

Working Paper

PROTECTION OF PUBLIC INTEREST AND MEDIA PLURALISM IN SERBIA



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INTRODUCTION

With the adoption of the Strategy for the Development of the Public Information System (hereinafter referred to as “Media Strategy”) in September 2011, the Republic of Serbia initiated the media reform and set up the foundations of "information system in the Republic of Serbia and parts of that system to ensure that the development of the freedom of the media and the media market contributes to the strengthening of democratic relations in society".

The Strategy should have provided the basis for the coordination with previously inconsistent regulations in monitoring the implementation of regulations in the field of public information system, which, as noted, used to cause legal uncertainty in practice.

The Strategy for the first time introduces the public interest in the field of public information, with a following definition:

“The production and publication of the following content in the public media in the Republic of Serbia shall be in public interest: general news media content, specialised media content on politics, culture, education, religion, economy, entertainment and other issues of relevance to the lives and work of the citizens, general news and specialised media content of relevance to the lives and work of citizens in local and regional communities, media content for children and youth, media content of relevance to the preservation of cultural heritage and media content promoting cultural and artistic creativity and the work of cultural institutions, investigative journalism content and other complex journalistic forms, original audio-visual and radiophonic works in the Serbian and national minority languages in use in the Republic of Serbia, provided that the production and publication of such content is relevant to the realisation of the right to information in the Serbian and national minority languages in use in the Republic of Serbia, preservation and advancement of media pluralism and media content diversity, development of media literacy, preservation of the cultural identities of the Serbian nation, national minorities and ethnic groups living in the Republic of Serbia, media creativity and creativeness, development of science and advancement of education at all levels, including adult education, promotion of the rule of law and social justice, the principles of civic democracy, human and minority rights and freedoms and adherence to European principles and values”.

With a delay of more than a year, in 2014, a set of media laws defined by the Strategy were adopted: Law on Public Information and Media (hereinafter referred to as “LPIM”), as an umbrella regulation in this area, then Law on Electronic Media (hereinafter referred to as “LEM”) and Law on Public Service Broadcasting (hereinafter referred to as “LPSB”).

The modalities are being defined regarding the realization of public interest through the establishment of public media broadcasters (hereinafter referred to as “PMB”) at the national and provincial levels, the establishment of a citizen information institution in Kosovo and Metohija, enabling of establishing institutions, companies that would be media outlets, as well as foundations "in order to achieve the general objective of improving public information in the language of the national minority" and by means of co-financing projects in the field¹. On the other hand, Article 5 of the Law defines the obligation of the media to respect the right of citizens to be accurately, fully and timely informed about issues of public importance. In Article 6, the Law defines the protection of media pluralism and the prohibition of monopolies in the field of public information.

The Law on Public Service Broadcasting in Article 7 prescribes "the public interest realized by the public service broadcaster", and in that sense, the public interest, pursuant to the law that governs the field of public information, which the public service broadcaster achieves through its programme content, includes the following:

1. truthful, timely, complete, impartial, and professional provision of information for the citizens and facilitation of freely formed expressions of opinions of listeners and viewers on the territory of the Republic of Serbia, autonomous province and local self-government;
2. respect for and representation of fundamental human rights and freedoms, democratic values and institutions, and advancing the public dialogue culture;
3. respect for privacy, dignity, reputation, honour, and other fundamental human rights;

¹ Article 15, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 and 12/2016 – authentic interpretation

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4. respect and promotion of pluralism in political, religious, and other ideas and facilitation of the public's familiarity with those ideas, without serving the interests of individual political parties or religious communities, or any other individual political, economic, religious or similar positions or interests;
5. fulfilment of the informational needs of all sections of the population without any discrimination, particularly taking into consideration vulnerable social groups such as children, young and elderly people, minorities, persons with disabilities, socially and medically disadvantaged, etc.;
6. fulfilment of the citizens' needs for programme content that facilitates preserving and expressing the cultural identity both of the Serbian people and national minorities, showing consideration for the need of national minorities to have access to certain programming in their own language and alphabet as well;
7. impartial coverage of political, historical, economic, social, medical, cultural, educational, scientific, ecological, and other issues, while enabling equal encounters of different viewpoints;
8. free of charge and equal representation of political parties, coalitions, and candidates that have verified electoral lists for the republic, provincial or local elections during campaigning;
9. affirmation of national cultural values of the Serbian people and national minorities that live in the Republic of Serbia, as well as of meeting and intertwining of their cultures;
10. development of the media literacy of the population;
11. production of national documentary and feature programming;
12. timely provision of information about current events in the world and about scientific, cultural, and other civilizational achievements;
13. advancement of general education, medical education, and education in relation to environment protection;
14. development of culture and artistic creation;
15. nurturing of humane, ethical, artistic and creative values;
16. fulfilment of the citizens' need for entertainment, recreation, sports, and other areas;
17. provision of information to our citizens abroad, as well as to the members of the Serbian people who live outside of the Republic of Serbia's territory;

18. representation of the cultural heritage and artistic creation in the country and abroad;
19. provision of information to the foreign public about the events and occurrences in the Republic of Serbia.

Since the adoption of the set of media laws², all relevant national and international reports on the media scene in Serbia point to numerous problems in their implementation. Progress Reports of the European Commission for Serbia have been indicating for years that there is no progress in the field of freedom of expression. Particular emphasis has been placed on the problems in the area of safety of journalists, project co-financing of media, inadequate application of media laws, as well as the independence of the Regulatory Authority for Electronic Media.³ In the 2018 *Media Sustainability Index Report*, IREX notes that Serbia, with Kyrgyzstan, recorded the largest decline.⁴ Serbia also recorded the biggest drop (for 10 places) in the world's list of freedom of expression in the Reporters Without Borders Report for 2018. The issues of control over the implementation of laws, regulations and protection of media pluralism are also cited in these reports as some of the causes of the unfavourable environment for the work of media, in addition to the economic environment and safety of journalists.

CONTROL MECHANISMS OVER THE IMPLEMENTATION OF MEDIA LAWS

In the Republic of Serbia, as control mechanisms on the media scene, we recognize monitoring over the application of the laws carried out by the Ministry of Culture and Information in relation to the Law on Public Information and Media and the Law on Public Service Broadcasting, as well as the regulatory role which is carried out by

² "Explained set of media laws at the National Assembly", Paragraf Lex, 2014 <https://www.paragraf.rs/dnevne-vesti/310714/310714-vest1.html>

³ European Commission, *Serbia 2018 Report*, Strasbourg, 2018, pp. 25, 26, 62. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>

⁴ Irex, *Media Sustainability Index (MSI)*, 2018, <https://www.irex.org/resource/media-sustainability-index-msihttps://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-full.pdf>

the Regulatory Authority for Electronic Media in accordance with the Law on Electronic Media in relation to audio-visual media services and radio media services.

These mechanisms have been established by the so-called set of media laws. The legislator recognized the basic need to allocate regulation of electronic media to an independent body. The legislator made the legal framework modern, by linking it with the rules taken over from the European directives.

What should be ensured in order to have good monitoring?

Monitoring is carried out in different ways, by available legal and technical means in accordance with the assigned competencies. In order for monitoring to achieve good results, the conditions for doing so need to be provided. A well-regulated legal framework has to be provided, with no gaps that make it difficult to work, as well as a precise organization, sufficient and quality capacity of personnel, resources, but also more complex conditions (cutting-edge technologies, software for monitoring the work of broadcasters, continuous training of employees, improvement of trends of control and monitoring, continuous measurement of efficiency and effectiveness), conflict of jurisdiction and collisions with other acts at the lowest possible level. The most indispensable condition is for monitoring to be essentially and functionally independent, sufficiently stable and secure in order to resist various types of pressure and influence.

Since the key controller in the media sphere is the Regulatory Authority for Electronic Media (REM), most of the above problems can be linked to the control that this body carries out.

The legislator recognizes an independent body as a regulator, which is positive, but practice also shows that this borders with declarative recognition. Basically, the problem is that independent regulatory bodies do not have a clear legal status in the legal order. The Regulatory Authority for Electronic Media is an "autonomous independent regulatory organization with the status of a legal person that exercises public authority", but, on the other hand:

- 1) the majority of the tasks performed are "entrusted tasks of state administration" (Law on Electronic Media, Article 22), in relation to which the Law on State Administration is applied accordingly and in relation to which the monitoring authority – the Ministry of Culture and Information has significant powers:

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"The Government and state administration authorities shall remain accountable for execution of entrusted tasks after they have been entrusted" (Law on State Administration, Article 51);

"The monitoring state administration authority shall have all general competences in regard to supervision of work which are prescribed by this Law." (Law on State Administration, Article 55);

"Monitoring state administration authority shall be obliged to directly execute entrusted tasks, if the non-execution could provoke damaging consequences for life and health of people, environment, economy and property of significant value, and if the holder of public powers, after numerous warnings, does not perform or does not perform regularly and promptly the entrusted state administration tasks, the monitoring state administration authority shall undertake the execution of entrusted tasks at the longest for 120 days. " (Law on State Administration, Article 56);

- 2) all bylaws adopted by the REM are subject to prior verification of constitutionality and legality by the Ministry, which means that without a positive opinion, the REM cannot issue its bylaws;
- 3) the Assembly approves of the financial plan of the Regulator, and in practice there is a constant delay in giving approval which affects the financial independence of the REM;
- 4) the Assembly approves of the REM Statute, which has not been done so far, so the REM operates according to the Statute that was adopted according to now void Law on Broadcasting.

