir Ilic, in the text "The Time has Come for Settling the Accounts: Davidovic, Jocic, Sarancic… the Next is…." as well as in the humoresque "The Impotent Mandarin", published in February 2009. Markovic was fined 100 thousand dinars. As early as during the summer, the Appellate Court in Kragujevac revoked this verdict. However, in the litigation in April 2010, over the aforementioned texts, the Higher Court in Cacak sentenced Markovic to pay Ilic 180 thousand

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

dinars in damages for mental pain and anguish suffered due to injury to honor and reputation. Such verdict was upheld by the Appellate Court and Stojan Markovic lodged an appeal before the Constitutional Court of Serbia, which is still deliberating the case. Such an outcome paints the situation in Serbia to a great extent. The journalists in this country typically fare better in criminal cases than in litigation. The number of actions for defamation is still legion, but the convictions seldom become final and even when they do, the fines are typically lower than the damages awarded in relation to the same texts, talk shows or statements in litigation proceedings.

All this, of course, does not mean that decriminalization of defamation and insult is not a good thing; on the contrary. Both media and journalists' associations, as well as all those in Serbia who have fought and are still fighting for the right to free expression, have hailed the prospect of decriminalization, calling it extremely important for the development of civil rights and freedoms and a large step forward of the law-makers in the direction of greater freedom of information. The adverse effect of even the possibility of being penalized for one's words on freedom of expression may not be disputed. The best proof for that in Serbia are the developments we have been witnessing back from the summer of 2009. The then excessive fines provided for by the Law on the Amendments to the Public Information Law, which were later found to be unconstitutional by the Constitutional Court, have resulted in increased self-censorship in the media, although they were never enforced. The mere threat sufficed to muzzle Serbian media. However, it is hard to believe that the decriminalization of defamation and insult would be strong enough to reverse the tide on its own. On the contrary, journalists today are more wary of litigations and lawsuits for damages. This is precisely why a responsible public policy in Serbia, which would genuinely strive for strengthening media freedom and freedom of expression in general, should not satisfy itself merely with decriminalization. Decriminalization ought to be accompanied with comprehensive reforms of the legal framework that would guarantee more robust protection of freedom of expression. In other words, it should be accompanied by amendments to other laws besides the Criminal Code. These amendments would make sure not only that Stojan Markovic is not fined in the first instance for libel for having criticized a powerful politician, but also that he, as well as any other journalist, be entitled to resort to effective mechanisms protecting him against such politician or other powerful figure, in litigation proceedings as well.

Challenges in the digitalization process

Milena Jocic and Milos Stojkovic[1]

Introduction

The process of television digitalization involves the switchover from analogue to digital terrestrial broadcasting. This process involves solely terrestrial broadcasting and does not involve either cable, or satellite television broadcasting.

Digital television offers much better picture and sound than analogue TV, more channels and an array of new services. The Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Program in the Republic of Serbia was adopted in July 2009. It specifies the standards for compression (MPEG-4 v.10) and transfer of TV signal (DVB-T2). In addition, the Rulebook on the Transition from Analogue to Digital Television Broadcasting and Access to Multiplex in Terrestrial Digital Broadcasting was adopted.

Back in 2008 and 2009, the Ministry of Telecommunications and Information Society competed and was awarded a project involving the financing from EU pre-accession funds for purchasing equipment for the development of the TV signal distribution and broadcasting network, namely the network of the current ETV. As a result of a successful tender, quality equipment was purchased for around eight million euros. The same fund is financing consulting services related to the implementation of the digitalization process. BBC World Trust won the tender for consulting services and the experts of this organization are currently in Belgrade, where they are assisting in the preparation of the implementation of the digitalization process. The Ministry's team is working with the consultants, which are helping, with their experience, the process to take place smoothly and with as few problems as possible.

