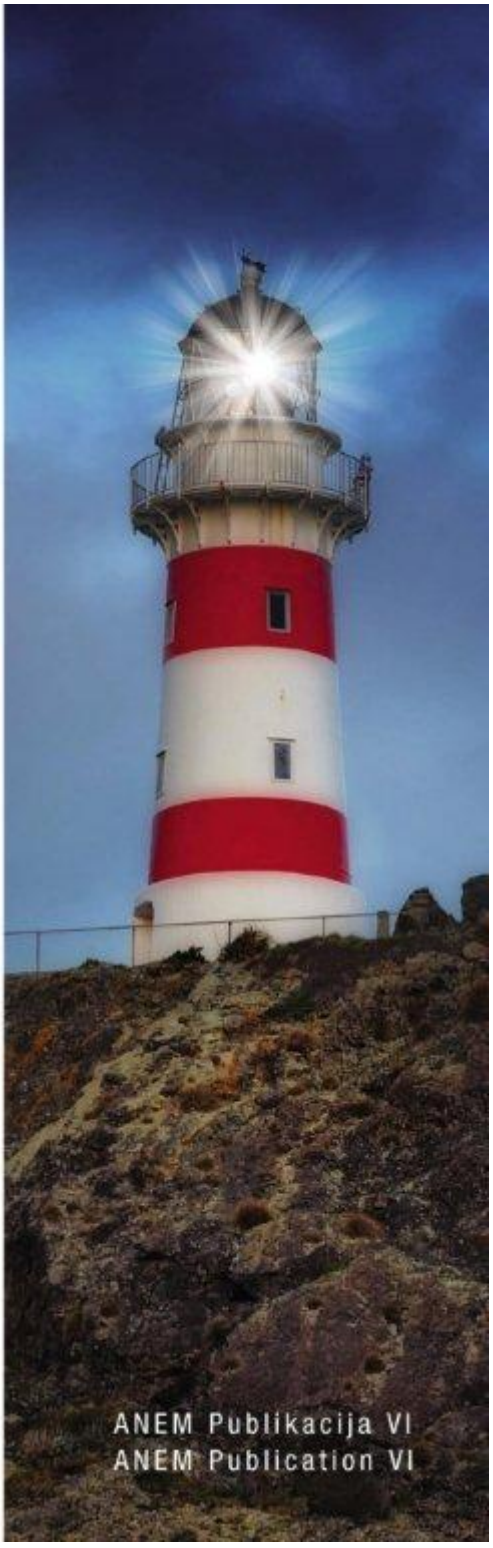
PRAVNI MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

ANEM



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UVOD

Medijska scena Srbije se nije mnogo izmenila za poslednje tri godine, koliko traje pravni monitoring koga ANEM kontinuirano sprovodi u saradnji sa svojim dugogodišnjim partnerom, advokatskom kancelarijom „Živković&Samardžić“. Zapravo, u ovom periodu, često se činilo da je na „monitorima“ našeg ekspertskog tima slika srpske medijske scene „zamrznuta“, jer su se isti problemi medija i novinara uporno ponavljali i ostajali bez ikakvog ili bez adekvatnog odgovora.

Ipak, prema mišljenju monitoring tima, prvih 6 meseci 2012. godine, na koje se ova Publikacija i odnosi, posebno se izdvajaju po izuzetno jakom uticaju koji je na ceo medijski sektor, ali i društvo u celini, imao izborni proces u Srbiji. Pretnje, pritisci i napadi na novinare i medije u ovom periodu bili su pojačani a najčešće su dolazili od strane lokalnih političkih moćnika nezadovoljnih kritičkim izveštavanjem pojedinih medija ili novinara o njima i njihovom radu. Poseban i najčešći vid pritiska je bila diskriminacija tih novinara i medija, koja je u predizbornoj atmosferi tretirana kao normalno i prihvatljivo ponašanje i predstavljana kao legitiman čin. Pored toga, teška ekonomska kriza, visokokoncentrisano tržište oglašavanja, sve manji oglašivački budžeti kontrolisani od malog broja velikih marketinških agencija koje su, po pravilu, blisko povezane sa državnim i stranačkim funkcionerima, kao i nedovršena privatizacija medija i neadekvatna primena propisa o kontroli državne pomoći koje su dovele dotle da se veliki broj neprivatizovanih medija, pod neposrednom političkom kontrolom lokalnih vladajućih oligarhija, finansira iz budžeta bez ozbiljne kontrole njihovih sadržaja – a takođe i izostanak opšteg nadzora nad izbornim procesom i sprovođenje nadzora samo nad elektronskim medijima i to na osnovu Opšteobavezujućeg uputstva RRA koje je bilo u toj meri nejasno da je sam RRA morao da objavi i obavezujuće tumačenje tog uputstva, značajno su uticali na meru slobode medija u ovom izbornom procesu koja nije bila na zavidnom nivou. Situacija je bila toliko očigledno loša da je Delegacija Parlamentarne skupštine Saveta Evrope, koja je tokom aprila boravila u Beogradu u okviru priprema za praćenje izbora 6. maja, u svom saopštenju izrazila zabrinutost zbog ekonomskih i političkih pritisaka na pojedine novinare i pokušaja partija da utiču na uređivačku politiku medija. Da je ovakva situacija veoma nepovoljno uticala na novinare i medije, govore i rezultati monitoringa izveštavanja medija u predizbornoj kampanji (BIRODI) koji pokazuju da je deo medija odustao od kritičkog i analitičkog izveštavanja o radu političkih stranaka, opredelivši se za neutralno a često i promotivno izveštavanje. Sve navedeno govori da je u ovom izbornom procesu bilo ugroženo ostvarivanje prava glasača na informisani izbor koji bi trebalo da se vrši na osnovu potpunih, objektivnih, tačnih i blagovremenih informacija, prava kandidata da ukrste svoje politike ali i prava samih medija da iznose svoje stavove i izveštavaju o pitanjima od javnog interesa.

Još jedna loša posledica izbornog procesa po medijski sektor, nastala zbog gubljenja interesa ili realnih nemogućnosti vlasti da nešto sistemski uradi, jeste ta da rešavanje ključnih pitanja koja nastavljaju da opterećuju položaj medija u Srbiji, kao što su povlačenje države iz vlasništva u medijima ili uređenje sistema finansiranja javnog interesa u medijskoj sferi u skladu s pravilima o državnoj pomoći, ostaje da čeka neku novu vladu, dok je „stara“ vlada u predizbornoj kampanji nekim svojim potezima pokazala da je praktično odustala od tih važnih principa za koje se nekoliko meseci pre opredelila u Medijskoj strategiji. Tu novu vladu će sačekati i tri gotova prednacrta važnih medijskih zakona predviđenih Strategijom, od kojih se za dva, koja su užurbano pripremile radne grupe Ministarstva kulture (Zakon o javnom informisanju i Zakon o javnim servisima), ništa ne zna – ni ko ih je radio, niti šta oni sadrže, što unapred izaziva podozrivost prema njima, dok je treći Prednacrt – Zakona o elektronskim medijima, kojeg je uradila radna grupa pod okriljem OEBS-a, nedavno javno predstavljen. Međutim, i na sudbinu prednacrta tih zakona, ali i same Medijske strategije, može drastično uticati i sastav nove vlade, imajući u vidu da u donošenje tog dokumenta nisu bile uključene sve parlamentarne stranke, niti su se o njemu izjašnjavale. U međuvremenu, kriza i postojeći tržišni uslovi nastaviće dalje da

urušavaju srpske medije. U ovakvoj situaciji, neke pozitivne promene koje su se desile u ovom periodu – kao što su: pomaci u procesu digitalizacije omogućeni izmenama Strategije, izdavanje dozvola za Inicijalnu digitalnu mrežu i početak simulkasta u Srbiji, naznake promena u sudskoj praksi u medijskim slučajevima, pre svega u pogledu pooštravanja kažnjavanja učinilaca napada na novinare i snimatelje ali i u pogledu većeg uvažavanja slobode medija i javnog interesa u oblasti informisanja, pomaci u uređenju oblasti kablovske distribucije medijskih sadržaja uvođenjem „must carry" obaveze dominantnom kablovskom operatoru na ovom tržištu, ostaju u senci svega lošeg što je nabrojano.

Tekstovi u ovoj Publikaciji se bave nekim od važnih medijskih pitanja za navedeni period – kako su mediji pratili izbore, implementacijom Medijske strategije, Prednacrtom Zakona o elektronskim medijima i pitanjem postkomunističkih medijskih reformi. Peti tekst i u ovom broju Publikacije jeste specijalni dodatak koga 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: prva se odnosi na zaštitu prava maloletnika a druga na pitanje balansa između slobode izražavanja i prava na poštovanje privatnog života javnih ličnosti.

Beograd, jun 2012. god.

Kako su mediji pratili izbore

Slobodan Kremenjak, advokat[1]

Izbori su obeležili prvu polovinu 2012. godine na medijskoj sceni u Srbiji. Iako su za lokalne skupštine, pokrajinsku i republičku skupštinu formalno raspisani tek 13. marta, a predsednički još i kasnije, 5. aprila, slobodno se može reći da je i više meseci pre raspisivanja, surova borba za poluge uticaja na javno mnenje već bila u punom jeku, kao i najrazličitiji pokušaji da se mediji instrumentalizuju i da se obezbedi njihova „kooperativnost" u predizbornoj kampanji. O ozbiljnosti situacije svedoči i to da je čak i delegacija Parlamentarne skupštine Saveta Evrope, koja je boravila u Beogradu u okviru priprema za praćenje izbora, morala da pozove partije na uzdržanost od pokušaja da utiču na uređivačku politiku medija i da izrazi svoju zabrinutost povodom ekonomskih i političkih pritisaka na pojedine novinare.

Fazu pre samog raspisivanja izbora karakterisalo je svojevrsno „obeležavanje teritorije" i demonstracije moći, posebno na lokalnom nivou i od strane lokalnih vlastodržaca. „Nepodobni novinari" sprečavani su da izveštavaju, uskraćivan im je pristup konferencijama za medije i drugim događajima. Obaveza koja važi za organe teritorijalne autonomije i lokalne samouprave, kao i odbornike, da informacije o svome radu učine dostupnim za javnost i to pod jednakim uslovima za sve novinare i sva javna glasila, propisana članom 10 Zakona o javnom informisanju, kršena je gotovo svakodnevno. Tako je, recimo, u jednom od brojnih slučajeva o kojima su mediji pisali, novinar sprečen da izveštava s konferencije za novinare predsednika Opštine. Sam predsednik Opštine ovo je pravdao izjavom da novinar na konferenciju nije bio pozvan, kako je naveo zbog „neprofesionalizma i kršenja osnovnih kodeksa novinarstva". Kreirana je situacija u kojoj predstavnici lokalne vlasti, bez suda i u suprotnosti s važećim zakonom, prava priznata svim novinarima i svim medijima samovlasno uskraćuju onim novinarima i medijima koje arbitrarno proglase za nepodobne. Kad se ovome doda da u uslovima duboke ekonomske krize, budžeti kojima te iste lokalne vlasti raspolažu često predstavljaju slamku spasa za osiromašene lokalne medije, postaje jasno zašto je sve manje kritičkih tonova u izveštavanju.

Zauzimanje što boljih početnih pozicija pred raspisivanje izbora obezbeđivano je i kroz pokretanje novih medija u kojima su odgovorne položaje zauzimali visoki funkcioneri političkih stranaka – učesnika na izborima. Tako je npr, početkom februara, Republička radiodifuzna agencija izdala dozvolu za emitovanje programa kablovskoj televiziji Kopernikus 3 (Svet plus), za koju su mediji pisali da je trećinu svog ukupnog vremena emitovanja praktično unapred izdala Srpskoj naprednoj stranci, a čija je jedna od urednica, Tanja Vidojević, i članica Glavnog odbora iste stranke. Ovaj medij do februara je radio bez dozvole a Služba za nadzor i analizu pri RRA, kako je preneo dnevni list „Blic", u više navrata je upozoravala Savet RRA da oni svojim programskim sadržajima favorizuju Srpsku naprednu stranku i vode neprimerene kampanje protiv funkcionera drugih partija. Predstavnici Republičke radiodifuzne agencije, izjavljivali su da u skladu s važećim propisima praktično nisu imali mogućnost da uskrate izdavanje dozvole, već jedino da nastave da prate program nakon njenog izdavanja i reaguju ako se s kršenjem propisa nastavi.

Ono što je Republička radiodifuzna agencija uradila, jeste donošenje dva nova opšta obavezujuća uputstva. Jedno je — Uputstvo radio i televizijskim stanicama (emiterima) u predizbornoj kampanji za lokalne, pokrajinske i republičke skupštinske izbore, izbore za predsednika Republike i izbore za nacionalne savete nacionalnih manjina, objavljeno 9. marta 2012. godine, a

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

drugo — Uputstvo emiterima radi omogućavanja nesmetanog informisanja gledalaca sa oštećenim sluhom u toku predizborne kampanje u 2012. godini, objavljeno 12. aprila.

Po Zakonu o radio-difuziji, RRA Opšte obavezujuće uputstvo donosi radi bližeg uređivanja određenih pitanja koja se odnose na sadržaj programa. Smisao Uputstva stoga i nije, niti je bilo realno očekivati da bude, u tome da neposredno štiti emitere od pritisaka, već da podižući nivo pravne sigurnosti otkloni nedoumice koje su mediji imali u vezi sa izveštavanjem o kampanji i izbornom procesu, i time utiče na sužavanje prostora za pritiske usmerene na to da se nejasnoće u propisima zloupotrebe u interesu bilo kog učesnika u izbornom procesu.

Nažalost, i pored činjenice da su ova dva opšta obavezujuća uputstva praktično već deveto i deseto po redu koje RRA donosi od usvajanja Zakona o radio-difuziji, budući da su prethodno donošena za predsedničke izbore 2003, 2004. i 2008. godine, za parlamentarne 2003. i 2007. godine, za lokalne 2004. godine, za lokalne, pokrajinske i republičke parlamentarne 2008. godine, te za izbore za nacionalne savete nacionalnih manjina 2010. godine, što bi trebalo da znači da se problemi znaju a da praksa u njihovom rešavanju postoji i da je dovoljno bogata, dileme vezane za primenu i najnovijeg opšteg obavezujućeg uputstva nisu izostale.