Parliamentary control over the work of the REM has been turning into an inappropriate influence on the regulatory authority – as illustrated by the scandal related to the election of members of the Council whose proposer was a civil society, as well as a regular delay in approving of the financial plan (details below). The National Assembly did not approve of the Statute, nor did it elect all members of the Council within the legal deadlines, so the Council is reduced to a rump (6 out of 9 members). Unfortunately, it turned out that parliamentary control in our country represents more of an inadequate impact on work than democratic parliamentary control.

Arranging procedures of control and monitoring in media laws

The media scene is governed by a set of the so-called "media laws":

- Law on Public Information and Media (Official Gazette of the Republic of Serbia, No. 83/2014, 58/2015 and 12/2016 – authentic interpretation)
- Law on Electronic Media (Official Gazette of the Republic of Serbia No. 83/2014, 6/2016 – other law),
- Law on Public Service Broadcasting (Official Gazette of the Republic of Serbia No. 6/16)

In addition to the above “key” laws, in force are the following regulations that in their provisions directly or indirectly govern the work and activities of the controllers:

- Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, No. 18/2016)
- Law on State Administration (Official Gazette of the Republic of Serbia No. 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 and 30/2018 – other law)
- Law on Advertising (Official Gazette of the Republic of Serbia No. 6/2016)
- Law on Electronic Communications (Official Gazette of the Republic of Serbia No. 44/2010, 60/2013 – Decision of the Constitutional Court and 62/2014)

MINISTRY OF CULTURE AND INFORMATION

Defining monitoring

Law on Public Information and Media states that “the goal of legal regulation is to establish rules on public information that ensure and protect disclosure, reception and exchange of information, ideas and opinions through the media in order to promote the values of a democratic society, to prevent conflict and to preserve peace, to ensure true, timely, credible and complete information and facilitate free development of personality”. Such a definition depicts the way in which the legislator perceives the degree of freedom of expression and the media which primarily signifies their protection and the continuous improvement of the quality of relations between providers and users of media services.

The Law has also made provision for monitoring over the application of provisions of the law, as well as the system of penalties.⁵ In order to ensure adequate protection, the legislator must establish an appropriate monitoring system, which continuously provides guarantees in exercising the freedom of expression and the freedom of the media, while also protecting the public interest and interest of particularly vulnerable categories from the negative impacts that the media can have.

As a state body, the Ministry of Culture and Information is connected with other state administration bodies, but generally, it cannot be concluded that the Ministry has functional mechanisms that would ensure the execution of its competencies.⁶ In addition to the Law on Public Information and Media, the Ministry uses other positive legal regulations in monitoring.⁷

Monitoring mechanism

As regards tools for carrying out monitoring, the Ministry has at its disposal the initiation of proceedings in relation to the misdemeanours committed, complaints related to commercial offenses, measures in the context of the preliminary examination of media concentration and possibly delivering opinions at the request of natural or legal persons. There are few (explicit) mechanisms available:

- 1) regulating the co-financing of projects of public interest in the field of public information (adopting the bylaw – rulebook);
- 2) determining documentation to be submitted in the process of registering the media in the Media Registry, by means of the bylaw (rulebook as well);
- 3) determining the existence of jeopardising media pluralism for print media and issuing warnings about violation of media pluralism; informing the Registrar of the warning and instructing the Registrar to erase the media from the Media Registry if the media outlet in question does not act in accordance with this warning;

⁵ Article 3, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 i 12/2016 – authentic interpretation

⁶ Article 64, Law on State Administration, Official Journal of RS, No 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 i 30/2018 – other law

⁷ Ministry of Culture and Information, "Media field regulations," 2018 <http://www.kultura.gov.rs/lat/dokumenti/propisi-iz-oblasti-medija>

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- 4) closer regulation of the manner of keeping records and registering in the records of foreign media representatives and foreign correspondence offices and keeping such records (adopting the rulebook);
- 5) In the most severe cases, the conditions for initiating proceedings due to committed commercial offenses are fulfilled, so the proceedings may be initiated against
 - a legal person – a media outlet which does not act in accordance with the warning of the competent authority in the process of determining jeopardising media pluralism, but also the responsible person from the media outlet;
 - a legal person dealing with the distribution of media in such a way to be refusing media distribution by means of applying unequal distribution conditions in relation to different participants in the media market and which, in some other respect, significantly limits, impairs or prevents competition in the relevant media market in the territory of the Republic of Serbia, in accordance with the provisions of the law regulating the protection of competition, but also the responsible person from the legal person who is the distributor of the media;

due to committed misdemeanours, against:

- a natural person who publishes the newspaper or provides radio or television programme services, and is not registered for pursuit of professional activities.
- a legal person – a media outlet if it publishes a medium without an imprint of the prescribed content or if it does not publish the imprint in the prescribed manner, if within 15 days it does not report any changes of data that are being kept in the Registry; if a person who enjoys immunity from responsibility, or a person who does not reside in the territory of the Republic of Serbia is appointed as an editor in chief; if it fails to comply with the obligation of keeping records; if it does not make available the media record or does not make a copy in accordance with the provisions of the Law on Public Information and Media, but also the responsible person from the media outlet and the entrepreneur – media outlet.
- a responsible person in the public authority if he or she fails to submit to the Registry the data on the allocation of funds within 15 days;

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- a responsible person in the public authority and the legal person that is predominantly state-owned or that is financed entirely or predominantly from public revenues if it co-finances projects or in some other way assists the media outlet which is not registered, or if it is being advertised or uses other services of media that is not registered;
- the entrepreneur of the media outlet who does not act in accordance with the warning of the competent authority in the process of determining jeopardising media pluralism, the entrepreneur of the distributor who acts contrary to the provisions of Article 58 (1) of the Law.
- the responsible editor of the media if someone in the published information is identified as the perpetrator of any criminal act, that is, if he or she is announced guilty or responsible before the final decision of the court or other competent body; if the content of the media that could endanger the development of a minor is not clearly and visibly marked, that is, if the minor has been made recognizable in published information that is appropriate to violate his right or interest, if he or she does not deliver the court an audio, or video recording of the broadcast, at the request of the court.

The Ministry monitors within only a limited segment of compliance with the law, and thus performs public administration tasks related to the public information system; monitoring the implementation of laws in the field of public information; monitoring the activities of foreign information institutions, foreign media, foreign correspondence offices and correspondents in the Republic of Serbia; providing information to national minorities; registration of foreign information institutions and providing assistance to foreign journalists and correspondents; participation in regional projects, as well as other tasks determined by law.

On the other hand, the court and other bodies have certain powers concerning the media: the court in media disputes and the prohibition of distributing information (on the proposal of the public prosecutor), the Business Registers Agency in the registration of the media, the Commission for State Aid Control in the project co-financing.

As a measure, the Law provides a warning to the media outlet and specifies that, within six months from the date of receipt of the warning, it should present evidence

that it has eliminated the causes of jeopardising media pluralism by its actions.⁸ The Ministry ex officio informs the Registrar of warnings issued to the media outlet, and if the media outlet does not act on it, it is possible to be erased from the Registry.

As one of the forms of protection, the legislator also provides for the proposal of the competent public prosecutor, on the basis of which the competent court may prohibit the distribution of information or other media content, if this is necessary in a democratic society, and if the information invokes the following:

- 1) the act of violent demolition of constitutional order;
- 2) acts of direct violence against a person or a group based on race, nationality, political affiliation, religion, sexual orientation, disability or other personal trait, whereas the publication of information represents a direct threat with a serious and irreparable consequence whose occurrence cannot be prevented otherwise.⁹

However, the information on whether and to what extent these measures are used, as well as about their outcome, is not available to the public. At the same time, it is possible to notice on daily basis in certain media the media content which can at least lead to a suspicion that it represents a call to "violence against a person or group based on race, nationality, political affiliation, religion, sexual orientation, disability or other personal trait, whereas the publication of information represents a direct threat with a serious and irreparable consequence whose occurrence cannot be prevented otherwise".