Investments of the state in digitalization

The network for digital terrestrial broadcasting and distribution of TV program is designed according to the architecture developed in the Ministry. Part of the equipment was already financed from IPA funds and the remaining, much bigger part will be purchased through loans for which the state will issue banking guarantees. In addition to the equipment, it will also be necessary to prepare the sites where this equipment will be installed. These are sites formerly owned by RTS and today they are the property of the Public Company Broadcasting Equipment and Communications (*Javno preduzeće Emisiona tehnika i veze* - ETV). Nothing has been invested in these sites for years, although they were damaged in the 1999 bombing. On August 26, the Ministry announced a tender for the reconstruction of 25 sites.

At the same time, the Strategy for Switchover from Analogue to Digital Broadcasting of Radio and Television Program provides for the purchase of STBs to be subsidized for 300 thousand socially vulnerable citizens.

[1] Advisors in the Ministry of Culture, Media and Information Society, Republic of Serbia

The overall costs of investments in the digitalization process may not be precisely determined at the present time, since the tenders for the reconstruction of the remaining ETV sites, as well as for the purchase of the remaining part of transmission equipment, antennae systems and headends, are yet to be prepared.

Conversion of Television Broadcasting Licenses and Broadcasters' Obligations

The change of the technology of processing and transmission of TV signal has led to a change to the regulatory framework. For that reason, in the process of digital switchover, cooperation is very important between the competent ministry, the Republic Agency for Electronic Communications (RATEL), the Republic Broadcasting Agency (RBA) and ETV.

In analogue technology, each TV station has its own broadcasting network and a frequency channel which it broadcasts on. In the digital domain, the situation changes dramatically. The channels of TV stations from a certain area are collected in a center called the headend. There is also the multiplexer, a device enabling the combination of different incoming signals in one common signal for the purpose of transmission and broadcasting. With the help of extremely efficient signal processing methods, it is possible to achieve, in a single frequency channel serving in analogue technology for the transmission of one television channel, the transmission of up to 20 television channels in the digital domain, in standard definition. Hence, the broadcasters are not the users of radio frequencies anymore – they become so-called media content providers, namely they are responsible only for the content they offer. The operator of the electronic communication network in the process of digitalizing terrestrial television becomes the sole holder of the right to using the radio frequency.

Under the Law on Electronic Communications, the Public Company Broadcasting Equipment and Communications (ETV)[2] is the sole operator of the multiplex network[3] in our country. Accordingly, ETV is obliged to set up a digital television program broadcasting network, enable access to multiplex in the scope of that network and distribute television signal, all that in line with the issued broadcasting licenses. In order to set up this network, RATEL is required to issue ETV a license for using radio frequencies in the band intended for television broadcasting[4]. As for broadcasters' licenses, the television broadcasting license shall be issued on the basis of an open competition, to be supervised jointly by RBA and RATEL. One of the integral parts of the television broadcasting license is the radio station license. With the passing of the Law on Electronic Communications, the radio station license was replaced by the license for using the radio frequency. Therefore, changes need to be introduced in the broadcasting licenses, so as to protect the acquired rights of broadcasters. In that sense, the cooperation of the Ministry and regulatory agencies in this stage of the project is of paramount importance. The changes concern the following: 1) there is no more broadcasting station license, which is replaced by the license for using the radio frequency (in line with the Law on Electronic Communications); 2) the holder of the license is not the broadcaster anymore, but ETV as the operator of the network and the

[2] Established by the decision of the Government of the Republic of Serbia on the Formation of the Public Company for Managing Broadcasting Infrastructure (Official Gazette of the Republic of Serbia no. 84/09)

[3] The Public Company "Broadcasting Equipment and Communications" is the sole multiplex operator until the digital switchover is completed, while in the future there will probably be other operators that will be involved in multiplexing and signal distribution.

[4] From 174-230 MHz (VHF area) and 470 do 862 MHz (UHF area).