Tako je, npr. odredba Opšteg obavezujućeg uputstva, shodno kojoj u toku predizborne kampanje emiteri treba da iz svog programa isključe dokumentarne, igrane, zabavne i slične emisije i filmove u kojima se pojavljuje funkcioner, istaknuti predstavnik podnosioca izborne liste ili kandidat i da izbegavaju druge oblike indirektne političke propagande u redovnim emisijama, bila različito tumačena čak i od različitih predstavnika same agencije. Takođe, nerešeno pitanje klasifikacije programskih žanrova, emisija i filmova na dokumentarne, igrane, zabavne i, što je najgore, i „slične emisije i filmove“, moglo je samo da izazove nesigurnost emitera u obim svojih prava. Naime, RRA nikada nije objavila kriterijume na osnovu kojih vrši klasifikaciju čak ni za tradicionalne žanrove, a još manje kriterijume na osnovu kojih bi neke druge žanrove mogla klasifikovati kao „slične“ dokumentarnim, igranim ili zabavnim programima. U datim okolnostima bilo je krajnje nezahvalno tumačiti da li je konkretan program podoban za emitovanje ili ne.

S druge strane, još veću zbrku izazvali su zahtevi stranaka za objavljivanje predizbornih oglasnih poruka takozvane kontrastne ili negativne kampanje, kampanje koja je bila usmerena na diskreditaciju drugih lista i kandidata. Marketinške agencije stranaka i koalicija praktično su se utrkivale u proizvodnji takvih oglasnih poruka a mediji dovođeni u situaciju da je sva odgovornost za emitovanje bila isključivo na njima. Naime, iako je Zakonom o izboru narodnih poslanika predviđeno i postojanje opšteg nadzora nad postupcima političkih stranaka, kandidata, pa samim tim i marketinških agencija koje u njihovo ime i za njihov račun vode predizborne kampanje, a koji nadzor je trebalo da vrši Nadzorni odbor Narodne skupštine Republike Srbije, takav odbor ni na ovim, kao ni na jednim prethodnim izborima još od 2000. godine, nije bio formiran. Time je kreirana situacija u kojoj za povrede načela oglašavanja, osim RRA koja je zakonom ovlašćena da pokreće postupke isključivo protiv radio i TV stanica, nije bilo tela koje bi iniciralo postupke protiv samih stranaka i njihovih agencija i na taj način problem rešavalo na njegovom izvorištu. Televizije su dovedene u situaciju da biraju između prijava stranaka za diskriminatorsko odbijanje emitovanja njihovih spotova, ukoliko bi emitovanje odbili, odnosno sankcija RRA za slučaj da emitovanje prihvate, dok se pitanjem odgovornosti stranaka za neprimerenu kampanju niko nije bavio.

Sve navedeno, iako verovatno predstavlja tek vrh ledenog brega, u dovoljnoj meri svedoči o uslovima u kojima su mediji pratili izbore. U takvim uslovima, bilo je nerealno očekivati da mediji ostvare svoju funkciju i zadatke koji se od njih u izbornom procesu i u vezi s njim očekuju.

Rezultati istraživanja koje je od 1. do 14. aprila sproveo Biro za društvena istraživanja, očekivano su pokazali da je izveštavanje medija u predizbornoj kampanji dominantno pozitivno, a u mnogim slučajevima čak i promotivnog karaktera, kao i da su mediji „uglavnom odustali od svoje kontrolne uloge, odnosno od bilo kakvog kritičkog i analitičkog izveštavanja, i ponašali se samo kao prenosioci informacija o aktivnostima političkih stranaka i njihovih kandidata“. Koliko bi ovakvo poražavajuće stanje moglo da se promeni do nekih narednih izbora, zavisi pre svega od spremnosti nove vlade da posle decenija ignorisanja problema u medijskom sektoru, te probleme napokon počne da rešava.

Prvih devet meseci Medijske strategije

Kruna Savović, advokat[1]

Strategija razvoja sistema javnog informisanja u Republici Srbiji do 2016. godine, usvojena je 28. septembra 2011. godine i objavljena u Službenom glasniku br. 75/2011 od 7. oktobra. Gotovo devet meseci, koliko je od tada proteklo, čini se sasvim dovoljnim vremenom za evaluaciju onoga što je na implementaciji Strategije učinjeno.

Formalnopravno, vlada svaku strategiju, pa tako i medijsku, donosi shodno odredbi člana 45 Zakona o vladi („Službeni glasnik RS", br. 55/2005, 71/2005 — ispr., 101/2007, 65/2008 i 16/2011), kako bi utvrdila stanje u konkretnoj oblasti iz svoje nadležnosti i predvidela mere koje treba preduzeti radi njenog razvoja.

Strategija razvoja sistema javnog informisanja samo je jedna od osamdesetak strategija koje je Vlada Republike Srbije donela poslednjih godina u najrazličitijim oblastima, od podsticanja rađanja (Strategija podsticanja rađanja, „Službeni glasnik RS", br. 13/2008) do starenja (Nacionalna strategija o starenju, „Službeni glasnik RS", br. 76/2006), i od povratka na Kosovo i Metohiju (Strategija održivog opstanka i povratka na Kosovo i Metohiju, „Službeni glasnik RS", br. 32/2010) do razvoja širokopojasnog pristupa Internetu (Strategija razvoja širokopojasnog pristupa u Republici Srbiji do 2012. godine, „Službeni glasnik RS", br. 84/2009). Obilje strateških dokumenata ne znači, međutim, da je Srbija istovremeno postala zemlja transparentne javne politike u oblastima za koje se strategije donose. To bi se ponajmanje moglo reći za oblast medijske javne politike.

Okruženje za delovanje medija u Srbiji oblikovano je, poslednjih deset godina, ne kao rezultat mera koje bi sledile nekakve unapred definisane ciljeve, već pre kao posledica stihije, a često i direktne opstrukcije definisanih ciljeva rukovođene pre svega ambicijom da se zadrže poluge kontrole i uticaja na medijski sektor. Upravo iz razloga direktne opstrukcije, privatizacija medija je, iako propisana kao obavezna još Zakonom o radio-difuziji iz 2002. godine i Zakonom o javnom informisanju iz 2003. godine, umesto već davno okončana, sada ponovo u Strategiji predstavljena kao aktuelno strateško opredeljenje.

Dokle se, dakle, stiglo s implementacijom Strategije, devet meseci nakon njenog usvajanja? Ako pogledamo Akcioni plan za sprovođenje Strategije, videćemo da u njemu nijedna aktivnost nije oročena na rok od 9 meseci ili kraći. Videćemo, međutim, i da su najkraći rokovi predviđeni u Akcionom planu, oni koji traju 10 meseci, a koji se odnose na preispitivanje mogućnosti izmena Zakona o oglašavanju, Zakona o pravu na besplatne akcije i novčanu naknadu koju građani ostvaruju u postupku privatizacije, Zakona o porezu na dodatnu vrednost, Carinskog zakona, Zakona o kontroli državne pomoći, kao i preispitivanje mogućnosti uvođenja programa medijske pismenosti u proces obrazovanja.

Iako nije objašnjeno šta „preispitivanje mogućnosti" u konkretnom slučaju znači, pretpostavljamo da bi minimum onoga što je Vlada usvajajući strategiju imala u vidu, podrazumevao da se, npr. u odnosu na preispitivanje mogućnosti izmena Zakona o oglašavanju, Ministarstvo kulture, informisanja i informacionog društva u komunikaciji s ministarstvom u čijoj je to nadležnosti (konkretno s Ministarstvom poljoprivrede, trgovine, šumarstva i vodoprivrede), utvrdi da li već postoje planovi izmena Zakona o oglašavanju, kao i da li su izmene predložene medijskom strategijom (regulisanje oglašavanja države, odnosno njenih

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

organa na način koji bi sprečio koncentraciju oglasnih budžeta, odnosno njihovu monopolizaciju od strane pojedinih medija ili agencija; liberalizacija oglašavanja u medijima, u meri u kojoj je to u skladu s međunarodnom praksom i međunarodnopreuzetim obavezama) kompatibilne s izmenama koje se i inače planiraju, odnosno kompatibilne s drugim interesima koje vlada štiti u toj oblasti. Slično je valjalo postupiti i u odnosu na druge zakone preispitivanjem mogućnosti izmena predviđenih Akcionim planom. Samo mesec dana pre isteka roka za okončanje ove aktivnosti predviđene Akcionim planom, ne postoje informacije da je bilo šta od navedenog urađeno, u odnosu na bilo koji od navedenih zakona, što bi moglo da ukazuje na to da se na implementaciji Strategije ne radi, odnosno da se, u najboljem slučaju, ne radi dovoljno.

Još je složenije pitanje rešenja ponuđenih Strategijom a koja nisu naišla na nepodeljenu podršku javnosti, ili su, najblaže rečeno, nedovoljno razrađena. Recimo, ideja Strategije da se nesporna potreba građana da na lokalnom i regionalnom nivou dobijaju blagovremene i tačne informacije specifične za to područje rešava osnivanjem šest javnih regionalnih radio i televizijskih servisa samo u centralnoj Srbiji, naišla je na kritike medijskih i novinarskih udruženja. Vlada se, najavljujući osnivanje javnih regionalnih radio i televizijskih servisa, pozvala na poštovanje preporuka Saveta Evrope koje se odnose na garancije nezavisnosti javnih radiodifuznih servisa i garancije nezavisnosti i funkcija regulatornih tela u oblasti radio-difuzije. Ova druga preporuka u dobroj meri već je prekršena usvajanjem Zakona o kinematografiji, kojim su narušeni sistemi finansiranja i RRA i Ratela. Takođe, Strategija osim što kaže da će regionalni javni servisi funkcionisati na principima na kojima funkcionišu RTS i RTV (koji teško da bi od bilo koga mogli biti ocenjeni kao pozitivni primeri upravljačke, programske i posebno finansijske nezavisnosti), ne precizira ni ko će upravljati regionalnim javnim servisima, s kakvim nadležnostima i odgovornostima, ko će nadzirati njihov rad, i što je posebno važno, kako će se konkretno regionalni javni servisi finansirati. Strategija, naime, kaže da će se finansirati u skladu s pravilima o dodeli državne pomoći, ne pozivajući se neposredno na primenu Komunikacije Evropske komisije o primeni pravila o kontroli državne pomoći na javne radiodifuzne servise iz 2009. godine. Primena navedene Komunikacije morala bi biti obaveza Srbije i u kontekstu Sporazuma o stabilizaciji i pridruživanju. Ocena prihvatljivosti finansiranja javnih servisa sa aspekta propisa koji se tiču kontrole državne pomoći, u kontekstu Komunikacije, podrazumeva između ostalog i postojanje jasne definicije mandata, odnosno uloge javnih servisa, načina na koji se taj mandat, odnosno uloga proveravaju i njihovo poštovanje nadzire, transparentnosti finansiranja i posebno knjigovodstvenog razdvajanja aktivnosti javnog servisa od onih aktivnosti koje to nisu, zabrane preplaćivanja, postojanja mehanizama finansijske kontrole, definisane procedure za uvođenje novih servisa, ponašanja na tržištu kojim se ne narušava konkurencija. Dragana Milićević-Milutinović, državna sekretarka u Ministarstvu kulture, informisanja i informacionog društva, izjavila je početkom juna da je prednacrt Zakona o javnim servisima pripremljen i predat ministarstvu od strane radne grupe koja je na njemu radila. Ministarstvo, međutim, nije objavilo prednacrt, te je nemoguće oceniti u kojoj meri on prepoznaje sve ovde navedeno. Dodatni razlog za brigu je i činjenica da je sam postupak imenovanja članova radne grupe bio prilično netransparentan, te da se za razliku od prakse za koju se verovalo da je ustanovljena prilikom izrade nacrta Strategije, a da se Ministarstvo prilikom izrade nacrta akata od značaja za medijski sektor konsultuje sa udruženjima, u ovoj radnoj grupi nisu našli predstavnici medijskih i novinarskih asocijacija. Ovo je tim više opasno što bi bilo kakva nedoslednost u budućem Zakonu o javnim servisima kojim bi se odstupilo od kriterijuma Komunikacije Evropske komisije o primeni pravila o kontroli državne pomoći na javne radiodifuzne servise, praktično uništila komercijalnu radio-difuziju na regionalnom i lokalnom nivou u Srbiji, ako je već i samo osnivanje regionalnih javnih servisa ne uništava. Imajući u vidu raniju praksu neuvažavanja zahteva medijskih udruženja u javnim raspravama, pitanje je koliko će na ovaj nacrt uopšte moći da se utiče jednom kada bude publikovan i pušten u javnu raspravu.

Takođe, ništa nije urađeno ni po pitanju kontrole državne pomoći koje mediji, a posebno oni u javnom vlasništvu, i inače dobijaju. Podsetimo, Strategija je najavila da će se ova pomoć dodeljivati uz poštovanje kriterijuma koji podrazumevaju javnost, finansijsku kontrolu, zabranu preplaćivanja, srazmernost, ponašanje na tržištu koje ne narušava propise o zaštiti konkurencije. Takođe, najavljeno je uvođenje novog modela finansiranja, po projektnom principu, ali se ni tu nije odmaklo dalje od same najave. Devet izgubljenih meseci za regulisanje ove oblasti, za posledicu ima dalje urušavanje komercijalne radio-difuzije u Srbiji.

Zaključak koji možemo izvući je da se — ako izuzmemo da su prednacrti nekih zakona (Zakon o javnom informisanju, Zakon o elektronskim medijima, Zakon javnim servisima) napisani i predati ministarstvu, pri čemu ih ministarstvo još nije objavilo, te je samim tim nemoguće dati njihovu ocenu — s implementacijom Strategija razvoja sistema javnog informisanja zapravo nije ni počelo. Činjenica da raspisivanje izbora, do čega je u međuvremenu došlo, nije pogodovalo njenoj punoj implementaciji možda i stoji, ali nikako ne može da opravda to što je Strategija ostala mrtvo slovo na papiru, kupovina vremena i ispunjavanje uslova postavljenog iz Brisela za dobijanje statusa kandidata za članstvo u EU koje je samo formalno i koje je lišeno sadržaja i suštine.