The Ministry also has flexible mechanisms under the Law on State Administration: adoption of other types of bylaws - instruction and adopting a legally non-binding opinion.

On the other hand, there are no inspections in relation to the media.

Regarding what was legally provided for, there are still modest monitoring powers; even flexible mechanisms (instruction and opinion) have not been used, and some effective measures are missing, for example, inspection measures.

⁸ Article 47, Law on State Administration, Official Journal of RS, No 79/2005, 101/2007, 95/2010, 99/2014, 47/2018 i 30/2018

⁹ *Ibid.*, Article 59

In the case of the obligation to submit to the Media Registry the data on the allocation of funds to the media, which is largely ignored by public authorities, it is clear that the full implementation of the law is not ensured. The data on whether the Ministry has submitted misdemeanour complaints to the Misdemeanour Court, or whether responsibility for impunity lies with the Ministry or the court, are not available to the public. It should be noted that for this misdemeanour the Law prescribes a fine to a responsible person in a public authority in the amount of RSD 50,000 to 150,000.

In addition to the above measures, the Law does not say much about the very control mechanism available to the Ministry.¹⁰ The control is further provided for by legal rules that describe the procedure by means of other laws (Law on General Administrative Procedure, Law on State Administration, and Law on Ministries).

According to the Rulebook on Internal Organization and Job Classification, the Information Sector operates within the Ministry and includes a smaller internal unit – Department for normative affairs, project co-financing and records of foreign correspondents and foreign correspondence offices, which deals with control issues. Within the Department, three officers are envisaged, who, among other tasks, have the authority to monitor over the implementation of laws and initiation of misdemeanour proceedings.¹¹ Given that it is not known whether these controls were performed at all, there is also a question about the efficiency and effectiveness of such control. The sufficient indication seems to be the lack of public data (reports) on what has been done in relation to monitoring procedures.¹²

The Ministry performs monitoring by acting *ex officio* or based on the filed complaints. Regarding the entity being monitored, data are first collected, a record is drawn up on the basis of which they decide whether there are elements for further processing, and then, if necessary, they take further legal measures and actions. Regarding the actual activity as regards complaints, the Ministry mostly relies on the

¹⁰ *Ibid.*, Articles 3 and 132

¹¹ Ministry of Culture and Information, *"Rulebook on internal organization and systematization of working meat in the Ministry of Culture and Information"*, Belgrade, 2013, pp 26–28 <http://www.kultura.gov.rs/lat/dokumenti/pravilnik-o-sistemizaciji/pravilnik-o-sistemizaciji-2013/pravilnik-o-unutrasnjem-uredjenju-i-sistemizaciji-radih-mesta-u-ministarstvu-kulture-i-informisanja>

¹² Ministry of Culture and Information, "Media field regulations," 2018 <http://www.kultura.gov.rs/lat/dokumenti>

Law on General Administrative Procedure, which is applied by all state authorities in the field of administration. For this reason, the way the Ministry acts does not differ at all from other bodies.

Monitoring over public media broadcasters

Law on Public Service Broadcasting stipulates that monitoring of the implementation of the provisions of this law is carried out to a certain extent by the ministry responsible for public information.¹³ Although the Law on Public Service Broadcasting stipulates that monitoring of the implementation is entrusted to the Ministry of Culture and Information, the Law does not provide specific measures that the Ministry applies in relation to public media broadcasters. On the other hand, Law on Public Service Broadcasting, Article 52 states that "the provisions of the law that governs public provision of information and electronic media shall be applied to the matter that refers to the public service broadcaster and that is not regulated by the provisions of this Law".

The system of control over public media broadcasters is in fact reduced to the powers of the Regulatory Authority for Electronic Media: the powers relating to the introduction of a new media service (Article 14); appointment and dismissal of the members of the Management Board of Public Service Broadcaster; granting consent to the statute of the public service broadcaster; the control regarding cross-subsidising (Law on Public Service Broadcasting, Article 45); adopting rules on the assignment of unused rights to contents of the public media broadcaster (Article 46); the report on activities and business performance of a public media broadcaster submitted for information to REM.

We did not notice any reports or other data on the Ministry's website on monitoring the performance of public media broadcasters.¹⁴

Public media services, RTS and RTV, once a year, submit to the National Assembly for consideration and decision-making, and to the Council of Regulators for information, the report on activities and business performance for the previous

¹³ Article 53, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 i 12/2016 – authentic interpretation

¹⁴ Ministry of Culture and Information, "Media field regulations," 2018 <http://www.kultura.gov.rs/lat/dokumenti>

year, together with the report of an independent official auditor. The report on activities and business performance is made in a way that it clearly separates the main activity of the public service broadcaster from commercial activity, as well as the financing sources of these activities.¹⁵

Transparency of data on activities

There is very few publicly known exact data about how the performance of activities is organized, so we did not notice that bylaws and other internal documents of the Ministry of Culture and Information are published describing the activities during monitoring, or to which the controller refers to in his work.¹⁶ The last published document related to the work plan is for 2015.¹⁷ There are no reports on the activities in the last few years; there are no data on the results of monitoring activities conducted, or warnings issued¹⁸, as well as any possible filed complaints.¹⁹ However, the regulation that prescribes only a few misdemeanours and commercial offenses²⁰ does not provide enough tools for the Ministry to perform adequate monitoring and ensure the implementation of legal provisions.

The interest in publishing the data because they contain very important information about the current state is obvious, and the public would certainly be interested in the data on the findings, as well as whether it was, and against which media, the complaint was filed. Furthermore, such data are useful for internal control, in order to determine the efficiency and effectiveness of the activities performed. However, we did not notice any internal control reports, so it is not possible to determine whether they dealt with them as well.

The conclusion is that the Ministry does not publish data on monitoring over the implementation of laws. The latest documents that can be found on the Ministry's

¹⁵ Article 51, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 i 12/2016 – authentic interpretation

¹⁶ Ministry of Culture and Information, "Information Booklet", last change was made on January 2019 <http://www.kultura.gov.rs/lat/dokumenti>

¹⁷ See: <http://www.kultura.gov.rs/lat/dokumenti/program-rada>

¹⁸ Article 47, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 i 12/2016 – authentic interpretation

¹⁹ The last published report on the activities we found dates back to 2013

²⁰ Articles 133 – 140, Law on Public Information and Media, Official Gazette of RS, No 83/2014, 58/2015 i 12/2016 – authentic interpretation

website refer to the 2013 report on activities and, for example²¹, work plan for 2015.²² Work Information Booklet was updated in May 2018²³, but it does not state anything regarding the activities of control. There is no mention of the implementation of monitoring in the above documents. The Ministry does not really behave transparently in its work, as it does not proactively publish information that clearly and unambiguously establishes the "rules of the game" for all media, as well as information on interventions within its competence that it takes to ensure compliance with these rules and equal conditions for all media. At the same time, the representatives of the Ministry did not respond to the call for a discussion within this research.

The mutual relationship between the monitoring authority and the Regulator

The extent to which there is interdependence in the work of the authorities and the mutual influence of conduct of one monitoring state authority towards the other – the regulatory authority, can be seen in the example of the allocation of funds in the public competition of the Ministry for co-financing the media content of public importance in 2018. Namely, although in its report the REM stated that Happy Television did not comply with the Rulebook on minimum conditions for provision of media services and criteria for deciding on the procedure for issuing a licence for the provision of media services on the basis of the conducted public competition²⁴, this television received funds at the Ministry's competition, for the content of entertaining, i.e., commercial character. Article 23 of the Law on Public Information and Media states the following: "All applications shall be assessed according to the

²¹ Ministry of Culture and Information, *Work report for 2013*, <http://www.kultura.gov.rs/lat/dokumenti/program-rada/izvestaj-o-radu-ministarstva-za-2013--godinu>

²² Ministry of Culture and Information, "Program of work", "Working plan document", the last published document is the Working Plan for 2015 <http://www.kultura.gov.rs/lat/dokumenti/program-rada>

²³ Ministry of Culture and Information, "Information Booklet", last changes were made on January 2019 <http://www.kultura.gov.rs/lat/dokumenti/informator-o-radu>

²⁴ Rulebook on minimum conditions for provision of media services and criteria for deciding on the procedure for issuing a license for the provision of media services on the basis of the conducted public competition <http://rem.rs/uploads/files/Pravilnici/1387-Pravilnik%20minimalni%20uslovi%20i%20kriterijumi%20za%20izd%20dozvole.pdf>

extent to which proposed project activities are appropriate for the realisation of public interest in the public information sector in accordance with Article 15 hereof, and according to the extent to which, based on the documents submitted, the applicant provides a better guarantee of his commitment to the professional and ethical media standards". Article 18 of the Rulebook on co-financing projects of public interest states that "the criteria on the basis of which the projects applied for competition will be assessed are, inter alia: 1) whether the participant was imposed measures by state authorities, regulatory authorities or self-regulatory authorities in the past year, due to violations of professional and ethical standards (the data is obtained by the professional service from the Regulatory Authority for Electronic Media, for electronic media, and from the Press Council, for print and online media). So, the REM detected a violation of the terms of the licence, but the provider still received funds.