multiplex, while the broadcasters will have a guaranteed place in the multiplex until the expiration of their broadcasting licenses; and 3) the coverage zone of some of the current broadcasters will possibly be expanded.[5] Obtaining a greater coverage zone would in theory mean having to pay a higher fee and it is unjust to impose to broadcasters charges that did not exist at the time of obtaining the license for using the radio frequency. For that reason, in the transition period, there needs to be a mechanism to enable the broadcasters to obtain, via the network operator, new coverage, without the obligation to pay a higher fee, while being obliged to shut down their analogue signal on the day when they switch to digital broadcasting. However, this concept may only be prescribed by law – the one regulating the field of electronic media[6]. On the other hand, the Broadcasting Law does not distinguish various forms of broadcasting and stipulates that, subject to the possession of a television broadcasting license, the broadcaster acquires the right to broadcast through terrestrial broadcasting stations. For that reason, television broadcasting licenses should not be changed in the part concerning this authorization the broadcasters have obtained after an open competition. The current broadcasters will, in the digital domain, prepare their television program in the usual manner, while they will be delivering their signal to the nearest headend in the ETV network. In the digital domain, the broadcaster will practically be obliged to pay for the delivery of the signal to the headend, for space in the multiplex, distribution of its program to ETV, as well as for the RBA issued license for programming content, as it has been the case until now. The network operator ETV will set the price list for its services on a cost-based principle and the Regulatory Agency for Electronic Communications will, under the Law, regulate these services.[7] Furthermore, certain obligations vested in the broadcasters under the Broadcasting Law will become meaningless due to different characteristics of digital coverage. Hence, for example, the obligation to provide quality television signal for at least 90% of the population in the coverage zone for the Public Broadcasting Service, namely 60% for commercial broadcasters, does not exist anymore, for it will now be vested in ETV. The desired service zone will overlap with the allotment zone. The obligation to pay the fee for using the radio frequency[8] will be transferred from a broadcaster to ETV.

Establishing the user platform for switching from analogue to digital television broadcasting

The Rulebook on Switchover from Analogue to Digital Television Broadcasting and Access to Multiplex in Terrestrial Digital Broadcasting is based on several assumptions for the digital switchover. The first pertains to the setting up of the multiplexing and distribution network, while the second concerns establishing the user platform for receiving digital signal. Essentially, the latter is about informing the public about the activities the user ought to perform in order to be enabled to receive television content in digital technology. This practically means to ensure the appropriate quantity of set-top boxes that support the chosen standard. Therefore it is necessary for all participants in the market, including both the vendors and the users, to behave responsibly and purchase only those STBs that correspond to the standard selected by our country.

[5] The final acts of the Regional Conference on Radio Communications for the Planning of the Digital Terrestrial Broadcasting Service in parts of Regions 1 and 2 respectively, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06); Serbia was divided in 16 allotment zones. For technical reasons, the signal coverage will overlap with the allotment zone, which will be result in the local broadcasters practically becoming national regional ones.

[6] The area that is currently regulated by the Broadcasting Law

[7] In line with the rules concerning regulatory obligations of the operator with substantial market strength

[8] The fee that was hitherto paid to RATEL

Furthermore, upon switching to digital broadcasting, the TV sets that are sold in retail stores should be adequately labeled in order to avoid misleading the customers.[9]

The viewers who receive their TV program terrestrially must either have a new TV set supporting the standards chosen by Serbia (DVB-T2/MPEG-4) or a STB, which will transform the selected digital signal into a format suitable for broadcasting on all types of old TV sets, analogue or digital. The sale of these appliances will begin in our stores too at the time of the experimental broadcasting. TV sets and STBs should be purchased as late as possible since their price in the new standard will fall.

Date of the Switchover from Analogue to Digital Broadcasting

European Commission Recommendation 204[10] (2005) stipulates that all EU countries must complete their respective digital switchover processes by 2012. Acts of the International Telecommunications Union's Regional Radio Communication Conference (RRC-06) provide for the obligation of all countries to complete the said process until a certain date, but also the duty to protect analogue frequencies.[11] Therefore, European states have been given a three-year period to complete the switchover. Due to many organizational and technical problems, only a handful of EU states will complete it on time, in line with the EC recommendation. When it comes to countries from our region, only Croatia and Bosnia have successfully completed the digital switchover. Bulgaria and Romania have postponed it for 2015.[12] The Serbian Digital Switchover Strategy has set April 4, 2012 as a deadline. Since in the meantime that month has been set as an election month in Serbia, as well as in view of the fact that major sport events are starting immediately after the elections, it is necessary to start shutting down the analogue program only after the Olympics in London. The shutting down will be performed by region and by allotment zone and the public will be informed thereof. It should be noted that one of the biggest problems plaguing the digital switchover is the lack of free spectrum. Serbia is saturated with TV channels, which is not that much of a problem with digital broadcasting. However, due to all channels being occupied, the digital switchover will represent a very complex task to be handled by the competent ministry and Regulatory Agency for Electronic Communications.