Prednacrt Zakona o elektronskim medijima – unapređivanje regulacije i prakse

Prof. dr Rade Veljanovski[1]

Potreba da se temeljnije menja Zakon o radio-difuziji, koji je inače doživeo nekoliko manjih promena, uočena je još pre četiri godine, a realizacija ideje izmene odredaba dovela je do Prednacrta Zakona o elektronskim medijima. Ovako dug period priprema novog zakonskog teksta može se objasniti činjenicom da je ista radna grupa u međuvremenu dobila zadatak da pripremi i Prednacrt Zakona o javnosti i nedozvoljenom objedinjavanju vlasništva u medijima, koji do sada nije ušao u proceduru usvajanja, a zatim je bilo nužno da se sačeka donošenje Strategije razvoja sistema informisanja u Srbiji.

Skoro deset godina od kako je Zakon o radio-difuziji na snazi, dug je period za ovako dinamičnu oblast kao što je delovanje elektronskih medija, pogotovo u novom tehnološkom okruženju. Digitalizacija i primena novih medijskih tehnologija, koji iz određenih, manje ili više opravdanih, razloga nisu zakonski tretirani pre jedne decenije, već nekoliko godina su regulatorni imperativ. Činjenica da su u Srbiji usvojeni Strategija digitalizacije i Zakon o elektronskim komunikacijama, kojim je zamenjen Zakon o telekomunikacijama, zahtevala je i usaglašavanje zakona koji se u užem smislu bavi medijskim aspektima korišćenja frekvencija. Noviji evropski regulatorni dokumenti, pre svega Direktiva o audio-vizuelnim medijskim servisima, ali i izvesnost prelaska sa analognog na digitalno emitovanje, najkasnije do 17. juna 2015. godine, zahtevale su normativno prilagođavanje u ovoj oblasti. I neke od izmena Zakona o radio-difuziji ali i postupanje po njemu, bili su razlozi za novi regulatorni pogled.

Inicijativa za izmene Zakona o radio-difuziji i rad na tekstu zakona rezultirala je konstatacijom da se pojam *radio-difuzija* ne može više koristiti na dosadašnji način jer je taj izraz označavao pre svega distribuciju signala od dosadašnjih *emitera* do krajnjih korisnika. Prema obimu izmena i značaju novih odredaba realnije je, dakle, govoriti o novom zakonu, a ne o izmenjenom Zakonu o radio-difuziji.

Dalja harmonizacija sa evropskim regulatornim okvirom

Prednacrt Zakona o elektronskim medijima ima devet delova i 146 članova.

Njegova struktura, na prvi pogled, ne odudara mnogo od Zakona o radio-difuziji. I ovaj zakonski tekst počinje s načelnim opredeljenjima kao što su: sloboda, profesionalizam i nezavisnost medija, zabrana cenzure i uticaja na elektronske medije kao garancija nezavisnosti, puna afirmacija građanskih prava i sloboda, primena međunarodnopriznatih normi i principa. Među načelima su i objektivnost, zabrana diskriminacije u procesu izdavanja dozvola, podsticanje slobodne konkurencije, pristup elektronskim medijima, podsticanje medijske pismenosti, zaštita kulturne raznovrsnosti i podsticanje medijskog stvaralaštva.

Razdvajanje proizvodnje programa, odnosno produkcije sadržaja od distribucije, odnosno emitovanja, prva je ključna razlika između Zakona o radio-difuziji i Prednacrta Zakona o elektronskim medijima. Kao što kaže član 2 Prednacrta: „Odredbe ovog zakona ne odnose se na uslove obavljanja delatnosti elektronskih komunikacija, uslove i način korišćenja radio-

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frekvencija za distribuciju i emitovanje medijskih sadržaja, kao i na uslove postavljanja, upotrebe i održavanja emisionih fiksnih i mobilnih uređaja". Emitovanje je, po novom pristupu, ostavljeno Zakonu o elektronskim komunikacijama, pa je time i pojam *emiter* izostao iz Prednacrta. Emitovanjem medijskih sadržaja trebalo bi da se bavi posebno preduzeće, ili više njih u budućnosti, i to će biti *operatori elektronske komunikacione mreže za pružanje medijskih usluga*. Ono što smo do sada zvali emiterom, ubuduće će biti *pružalac audio-vizuelne medijske usluge* koji ima uređivačku odgovornost za izbor sadržaja, odnosno audio-vizuelnih medijskih usluga. Ovo su promene koje su direktno proizašle iz Direktive o audio-vizuelnim medijskim servisima koja radio i televizijske kuće i ostale pružaoce programskih usluga naziva *provajderima medijskog servisa*.

Prednacrt Zakona o elektronskim medijima ima ovakav naziv jer se, opet na osnovu evropskih dokumenata, koji uvažavaju okolnosti nastale uvođenjem novih tehnologija, pojam elektronski medij širi, pored radija i televizije, i na „druge audio-vizuelene medijske usluge, urednički oblikovane internet stranice i drugo", kako stoji u Prednacrtu.

Već u novom „pojmovniku", odnosno članu koji govori o *značenju pojedinih izraza,* umesto dosadašnjih *definicija*, mogu se naći mnogi novi izrazi koji dovoljno govore o prilagođenosti zakonskog teksta Direktivi o audio-vizuelnim servisima. Tu je, već pomenuta, nova definicija *elektronskog medija*, zatim *medijska usluga* i *audio-vizuelna medijska usluga*. Objašnjeno je značenje *programskog sadržaja* i *uređivačke odgovornosti*. Uređivačka odgovornost je jedna od ključnih reči u Prednacrtu jer ona, u skladu sa evropskom regulativom, omogućava redefiniciju pojma elektronski medij, pošto obuhvata i nove medije na internetu, ali ne bilo koje, već one za koje se može utvrditi profesionalni pristup i odgovornost.[1] Definisane su *linearne* i *nelinearne medijske usluge*, kao i *usluga na zahtev*. To su značajne novine u zakonu koji treba da reguliše elektronske medije. S obzirom na to da se pomenuta Direktiva u najvećoj meri odnosi na televiziju kao audio-vizuelni medij, kao i na činjenicu da je digitalizacija radija još neizvesna, već u pojmovniku, a i kasnije u tekstu zakona, odvojeni su radio i televizija. Novi pojmovi su i *plasiranje proizvoda*, *zaštićena medijska usluga* koja se pruža na osnovu uslovnog pristupa i *zona raspodele* (allotment) umesto zone pokrivanja, što predstavlja usaglašavanje sa Zakonom o elektronskim komunikacijama.

Regulatorna agencija i vrste usluga

Jedna od najvažnijih orijentacija dosadašnjeg zakona za oblast radio-difuzije, postojanje i delovanje nezavisnog regulatornog tela, ostaje i u novom zakonu. Umesto RRA to bi ubuduće trebalo da bude Agencija za elektronske medije ili AEM. Nije samo u tome razlika. Ponuđena su dva rešenja za izbor članova Saveta Agencije. Jedan je praktično vraćanje na princip ovlašćenih predlagača pre izmena zakona kojima je Odboru za kulturu i informisanje Narodne skupštine Srbije data mogućnost da predlaže šest kandidata i tako utiče na izbor trećine članova Saveta. Ovaj model je u izvesnoj meri modifikovan tako što su, kao ovlašćeni predlagač, dodati nacionalni saveti nacionalnih manjina, koji bi do predloga došli zajedničkim dogovorom. Procedura je u izvesnoj meri precizirana kako bi se olakšali, inače dosta komplikovani, kandidovanje i izbor.

Alternativa ovoj odredbi je izbor članova Saveta na osnovu javnog konkursa za kandidate za koje su predviđeni precizni uslovi. Ovaj model je proceduralno znatno jednostavniji, ali je važno pitanje ko bi, od eventualno velikog broja prijavljenih kandidata koji zadovoljavaju formalne uslove, pravio užu listu o kojoj bi odlučivala skupština. Radna grupa se opredelila za ideju da, od prijavljenih kandidata, po dva imena za svako mesto člana Saveta, zajedničkim dogovorom

[1] Direktiva 89/552/EEC Evropskog parlamenta i Saveta o audio-vizuelnim medijskim servisima, Glava I, Član I, (c) i Rezolucija: Ka novom poimanju medija, Rejkjavik, 2009.

predlože tri nezavisne institucije: Zaštitnik građana, Poverenik za informacije od javnog značaja i Poverenik za zaštitu ravnopravnosti. U oba slučaja predloženo je da sadašnji članovi Saveta ostanu u ovom telu do isteka mandata na koje su birani.

U pogledu rada regulatorne agencije, uneto je i nekoliko odredaba koje, ne narušavajući njenu nezavisnost, treba da doprinesu većoj odgovornosti. U tom smislu uneta su rešenja o prestanku mandata razrešenjem ukoliko je član Saveta radio nesavesno ili nepravilno. Pojačane su i odredbe koje govore o javnosti rada Agencije.

Agencija za elektronske medije, ukoliko se tekst zakona usvoji, u okviru svoje nadležnosti, ubuduće bi imala na raspolaganju preciznije definisane mere za kontrolu rada pružalaca medijskih usluga. To bi trebalo da budu opomena, upozorenje i privremena zabrana dela programskog sadržaja, zatim privremeno i trajno oduzimanje dozvole. Sve mere bi ubuduće bile javne — sa obavezom objavljivanja u mediju na koga se odnose i još jednom štampanom mediju koji se distribuira na području na kome pružalac medijske usluge ima dozvolu.

Jedna od suštinskih promena u novom zakonu odnosi se na *audio-vizuelne medijske usluge prema načinu pružanja i sadržaju*. Član 47 Prednacrta predviđa usluge koje prema načinu pružanja mogu biti: *linearne* i *audio-vizuelne usluge na zahtev*, a prema sadržaju: *opšte* i *specijalizovane*, odnosno tematske: sportske, kulturne, muzičke, obrazovne, programi oglašavanja i drugo. Uvođenje usluga na zahtev i njihovo razdvajanje po specijalizovanim servisima jesu novine koje novi zakon svrstavaju u red savremenih regulatornih rešenja.

Audio-vizuelna komercijalna komunikacja, obuhvaćena je Prednacrtom u meri koja je nužna prema revidiranoj Evropskoj konvenciji o prekograničnoj televiziji i Direktivi o audio-vizuelnim medijskim servisima. Detalji o oglašavanju proizvoda i usluga i restrikcije u vezi s tim sadržani su u delu Prednacrta koji govori samo o linearnim uslugama. Važno je napomenuti da, u vezi s komercijalnim komunikacijama, kao i u vezi sa uslugama na zahtev, Prednacrt Zakona o elektronskim medijima posebno razrađuje zaštitu maloletnika.

Nova odredba se odnosi i na *kvote evropskih dela*, što je takođe usaglašavanje sa evropskom regulativom. Predviđena je obaveza pružalaca medijskih usluga da najmanje 10% ukupnog godišnjeg programa nameni sadržajima evropske produkcije, izuzimajući vesti, sportske događaje, igre, oglašavanje, teletekst i TV prodaju. Ova odredba zahteva i prisustvo evropske kinematografije (filmovi i serije) u kvoti najmanje 20% godišnjeg programa.

Usluge javnog audio-vizuelnog medijskog servisa

I Prednacrt novog zakona ima odredbe o javnom servisu. S obzirom na to da je radna grupa počela svoj rad pre nekoliko godina i da je završavala tekst neposredno posle donošenja medijske strategije, u Prednacrtu nije tretirana ideja regionalnih javnih servisa. Pisci Prednacrta su imali informaciju da je Ministarstvo kulture formiralo drugu radnu grupu koja radi na posebnom zakonu o javnom servisu, koji će obuhvatiti i regionalne servise. Ovakve okolnosti će sasvim sigurno zahtevati jasno opredeljivanje zakonodavca, uz nadu da će se to dogoditi na osnovu kompetentne stručne rasprave.

Što se Prednacrta Zakona o elektronskim medijima tiče, on je unapredio odredbe o javnom servisu koje se, kao i do sada, odnose na republički i pokrajinski javni servis. Najznačajnija izmena sadržana je u članu 72 Prednacrta koji govori o nezavisnosti i funkcionalnoj autonomiji javnog servisa. Deset tačaka preuzeto je iz Preporuke Saveta Evrope R (96) 10 o garantovanju nezavisnosti javnog servisa radio-difuzije. Potpuna samostalnost se, prema ovoj odredbi, odnosi pre svega na: programsku šemu, koncepciju i proizvodnju programa, uređivanje i prezentaciju

vesti i programa o aktuelnim događajima, organizaciju delatnosti, izbor rukovodilaca, glavnih i odgovornih urednika i zapošljavanje.

Finansiranje republičkog i pokrajinskog javnog servisa i dalje će biti moguće iz nekoliko izvora: pretplate, oglašavanja, prodaje programa i nosača zvuka i slike, koncerata i drugih izvora u skladu sa zakonom. Pretplata se i nadalje vidi kao glavni izvor prihoda a odredbe o njenoj naplati su poboljšane. Predviđeno je da se posebno naplaćuje u Vojvodini a posebno u ostalim delovima Srbije, uz obavezno prijavljivanje prijemnika. I dalje postoje kategorije lica i ustanova koje su oslobođene plaćanja pretplate. Ovoga puta posebno su razrađene odredbe o naplati pretplate za korišćenje radio-prijemnika u motornim vozilima. Približne računice govore da je na ovaj način moguće povećati prihode iz pretplate za pet do šest miliona evra godišnje, što nije zanemarljiva suma.