If, however, a certain media provider has not been imposed a measure so far, but it has been found that the Rulebook has not been complied with, the organizer of the competition must anticipate this situation and redefine the conditions and rules for the allocation of funds.

REGULATORY AUTHORITY FOR ELECTRONIC MEDIA

Defining regulation

Law on Electronic Media is based on the rules of the Directive 2010/13/EU concerning the provision of audio-visual media services.²⁵ The Law governs the organization and activities of the Regulatory Authority for Electronic Media, the conditions and manner of providing audio and audio-visual media services, the conditions and the procedure for issuing licences for providing audio and audio-visual media services, as well as other issues of relevance to the field of electronic media.

The legislator recognizes the transition to an independent form of control, but to some extent it limits it. It normatively regulates the work, competencies and

²⁵ European Parliament and the Council, Directive 2010/13/EU, Official Journal of the European Union, 2010, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0013>

activities of the Regulatory Authority (REM or Regulator) in the field of electronic media; it regulates the procedure regarding the issuing of licences for the provision of media services. It quite precisely regulates the reasons why media service providers may lose the very same licence. The law envisioned what we consider to be the key supervisory role: it governs the protection of media pluralism, the protection of minors, the provision of conditions for adequate protection in the judiciary system in case of violation of the rights of audio-visual service providers, as well as their penalisation in case of non-compliance with the provisions of the Law on Electronic Media. There is the greatest number of irregularities in the application in this very respect.

Conditions for ensuring good regulatory work

The achievement of independence of Regulator's work is the foundation of ensuring good regulatory work. Independence must be realized from all influences that may jeopardize monitoring of achieving media freedoms in the provision of media services through electronic media, as well as the achievement of public interest.

If we compare the introductory articles of the Law on Electronic Media with the provisions that regulate the competencies of the Regulator in more detail, as well as its procedural activities and its responsibility, it is clear that the principle of independence is not fully applied equally. This refers to the so-called entrusted tasks assigned to the Regulator by the Law, and further implies the possibility of the Ministry's influence on the independent body.

The Regulator must have a well-regulated legal framework with no gaps that make it difficult to work, as well as a precise organization, sufficient and quality capacity of personnel, resources, technical conditions (cutting-edge technologies, software for monitoring the work of broadcasters, continuous training of employees, adjusting to new trends of control and monitoring), conflict of jurisdiction and collisions with other acts at the lowest possible level, constant measurement of efficiency and effectiveness and auditing of what has been done.

Status and position in the legal framework of Serbia

Monitoring authorities fit well into the organization of the public sector, but other research has shown that the Serbian administrative tradition and the legal framework do not fully recognize their status and role.²⁶ There is no horizontal legislation or a particular framework law that would govern the establishment and operation of independent bodies, so in that sense there is a problem that relates to all independent bodies in Serbia.²⁷ Serbia generally needs a consistent regulatory framework for the establishment and functioning of independent bodies, which should include clearly defined links to horizontal legislation governing civil servants and salaries, the budget, procurement procedures and other rules.²⁸ In that respect, it would be extremely important for the REM to collect experiences from other monitoring authorities.

The Parliament has not yet approved of the Draft Statute of the Regulatory Authority (which regulates the work of the authority), although it was submitted within the legal deadline, after the adoption of the set of media laws in 2014. Therefore, the Regulatory Authority operates according to the Statute of the Republic Broadcasting Agency from 2005, which was adopted on the basis of now void Law on Broadcasting.²⁹ In support of that, employees in the professional service of the Regulator have the status of civil servants, and their rights and obligations are subject to regulations on the position of employees in the state administration,

²⁶ US AID and BCRR, *Agencies in Serbia: Analysis and recommendations related to reform*, Belgrade, 2015, (footnote 47), p. 22f.

²⁷ Kristina Irion et al, *The independence and functioning of the Regulatory Authority for Electronic Media in Serbia: Assessment using INDIREG methodology*, Council of Europe, Amsterdam/ Brussels/Budapest/Belgrade, p. 51

²⁸ See: Kristina Irion et al, *The independence and functioning of the Regulatory Authority for Electronic Media in Serbia: Assessment using INDIREG methodology*, Council of Europe, Amsterdam/ Brussels/Budapest/Belgrade, page 51 and European Commission, Serbia Progress report for 2014, SWD(2014) 302 final, October 2014, p. 10 https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf ; Maja Poznatov: "Commission: Serbia should acknowledge the remit of independent bodies", Euractive, 16th November 2017, <https://www.euractiv.com/section/enlargement/news/commission-serbia-should-acknowledge-the-remit-of-independent-bodies/> .

²⁹ Statute of the Republic Broadcasting Agency, Official Gazette of RS, No. 102/2005, <http://rem.rs/uploads/files/Statuti/7321-statut-republicke-radiodifuzne-agencije.pdf>

which additionally reduces the flexibility in organizing the work of the Regulator and indirectly affects the capacities of the Regulator in carrying out numerous tasks that are entrusted to it by the law.³⁰

(In)dependence of the Regulator

The essence of the existence of a regulator is achieving the representativeness of a society and its detachment from politics. Independence of the regulatory authority primarily refers to the fact that it is not instructed by any other body while performing its tasks. The aim is to establish a fully independent regulatory mechanism in the field of electronic media, whose function is to provide equal conditions for all media service providers.

Functional independence

However, the Law on Electronic Media and the Law on Public Administration classify the Regulator as "a holder of public powers" which performs "entrusted tasks". In such an arrangement that has a partial foothold in the Constitution, the Regulator becomes "something between" an independent body and state administration body, which is a kind of a contradiction and significantly influences its quality of work.³¹ Pursuant to the Law on State Administration, in the performance of entrusted tasks of state administration (most of the tasks of the regulatory authority fall into this category), holders of public powers have the same rights and duties as state administration bodies, whereas the Government and state administration bodies "after the delegation of state administration tasks, retain responsibility for their execution." In addition, the Regulator is obliged to obtain from the specific ministry the opinion on the constitutionality and legality of the regulations before adopting them, and in that opinion the ministry gives a reasoned proposal to the Regulator³².

³⁰ See: Contributions for drawing up the Strategy for the Development of Public Information System by 2023, page 49; and Miloš Stojković, „Nezavisno Regulatorno telo za elektronske medije“, *Bettermedia*, Beograd, 2018, <http://www.bettermedia.rs/tag/regulator/>.

³¹ Contributions for drawing up the Strategy for the Development of Public Information System by 2023;

³² Contributions for drawing up the Strategy for the Development of Public Information System by 2023, page 48;

Organisational independence

As regards organisational independence, a huge political influence on the election of bodies of the Regulatory Authority comes into light. According to one of the members of the relevant Assembly Committee on Culture and Information, the questions related to the operations of the REM are almost never posed in the sessions, or they cannot be posed, since such issues are not included in the agenda on the proposal of the members.³³ On the other hand, the Committee becomes active regarding issues that it should not be dealing with. For these reasons, it seems that the Assembly Committee, rather than performing the role of facilitator of the process of election of Council Members, determines the suitability of candidates, which it should not be having a mandate for. It may be concluded from the report on the activities of the REM for 2017 that the Council currently has 6 members out of a total of 9 that it should have and that this is a borderline number of personnel in order to be able to actively make decisions (for example, in the absence of only one member, the Council no longer has a quorum for making decisions which require a two-third decision making: the decision to suspend a member of the Council, the election of the president and the deputy president of the Council, the adoption of the Statute, the Rules of Procedure of the Council's activities and bylaws).³⁴ We conclude that it is unsustainable for the Council to retain this number of members and that it is necessary to do everything it takes for it to be in full session again.

Financial independence

Financial independence of the REM is endangered because the National Assembly, as the competent body, did not use to approve of the annual financial plans of the Regulator within the appropriate timeframe, so this body was brought into the situation to constantly work according to the plans from the previous year. Although there is no legal deadline for deciding on the financial plan, it makes no sense for the act of consent to be given retroactively i.e. at the end of the year for the current year. It should be added that the Parliament put an end to this practice in 2018 and approved of the 2019 financial plan of the REM. The Regulator's independence is

³³ Source: professional academic public and a member of the Assembly Committee for Culture and Media;

³⁴ Regulatory Authority for Electronic Media, *REM report for 2017*, <http://rem.rs/uploads/files/PDF/Izvestaj%20o%20radu%20REM%202017..pdf>

limited by the fact that it cannot engage alone in deciding on spending the funds from its own budget. In this way, the Parliament directly brings instability in the work of the Regulator and obstructs (with or without intent) the implementation of the planned activities. The European Commission's Annual Report for 2016 states that Parliament's support to independent bodies is inadequate and that the trend continues even further.³⁵ In order for the Regulator to gain substantive independence, the Parliament must first do its part (approve of the financial plan and the statute in due time) and to pay greater attention to the work of the REM, especially to disputable activities from this analysis, through the Culture and Information Committee.