According to the ETV plan, the signal in the pilot network will be aired from 15 sites throughout Serbia. The transmitters that will be used in this network will be rather weak, since there are currently no technical possibilities for using stronger ones or better sites, due to a large number of television broadcasters. The pilot network will be an experimental one, based on which ETV will test the selected network parameters and work with new equipment. The broadcasting of the signal in the pilot network is set to begin late this year.

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[9] It should be properly marked if a TV set is not suitable for receiving digital signal or the signal of the selected standard. It should be noted that this distinction is relevant only for receiving the signal via terrestrial broadcasting, but not for cable or satellite broadcasting.

[10] This Recommendation is a political act and therefore the 2012 switchover deadline is not legally binding and hence it is possible to extend it in the EU too by 2015.

[11] These acts have been ratified by all European countries and therefore it is the sole legal obligation for European Countries in the sense of completing the digitalization process by 2015.

[12] Bulgaria if facing issues due to the relocation of the Bulgarian army from the frequency band used for digital broadcasting, while Romania has organizational problems due to insufficient cooperation between the competent ministry and the regulatory agency.

Some Controversies and Dilemmas in Adoption of the Serbian Media Strategy

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For more than two years, the Republic of Serbia has been working on drafting the Media Strategy. Although it was announced that the Strategy would be adopted by the end of 2010, it has not happened yet. The newly established Ministry of Culture, Media and Information Society finally presented the Draft Strategy in early June, related to which public discussions were held in several Serbian towns. In the course of the summer 2011, the new Working Group of the Government was established, which was tasked with producing the final text of the Strategy after the public debate. At the time when this article is being written, the final text of the Proposal of Strategy for Development of Public Information System in the Republic of Serbia by 2016, adopted on September 8, is yet to be released and hence it is not available to media professionals or the wider expert public. We are just beginning to gradually discover why this is the case and whether there is a "hidden agenda" of the authorities through stories and texts published and broadcasted by certain media[2] in the past few days, as well as from comments to the Proposal of Strategy compiled by the European Commission.[3] What we have been able to unofficially learn in this way is that the state will continue to be reluctant to give up its influence on the media, because it is reluctant to renounce its founding rights and property. This assertion may help us find an answer to the question why has the work on the Media Strategy taken so much time (two years) and why wasn't it finished much earlier? It seems that the rationale for the whole process was "one step forward, two steps back". The participation of the representatives of journalists' and media associations in the work group that has prepared the Draft Strategy served only as a cover, since the Government later established a special working group that would give its final verdict on crucial issues. This verdict will probably see the Government renouncing some key concepts proposed by media professionals, which shows that the government is reluctant to give up its influence on the media. In this text, I have analyzed only the aspects of the Proposal that have been made available to the public and that mainly pertain to the establishment, ownership and influence of the state on the media.

For starters, a grave concern is the seemingly final decision of the government to establish, in the Proposal of Strategy, the concept involving six regional public service broadcasting, to be established by the Republic of Serbia. The modality of the financing thereof, but also the manner in which these broadcasters will be managed in the future, is definitively something that will be an additional burden. As opposed to the Draft Strategy from June, which stipulated that the public duties and functions of the public service broadcasting would be discharged by public service broadcasters on the republic and provincial levels, the new document – if it remains unchanged – will introduce regional public service broadcasting as well.