Znatne promene ponuđene su u načinu imenovanja članova upravnih odbora javnih servisa. Prema Prednacrtu, umesto devet biće sedam članova a po jednog će imenovati: Srpska akademija nauka i umetnosti, Rektorska konferencija Srbije, Koordinaciono telo Saveta nacionalnih manjina, novinarska udruženja i udruženja koja se bave sobodom medija, ljudskim pravima, obrazovanjem i zaštitom maloletnika a tri člana će birati regulatorna agencija. Za pokrajinski javni servis predviđeno je slično rešenje, s tim što će članove imenovati pokrajinska akademija i rektori Univerziteta s područja Vojvodine.

Ovlašćenja za pružanje usluga, dozvole, koncentracija vlasništva, privatizacija

Prednacrt zakona predviđa pružanje usluga bez pribavljanja dozvole ako se pružaju isključivo putem informatičke mreže (Web casting) i u slučaju reemitovanja u skladu sa odredbama Evropske konvencije o prekograničnoj televiziji. Dozvole se izdaju licima koja imaju sedište u Srbiji i koja tako dobijaju ovlašćenje da svoje medijske usluge, putem javnih mreža elektronskih komunikacija, pružaju neodređenom broju korisnika. U prelaznim i završnim odredbama Prednacrta, član 139, predviđeno je da sadašnji imaoci dozvola za analogno emitovanje pružaju medijske usluge do roka na koji su dozvole izdate i da će im u skladu s tim biti obezbeđen pristup multipleksu u trenutku prelaska na digitalno emitovanje.

Postupak izdavanja dozvola je javan a dozvolu ne mogu dobiti političke stranke i koalicije, kao i pravna lica čiji je osnivač država, računajući i pokrajinu i lokalnu samoupravu. Razume se, izuzetak je javni servis, a ovoga puta dodata je jedna novina — a to je mogućnost da univerziteti, čiji je osnivač država, mogu da osnivaju elektronske medije radi obuke studenata u vezi s medijima i na neprofitnoj osnovi. Time su državni univerziteti u mogućnostima izjednačeni s privatnim a bojazni da će se na taj način preneti uticaj države na studentske medije ne bi trebalo da bude s obzirom na to da Zakon o univerzitetu ovim ustanovama garantuje političku autonomiju.

Procedura dobijanja dozvola putem javnog konkursa vrlo detaljno je razrađena i usaglašena s promenama koje nameće digitalizacija, kao i sa Zakonom o elektronskim komunikacijama. Radi potrebe bolje evidencije i javnosti vlasništva, detaljnije je razrađen i *registar medijskih usluga*.

Radna grupa koja je pripremala Prednacrt bila je na stanovištu da do donošenja posebnog zakona ili na drugi način boljeg regulisanja javnosti i nedozvoljenog objedinjavanja vlasništva u medijskoj oblasti, u zakonu treba da ostanu odredbe o ovim pitanjima. Prednacrt Zakona o elektronskim medijima sadrži odredbe koje su, manje-više, prošle javnu raspravu koja je vođena o Prednacrtu zakona specijalizovanog za ovu tematiku. Tekst zakona određuje izvesne pragove koncentracije koji su srazmerni evropskom iskustvu i praksi i koji ne sprečavaju zdravu konkurenciju na medijskom tržištu.

Zakonska konfuzija u vezi s privatizacijom medija na lokalnom nivou, rukovodila je radnu grupu da još jednom predvidi način rešavanja ovog problema. Prema prelaznim i završnim odredbama, mediji čiji su osnivači organi lokalne samouprave, a koji nisu okončali proces privatizacije prema Zakonu o radio-difuziji, imaju rok da ovaj proces završe u roku od 24 meseca od stupanja na snagu Zakona o elektronskim medijima. Do tada, ovi mediji treba svoj rad i poslovanje da usklade sa odredbama zakona koje se odnose na pružanje usluga javnog medijskog servisa.

Post-komunističke medijske reforme iz ptičje perspektive

Dr Jovanka Matić[1]

Promene medijskih sistema u post-komunističkim društvima su razočaravajuće. Oni danas jesu pluralistički, većinski su u privatnom vlasništvu, deluju u legalnom ambijentu precizno definisanih prava i obaveza, a regulišu ih posebna tela odvojena od vlasti. Ipak, mediji su ekonomski i politički zarobljeni. Državne monopole su zamenili faktički monopoli stranih korporacija ili (ne)poznatih domaćih tajkuna, izbor regulatornih tela i upravljačkih tela javnih servisa ostvaruje se uz političke uticaje i nagodbe, novinari su predmet čestih pretnji, napada pa i ubistava, zakoni se sporo menjaju a moderni se ne poštuju, medijski sadržaji su međusobno više slični nego različiti, a istraživački poduhvati su retki i ne donose željene rezultate. Prošlo je već nešto više od 20 godina od obećanja radikalne demokratizacije medija.

Već — ili tek dve decenije?

Tranzicija u Srbiji, faktički, traje nepunih 12 godina. Možda bi sve bilo drugačije da su nam 5. oktobra obećali znoj, krv i suze. Bez njih nema stvaranja novog društvenog poretka. Sa ovim iskustvom, nada Egipćana da su dovoljni samo pluralistički izbori da se jedan rigidan, represivni sistem pretvori u otvoren i demokratski — deluje nepodnošljivo naivno. Bez naivnih nada, ipak, nema promena. Danas je, međutim, neophodno osigurati da se ne skrene u beznađe, putem koji je obavezno popločan nerealnim očekivanjima. Za obnovu razorenog društva, kakvo je Srbija bila na početku novog milenijuma, 12 godina može biti tek kraj početka.

Nepodnošljiva lakoća tranzicije

Mediji su bili prve društvene institucije koje su zakoračile u post-komunistički period u gotovo svim zemljama Centralne i Istočne Evrope. Demontaža veza sa državnim strukturama i oslobađanje medija od položaja sluge vladajuće političke partije i radničke klase svuda su tumačeni kao najvažnija pretpostavka razvoja demokratije u novim sistemima u nastanku. Početna brza pluralizacija medijske sfere, značajna uloga koju su imali u političkim promenama režima, nova otvorenost prema raznolikim izvorima informisanja, reflektovanje širokog socijalnog spektra mišljenja i njihov praktični i simbolički doprinos stvaranju civilnog društva uticali su da preovlada stav da će mediji imati vodeću ulogu u stvaranju demokratske infrastrukture post-komunističkih društava. Postojale su i nade da će nova socijalna situacija poroditi nove, demokratskije oblike komuniciranja koje nisu uspela da ostvare ni razvijena (post)industrijska društva. U najmanjem, očekivalo se da će mediji efikasno obavljati bar nekoliko uloga: ulogu izvora tačnih i sveobuhvatnih informacija, ulogu kontrolora vlasti (obezbeđivanje transparentnosti javnih institucija), ulogu foruma za javnu debatu o stvarima od javnog interesa i ulogu promotera demokratskih vrednosti.

Današnji uvid u rezultate tranzicije ukazuje da je početni optimizam bio neosnovan. Položaj medija u odnosu na institucije moći nije se radikalno izmenio. Ipak, ostvarene promene u rekonstrukciji medijskih sistema su nepovratne. Ideal medija u službi civilnog društva, a ne vlasti, još uvek je model kome se teži, makar njegovo ostvarenje izgledalo daleko, posebno u uslovima aktuelne ekonomske krize.

[1] Naučni saradnik Instituta društvenih nauka u Beogradu

Svi novouspostavljeni demokratski režimi opredelili su se za usvajanje zapadnog modela medijskog sistema. A njemu je bilo potrebno više od dva veka da se etablira kao uzor.

Današnje iskustvo tranzicionih zemalja pokazuje da su za uspeh reformi neophodne ne samo nove institucije već i odgovarajuća socio-kulturna podloga koja potpomaže njihov rad, odnosno prihvatanje novih vrednosti i podrška javnosti ciljevima promena. Na dugi rok, njih stvara obrazovni sistem, a u aktuelno vreme – mediji. Bez medija se ne može formirati nova politička i ekonomska kultura potrebna za konsolidaciju demokratije. Od efikasnosti rada medija zavisi koliko dugo će društvo ostati zarobljeno u pokušaju promene. Stoga se transformacija medija i njihovo osposobljavanje za nove uloge postavlja kao primarni zadatak tranzicije ka pluralističkoj demokratiji i tržišnoj ekonomiji. U praksi, međutim, medijske reforme nisu dobile taj značaj. One su gurnute u drugi plan, ali se od medija i dalje očekivalo da budu katalizator strukturnih promena i ključni faktor razvoja demokratske političke kulture.

Uticaj politike

Analiza reformi u post-komunističkim društvima u protekle dve decenije pokazuje da su brzina i obim promena medijskih sistema uglavnom pratili oblik transformacije globalnih sistema. Nasuprot optimističkim očekivanjima na početku, demokratizacija medijskih sistema više je bila funkcija političke volje novih elita nego što je sama postala faktor demokratizacije celokupnog društvenog sistema. Kako ističu analitičari, svuda je potcenjena sposobnost totalitarizma za „strukturalnu i funkcionalnu mimikriju".

Nove političke elite se nigde nisu odrekle mogućnosti i mera za kontrolu medija ili ograničenja njihove autonomije. Mediji civilnog sektora ili neprofitno orijentisani mediji nisu postali značajan deo medijskog sistema. Ako je demonopolizacija države u medijskom sektoru (posebno u radiodifuziji) bila uspešna, praćena je politički orijentisanom medijskom koncentracijom ili raznim merama da se očuva politička kontrola nad javnim servisom (kroz izbor članova regulatornih tela ili upravljačkih tela javnih servisa), ili podrije ekonomska stabilnost kritičkih medija. Medijski sistem u novim demokratijama jeste pluralistički, ali su mediji zavisni ili od države ili različitih moćnih grupa pa u medijskim sadržajima nema mnogo političkog diverziteta. Na pravnom planu, ista borba se vodila za rešavanje problema pristupa javnim informacijama, zaštite novinarskih izvora, ograničenja tajnosti informacija, zaštite privatnosti, kažnjavanja klevete i uvrede, raspodele dozvola za emitovanje...

Paradoks medijskih promena leži u tome što je za njih potrebna aktivna državna politika usmerena na stvaranje uslova za medijsku autonomiju, dok su državi, da bi pridobila javnost za tegobne tranzicione reforme, neophodni mediji-pudlice, a ne kontrolori. Za političku elitu, mediji su samo neophodan saveznik u borbi za javnu podršku njihove politike. Sve ostalo se doživljava kao nepotreban višak.

Istraživanja u zemljama bivšeg socijalističkog bloka ukazuju na politički sistem kao krucijalni faktor koji otežava proces demokratizacije medija. Vlast deluje kao najkonzervativniji faktor masovnog komuniciranja, jer društvo vidi kao objekat na koji treba da utiče, a medije isključivo kao pogodan instrument za ostvarenje svog uticaja.

Posle 2000. godine, vladajuće garniture u Srbiji nikada u izbornoj kampanji nisu pominjale reformu medijskog sistema kao jedan od političkih prioriteta. Ni u izborima 2012. godine nijedna politička partija nije uključila promene u medijima u svoju izbornu platformu. Vladajuće partije bi najradije da zadrže status quo. Opozicione partije nikada nisu bile zadovoljne medijima, ali ako su nešto činile, onda je to stvaranje duboko politizovanih i prema njima pristrasnih medija, čime se samo dodatno problematizuje novinarski profesionalizam i kredibilitet medija uopšte.

Ni u narednim godinama od bilo koje vlasti ne treba očekivati drugačije ponašanje. Promena se mora nametnuti inicijativama i pritiskom civilnog društva, jer ono ima autentičan interes da se stvore mediji u funkciji kontrolora javnih resursa i javne politike i poštovanja proklamovanih vrednosti. Samo stalni pritisak na vlast povodom inicijativa za usvajanje novih zakonskih i regulatornih rešenja, predloga novih rešenja, novih pravila državne pomoći i podstreka za medije koji zadovoljavaju javni interes može dovesti do neophodnih reformi u medijskom sektoru.

Uticaj ekonomije

U većini post-komunističkih zemalja tržište je postalo glavna snaga koja opredeljuje medijski pejzaž. Na početku tranzicije, većina novinara u oslobađanju medija od državne kontrole i u razvoju privatnih, komercijalnih glasila videla je dovoljnu garanciju medijske autonomije. Danas se vajkaju da su tražili slobodu, a umesto nje dobili tržište. Umesto na novom sistemu odnosa finansijera i novinara, reforme su insistirale na privatizaciji i otvorile polje bespoštednoj konkurenciji radi ostvarivanja privatne finansijske, a ne društvene dobiti. Posledice su dalekosežne i teško zaustavljive: komercijalizacija medija, tabloidizacija sadržaja, segmentacija publike, koncentracija vlasništva, remonopolizacija, pojava domaćih medijskih tajkuna, nestajanje kvalitetne štampe, prevlast zabave nad informativnom i edukativnom funkcijom medija, zanemarivanje manjinskih interesa i glasova.

Ovo su normalni trendovi i u razvijenom delu sveta. Ipak, u okolnostima post-komunističkih društava – prevlasti politike nad ekonomijom, sporih ekonomskih reformi, niskog ekonomskog rasta, nedostatka kapitala, nerazvijenog reklamnog tržišta i siromašne publike, haotičnog tržišta, netransparentnosti vlasništva, odsustva sindikalnog organizovanja, itd. — posledice su znatno drugačije. Proizvedeni su ekonomski neodrživi i siromašni mediji, zavisni od interesa vlasnika i države kao dodatnog finansijera i ekonomski i socijalno ugroženi novinari. Nenalaženje adekvatnog rešenja za finansiranje javnog servisa onemogućilo je da se on posveti obavljanju svojih posebnih funkcija i gubi bitku u poređenju sa profitno orijentisanim medijima.