REM Council

The legislator foresaw the Regulator's Council to have 9 members.³⁶ Since the establishment of the regulatory authority, it has been repeatedly confirmed that there is an exclusive political influence on the election of members of the REM Council. Regarding this, let us recall the way the new members of the Council have been elected from the end of 2015, particularly the part related to the election of candidate proposed by civil society associations whose goals are to achieve the freedom of expression and the protection of children. First of all, through the competent Culture and Information Committee of the Serbian Parliament and in accordance with the will of the ruling majority, the Parliament abused its mandate and from the primarily technical participant turned into the main "arbiter" in deciding who becomes a member of the REM Council. Thereby, there are grounds that a violation of legal procedures occurred. Similar was the behaviour of the Parliament itself, whose majority refused to vote to elect one of the two candidates nominated by civil society associations whose goals are to achieve the freedom of expression and the protection of children. The Assembly announced a new public call for the application of candidates thereby violating legal procedures, after which the candidate was elected in accordance with the will of the ruling coalition, on the proposal of the newly-established association. This candidate was nominated by civil

³⁵ European Commission's Annual Report on Serbia for 2016 http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/godisnji_izvestaj_16_eng.pdf

³⁶ LEM, Article 9;

organizations dealing with persons with disabilities, and not with the protection of children's rights and freedom of expression, which is a legal requirement to be a proposer.³⁷ This kind of behaviour indicates that all allowed and prohibited methods seem to have been used in the attempt of the leading political party in the government to influence the election of their candidates for members of the Council.³⁸ Some deputies even publicly stated that they do not know why they vote when the outcome is known in advance. Due to the violations of the Law on Electronic Media during the election procedure for the members of the REM Council, authorized civil sector proposers filed a lawsuit with the Administrative Court.³⁹

As for the very members of the Council, there is considerable disproportion in what they are supposed to do, how they work as members and the way they come out on behalf of the Council. Basically, the REM Council is a decision maker, but Council members seem to have little stake and invest too little in securing independence and effective functioning of the REM.⁴⁰ The involvement of Council members is often limited to regular sessions of the Council which are held at least twice a month. They are not employed by the Regulator, they do not have the obligation to be coming except to the mandatory sessions, but on the other hand they have a great influence on the decision making process. Until recent public appearances, we notice that there was no personal address of the members of the Council to particular journalists and the media. Today it becomes a trend, so members sometimes address on their own behalf, and sometimes on behalf of the Council. In the election campaign in 2016, the situation was noted that out of five pieces of news on the Regulator's website, three were addresses of the member of the Council Olivera Zekić to the media Cenzolovka, one to NUNS and one to N1 Television. The representatives of the Regulator, i.e. the members of the Council, should not make appearances outside the framework assigned to them. The Council should work in accordance with the assigned competencies, following the arranged procedure: to act on the complaints, if there is an irregularity in the work of a particular media, to respond in the manner that is foreseen and not to be communicating with persons

³⁷ Source: professional academic public;

³⁸ European Commission's Report on Serbia for 2017, page 63;

³⁹ Source: professional academic public;

⁴⁰ The independence and functioning of the Regulatory Authority for Electronic Media in Serbia: Assessment using INDIREG methodology page 76;

who hold different beliefs, and finally, with media and individuals who actually point out irregularities.

“Control” of the controller

In connection with the aforementioned entrusted tasks of the REM, in accordance with the Law on State Administration, there are solutions in its very arrangement that lead to problems: the competent Ministry of Culture and Information, in fact, has a considerable number of authorizations in relation to the Regulator as regards the following:⁴¹

- supervision of the legality and the purposefulness of work,
- control of the constitutionality and legality of bylaws,
- temporary undertaking of activities from the holder of the public power – the REM, in accordance with the Law on Electronic Administration, if these are not done by the holder.

One of the functions of the Ministry is to determine the reasons why the Regulator does not perform its role, in the part in which it is detected.

Determining regulation

Regarding the controlling role, the legislator first defines in general the competence of the Regulator and precisely states that REM "controls the work of media service providers and ensures the consistent application of the provisions of this law" and "imposes measures to the media service providers in accordance with this Law".⁴²

Article 24 provides for control of the activities of media service providers: "The Regulator controls the work of media service providers regarding the consistent application and promotion of the principles underlying the regulation of relations in the field of electronic media in terms of meeting the conditions for providing media services, as well as in performing other obligations which, according to the provisions of this Law and bylaws, service providers have, and undertakes the prescribed measures without delay." Precisely in this regard, consistent application

⁴¹ ANEM, *Guide through new media laws, For media and journalists*, 2015;

⁴² LEM, Article 22

means that the Regulator is expected to make its controlling role thorough and complete⁴³, and that the MSP is obliged to strictly meet the required conditions.

"In the implementation of the control referred to in paragraph 1 of this Article, the Regulator shall particularly ensure that media service providers respect the obligations related to the programme content stipulated by this Law and the conditions under which the licence has been issued to them, which in particular refers to the type and the character of the programme.⁴⁴

The Regulator shall initiate proceedings before a competent court or other state authority against a media service provider or a responsible person, if his act or omission has the character of an offense punishable by law".

What is prominent is role of the Regulator which ensures that the MSP complies with the legally stipulated obligations in relation to the programme content and the conditions under which the original licence was issued to them, which specifically refers to the type and character of the programme. However, the impression is that the REM does not fulfil this role. The REM implements and publishes on its website annual analyses of programme content of televisions with national frequency.⁴⁵

Namely, the granting of licences for the provision of media services was carried out on the basis of a public competition, within which one of the conditions for candidates was to submit detailed elaborates on their programme. Although the Law requires consistent control of the conduct of broadcasters in relation to the elaborates on the basis of which they received their frequencies, unfortunately, we are witnessing that the allocated frequencies are only renewed, without considering the programme content that media service providers are broadcasting and the non-compliance with the Rulebook on minimum conditions for provision of media services and criteria for deciding on the procedure for issuing a license for the provision of media services on the basis of the conducted public competition. In its reports, the REM certifies that several media service providers do not respect the minimum requirements of the above Rulebook. Thus, in its report, REM for example

⁴³ <https://www.paragraf.rs/dnevne-vesti/210616/210616-vest1.html>

⁴⁴ LEM, Article 24

⁴⁵ <http://www.rem.rs/sr/izvestaji-i-analize/izvestaji-i-analize-o-nadzoru-emitera/analize>

finds that Pink Television: "seriously violates the obligations defined by the Rulebook and does not have two out of five mandatory programme genres".⁴⁶

Basic functions of the Regulator

Regarding the control procedures, the functions of the Regulator are:

- adoption of bylaws and recommendations related to law enforcement and participation in policy-making related to the provision of media services;
- control of MSP;
- performing other regulatory functions.⁴⁷

The Regulator shall adopt bylaws for more efficient implementation of the Law on Electronic Media. By means of rulebooks, the REM closely elaborates certain provisions of the law, while the instruction specifies in more detail the way in which the Regulator applies the provisions of the laws, regulations and other provisions related to programme content. The rulebook and the instruction shall be published as bylaws in the Official Gazette of the Republic of Serbia.⁴⁸

The REM shall make a recommendation in the event that there is an uneven allowed practice of media service providers in the application of the provisions of this Law relating to programme content, if it is in the interest of media service users to establish a unique practice in order to improve the way in which these services are provided. The recommendation is not binding, and shall be published on the website of the REM.⁴⁹

Consideration of applications

In the implementation of control measures, in Article 26 of the Law on Electronic Media, the legislator provided for and regulated the consideration of applications whereby he defined who is eligible to submit the application to the Regulator: "Natural and legal persons, including media service providers, are eligible to submit applications to the Regulator regarding the programme content of media service

⁴⁶ <http://rem.rs/uploads/files/izvestaji-o-nadzoru/2017.pdf>

⁴⁷ LEM, Article 22;

⁴⁸ LEM, Article 25;

⁴⁹ LEM, Article 25;

providers if they consider that such content is violating or jeopardizing their personal interests or the public interest".⁵⁰

The possibility of submitting applications is crucial to the REM's communication and relationship with citizens. Citizens in practice quickly detect possible irregularities, and in that sense, the possibility of submitting applications should enable quick access to the Regulator and making an impact on its work.⁵¹ The legislator does not specify in detail the public interest⁵² which the law states as the ground for the application. The applicant bears the burden of proof primarily of personal interest, which is clear and logical, but also of the public interest. The data on the results of acting upon applications, along with explanations, would present very useful information to citizens for future submission of applications.⁵³

The application may be submitted no later than 30 days from the date of the premiere or repeated broadcast of the content in question. We believe that it is not right that the irregularities committed, given the possibility of their gravity, are limited to such short deadlines.