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[2] *The Media Strategy: Six Regional Public Service Broadcasters*?, NUNS Newsletter, no. 20 from 15.09.2011 taken from the text from the daily "Vecernje novosti" http://nunsnewsletter.blogspot.com

[3] *The EC Criticizes the Media Strategy*, Source: B-92, 22.09.2011 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=09&dd=22&nav_category=12&nav_id=543799; The text may also be found on the ANEM webpage http://kampanje.anem.rs

This concept has encountered fierce resistance from journalists' and media associations, ever since the beginning of the work on the Media Strategy. The main stance taken up from the very beginning by ANEM, NUNS, UNS, NDNV, Local Press and others is that the state needs to withdraw from the ownership of media, in order to curb political influence on their programming content and ensure an equal position of media, as well as for the budget funds to be spent transparently. The concept of regional public service broadcasting is completely contrary to this position. The journalists' and media associations reiterated once again, in their joint statement on September 14 that such proposal was totally unacceptable and unsustainable. They also demanded that part of the Proposal of Strategy concerning regional public service broadcasting be removed.[4]

According to recently published information in certain media, the European Commission isn't happy with such concept either. In the comments to the Proposal of Strategy, the EC said to be seriously concerned about the financial sustainability of the new regional public service broadcasting. The EC stressed that if these broadcasters were established, this process ought to be elaborated on in more detail, including organizational aspects and precise rules concerning state aid, that ought to ensure their sustainability. Furthemore, the EC demanded that the possibility of the state to influence the content of these services be excluded. The Commission said there were other alternative ways to satisfy the needs for regional programming of public interest, namely by observing the relevant CoE recommendations.

Certain countries in the EU indeed have regional public service broadcasting and there is no point denying that. However, the explanation that "the working group opted for such concept in order to ensure an equal legal position of the citizens and the possibility for them to receive, throughout Serbia, information of public interest",[5] is highly problematic, if one observes the "genesis" of the media policy in Serbia since the democratic changes in 2000.

In this process, we have had, and still have, three stakeholders: the first is the government, the second are the media, professional associations and non-governmental organizations, and the third are the citizens, namely the public, as the end "consumer" of information. It is in the interest of the citizens that the information conveyed by the media be true, accurate, timely and objective. The interest of most of the media, professional associations and non-governmental organizations is to have clear, precise and non-discriminatory conditions for the work of media on a limited media market. They also want to have a legal and regulatory framework that will provide a reliable basis for the said conditions. Unfortunately, numerous examples in the last ten years in Serbia have shown that the government, which has a defining influence on the creation of media policy, is not keen on solving the problems in the media sphere, but rather on retaining a certain degree of influence and even political control. Such position of the government, which says to be keen on ensuring the "legal equality of citizens", especially using that stance to justify the concept of regional public service broadcasting, reminds greatly of that.

The second problem concerns the right of Ethnic Minorities National Councils to be able to establish media in their language.[6] NUNS, UNS, NDNV and media associations ANEM, Local

[4] *Journalists' and Media Organizations Unhappy with the Proposal of Strategy*, NUNS Newsletter, no. 20 from 15.09.2011. taking up the news released by the Fonet news agency http://nunsnewsletter.blogspot.com

[5] *Jelena Trivan about the Relations in the Coalition, Voting, Conditions from Brussels and the Media Strategy*, Večernje novosti, 22.09.2011: The text may also be found on the ANEM webpage: http://kampanje.anem.rs

[6] B. Cvejic, *Ethnic Minority National Councils may establish Media*, "Danas", 14.09.2011 http://www.danas.rs/danasrs/drustvo/saveti_nacionalnih_manjina_mogu_da_osnivaju_medije.55.html?news_id=223649

Press and the Media Association have voiced, in a joint statement, their dissatisfaction with the fact that the said Councils, under the Proposal of Strategy, would be entitled to be founders of media, including broadcast media. The aforementioned organizations have expressed the concern such concept would mean that the Councils would practically monopolize minority information. One of the members of the working group, working on the Draft Media Strategy, said that the Ethnic Minorities National Councils would also be able to establish their own media, but that these media "will not be controlled by the minorities, but by the minority oligarchies"… and that the media ought not to be under the control of the Councils, because the latter were nothing but para-governmental institutions.[7]