Snažna komponenta ekonomskog propadanja medija jeste opadanje efikasnosti dosadašnjeg poslovnog modela, usled razvoja novih informacionih tehnologija, ali i globalne ekonomske krize. Sigurno je da veliki broj medija u Srbiji neće uspeti da preživi ekonomske turbulencije. U postojećim okolnostima, nema garancija da će opstati oni najpotrebniji — najprofesionalniji, najkredibilniji, oni koji najviše rade u javnom interesu. Ali se državna pomoć medijima, koja je neophodna i koja se ostvaruje i u drugim tržišnim ekonomijama, pod uslovom da je transparentna i neutralna, može usmeriti upravo na medije koji najbolje ostvaruju javni interes. Napore je potrebno usmeriti i na obezbeđivanje stabilnog i neutralnog finansiranja javnog servisa, zbog njegovih prednosti u ostvarivanju interakcije različitih društvenih grupa i zadovoljavanju važnih, a zanemarenih interesa publike.

Uticaj civilnog društva

Razlika između post-komunističkih zemalja u unpređivanju medijskog sistema ipak ima. Poljska, Češka, Mađarska, Slovenija i Baltičke zemlje uspele su da ostvare relativno uspešnu tranziciju i stvore pluralističke i kompetitivne demokratije, sa relativno demokratizovanim komunikacionim strukturama. Manje su uspešne Slovačka, Rumunija, Bugarska, Ukrajina, Rusija i druge, u kojima su politički režimi „koncentrovani“ pre nego kompetitivni. Post-konfliktne zemlje, poput Srbije, Bosne i Hercegovine, Makedonije, Gruzije itd. izdvajaju se u posebnu grupu jer je njihova tranzicija opterećena dodatnim teškoćama ekonomske devastiranosti, ideološke i političke podeljenosti, vrednosne razorenosti.

Na osnovu iskustva nabrojanih zemalja, analitičari u faktore koji olakšavaju tranziciju ubrajaju ekonomski razvoj, visoke obrazovne standarde, tradiciju autohtonih antirežimskih pokreta, tradiciju ujedinjavanja raznolikih društvenih grupa oko zajedničkog cilja, iskustvo reformi, nacionalnu homogenost. U nepovoljne faktore ubrajaju se nerazvijena ekonomija, nizak životni standard, niski obrazovni standardi, etničke tenzije i nerazvijenost civilnog društva.

U slučaju Srbije, nepovoljnih faktora je mnogo, računajući i zakasneli početak tranzicije. Ohrabruje, ipak, to da javnost poseduje iskustvo o važnosti nezavisnih i kredibilnih medija i da je civilno društvo, a posebno profesionalna i strukovna udruženja, aktivno u otporu na drastične oblike ugrožavanja medija i novinara i dovoljno je kompetentno da traži promene i usmerava ih u željenom pravcu. Civilno društvo u Srbiji se tek uči svojim novim ulogama. U Americi je, na primer, prvo udruženje univerzitetskih nastavnika novinarstva osnovano pre tačno 100 godina (1912. god.). U Srbiji nema čak ni ideje da je ono potrebno. Na redu je učenje profesionalne solidarnosti, efikasnog organizovanja različitih (i sukobljenih) delova medijske zajednice radi postizanja zajedničkih ciljeva, lobiranja, traženja saveznika u političkoj, ekonomskoj i kulturnoj eliti, kao i mogućnosti za korišćenje prihvaćenih procedura za svrstavanje promena medijskog sistema u društvene prioritete.

Kada nove institucije ne uspevaju da ostvare ono što se od njih očekivalo, jedino što može produžiti njihovu validnost, kako kažu poznavaoci tranzicije, jeste čvrsto ukorenjen sistem verovanja koji ih podupire — ne zato što su date institucije korisne (jer trenutno nisu), već zato što su odgovarajući izbor za postizanje dugoročnog cilja.

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

Informator br. 148 /januar 2012

ČLAN 10 *Konvencije za zaštitu ljudskih prava i osnovnih sloboda*
SLOBODA IZRAŽAVANJA

Obaveza plaćanja naknade detetu koje je žrtva seksualnog zlostavljanja, zbog otkrivanja njenog identiteta u novinskom članku: *nema povrede*

Kurier Zeitungsverlag i Druckerei GmbH protiv Austrije –
3401/07 presuda 17.1.2012 [Odeljak I]

Činjenice: Novine, podnosilac predstavke, objavile su dva teksta koja se tiču slučaja C - deteta koje je bilo maltretirano i seksualno zlostavljano od svog oca i maćehe. Tekstovi objavljeni tokom krivičnog postupka vođenog protiv oca i maćehe, dali su detaljan opis okolnosti slučaja, otkrivajući identitet C i puna imena i fotografije njenog oca i maćehe. Budući da je njen slučaj izazvao veliku medijsku pažnju, C je ponovo primljena u bolnicu zbog psihičkih problema. Kasnije je podnela tužbu za naknadu štete protiv podnosioca predstavke, zbog objavljivanja njenog imena i detalja njenog slučaja. Presuda kojom je njena tužba usvojena, potvrđena je i u postupku po žalbi i podnosilac predstavke je obavezan da plati naknadu u iznosu od 10.000 EUR, zbog toga što otkrivanje identiteta C, u stvari koja se tiče isključivo njenog privatnog života, nije bilo neophodno i što je predstavljalo povredu nacionalnog prava.

Pravo: Član 10. Slučaj se tiče balansa između prava podnosioca predstavke na slobodu ižražavanja i prava C na zaštitu svog identiteta. C nije bila javna ličnost i ne može se smatrati da je ušla na javnu scenu time što je postala žrtva krivičnog dela koje je privuklo znatnu pažnju medija. Dalje, iako su se sporni članci bavili pitanjem od javnog značaja, činjenica da ni okrivljeni, ni žrtva, nisu bili javne ličnosti, znači da poznavanje njihovog identiteta nije bilo od ključnog značaja za razumevanje pojedinosti slučaja. Podnosilac predstavke nije bio sprečavan da izveštava o detaljima slučaja, već samo da otkrije identitet C. Identitet žrtava krivičnih dela zaslužuje posebnu zaštitu, zbog njihove ranjivosti. Ta obaveza je bila još izraženija u slučaju C, jer je ona bila dete u vreme zlostavljanja. I Konvencija o zaštiti dece od seksualne eksploatacije i seksualnog zlostavljanja i brojne preporuke Komiteta Ministara Saveta Evrope pozivaju države da preduzmu mere zaštite identiteta žrtava krivičnih dela. Na kraju, sankcija nametnuta podnosiocu predstavke nije bila nesrazmerna: iznos dosuđene naknade razuman je u datim okolnostima, naročito uzimajući u obzir uticaj koji su tekstovi morali imati na C, koja je doživela ozbiljne psihičke probleme i morala ponovo da bude hospitalizovana.

Zaključak: nema povrede (jednoglasno)

[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

ČLAN 10 *Konvencije za zaštitu ljudskih prava i osnovnih sloboda*
SLOBODA IZRAŽAVANJA

Zabrana izveštavanja o hapšenju i osudi poznatog glumca: *povreda*

Axel Springer AG protiv Nemačke –
39954/08 presuda 7.2.2012 [GC]

Činjenice: Kompanija podnosilac predstavke, izdavač nacionalnih dnevnih novina velikog tiraža, septembra 2004. godine objavila je na naslonoj strani članak o zvezdi popularne televizijske serije, koja je uhapšena na festivalu piva u Minhenu zbog posedovanja kokaina. Članak je bio praćen detaljnijim tekstom na još jednoj strani ilustrovanim sa tri fotografije istog glumca. Odmah pošto je članak objavljen, glumac je izdejstvovao privremenu meru zabrane deljeg objavljivanja članka i fotografija. Privremena mera, u delu koji se odnosio na zabranu objavljivanja članka, potvrđena je i u postupku po žalbi u junu 2005. godine (podnosilac predstavke nije se žalio na privremenu meru u delu kojim je zabranjeno objavljivanje fotografija). U novembru 2005. godine, zabranjeno je objavljivanje gotovo čitavog članka, a podnosilac predstavke obavezan da plati kaznu u iznosu koji je, nakon žalbe, smanjen na 1.000 EUR.

U međuvremenu, u julu 2005. godine, novine su objavile drugi članak, u kome su izvestile da je glumac, nakon priznanja, osuđen za neovlašćeno držanje opojnih droga, i kažnjen novčanom kaznom. Glumac je podneo predlog za određivanje privremene mere i u odnosu na drugi članak. Privremena mera je i određena, na suštinski istim osnovima, kao i u slučaju prve privremene mere. Odluka je potvrđena u postupku po žalbi. Podnosilac predstavke je kasnije obavezan da plati kaznu, od dva puta po 5.000 EUR zbog kršenja zabrane određene privremenom merom.

Pravo: Član 10: Opšte je mesto da su odluke domaćih sudova predstavljale mešanje u pravo podnosioca predstavke na slobodu izražavanja. To mešanje je propisano zakonom i imalo je legitiman cilj zaštite ugleda i prava drugih. Sud je utvrđivao da li je mešanje bilo neophodno u demokratskom društvu.

Primenivši kriterijume utvrđene u svojoj praksi, a koji se tiču balansa između slobode izražavanja i prava na poštovanje privatnog života, Sud je primetio, prvo, da se objavljeni članci tiču hapšenja i osude glumca, odnosno podataka iz javnog sudskog postupka, za koje se može smatrati da su od javnog interesa. Drugo, glumac je bio dovoljno poznat da ga to kvalifikuje kao javnu ličnost i, iako je priroda dela takva da o njoj verovatno ne bi bilo izveštavano da ga je počinio obični građanin, činjenica da je glumac bio uhapšen na javnom mestu i da je aktivno tražio pažnju medija otkrivajući detalje svog privatnog života u brojnim intervjuima, znači da su njegova legitimna očekivanja da će mu pravo na privatnost biti efektivno zaštićeno, bila smanjena. Što se tiče trećeg kriterijuma - kako je informacija dobijena i da li je bila pouzdana - prvi članak o glumčevom hapšenju imao je dovoljan činjenični osnov, budući da je bio zasnovan na informacijama javnog tužilaštva, i istinitost informacija iznetih u oba članka nije bila predmet spora između stranaka. Podnosilac predstavke nije postupao u lošoj veri: ne samo da je dobio potvrdu objavljene informacije od tužilaštva, već nije bilo ničega što bi ukazivalo da i sam nije cenio balans između svog interesa da informaciju objavi i prava glumca na poštovanje privatnog života pre objavljivanja, te da uzimajući u obzir sve okolnosti konkretnog slučaja nije našao dovoljno jake razloge da štiti glumčevu anonimnost. Što se tiče sadržaja, forme i posledica objavljivanja, članci nisu otkrili detalje o privatnom životu glumca, već su se uglavnom ticali okolnosti njegovog hapšenja i ishoda krivičnog postupka. Nije bilo omalovažavajućih komentara ili neosnovanih optužbi. Podnosilac predstavke nije sporio privremenu meru zabrane

objavljivanja fotografija i nije dokazano da je objavljivanje članaka dovelo do ozbiljnih posledica za glumca. U odnosu na poslednji kriterijum, iako su sankcije nametnute podnosiocu zahteva bile blage, one su ipak bile podobne da imaju odvraćajući efekat i nisu bile opravdane u svetlu gore navedenog. Stoga, ograničenja nametnuta podnosiocu predstavke nisu bila srazmerna legitimnom cilju zaštite prava na poštovanje privatnog života glumca.

***Zaključak**:* povreda (dvanaest glasova prema pet)

Član 41: 17.734,28 EUR na ime materijalne štete, što odgovara kaznama i troškovima nastalim u postupku pred domaćim sudovima, umanjenim za dve kazne isplaćene u iznosu od po 5.000 EUR.

INTRODUCTION

The Serbian media scene has not changed considerably in the last three years since ANEM started its legal monitoring in collaboration with its long-time partner, the Zivkovic&Samardzic Law Office. In the said period, it often seemed that the picture of the Serbian media scene was "frozen" on the "screens" of our monitoring team as the same problems tormenting the media and the journalists remained unaddressed.

However, according to the opinion of the monitoring team, in the first six months of 2012 (the period covered by this Publication), the electoral process in Serbia was the factor that had the strongest influence on the media sector, as well as on society as a whole. Threats, pressures and attacks against journalists were on the rise, typically coming from local politicians, unhappy with media or journalists' criticism of their activities. The particular and the most common form of pressure was discrimination against those media and journalists, which in the pre-election environment was considered almost as normal and legitimate behavior. In addition, the difficult economic situation, saturated advertising market, shrinking advertising budgets typically controlled by a small number of marketing agencies affiliated with state and political party officials, as well as the unfinished media privatization and inadequate enforcement of state aid control regulations (which resulted in many not privatized media, by rule directly controlled by local ruling oligarchies, being financed from the budget without any serious control of their content), but also the lack of general oversight of the election process and controlling of only broadcast media, on the basis of the RBA's General Binding Instruction that were so unclear that the RBA itself had to release a binding interpretation of Instruction, considerably affected already critically law level of media freedom in the latest electoral process. In light of such an obviously poor situation, the Delegation of the CoE Parliamentary Assembly, which visited Belgrade in April in the scope of the preparations for observing the elections on May 6, voiced its concerns in a press release over the economic and political pressure faced by some journalists and the attempts of political parties to influence the editorial policy of the media. Such adverse situation affecting the journalists and the media is evidenced in the results of the monitoring of reporting of the media in the election campaign (BIRODI), showing that some media renounced critical and analytical reporting about political parties, opting instead for a neutral, and very often promotional reporting. All the above clearly shows that, in this electoral process the right of the voters to make an informed choice that should have been based on complete, objective, accurate and timely information, was threatened, as was the right of candidates to mutually challenge their respective policies and the right of the media to voice their views and report about issues of public interest.