The Law does not regulate precisely enough the conduct of the Regulator since the moment of the arrival of the application: "The Regulator is obliged, upon receipt and consideration of the application indicating the violation or jeopardising of the rights or legal interest of the applicant, to communicate the application without delay to the media service provider with a request to declare on it no later than eight days from the date of communication of the application". The details regarding acting upon applications are regulated by a special bylaw – the Rulebook on the manner of imposing measures to media service providers.

"If it establishes that the application referred to in paragraph 1 of this Article is reasonable, the Regulator shall impose measures in accordance with the provisions of this Law on the media service provider or submit a request for the initiation of misdemeanour and criminal proceedings or initiate another proceedings before the competent state authority, and refer the applicant on how it can achieve and protect its rights".

⁵⁰ LEM, Article 26;

⁵¹ <https://gradjaninastrazi.rs/vesti/budenje-rem-a-vise-od-300-prijava/>

⁵² LEM, Article 26;

⁵³ LEM, Article 39;

Ambiguities in the process of submitting applications

Citizens can submit applications in different ways. The basic way to do this is by a written submission, which is delivered directly, by mail, by fax or e-mail to the Regulator.⁵⁴

Application on the Regulator's website

Another way is to do this through an application that the Regulator has set up on its website:

<http://www.rem.rs/sr/zahtevi-i-prijave/podnesite-prijavu>

The method of submission through the application on the website is provided by the Rulebook on the manner of imposing measures, but it is not regulated in a detailed and precise way.⁵⁵ The form itself contains fields in which it is necessary to enter certain data regarding the details of the offense itself, suspected of being committed, but also the applicant's personal data. Given that the application form specifies that, for example, data such as first and last name, address, postal code, phone number as well as e-mail should be entered, the application will not accept the incomplete applications. The Regulator does not explain that nor inform possible applicants with the rules of filling in applications. On the other hand, the Regulator thus creates a specific database related to the applicants, which contains the applicants' personal data. It is not known whether the REM in this process complies with the requirements of the Law on Personal Data Protection.

It is very important to obtain information on how the data from the application are possibly managed, how they are stored and kept, especially the data submitted and kept in electronic form through an existing application. An addition to this is the information you receive when submitting an application through a software return message (electronic data protection system on our personal computers), which states that this approach and submission is "*not safe*".

⁵⁴ Rulebook on the manner of imposing measures to media service providers, Article 4

⁵⁵ Submission via an application is a form of direct submission (Rulebook on the manner of imposing measures, Article 4)

Recording the submitted application

The Regulator first records the submission, assigns a certain filing number to it i.e. introduces it to further action and thus follows the initiated case. After the process of submission, the applicant does not receive any feedback on filing the case itself.

Through interviews and insights into other projects that have been implemented (the example of the Internet platform "Application" developed by the Zaječar Initiative with the aim of assisting citizens in submitting applications to the REM regarding the content of broadcasters' programme), we noticed that there is a certain number of cases, in which the professional services of the Regulator did not address to the applicants in connection with possible amendments to the submitted applications.^{56 57} On the other hand, certain outcomes remain unknown, or one can subsequently get data on the results of submitted applications.⁵⁸

Acting upon the submitted application

As a separate issue, we draw attention to the fact that, according to the Rulebook on the manner of imposing measures, the Regulator communicates the application to the media service provider, with a request to declare on it. We consider this provision very controversial in the part that would relate to the applicant's personal data. We conclude that the Regulator delivers a copy of the complete application without the protection of the applicant's personal data. In this way, a private or public broadcaster first finds out or can find out the applicant's identity, basic information about him or her. We do not think that it is good for the broadcaster to find out the identity of the applicant, but unfortunately, from practical experiences, we notice that this happens. In this way, it may exercise certain unallowed influences (for example, contact the applicant and "negotiate" about the withdrawal of the application, but also exert other pressure). For the Regulator, the information about the applicant is sufficient, of course, in addition to detailed data regarding the offense suspected of being committed, although it is questionable whether something like this should exist at all, especially if the public interest is violated. Based on the data from the application, the MSP can also create a specific database as regards the applicants.

⁵⁶ <http://www.publika.rs/>

⁵⁷ Source, professional academic public;

⁵⁸ <https://gradjaninastrazi.rs/vesti/budenje-rem-a-vise-od-300-prijava/>

For this reason, the Regulator should further regulate this part (first of all, in the Rulebook, and then in the application to be filled), by re-examining the specification of data that the application should contain, and in particular to ensure that the scope of this data does not exceed the protection of privacy of the applicant (in particular when it comes to the public interest).

In addition to the umbrella Law on Electronic Media, the Regulator in practice uses the administrative procedure regulated by the Law on General Administrative Procedure ("Official Gazette of the Republic of Serbia" No. 18/2016). As it is probable that applicants are citizens who notice certain irregularities and that they may not be aware of the rights and obligations they have when submitting applications, it is necessary for the Regulator to provide feedback regarding acting upon applications. Alongside the part regarding possible amendments and notifications, the Regulator could thank each applicant for the electronic application with an automatic thank-you note and inform him or her that it has been forwarded to the professional service for consideration. There is a general impression that it is trying to avoid any communication with the public and that the Regulator is completely "shutting itself up".

The administrative body is obliged to warn the inexperienced parties of the shortcomings and to invite them to complete what has been left incomplete (Article 8 (1) of the Law on General Administrative Procedure, the body ex officio ensures that ignorance and unawareness of the other participants in the proceedings are not to the detriment of the right which belongs to them).⁵⁹ As for the description itself in the field "Violation", it seems that it is very difficult for ordinary citizens to understand what a violation might mean, so the Regulator should offer a description of this category, to show an explanation of what should be entered there, for example to insert the instruction "Description of violation of rights" or the like.

Measures provided for by the Law

In Articles 28 and 29, the legislator provides for the possibility of imposing measures to the media service provider, which precisely defines that the Regulator may "impose a notice, a warning, a temporary ban on broadcasting programme content, or may revoke the licence due to liability breach relating to programme content,

⁵⁹ LGAP, Article 8;

prescribed in the Articles 47–71 of this Law, as well as because of the violation of the conditions set forth in the licence or authorization for provision of media services in accordance with the provisions of this Law ".

Measures may be imposed for violations related to the protection of human rights and dignity of a person, protection of minors, copyright infringement, violation of rules on audio-visual commercial communications and other rules prescribed by law.⁶⁰

When conducting the procedure and imposing the measures, the controller is obliged to respect the principles of objectivity, impartiality and proportionality, and during the procedure to take into account the possibility and the opportunity for the MSP to declare itself on the facts that are the reason for conducting the procedure.⁶¹

Measures are foreseen in relation to the gravity of a violation: a notice - imposed due to a violation of the obligation from the Law, a warning - due to a serious violation of obligations from the Law, a temporary ban on broadcasting programme content - due to particularly serious violation of obligations from the Law; revocation of the licence - the final measure that is imposed when all other measures did not give results i.e. if the MSP continues to violate its obligations after the imposed measures.

The Regulator shall impose measures independently of the use of other means of legal protection available to the injured party or another person in accordance with the provisions of special laws, whereas the provisions of the Law, with the exception of the measures of revocation of the licence, "apply accordingly to the media service providers for which there is no obligation to obtain licences."

While imposing the measures, the legislator provides that "the Regulator shall particularly take into account the degree of responsibility of the media service provider as well as the manner of the performed liability breach, the motives behind the liability violation, the degree of danger or damage of the protected object, the gravity of the consequences caused by the damage, the frequency of the activity, whether a measure has already been imposed on the provider, and the conduct of the media service provider after performing a violation". The expert public believes that such measures are ineffective, so the question is no longer why broadcasters

⁶⁰ LEM, Articles 47-71;

⁶¹ ANEM, *Guide through new media laws*, 2015

keep violating the law, but why the Regulator does not try to find a way to change such behaviour.

Obligation to impose measures without delay

By interpreting the obligations regarding conducting regulation, we conclude that the Regulatory Authority should without delay impose measures on those who violate the Law.⁶² However, although some broadcasters with a national frequency, for years keep violating on a daily basis both media laws and rulebooks issued by the REM itself⁶³, not only does this body not react, but it itself creates an environment where electronic media can without any consequences show media content that is contrary to professional and ethical standards, as well as with domestic and European regulations.