To a certain extent the above was confirmed by a group of Hungarian intellectuals from Vojvodina, who addressed in early September a letter to the Culture Minister, protesting over the manner the Ethnic Minorities National Councils were running the media they had founded and voicing their dissatisfaction over the intent of the government to make sure such situation did not change. While the authors of the letter said they believed that the Councils should remain the founders of minority media, in this case newspapers, they nonetheless added that the Media Strategy should include a concept that would ensure that the influence of the elite on editorial policy was minimized or completely removed. The intellectuals said that editorial independence of the said media ought to be guaranteed both by the Strategy and by the recently amended Law on National Councils of National Minorities. They pointed out the case of the formerly highly esteemed daily "Magyar So", which saw its editor-in-chief sacked by the National Council of Hungarians, for allegedly not having been focused enough on the activities of one of the Hungarian political parties.[8]

The European Commission has also highlighted this problem in its comments on the Proposal of Media Strategy. The EC is concerned by the possibility to have the Councils financed from the budget, due to their political nature and possible influence on the editorial policy of minority media. The Commission indicated there were alternative models of minority media financing in places where such needs existed.

The state has shown in yet another segment of the Proposal of Strategy that it is reluctant to renounce its influence on the media. For several years now, journalists' and media associations have been insisting that the state news agency Tanjug, which is currently operating as a public company, must be privatized. According to the Draft Strategy presented on the public debate, the production of which also involved the experts, the state news agency must be privatized and if privatization were to be unsuccessful, the citizens will become the owners of Tanjug and be distributed the shares thereof. According to unofficial information, the Proposal of Strategy laid down by the Government does not mention the privatization of Tanjug anymore, but refers to "ownership transformation". This should not necessarily be interpreted merely as a "word game", but as a "game" with serious implications. Namely, according to certain interpretations, "ownership transformation" could involve not the news agency's privatization, but its transformation into a different organizational form of public agency – public institution. An available comment of the EC confirms that where there's smoke, there's fire: the EC requested

[7] Rade Veljanovski, *The State will Continue Breaking the Law*, Reč plus, Blic, 16.09.2011, page 4.

[8] *The Influence of National Council Should be Minimized*, NUNS Newsletter, No. 20 from 15.09.2011 taking up the letter published in the daily "Dnevnik" signed by: Laslo Vegel, Zuzana Serences, Bela Garai, Caba Presburger and others. http://nunsnewsletter.blogspot.com

additional clarifications to be added to the Strategy in the part concerning the privatization of Tanjug.

When it comes to news agencies, but also print media, we may welcome the position stemming from the Proposal of Strategy, that the Republic of Serbia and the local governments, as well as the advertisers, will on all levels and in a transparent way, allocate advertizing (public calls, competitions, public companies' advertisements, etc) and that the state will, through open competitions, co-financing of media content of public interest, as well as through the purchase of agency services for own needs, promote their development and the development of news agencies. However, the European Commission is skeptical about the aforementioned position and points to the lack of clarity in the provision, saying that the state will foster news agencies by purchasing their services for its own needs. The EC said that such a formulation opened up the possibility of inappropriate influence. Brussels also stressed it was necessary to provide for clear rules for state advertising, since the sources of media financing in Serbia were concentrated in the hands of small number of market players. Therefore, the EC said, it is necessary to apply competition protection rules, in order to prevent the concentration of media budgets and the allocation thereof, which could result in abusing one's dominant position and influencing the professional and financial integrity of media.

There has been a fervent debate about the part of the Proposal of Strategy stipulating that the state may be a founder of a public media in Serbian language intended for the population in Kosovo and Metohija. According to some sources, the Proposal says that "for the purpose of timely and quality information of the population in Kosovo and Metohija, the Republic of Serbia shall retain the founding rights to the public publishing company "Panorama", in the scope of which company a weekly newspaper "Jedinstvo" is published."[9] Since this is a public company, the question again is what will be Jedinstvo's editorial policy and what its bodies will be (managing board, supervisory body and director) that will be, on behalf of the founder, "appointed" by the Government of the Republic of Serbia. In that context, one may sense the function and the editorial policy of this public media in the future. According to comments from Brussels, the existence of such government media outlet for Kosovo is not necessary. Furthermore, the EC has already pointed that state-owned media must enjoy editorial and financial independence, failing which they must be privatized and hence, such stance definitely concerns the public company Panorama.