Another negative consequence of the election process for the media sector, caused by loss of interest or absence of realistic means by the government to do something systemically, is the fact that addressing the key problems that continue to burden the media in Serbia (such as the withdrawal of the state from media ownership or regulating the system of financing the public interest in media sphere in accordance with state aid rules) will likely have to wait for the new government. The old one certainly demonstrated, with some decisions in the electoral campaign, that it renounced the key principles it had opted for in the Media Strategy several months before. The new government will also have to deal with three new pre-draft versions of important media laws provided for by the Strategy, of which two laws (prepared in haste by working groups of the Ministry of Culture – the Public Information Law and the Public Service Broadcasters Law) have been kept in the dark as to who drafted them and what they contain, which automatically raises doubts. Meanwhile, the third pre-draft Law on Electronic Media, produced by the working group under the auspices of OSCE, has been publicly released only recently. However, the fate of these pre-drafts and that of the Media Strategy itself could be drastically affected by the composition of the new government, since not all political parties

participated in the production thereof or expressed their opinion. Meanwhile, the economic downturn and the market conditions will continue to hurt Serbian media. In such situation, certain positive changes that have occurred, such as: the progress in the digitalization process, enabled by the amendments to the Strategy; the issuance of licenses for the initial digital network and the beginning of the simulcast in Serbia; hints of changes in the practice of Serbian courts in media cases (harsher penalties against attackers on journalists and cameramen and greater consideration for media freedom and the public interest in the field of information); as well as progress in the regulation of the field of cable distribution of media content with the introduction of the "must carry" obligation to the dominant cable operator on the market, have, however remained in the shadow of all the negative developments we have cited above.

The texts in this Publication deal with some of the important media-related questions for the period in question: how the media covered the elections, the implementation of the Media Strategy, the Pre-Draft of the Law on Electronic Media and the issue of post-communist media reforms. The fifth text in this edition of the Publication is a special addendum, consisting of excerpts from the Information Notes on the case-law of the European Courts of Human Rights, a digest of two verdicts concerning the enforcement of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms; the first pertains to the protection of the rights of minors, while the second concerns the balance between freedom of expression and the right to the privacy of public figures.

Belgrade, June 2012

Media Coverage of the Elections

Slobodan Kremenjak, attorney at law[1]

The elections have marked the first half of 2012 as far as the media in Serbia are concerned. Although the elections for local assemblies and the provincial and national parliaments were formally called on March 13 and the Presidentials even later – on April 5 – it may be rightfully said that the battle for the "hearts and minds" of the voters was already in full swing, just as the various attempts to put the media under control, so as to make them "cooperative" in the pre-election campaign. The seriousness of the situation is also evidenced by the fact that even the delegation of the CoE Parliamentary Assembly, which visited Belgrade in the scope of the preparations for monitoring the elections, had to call on political parties to refrain from attempts to influence the media's editorial policy, while voicing its concern regarding economic and political pressure against certain journalists.

In the stage before the elections were called, local power players started marking their territory and showing off their power. "Politically incorrect" journalists were prevented from reporting and were denied access to press conferences and other events. The obligation applying to all territorial autonomy and local self-government bodies – to make information about their work available to the public and under equal conditions for all journalists and public media – as provided for in Article 10 of the Public Information Law, was violated almost on daily basis. Hence, for example, in one of the many cases reported about by the media, a journalist was prevented from reporting from a press conference held by the mayor. The mayor's excuse was that the journalist was not invited "due to his unprofessionalism and violations of the basic journalism standards". A situation was created where local authorities, without a court decision and in breach of the current legislation, denied lawfully guaranteed rights to those reporters and media whose work did not suit their agenda. Add to that the fact that municipal budgets controlled by these local authorities often are, due to the economic crisis, the sole source of revenue for impoverished local media, it is no surprise that criticism has become a rare commodity.

Grabbing the best possible starting positions on the eve of the elections was also secured by launching new media controlled by high officials of political parties participating in the elections. Hence, in early February, the RBA issued a broadcasting license to the cable TV stations Kopernikus 3 (Svet plus), which was reported to have leased in advance up to a third of its air time to the Serbian Progressive Party (SNS). One of TV Kopernikus' editors is Tanja Vidojevic, who is also a member of the SNS' main board. Kopernikus 3 operated without a license until February; the RBA's Supervision and Analysis Department repeatedly warned the RBA Council that the said station was promoting the SNS and waging smear campaigns against the officials of other political parties. The RBA representatives said, however, that under the current regulations, they were unable to deny the broadcasting license to Kopernikus 3 and that they could only keep on monitoring its program after the license was issued and react if non-compliance persisted.

Meanwhile, the RBA passed two new general binding instructions – the first (released on March 9) aimed at radio and television stations (broadcasters) in the campaign for local, provincial and national parliamentary elections, presidential elections and elections for ethnic minorities' national councils. The second was made public on April 12 and was aimed at the broadcasters,

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

which were tasked with enabling unhidered access to information to hearing impaired viewers during the 2012 election campaign.

Under the Broadcasting Law, the RBA passes general binding instructions in order to regulate in more detail certain issues pertaining to the content of the program. The purpose of the instructions is hence not (nor was it realistic to expect it to be) to directly protect broadcasters from pressure, but to raise the level of legal certainty to remove the dilemmas faced by the media in reporting on the campaign and the election process. This would, in turn, reduce the opportunities for putting pressure on media applied by taking advantage of the gaps in the law.

Unfortunately, in spite of the fact that the aforementioned two general binding instructions were the ninth and the tenth, respectively, passed by the RBA since the adoption of the Broadcasting Law given that the previous instructions were passed on the eve of the presidential elections in 2003, 2004 and 2008, for the parliamentary elections in 2003 and 2007, for local elections in 2004, for local, provincial and national parliamentary elections in 2008, as well as for elections for ethnic minorities' national councils in 2010) – which should mean that the problems are well-known and that there is abundant experience as to how to handle them – the dilemmas related to the enforcement of the latest general binding instructions persist.

Hence, the provision of the general binding instructions, according to which the broadcasters, during the election campaign, must remove from their program documentary, feature, entertainment and similar programs or films if they feature an official, renown representative of the submitter of the electoral list or candidate and to avoid other forms of indirect political propaganda in the content they broadcast, was interpreted differently even by different representatives of the Agency itself. Furthermore, the issue of classifying program genres, shows and films into documentary, feature or entertainment is far from clarified. The same applies to the concept of "similar programs and films", thus creating uncertainty with the broadcasters as to what they are entitled to air. The RBA has namely failed to make public the criteria according to which it classifies television content, not even for traditional genres and let alone criteria based on which other genres could be classified as "similar" to documentary, feature or entertainment content. In the relevant situation, it was utterly difficult to discern if a specific program was fit for broadcasting or not.

On the other hand, political parties added to the general confusion by demanding their advertising agencies to produce election advertisements in the scope of the so-called contrasting, or negative campaign, targeting other lists and candidates. At the same time, the media were in the situation to risk being held accountable for releasing such content. Namely, the Law on the Election of Members of Parliament provides for the existence of general supervision of the actions of political parties and candidates, which entails the supervision of marketing/advertising agencies managing their election campaigns (which should have been carried out by the Supervision Committee of the Serbian Parliament, however, such Committee was not set up neither for 2000 elections, nor for the latest ones). This has resulted in a situation where, except for the RBA, which is authorized by law to initiate proceedings against TV and radio stations only, there is no body that would initiate such proceedings against political parties and their agencies, which would address the problem at its source. Broadcasters are now in the position to pick their poison: if they refuse to air political advertisements, they risk being taken to court by political parties for discrimination; if they accept to broadcast such advertisements, they risk to be fined by the RBA. Meanwhile, nobody was dealing with the responsibility of political parties for inappropriate political advertising.

The aforementioned issues are probably only the tip of the iceberg, which is an evidence of the complicated situation in which the media covered the elections. In such an environment, it was unrealistic to expect them to fulfill their expected role during and in relation to the election process. The results of the survey, carried out on April 1-14 by the Bureau for Social Research

(BSR), have shown that media coverage of the election campaign was mainly positive and in some cases almost tantamount to political advertising. According to the BSR "most media renounced their watchdog role and any semblance of critical and analytical coverage, opting instead to behave as mere conveyors of information about the activities of political parties and their political candidates". If such an appalling situation is to change for some future elections, the new government must start addressing the problems plaguing the media sector, which have been ignored and neglected for decades.

The First Nine Months of the Media Strategy

Kruna Savovic, attorney at law[1]

The Strategy for Development of the Public Information System of the Republic of Serbia until 2016 was adopted on September 28, 2011 and published in the Official Gazette no. 75/2011 dated October 7. The nine months that have passed since seem to have been quite sufficient to evaluate the achievements as to the Strategy's implementation.

From the legal point of view, the Government passes each strategy (in this case the Media Strategy) in accordance with Article 45 of the Law on the Government ("Official Gazette of the Republic of Serbia" no. 55/2005, 71/2005 – corrected, 101/2007, 65/2008 and 16/2011), in order to ascertain the situation in a specific area from its competence and provide for measures to be taken in order to develop that area.

The Strategy for Development of the Public Information System is merely one of the 80-some strategies that the Government of the Republic of Serbia passed in the last few years in various domains – from incentives for having children (Strategy for Encouraging Childbirth, "Official Gazette of the Republic of Serbia" no. 13/2008) to those dealing with old age (National Strategy on Aging, "Official Gazette of the Republic of Serbia" no. 76/2006); from returning to Kosovo and Metohija (Sustainable Survival and Return to Kosovo and Metohija Strategy, "Official Gazette of the Republic of Serbia" no. 32/2010) to broadband Internet access development in Serbia (Strategy for the Development of Broadband Internet Access in the Republic of Serbia until 2012, "Official Gazette of the Republic of Serbia" no. 84/2009). An abundance of strategic documents also means that Serbia has become a country with transparent public policies in the areas for which the aforementioned strategies were adopted. However, the same does not seem to apply to the area of public media policy.

The media environment in Serbia was shaped, in the last decade, not as a result of measures aimed at certain predefined objectives, but rather as the consequence of a frenzy and often direct obstruction of the identified goals, with the ambition to maintain the control of and influence over the media sector. It is precisely due to direct obstruction that the privatization of the media – although it was declared mandatory under the Broadcasting Law from 2002 and the Public Information Law from 2003 – has been again put forward by the Strategy as a strategic commitment, instead of having been completed a long time ago.

What have been the achievements as to the implementation of the Strategy, nine months after its adoption? If we look at the Action Plan for Enforcing the Strategy, we shall see that none of the activities have been placed in a 9-month time frame or shorter. The shortest deadlines set forth by the Action Plan are 10-month terms pertaining to reviewing the possibilities for amending the Advertising Law, the Law on the right to free shares and remuneration the citizens receive in the privatization process, the VAT Law, the Customs Law, the Law on State Aid Control as well as to reconsider the possibility for introducing the media literacy program in the education process.

Although the meaning of "reconsider the possibility" in the concrete case was not explained, we suppose that the minimum the Government had in mind when adopting the Strategy would involve – in relation to reviewing the possibility of amending the Advertising Law – having the Ministry of Culture, Media and Information Society, in communication with the competent

[1] Law office „Zivković&Samardzic", Belgrade

ministry (in this case the Ministry of Agriculture, Trade, Forestry and Water Management) establish whether there are already plans for amending the Advertising Law, as well as if the amendments proposed in the Media Strategy (regulating advertising by the state, namely by the state bodies, so as to avert the concentration of advertising budgets, namely the monopolization thereof by certain media or agencies; the liberalization of advertising in the media to the extent to which that is compatible with international practice and ratified international commitments) are compatible with the already planned changes, namely with other interests protected by the Government in that domain. A similar approach should have been taken in relation to other laws, which ought to be reviewed under the Action Plan. Only a month prior to the expiration of the term for finalizing this activity (under the Action Plan) there is no information whatsoever as to what has been accomplished with respect to the above, which could be understood as a sign of inactivity or insufficient activity at best.

Things are even more complex when it comes to issues for which the solutions proposed by the Strategy did not receive broad public support or which were insufficiently elaborated at best. For example, the Strategy envisioned the establishing of six regional public service broadcasters (PSB) in Central Serbia only, for the purpose of meeting the undisputed need of the citizens to receive, at local and regional level, timely and accurate information specific for a certain region. This concept was criticized by media and journalists' association. By announcing the establishing of regional radio and TV public service broadcasters, the Government invoked the need to adhere to the recommendation of the Council of Europe pertaining to the guarantees of independence of public service broadcasters and the guarantees of independence and functions of regulatory bodies in the area of broadcasting. The latter recommendation has already been, to a considerable extent, breached by the adoption of the Film Industry Law, which has undermined the systems of funding the RBA and RATEL. Moreover, in addition to stipulating which regional PSBs will operate under the principles of RTS and RTV (which are everything but good examples of managing, programming and especially financial independence), the Strategy fails to stipulate in detail who is going to manage the said regional PSBs, with which competences and responsibilities, who will be overseeing their activities and, most importantly, how will those regional PSBs be funded. The Strategy namely says that they will be financed in keeping with the rules on state aid allocation, while not invoking directly the implementation of the EC's Communication from 2009 on the enforcement of state aid control rules with respect to PSBs. The enforcement of the said Communication should be an obligation of Serbia also in the context of the Stabilization and Association Agreement. Assessing the acceptability of the financing of PSBs from the aspect of state aid control regulations, in the context of the Communication, involves, amongst other things, the existence of a clear definition of the mandate and the role of PSBs, the manner in which this mandate and role, as well as compliance therewith, are checked; the issue of transparent financing and accounting separation of public-service related activities from other operations; the prohibition of overpayment; the existence of financial control mechanisms; defined procedures for introducing new services; behavior on the market that does not undermine competition. The State Secretary in the Ministry of Culture, Media and Information Society Dragana Milicevic-Milutinovic said in early June that the pre-draft Law on Public Service Broadcasters had been prepared and tabled to the Ministry by the working group. The Ministry, however, is yet to publish this pre-draft and hence it is impossible to judge to what extent it has recognized the above mentioned issues. An additional concern is the fact that the procedure of appointment of the working group members was everything but transparent. Namely, as opposed to the procedure believed to be established during the production of the Strategy, when the Ministry consulted the media sector while working on draft regulations relevant for the media, the latest working group did not comprise any representatives of media and journalists' associations. The above is all the more dangerous, since any inconsistency in the future Law on PSBs, which would see a divergence from the criteria set in the EC's Communication from 2009 on the enforcement of state aid control rules with respect to PSBs, would practically destroy commercial broadcasters at the regional and local level in Serbia, if the latter manage to survive the establishment and regional PSBs. Since

the requests voiced by media associations during the public debates were shunned in the past, the question remains if it will be possible at all to influence the latest draft once it is published and released for public debate.