There are obvious shortcomings in the possibilities of imposing and using various sanctions. On the one hand, the monitoring authority does not have the power to impose financial sanctions that are certainly more effective than notices and warnings. On the other hand, the REM insufficiently uses its most effective sanction, i.e. temporary ban on broadcasting programme content.⁶⁴

Conclusions and issues related to (non)application of measures

Regarding the controlling role, after almost five years of implementation of the Law, several problems are noted:

- It seems that this type of measures designed as "constructive threats" do not correspond to the environment in which they are applied. The measures that you use to give notice or warn someone are the starting points; they do not even represent punishment. They are useful for a society where standards of behaviour are established, in this case a model of responsible behaviour, awareness and responsibility for one's deeds. When we provide behaviour in which after one imposed notice or warning, MSP really uses

⁶² LEM, Article 24

⁶³ <http://www.rem.rs/sr/izvestaji-i-analize/izvestaji-i-analize-o-nadzoru-emitera/izveshtaji>

⁶⁴ The independence and functioning of the Regulatory Authority for Electronic Media in Serbia: Assessment using INDIREG methodology, quote

the imposed time period in order to correct the irregularities, only then will such measures begin to produce the effect.

- There are several reasons for the absence of effect of the imposed measures: first of all, the Regulator does not impose measures quite often, so logically, if they are not imposed, they cannot even achieve the foreseen benefit.⁶⁵ The second reason does not apply to the measure itself, but to the fact that the Regulator does not impose it. Why? It may be because it understands that, in the society in which they are applied, they simply do not achieve their purpose;
- When the Regulator notices that the MSP keeps committing irregularities (ex officio or on the basis of the submitted application), and the Regulator imposed milder measures, it is logical to decide on the step by which it can examine the reaction of the MSP to more serious consequence that it might be faced with and to apply harsher measures at its disposal;
- Furthermore, if the legislator foresaw a ban on broadcasting as a harsher measure, it is not up to the Regulator to interpret this narrowly in terms of what, for example, the broadcasting ban could do, but to execute the given competence and obligation. Namely, in its public statements, the Regulator refers to the thesis that this measure would represent censorship or jeopardising pluralism. It is true that, in this measure, caution should be exercised, given that it really leaves the possibility of political abuse, especially in the case of the Regulator whose independence is seriously endangered;
- The Regulator acts ex officio and on submitted applications. In that sense, it is obliged, as far as it can, to apply all measures at its disposal, and as an ultimate, to revoke the MSP the licence and file a misdemeanour charge.
- There is also a question of the real power of the measures themselves, although (ir)responsibility for their non-implementation should nevertheless be transferred to the Regulator, which, contrary to its capabilities and capacity, does not use harsher measures. We are quite sure that such measures, at least for a brief period, would deter the MSP from violating the law. Certainly, a total of 22 imposed measures for 5 years of

⁶⁵ The independence and functioning of the Regulatory Authority for Electronic Media in Serbia: Assessment using INDIREG methodology, page 33, the review of the number of sanctions and warnings related to annual reports from 2007 to 2016

the work of REM are neither quantitative nor a qualitative sample used as a benchmark of success or failure.

Filing misdemeanour charges by the Regulator

In addition to imposing measures, the Regulator has the option and authority to initiate proceedings before the competent court or other state authority against the MSP or the responsible person (request for the initiation of a misdemeanour or criminal proceedings), if his act or omission has the character of an offense punishable by law.⁶⁶

However, the Regulator is authorized only to initiate appropriate proceedings, while consideration and further acting as regards the responsibility of MSP in these proceedings are left to the competent court. If the charges are filed on time (efficiently), within the period in which it can be expected for the competent misdemeanour court to fulfil its task (and effectively), only then is it possible to assess the reasons why the system does not function (slow performance of courts, short deadlines, statute of limitations).⁶⁷

The REM's charges were mostly filed just before the expiry of the objective statute of limitations (one year from the detected irregularity), and in connection with the detected violations in the previous 11-12 months (noted from the submitted requests for initiation of misdemeanour proceedings to the Misdemeanour Court in Belgrade⁶⁸). Yet, although it has been filed before the statute of limitations, the Misdemeanour Court still has a year to resolve the case. For example, the detected irregularity with one of the broadcasters relates to July 2015. It was detected on the basis of the existing software that the REM uses and subsequently confirmed by the competent Regulator's service. In this particular case, the request for initiating misdemeanour proceedings was submitted in June 2016. This demonstrates a very slow transit from the activity of detecting to making an internal decision and the

⁶⁶ LEM, Article 26

⁶⁷ Verification of integrity plan risks and efficiency analysis of public authority self-assessment, pp. 12 and 48 http://www.acas.rs/wp-content/uploads/2012/06/Izvestaj_o_sistemu_pravosudja_-_Final.pdf

⁶⁸ Insight into submitted requests for initiation of misdemeanour proceedings to the Misdemeanor Court in Belgrade, received at the request of the Slavko Ćuruvija Foundation as part of the work on the project

practical initiation of misdemeanour proceedings. But on the other hand, it demonstrates the slowness of functional processing by the Court (examination upon filed complaint, if we ignore the technical part about the receipt and determining the acting judges).

From the insight, we note that it usually takes between 30 and 40 days from the day of receipt for the Misdemeanour Court to initiate procedure and resolution (the procedure of receipt, filing and assignment of the case). Thereafter, (until expiry of the general statute of limitations of 2 years, for the legally binding closure of the case) the case must be resolved. In order to ensure the writ of execution, the deadline shall remain for at least one year from the day of the final conviction. In the course of action, the Court is faced with numerous situations, from returning mail for four or five times in cases of attempted delivery, requests for access to the documentation attached to charges, to the request for postponement due to annual leave of the responsible persons at the electronic media against which the misdemeanour proceedings is conducted. Many of these requests represent permissible technical options that actually slow down or aggravate the work of misdemeanour bodies, with the ultimate goal leading to the statute of limitations.⁶⁹

On the other hand, we noticed that the REM as well submitted requests mainly related to the observed irregularities regarding advertising.⁷⁰ In most of these cases, almost all the standards to which filed charges relate ceased to be valid with the adoption of the new Law on Electronic Media in 2016.

Internal organisation of activities during the process of monitoring

Based on practical indicators, it may be justified to raise a question regarding the internal organisation of the control mechanism. How are decisions made about whether and to what extent should they get involved in the application of measures and in the potential filing of charges to the competent courts? The Regulator passed the bylaw – the Rulebook on the manner of imposing measures to media service providers, where it regulated in more detail acting upon submitted applications and ex officio. The Rulebook states, inter alia, that the application should be initiated on

⁶⁹ Information obtained from the practice of the Misdemeanor Court

⁷⁰ Response of the Misdemeanour Court on the request for access to information regarding submitted requests for initiation of misdemeanour proceedings by the REM

the basis of a drawn up report. Such a report can only be made by a professional service. The service further implements the procedure and identifies all decisive facts that are of importance for the decision-making process. The decision is made at the Council session, so it is logical for such a decision to be made by the members of the Council and to do so on the basis of the explanations provided by the professional service.

Based on the published documents, the REM monitors and follows, for example, meeting the requirements as regards programme content, but the impression is that it does not undertake anything on its own conclusions. The logical questions are: are they undertaking all types of monitoring for which they have jurisdiction, whether legal measures and actions from their jurisdiction have been undertaken, if the proceedings are initiated - whether the degree of violation of the law has been determined, whether there are elements of the offense, whether the misdemeanour charges are eventually filed or are other proceedings are initiated before state authorities?

One may justifiably raise the question of how the decision is made not to initiate certain procedures after questioning or reporting, and is there any influence on (the lack of) conduct. According to the interviewed persons who have experience of cooperation with the REM's professional services, it is clear that, for example, such omissions should not happen to the legal service because they possess sufficient capacity and knowledge.⁷¹

In order for the REM to become a penalizing authority, the decision-maker must (and should) establish a functional system within the body itself that would allow professional services smooth operation and the absence of influence of the members of the Council on the part of the work they do – legal work.

In this regard, certain analyses are in favour of the fact that within the the REM Council there has to be room for the media rights experts, economists who have experience in working with the media, engineers dealing with media service technology.⁷²

⁷¹ Source, professional academic public;

⁷² Contributions for drawing up the Strategy for the Development of Public Information System by 2023, p. 52

Transparency of activities

For the conduct of the REM and the presentation of its very activities, it is of high importance for its work to be public. In addition to binding announcements, the Regulator should act proactively. In the light of the new rules related to the digitization of administration's activities and opening of data (open data), the Regulator has plenty of useful data which should be published in machine-readable format (xls, cls, csv), which is useful and suitable for further processing and use.⁷³

By reviewing the published documents, it seems that certain data and documents are published selectively.