The Media Strategy is definitely a document that is important and needed. The presented Draft Strategy had its good sides and they will probably be retained in the Strategy, the adoption of which is pending. Still, its final content and future fate (implementation) will primarily depend on the political will of present or future players on the Serbian political stage. What is certain is that, only when the holders of power become really prepared to renounce their direct or indirect influence on the media, it will be possible to realize the foundation of media policy a modern European media strategy should contribute to and strive for. This foundation is expressed in something that was uttered on the eve of the October 5 changes in Serbia: *the media must be free and the government will not interfere in the media's independence*.

[9] B. Cvejic, *Minority Councils may Establish their Media*, "Danas", 14.09.2011 www.danas.rs.

European Court of Human Rights[1]
Information Note on the Court's case-law

No. 143/July 2011

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms

Freedom of expression

Conviction of newspaper editor for publishing verbatim interview without prior authorisation by interviewee: *violation*

Wizerkaniuk – Poland/Pologne –
18990/05 Judgment/Arrêt 5.7.2011 [Section IV]

Facts – The applicant was the editor-in-chief and the co-owner of a newspaper. In February 2003 two journalists working for that newspaper interviewed a Member of Parliament who, on seeing the text, refused to authorise its publication. Notwithstanding that refusal, the newspaper published parts of the interview verbatim but stated that the MP had refused to authorise publication. Following a complaint by the MP the applicant was prosecuted under the Press Act 1984 on charges of publishing an interview without the interviewee's consent. He was sentenced to a fine. He then sought, unsuccessfully, to challenge the constitutionality of the Press Act. Despite the Prosecutor General, the Speaker of the Parliament and the Ombudsman all opining that the law was incompatible with the Constitution, the Constitutional Court found that civil-law remedies did not provide effective redress for infringements of personal rights, that journalists had the option of summarising interviews without seeking authorisation and that the legal requirement for authorisation before publication was a guarantee for readers that statements purportedly made during interviews were authentic.

Law — Article 10: While the Court had difficulty accepting that the aim of the interference at issue could have been the protection of the MP's reputation, since the conviction was not based on the substance or content of the impugned article but on the lack of consent to its publication, it was nevertheless prepared to assume that the interference served a legitimate aim. In previous cases the Court had been called upon to examine whether interference with freedom of expression was "necessary in a democratic society" by reference to the substance and content of statements of fact or value judgments for which the applicants had ultimately been penalised under the civil or criminal law. The essential difference in the applicant's case was that the domestic courts had imposed a criminal sanction on grounds which were completely unrelated to the substance of the impugned article. The Court noted, firstly, that even though domestic law provided for the possibility of a private prosecution in cases concerning less serious offences, the criminal proceedings against the applicant were brought by the public prosecutor. Further, at no stage of the proceedings was it shown that either the content or the form of the MP's remarks had been distorted in any way. Despite this, the mere fact of publication without the authorisation required by section 14 of the Press Act had automatically entailed the imposition of a criminal sanction. Accordingly, when examining the case against the applicant, the domestic courts had not been

[1] Excerpts from the official documents of the European Court of Human Rights, available on its web site

required to give any thought to the relevance of the fact that the person interviewed was an MP with political responsibilities towards his constituents. Indeed, they did not have any regard to the substance of the published statements or to whether they corresponded to what had been said during the interview. The provisions applied in the applicant's case effectively gave interviewees carte blanche to prevent a journalist from publishing any interview they regarded embarrassing or unflattering, regardless of how truthful or accurate it was. These provisions were also liable to produce other negative consequences, in that they were capable of making journalists avoid putting probing questions for fear that publication of the entire interview would be blocked by a refusal of authorisation. These provisions were thus capable of having a chilling effect on journalism by going to the heart of decisions on the substance of press interviews. Moreover, they dated back to a period before the collapse of the communist system in Poland when all media were subjected to preventive censorship and consequently, as applied in the applicant's case, they could not be said to be compatible with the tenets of a democratic society.