Besides, nothing was done with respect to the control of state aid received by the media – those owned by the state in particular. The Strategy has announced that such aid would be allotted in compliance with the criteria of transparency, financial control, prohibition of overpayment, proportionality, behavior on the market that does not undermine competition. The introduction of a new, project-based funding model was also announced, but nothing was done in practice. The nine months lost for regulating this field has further undermined commercial broadcasting in Serbia.

The conclusion that we may draw is that the implementation of the Strategy for Development of the Public Information System has not not even started (except for the fact that the pre-drafts of certain laws – Public Information Law, Law on Electronic Media, Law on Public Service Broadcasters – have been written and tabled to the Ministry, but, as stated above, it is impossible to assess them since the Ministry is yet to make them public. The fact is that the recent elections were not exactly conducive to full implementation, but it cannot be an excuse for the Strategy remaining a dead letter on paper and mere lip service with the purpose of buying time as to compliance with Brussels-imposed conditions for EU membership.

Pre-Draft Law on Electronic Media – Improving Regulation and Practice

Prof. Rade Veljanovski, PhD[1]

The need to amend more thoroughly the Broadcasting Law, which has already undergone several minor changes, emerged four years ago, whereas the amended provisions have resulted in the Pre-Draft Law on Electronic Media. Such a long time for preparing a new legal text may be explained by the fact that the same working group in the meantime tasked to also prepare the Pre-Draft Law on Transparency and unlawful Concentration of Media Ownership, which is yet to enter the procedure for adoption, and then it was necessary to wait for the adoption of the Strategy for the Development of the Information System in Serbia.

Nearly ten years after the adoption of the Broadcasting Law is a long period for a dynamic area such as the activities of broadcast media, especially in the new technological environment. Digitalization and the application of new media technologies, which were, out of more or less justified reasons, not regulated by law a decade ago, became in the last few years a regulatory imperative. The fact that Serbia has adopted the Digitalization Strategy and the Law on Electronic Communications (replacing the Law on Telecommunications) also required the harmonization of the laws dealing with media aspects of using frequencies. The latest European regulatory documents – and especially the Audiovisual Media Services Directive – but also the imminent digital switchover by June 17, 2015 at the latest, required some normative adjustments in this field. Some of the amendments to the Broadcasting Law and the enforcement thereof were the reason to embrace a new regulatory outlook. The initiative with the amendments to the Broadcasting Law and the work on the text of the law have led to the conclusion that the term *broadcasting* may not be used like in the past anymore, because it used to refer to the distribution of the signal from the hitherto *broadcasters* to the end users. In view of the scope of the amendments and the importance of the new provisions, it is more realistic to refer to a *new* law and not an amended Broadcasting Law.

Further harmonization with the European regulatory framework

The Pre-Draft Law on Electronic Media has nine sections and 146 articles. Its structure, at first glance, does not diverge much from the Broadcasting Law. The Pre-Draft Law on Electronic Media also begins with some principal commitments such as freedom, media professionalism and independence, prohibition of censorship and influence on broadcast media as a guarantee of independence, full affirmation of civil rights and freedoms, enforcement of internationally recognized norms and principles. These principles also include objectivity, prohibition of discrimination in the process of license issuance, promoting freedom of competition, access to broadcast media, promoting media literacy, protection of cultural diversity and promotion of media creativity.

The separation of content production from distribution, i.e. broadcasting, is the first key difference between the Broadcasting Law and the Pre-Draft Law on Electronic Media. As Article 2 of the latter stipulates, "the provisions of this Law shall not pertain to the conditions of performing the activity of electronic communication, the conditions and the manner of setting up, use and maintenance of fixed and mobile broadcasting devices". According to the new

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approach, broadcasting is left to the Law on Electronic Communications to regulate; accordingly, the term *broadcaster* was omitted from the Pre-Draft. The broadcasting of media content is to be left to a separate company or several such companies in the future, which are dubbed *operators of the electronic communication network for provision of media services*. What was until now called a *broadcaster* will in the future be a *media services provider*, which is editorially accountable for the choice of content/audiovisual media services. These changes directly stem from the Audiovisual Media Services Directive, under which radio and television stations and other programming services providers are called *media services providers.*

The Pre-Draft Law on Electronic Media has embraced such a term because, again on the basis of European documents that have taken into account the new circumstances resulting from the introduction of new technologies, the term *broadcast media* (electronic media in the Serbian text) is wider and includes, apart from radio and television, "other audiovisual media services, editorialized web pages and the like", as indicated in the Pre-Draft.

In the new "glossary", i.e. the Article explaining the *meaning of certain terms* instead of the hitherto *definitions*, one may find many new terms that are evidence of the compliance of the legal text with the Audiovisual Media Services Directive. Hence, we have the already mentioned new definition of the *broadcast media*, *media services and audiovisual media services.* The text explains the meaning of *programming content* and *editorial responsibility*. The latter is one of the key words in the Pre-Draft, because, under European regulation, it enables the redefining of the term *broadcast media*, since it also includes new online media, but not just any online media, but only those that have been ascertained to possess a professional approach and responsibility.[1] *Linear* and *non-linear media services* are defined, as well as *on-demand services.* These are significant novelties in a legislation aiming at regulating broadcast media. Since the aforementioned Directive mostly pertains to television as an audiovisual media, as well as to the fact that the digitalization of radio remains uncertain, the glossary and later the text have seen a separation of radio and television. New terms are also *product placement, protected media services* provided on the basis of conditional access and *allotment zone* instead of coverage zone, which is also harmonization with the Law on Electronic Communications.

Regulatory agency and service type

The new Law has kept one of the most important commitments of the hitherto law governing the field of broadcasting – the existence of an independent regulatory body. The RBA should be replaced by the Electronic Media Agency (AEM). This is not the only difference. Two solutions were proposed for the election of AEM's Council. The first is practically returning to the principle of authorized proposers prior to amendments to laws, which allowed the Culture and Information Committee of the Parliament to propose six candidates and hence have an influence on the election of one third of Council members. That model was somewhat modified by adding national councils of ethnic minorities as authorized proposers, which are then supposed to come to a proposal by mutual agreement. The procedure has also been laid down in more detail, in order to facilitate the already complicated candidacy and election procedure.

The alternative to this provision is the election of Council members on the basis of an open competition, for which the requirements have been specified more precisely. This model is procedurally much simpler. However, an important question is who would, out of a potentially large number of candidates meeting the formal criteria, make it to the shortlist to be decided upon by the Parliament? The working group opted for the idea that, out of candidates proposed, three independent institutions would make a mutual agreement to propose two names for each

[1] Directive 89/552/EEC of the European Parliament and Audiovisual Media Services Council, Chapter I, Article I, (c) and Resolution: Toward a New Notion of Media, Reykjavik, 2009.

position in the Council: the Ombudsman, the Commissioner for Information of Public Importance and the Commissioner for the Protection of Equality. In both cases, it was proposed that the current Council members remained until the expiration of their term of office.

Regarding the activity of the regulatory agency, several new provisions have been introduced, with the aim of making it more responsible, without undermining its independence. In that sense, it is stipulated that the Council member's term of office will be terminated if he/she has worked improperly or unethically. The provisions on the Agency's transparency have also been boosted.

If the text of the Law were adopted, the Electronic Media Agency would have at its disposal more precisely defined measures for controlling the activities of media services providers. These measures should include a notice, warning and a temporary ban on a part of programming content, as well as temporary and lasting revoking of the license. All these measures will be public, they will have to be published by a broadcaster subject to these measures and by a print outlet, distributed in the area covered by the media services provider's license.

One of the key changes in the new law pertains to *audiovisual media services by manner of provision and content.* Article 47 of the Pre-Draft Law on Electronic Media foresees services that (by manner of provision) may be *linear* and *audiovisual services on-demand,* and by content: *general* and *specialized*, namely thematic: sports, culture, music, education, advertising programs, etc. The introduction of on-demand services and their classification in specialized services are the novelties placing this law among modern regulatory concepts.

Audiovisual commercial communication is foreseen in the Pre-Draft to the extent necessary according to the revised European Convention on Cross-Border Television and the Directive on Audiovisual Media Services. The details on product and services advertising and the related restrictions are contained in the section of the Pre-Draft dealing with linear services only. It is important to stress that, regarding commercial communications, as well as on-demand services, the Pre-Draft Law on Electronic Media elaborates in detail on the protection of minors.

The new provision also pertains to *quotas of European works*, which also constitutes alignment with European regulations. The media service providers are required to allot at least 10% of the annual program to European production content, excluding news, sport events, games, advertising, teletext and the like, as well as Teleshop sales. That provision also requires a quota for European films and series in the amount of no less than 20% of the annual program.

Services of the public audiovisual media service

The Pre-Draft of the new Law also contains provisions about the public service broadcaster. Since the working group started its activities a couple of years ago and that it completed the text immediately after the passing of the Media Strategy, the Pre-Draft did not deal with the concept of regional public service broadcasters. The writers of the Pre-Draft did not have the information if the Ministry of Culture had set up the second working group working on a separate law on the public service broadcaster, which would encompass regional public service broadcasters. Such circumstances will require the lawmakers to make a clear commitment, to be hopefully delivered after a competent public debate.

As for the Pre-Draft Law on Electronic Media, it has improved the provisions on the public service broadcaster, which, just like until now, concern the national and provincial public service broadcasters. The most significant change is contained in Article 72 of the Pre-Draft dealing with independence and functional autonomy of the public service broadcaster. Ten points have been transposed from the CE Recommendation R (96) 10 on the guarantee of independence of the

public service broadcasting. Under this Recommendation, total independence concerns primarily: programming schedule, programming concept and production, editing and presenting news programs and current affairs programs, activity organization, appointment of managers, editors-in-chief and employment.

The financing of the national and provincial public service broadcaster will still be possible from several sources: subscription fee, advertising, sales of programming content and carriers of sound and picture, concerts and other sources under the law. Subscription fee remains the main source of revenue, while the provisions on the collection thereof have been boosted. It will be charged separately in Vojvodina and separately in other parts of Serbia, while citizens will be required to report the possession of a TV set. The categories of persons and institutions relieved of paying the subscription fee remain. The Pre-Draft has elaborated in more detail the provisions on charging the subscription fee for the use of radios in motor vehicles. It is estimated that this could boost the revenues from the subscription fee by 5-6 million Euros a year, which is not a negligible amount.

Substantial changes were also proposed in relation to the appointment of members of public service broadcasters' managing boards. According to the Pre-Draft, instead of nine, there will be seven members, each of which will be appointed by: the Serbian Academy of Sciences and Arts; the Rector Conference of Serbia; the Coordination Body of the Ethnic Minorities Council; journalists' associations and associations promoting media freedoms, human rights, education and protection if minors; finally, three members will be elected by the regulatory agency. A similar solution is foreseen for the provincial public service broadcaster, whereas the members will be appointed by the provincial Academy and the rectors of universities on the territory of Vojvodina.

Authorizations for the provision of services, licenses, concentration of ownership, privatization

The Pre-Draft Law on Electronic Media foresees the provision of services without obtaining a license, if such services are provided solely through the information network (Web Casting) and in the case of rebroadcasting, in accordance with the provisions of the European Convention on Cross-Border Television. Licenses shall be issued to persons seated in Serbia, which will in that way receive the authorization to provide their media services through public electronic communication networks to an unspecified number of users. In the transitional and closing provisions of the Pre-Draft, Article 139 stipulates that the current license holders for analog broadcasting shall provide media services until the expiry of the term of such licenses and that they will accordingly be enabled multiplex access when the digital switchover takes place.

The license issuance procedure is public and the license may not be granted to political parties and coalition, or legal persons founded by the state, including the Province and local governments. It goes without saying that the public service broadcaster is an exception, but there is a novelty – the possibility for universities founded by the state to be able to set up broadcast media with the purpose of media training for students, on non-profit basis. State universities have thus been put on equal footing with private institutions and there should be no concern that this will "transpose" the influence of the state on student media, since political autonomy in this field is guaranteed by the Law on the University.

The procedure of obtaining a license on an open competition was elaborated on in very much detail and adjusted to changes resulting from digitalization, as well as to the Law on Electronic Communications Act. Due to the need to keep better records and the transparency of ownership, the *Register of Media Services* was also provided for in detail.

The working group that prepared the Pre-Draft was of the opinion that until the adoption of a separate law, or until transparency and unlawful concentration of media ownership were not better regulated, the Law should maintain provisions on these issues. The Pre-Draft Law on Electronic Media contains provisions that were mainly discussed in public, on a debate about the pre-draft law in this field. The text of the Law lays down certain thresholds for concentration in proportion to European practice and not detrimental to healthy competition on the media market.

The legal confusion about the privatization of local media made the working group reconsider the way of solving this problem. According to the transitional and closing provisions, media founded by local self-government bodies, which were not privatized according to the Broadcasting Law, have a 24-month term to finalize that process, until the Law on Electronic Media comes into force. Until then, these media must adjust their operations with the provisions of the law pertaining to the public service broadcaster services.

Post-communist Media Reforms from a Bird's Eye View

Jovanka Matic, PhD[1]

The long awaited changes of the media systems in post-communist countries have been a disappointment. Today they are and mainly privately owned; they operate in a lawful environment of clearly defined rights and obligations and they are controlled by independent bodies, separate from the government. However, the media are economically and politically subdued. State monopolies have been replaced by those imposed by foreign corporations or (un)known domestic tycoons. The regulatory agencies and managing bodies of public service broadcasters are established and appointed in a process marred by political wheeling and dealing. Journalists are often threatened, attacked and even murdered. Changes to the relevant legislation are slow; modern laws are not complied with. Content is often all too similar, while investigative journalism is rare and often unsuccessful. Twenty-some years have passed since we were promised that the media would be radically democratized.

Two decades: too long or too short of a period?

The transition in Serbia started almost 12 years ago. Things might have been different had they promised us blood, sweat and tears on October the 5th. Without that, a new system may not be instituted. With this experience, Egypt's hope that democratic elections alone will suffice to transform a rigid, oppressive system into a democratic one, seems utterly naïve. Absent of naïve hopes, however, there may be no change. Today, though, we must not stray into despair, a path typically paved with unrealistic expectations. For rebuilding a destroyed society like Serbia at the start of the new millennium, 12 years may only be the end of a beginning.

The unbearable ease of transition

The media are the first institutions of society to have entered the post-communist period in almost all countries of Central and Eastern Europe. The dismantling of the links with government structures and freeing the media from the role of ruling oligarchy and working class mouthpiece were seen everywhere as the most important preconditions for the development of these emerging democracies. The initial quick pluralization of the media sphere, the significant role the media had played in the political changes, the newly-found openness to diverse sources of information and willingness to reflect a wide social spectrum of opinions, as well as their practical and symbolic contribution to the creation of civil society, have resulted in the belief that the media would embrace the leading role in setting up the democratic infrastructure in these post-communist societies. The hope was that the new social environment would give birth to new, democratic forms of communication that remained out of reach of even advanced post-industrial societies. At the very least, it was expected that the media would take upon several roles: the role of sources of accurate and comprehensive information; the role of a watchdog (securing the transparency of the work of public institutions); the role of forum for public debate about issues of public interest; and the role of promoters of democratic values.

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Today's state of affairs, in terms of the outcome of the transition, shows that the initial optimism was unfounded. While the position of the media vs. government institutions has not changed dramatically, irreversible changes have been achieved in rebuilding the media systems. Having the media serve civil society remains a much-aspired model, albeit difficult to achieve, in light of the current economic downturn.

All the emerging democracies have opted for instituting a Western-style media system. The latter, however, needed more than two centuries to take root and establish itself as a model.

The current experience of countries in transition shows that the success of reforms hinges not only on new institutions, but also on the appropriate socio-cultural backdrop underpinning their work and the acceptance of new values/public support to the goals of the changes. On the long term, these are created by the education system and in the current times – the media. Without the media, the new political and economic culture, necessary for consolidating democracy, simply cannot take hold. The efficiency of the media will determine the time during which society will be "imprisoned" in the attempt to bring about change. Thus, transforming the media and making them fit for new roles is believed to be the primary task in the transition towards democratic pluralism and market economy. In practice, however, media reforms did not receive the necessary attention, although the media were nonetheless expected to be the catalyst of structural changes and the key factor of the development of democratic political culture.

Political influence

Analyses of the reforms in post-communist societies in the last two decades have shown that the speed and scope of the changes to the media systems were in sync with the transformation of the global systems. Contrary to the initial optimistic expectations, the democratization of the media was more of a function of the political will of the new elites, rather than becoming a factor of overall democratization itself. According to analysts, everyone has underestimated the capacity of totalitarianism for "structural and functional mimicry".

The new political elites in emerging democracies have not renounced the opportunities to control the media and restrict their autonomy. Civil society and/or non-profit media have never become an important segment of the media system. Where the dismantling of the state monopoly in the media sector (especially in broadcasting) was successful, it was typically accompanied by a politically oriented media concentration or various measures aimed at preserving political control over the public service broadcasters (by electing the members of regulatory bodies or appointing members of managing bodies of these public service broadcasters) and undermining the economic stability of those media prone to criticism. The media system in emerging democracies is pluralistic, but the media are dependent on the state or various powerful groups and hence their content is often devoid of political diversity. From the legal aspect, the issues of contention are always the same: access to public information, protection of journalist's sources, restriction to secrecy of information, protection of privacy, penalization of defamation and insult, allocation of broadcasting licenses…

The paradox of media changes is that they require an active state policy aimed at creating the conditions for media autonomy. Meanwhile, the state, in order to win over public support for painful reforms, needs media that are mouthpieces and not watchdogs. Everything else is seen as a superfluous.

Researches conducted in former Socialist countries have shown the political system to be the chief factor hampering the democratization of the media. The government acts as the most conservative agent of mass communication, for it sees society as an entity to be influenced and the media as a suitable instrument for exerting such influence.

After 2000, the ruling establishment in Serbia never mentioned in the election campaigns the reform of the media system as a political priority. The same was true for the latest elections. No political party had included these changes as a goal in their respective electoral agendas. The ruling parties prefer to keep the status quo. Opposition parties were never happy with the media. However, the only thing they did about it was to create their own, deeply politicized and biased media, dealing an additional blow to the professionalism of journalists and the credibility of media in general.

Future governments are unlikely to change that pattern of behavior. Changes must be imposed by initiatives and pressure by the civil sector, which has the authentic interest to create media that will watch over public resources and public policy and the respect of core values. The necessary reforms of the media sector may only be achieved by putting constant pressure on the government in the form of initiatives for the adoption of new regulations, proposing new concepts, new state aid rules and incentives for the media that work in the public interest.

Economic influence

In the majority of post-communist countries, the market has become the leading force determining the media landscape. At the start of the transition, most journalists believed that liberating the media from state control and developing private commercial outlets would suffice to guarantee media autonomy. Today, they lament on how they sought freedom and got the market instead. Instead of aiming at a new relationship between financiers and journalists, the reforms insisted on the accumulation of private financial profit, rather than on social wealth. The consequences are far reaching and hardly reversible: the commercialization of media, "tabloidization" of content, segmentation of audiences, concentration of ownership, renewed monopolization, the emergence of domestic tycoons, disappearance of quality print media, dominance of entertainment at the expense of the informative and educational function of the media, neglecting minority interests and voices.

Truth be told, the above has happened in the developed world too. However, in the context of post-communist societies, where politics controlled the economy, with slow economic reforms, low economic growth, lack of capital, undeveloped advertising market and low purchasing power of the audience, chaotic market, opaque media ownership and lack of meaningful trade union activity, the fallout has been much more severe. Such a situation has produced economically unsustainable and poor media, dependent on the interests of the owner and the state as the additional sponsor, as well as in poor journalists. Due to the failure to find an appropriate solution for financing the public service broadcaster, the latter has neglected its core functions and lost the battle against commercial media.

One of the root causes of the media's economic decline is the inefficiency of the hitherto business model due to the advent of new information technologies, but also because of the global economic downturn. Many media in Serbia will definitively not survive the crisis. In the current situation, there are no guarantees that the best ones – the most professional, the most credible, those that are working in the public interest – will make it. However, state aid – which is necessary and is being implemented in other market economies – could be channeled (if transparent and neutral) to the media working best in the public interest. It is necessary to institute a stable and neutral system of financing the public broadcasting service, since the latter is able to provide a setting for the interaction of various social groups and fulfilling the often neglected interests of the audience.

Civil society influence

Still, differences between post-communist countries with regard to improving the media system do exist. Poland, the Czech Republic, Hungary, Slovenia and the Baltic countries have managed to achieve a relatively successful transition and build pluralist and competitive democracies and democratized communication structures. Slovakia, Romania, Bulgaria, Ukraine, Russia and other countries, where the political regimes are "concentrated" and not competitive, are less successful. Post-conflict countries, such as Serbia, Bosnia-Herzegovina, Macedonia or Georgia fall into a separate group, with a transition process burdened by additional difficulties – economic devastation, ideological and political divisions and a destroyed value system.

Based on the experience of the aforementioned countries, the analysts have identified the factors that have facilitated the transition process: economic development, high education standards, the tradition of autochthonous anti-regime movements, the tradition of various social groups joining forces for a common cause, the experience of reforms, ethnic homogeneity… Negative factors include underdeveloped economy, low standards of living, low education standards, ethnic tensions and weak civil society.

Serbia faces many unfavorable factors, including a belated transition. Still, it is encouraging to see that the citizens understand the importance of having independent and credible media; furthermore, civil society and especially professional associations are active in resisting drastic threats against the media and journalists. It is also competent enough to demand changes and guide them in the right direction. Civil society in Serbia is only starting to learn its new roles. In the United States, for example, the first association of university journalism professors was founded exactly 100 years ago (1912). In Serbia, there is not even awareness of the need to have such an association. What remains to be learned is professional solidarity, efficient organization of various (and conflicting) segments of the media community in order to achieve common goals, lobbying and seeking allies in the political, economic and cultural elite, as well as the possibility to use established procedures for making changes to the media system a social priority.

The connoisseurs of transition say that when the new institutions fail to meet the expectations, the only thing that may prolong their legitimacy is a firm belief system underpinning such institutions, not because they are useful (since they currently are not), but because they are the most appropriate choice for achieving a long-term goal.

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

Information Note no. 148/January 2012

ARTICLE 10 *of the Convention for the Protection of Human Rights and Fundamental Freedoms*
Freedom of expression

Obligation to pay compensation to child victim of sexual abuse for revealing her identity in a newspaper article: *no violation*

Kurier Zeitungsverlag und Druckerei GmbH v. Austria –
3401/07 Judgment 17.1.2012 [Section I]

Facts **–** The applicant newspaper published two articles concerning the case of C, a child who had been ill-treated and sexually abused by her father and stepmother. The articles were published during the latter's criminal trial and gave a detailed description of the circumstances of the case, revealing C's identity, her father's and stepmother's full names and their photographs. Given the significant media attention in her case, C had to be re-admitted to hospital for psychological problems. She subsequently filed a claim for compensation against the applicant company for publication of her name and the particulars of her case. Her claim was upheld on appeal and the applicant company was ordered to pay compensation in the amount of EUR 10,000 on the grounds that revealing C's identity in a matter concerning exclusively her private life had been unnecessary and in breach of domestic law.

Law **–** Article 10: The case concerned a balancing of the applicant newspaper's right to freedom of expression against C's right to protection of her identity. C was not a public figure and could not be considered to have entered the public scene by becoming a victim of a criminal offence which attracted considerable media attention. Further, even though the impugned articles dealt with a matter of public concern, the fact that neither the offenders nor the victim were public figures meant that knowledge of their identity had not been material for undestanding the particulars of the case. The applicant newspaper had not been prevented from reporting all the details of the case, only from revealing C's identity. The identity of victims of crime deserved special protection due to their vulnerable position. That obligation had been all the more important in C's case as she was a child at the time of the abuse. Both the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and various recommendations adopted by its Committee of Ministers urged the States to take measures to protect the identity of victims of crime. Lastly, the sanction imposed on the applicant newspaper had not been disproportionate: the amount of compensation awarded appeared reasonable in the circumstances, in particular given the impact the articles must have had on C, who had experienced severe psychological problems and had had to be re-admitted to hospital.

Conclusion**:** no violation (unanimously).

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

ARTICLE 10 *of the Convention for the Protection of Human Rights and Fundamental Freedoms*
Freedom of expression

Prohibition on reporting arrest and conviction of famous actor: *violation*

Axel Springer AG v. Germany –
39954/08 Judgment 7.2.2012 [GC]

Facts – The applicant company is the publisher of a national daily newspaper with a large-circulation which in September 2004 published a front-page article about the star of a popular television series who had been arrested at the Munich beer festival for possession of cocaine. The article was supplemented by a more detailed article on another page and was illustrated by three pictures of the actor in question. Immediately after that article appeared, the actor obtained an injunction restraining any further publication of the article or photographs. The injunction on publishing the article was upheld on appeal in June 2005 (the applicant company did not challenge the injunction concerning the photographs). In November 2005 the injunction was continued in respect of almost the entire article and the applicant company was ordered to pay an agreed penalty, which, on appeal, was reduced to EUR 1,000.

In the interim, in July 2005, the newspaper had published a second article, reporting that the actor had been convicted of unlawful possession of drugs following a full confession and had been fined. The actor applied for and obtained an injunction restraining publication of the second article on essentially the same grounds as for the first. That judgment was upheld on appeal. The applicant company was later ordered to pay two penalty payments of EUR 5,000 in respect of subsequent breaches of that injunction.

Law – Article 10: It was common ground that the domestic courts' decisions had constituted interference with the applicant company's right to freedom of expression; which interference was prescribed by law and pursued the legitimate aim of protecting the reputation or rights of others. The Court went on to determine whether the interference had been necessary in a democratic society.

Applying the criteria it had established in its case-law for balancing the right to freedom of expression against the right to respect for private life, the Court noted, firstly, that the published articles concerned the arrest and conviction of an actor, that is public judicial facts that could be considered to present a degree of general interest. Second, the actor was sufficiently well known to qualify as a public figure and, even though the nature of the offence was such that it would probably not have been reported on had it been committed by an ordinary individual, the fact that the actor had been arrested in public and had actively sought the limelight by revealing details about his private life in a number of interviews meant that his legitimate expectation that his private life would be effectively protected was reduced. As regards the third criterion – how the information was obtained and whether it was reliable – the first article about the actor's arrest had a sufficient factual basis as it was based on information provided by the public prosecutor's office and the truth of the information related in both articles was not in dispute between the parties. The applicant company had not acted in bad faith: not only had it received confirmation of the information from the prosecuting authorities, there was nothing to suggest that it had not undertaken a balancing exercise between its interest in publishing and the actor's right to respect for his private life before concluding, in the light of all the circumstances, that it did not have sufficiently strong grounds for believing it should preserve the actor's anonymity. As to the content, form and consequences of the publications, the articles had not revealed details about the actor's private life, but had mainly concerned the circumstances of his arrest

and the outcome of the criminal proceedings. There had been no disparaging comments or unsubstantiated allegations. The applicant company had not challenged a court injunction prohibiting it from publishing photographs and it had not been shown that the publication of the articles had resulted in serious consequences for the actor. As regards the final criterion, while the sanctions imposed on the applicant company were lenient, they had nevertheless been capable of having a chilling effect and were not justified in the light of the factors referred to above. Accordingly, the restrictions imposed on the company had not been reasonably proportionate to the legitimate aim of protecting the actor's private life.

***Conclusion*:** violation (twelve votes to five).

Article 41: EUR 17,734.28 in respect of pecuniary damage, corresponding to penalties and costs incurred in the domestic proceedings less the two penalty payments of EUR 5,000.