Lastly, it appeared paradoxical that the more faithfully journalists reported interviews, the more they were exposed to the risk of criminal proceedings for failure to seek authorisation. In any event, the mere fact that the applicant was free to paraphrase words used by the interviewee – but chose to publish his statements verbatim and was penalised for it – did not make the penalty imposed on him proportionate. The applicant's conviction and sentence to a fine, without any regard being had to the accuracy and subject-matter of the published text and notwithstanding his unquestioned diligence in ensuring its accuracy, was therefore disproportionate.

***Conclusion*:** violation (unanimously).
Article 41: EUR 256 in respect of pecuniary damage and EUR 4,000 in respect of non-pecuniary damage

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No. 142/June 2011

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms

Freedom of expression
Damages award against newspaper which had made all reasonable attempts to verify accuracy of report on court proceedings: *violation*

Aquilina and Others/et autres – Malta/Malte – 28040/08 Judgment/Arrêt 14.6.2011 [Section IV]

Facts – The first applicant was the editor, the second applicant a court reporter and the third applicant a printer working for a national newspaper. In 1995 the second applicant attended a court hearing to report on a bigamy case. At some point in the proceedings, the atmosphere in the court room became chaotic and the second applicant believed that the magistrate had found one of the lawyers in contempt of court. She tried to verify what she had heard through the records of the proceedings but was unable to do so as the magistrate and the court deputy registrar had already left their chambers. She checked however with another reporter, also present in the courtroom, who confirmed that he too had understood that the lawyer concerned had been found in contempt. This was reported the next day in the newspaper under the headline "Lawyer found in Contempt of Court". The lawyer concerned immediately contacted the second applicant to protest.

She verified the minutes of the proceedings and, noting that no mention had been made of the lawyer having been found guilty of contempt, ensured that the newspaper issued an apology. The lawyer nonetheless brought civil proceedings for defamation and was awarded 300 Maltese liras (approximately EUR 720).

Law – Article 10: The domestic courts' judgments had amounted to an interference with the applicants' freedom of expression. That interference had been "prescribed by law", namely the Press Act, and had pursued the legitimate aim of protecting the reputation or rights of others.

As to whether the interference had been necessary in a democratic society, the Court reiterated that special grounds were required before the media could be dispensed from their ordinary obligation to verify factual statements that were defamatory of private individuals. Whether such grounds existed depended in particular on the nature and degree of the defamation in question and the extent to which the media could reasonably regard their sources as reliable with respect to the allegations. By giving readers the impression that the lawyer had been found guilty of contempt of court, the headline had contained a factual allegation, which, since it concerned a lawyer's behaviour in the exercise of his profession, was a matter of public interest. What was relevant was whether the second applicant had had the means to verify the facts and whether she had abided by her duty of responsible reporting.

On the first point, the Court observed that records of proceedings were usually brief minutes which, since they did not contain a detailed record of all that took place, could not be considered the sole source of truth for purposes such as court reporting. To limit court reporting to facts reproduced in the records of proceedings, and to bar reports based on what a journalist had heard and seen with his or her own eyes and ears, as corroborated by others, would be an unacceptable restriction of freedom of expression and the free flow of information. While there may be a presumption that the official record of court proceedings is complete and accurate, such a presumption may be rebutted by other evidence of what occurred during the course of the proceedings. Indeed, all the evidence – apart from the minutes of the hearing – suggested that the lawyer had been found to be in contempt of court. Even the prosecutor's evidence, which was plainly relevant and came from an independent source, had corroborated what the second applicant had stated, yet little or no attention appeared to have been paid to it and no explanation had been given for disregarding it.

As to the second point, there was no reason to doubt that the second applicant had, in line with best journalistic practice, attempted to verify what had taken place in the court room and could not reasonably have been expected to do more, especially bearing in mind that news is a perishable commodity and delaying publication may well deprive it of all value and interest. Noting, too, that the second applicant had issued an apology the Court found that she had at all times acted in good faith and in accordance with her duty of responsible reporting.

It followed that the interference with the applicants' right to freedom of expression had not been necessary in a democratic society for the protection of the reputation of others.

Conclusion: violation (unanimously).
Article 41: EUR 4,000, jointly, in respect of non pecuniary damage.