The Information Booklet was last updated in May 2018, whereas the English version was last updated in February 2017.⁷⁴

The REM should establish a practice of regular acting upon requests for free access to information of public importance. Namely, numerous interviewees from the media and research community emphasize that it is difficult, if not impossible, to obtain from the REM what has been requested in requests for access to information of public importance.⁷⁵

Negative consequences

If an institution can do its job, and does not do it properly, then it is harmful. If the work is poorly done, the consequences may be: the lack of free information in the electronic media sector, the pluralism of media content not fully realized, the lack of pluralism of different opinions and ideas, including a variety of political views, there is largely no quality programme content, the public space is dominated by inappropriate and violent media content that is harmful not only to children and minors but to the whole society. The lack of freedom of information and speech also affects democracy. The professional public considers that the Regulatory Authority is one of the factors that did not prevent the collapse of media and other human freedoms, violations of human rights and a complete decline of democratic values.

⁷³ <https://data.gov.rs/sr/discover/>

⁷⁴ <http://www.rem.rs/sr/informator-o-radu> and <http://www.rem.rs/en/information-booklet>

⁷⁵ Source: professional academic public;

Representatives of the academic community believe that the practice has shown that members of the REM Council do not always protect the public interest.⁷⁶

Although the Law stipulates that the REM should work on "improving the quality and diversity of electronic media services, contributing to the preservation, protection and development of the freedom of thought and expression in order to protect the public interest in the field of electronic media and protect the users of electronic media services, in accordance with the provisions of the Law on Electronic Media, in a way suitable for a democratic society," experts conclude that this body from the very beginning was not able to achieve systemic influence on raising the listed values.⁷⁷

PRESS COUNCIL

The representatives of the associations of media: Independent Journalists' Association of Serbia (hereinafter referred to as NUNS) and Journalists' Association of Serbia (hereinafter referred to as UNS), Media Association and Local Press established the Press Council by signing the memorandum of association in February 2009. The Press Council was established as an independent, self-regulatory body that brings together publishers, owners of print and online media, news agencies and media professionals. The Press Council has been established for monitoring the observance of the Journalists' Code of Ethics in print and online media, as well as in news agencies and for resolving complaints made by individuals and institutions related to media content.

Established as such, the Press Council has no possibility of sanctioning or pronouncing measures in the manner that the independent regulatory body does.

The Press Council consists of the Managing Board and the Press Complaints Commission composed of four representatives of the media industry (three from the Media Association and one from the Local Press), two representatives of NUNS, two of UNS and three representatives of civil society – the public.

Since its establishment, members have encountered the shortcomings of the Statute, but, as they say, they have solved the problems with good will. Through

⁷⁶ Source: professional academic public;

⁷⁷ Source: professional academic public;

interviews, we found out that they gradually decided on what media to cover by their activities because they did not use to monitor online editions. However, the desire to change the situation has led to the fact that they have also taken jurisdiction over media which did not use to accept the Council's decisions.⁷⁸

The existence of such a body in professional analysis is taken as a good example in Serbia.

How the Council operates

The Council operates on the basis of the adopted Statute and the Rules of Procedure of the Press Complaints Commission. In its scope, the Council takes care of the application of the Serbian Journalists' Code of Ethics, which regulates the basic principles of professional and ethical standards that journalists voluntarily and on a self-regulatory basis have committed to respect.

The Code notes that it is journalists' duty to follow ethical and professional principles contained therein, and to resist pressures to violate these principles. The document itself is very precisely arranged, containing guidelines that go into detail of each provision. Guidelines are very helpful given that they explain practically what constitutes the subject of each individual provision of the Code. Particularly regulated are parts such as authenticity of reporting, independence from pressure, prevention of corruption and conflict of interest, journalists' responsibilities, journalists' attention, relation to the sources of information, respect for privacy, utilising honourable means, respecting authorship and protection of journalists..⁷⁹

The Council acts on complaints through the Press Complaints Commission consisting of four representatives of the media industry, two representatives of NUNS, two of UNS and three representatives of the civil society – the public.

The Rules of Procedure of the Commission precisely and thoroughly regulate the manner of submitting complaints, the content of the submission and its further handling by the Commission. It describes the manner the complaint is received, the taking of actions after reception, the inclusion of the media that has published the controversial content; it provides objective deadlines for answering and acting; it

⁷⁸ Source: professional academic public;

⁷⁹ <http://www.savetzastampu.rs/cirilica/kodeks-novinara-srbije>

regulates possible supplements of the applicant; it describes in detail the necessary documentation in the procedure; it regulates the sessions of the Commission to discuss and decide on submitted and complete complaints, and provides for measures (public warning) explaining the manner in which its enforcement must be ensured.⁸⁰

Without exaggeration, it seems to us that the Rules of Procedure are a guideline to regulate and describe a procedure with the state authorities as well. In this way, self-regulation shows an ideal example of the existence of consciousness and the desire to regulate respect for the basic principles on which the profession rests. It is precisely in this respect that, due to the manner in which it is positively regulated, the code of conduct of print media should remain resolved according to the principle of self-regulation. Any other method of inclusion in the system of legally regulated administrative control of the state will cause complications, possibly damage and bring down established practices. Proposals and even attempts regarding legal regulation of the Council appear occasionally in the public, which we do not consider as a good idea.⁸¹ Regarding regulations that would include the Council as a participant in a certain form of regulation, we support the principle that Council's decisions have an objective and relevant impact when awarding funds in media contests carried out by the competent Ministry.

Transparency of activities

The Council also successfully conveys useful examples from practices in its work, in order to acquaint journalists as much as possible with the possible ways of violating the provisions of the Code.

On the website of the Association, we noticed a lot of documents related to the annual reports on activities and periodic results of the Press Complaints Commission. The data presented includes narrative and statistical data on the activities in the previous period, along with the conclusions and proposals for future activities.⁸²

⁸⁰ <http://www.savetzastampu.rs/cirilica/poslovnik-o-radu-komisije>

⁸¹ Source: expert academic public;

⁸² <http://www.savetzastampu.rs/izvestaji.html>

Filing complaints through the application

The website also provides an opportunity to file a complaint through the application:

<http://www.savetzastampu.rs/cirilica/podnesite-zalbu>

The application has been designed meticulously, with many details related to the case in respect of which the complaint is filed. For example, it is very good and useful that the applicant may enter a link in which he has detected an irregularity, and also upload a document – as an attachment that represents a file of a certain size. The Council also notes and urges applicants to avoid offensive qualifications, defamation and the imposition of discriminatory attitudes, and warns that it reserves the right not to publish such complaints or responses to complaints on their website.⁸³

On the other hand, we also point out a lot of private data required when filing a complaint (name, email, phone number, address of the applicant). From the data thus collected, it is possible to create a database of applicants with the said personal data. If such bases exist, it is necessary to record and specify them and limit their purpose.

The application offered is an example of a good and precise editing of an electronic way of filing a complaint.

CONCLUSION

When we talk about monitoring and regulation of media in Serbia in general, we are noticing positive and negative sides.

The procedures are mostly regulated, the mechanism established, the application is provided, it is noticeable that certain work is being done, there is a practical monitoring procedure that extends into further processing, and in some, although very rare cases, sanctioning. On the other hand, there are obvious problems in the way the rules are set that reflect as a consequence in practice.

The Ministry of Culture and Information does not have enough capacity, desire or political will to ensure the full implementation of the law.

⁸³ <http://www.savetzastampu.rs/cirilica/podnesite-zalbu>

Protection of public interest and media pluralism in Serbia

Taking into account the modest capacity of personnel as well as modest technical capacities and the broad field of application, the question is how much the Ministry is really able to perform the tasks that are currently under their jurisdiction regarding monitoring.

Given the lack of available data on procedures, the Ministry should first of all inform the public about the received applications, observed irregularities, conducted monitoring activities and submitted complaints.

In addition to establishing good cooperation with the REM, it would be very useful to determine whether there are indicators implying that there should be a change in the rules for allocating funds in the competition, with the aim of avoiding broadcasters who obviously use gaps or have a certain impact on the Regulator.

When it comes to the REM, there is noticeable presence of dependence reflected in the inability of the Regulator from the very beginning to position itself as an independent body as desired which is not subject to pressure. The specificity of the Authority as an independent regulatory organization that exercises public authority has been recognized declaratively, but many provisions of the Law on Electronic Media and the Law on State Administration relativize that independence, so the status of this body is at least vague, something between an independent regulator and a state administration body.

If the legislator wants to establish a substantive autonomy of all influences with a strong intention to fully strengthen the Regulator, independence must be determined in relation to political, business and other influences. Entrusted tasks should gradually become authentic.

The practice showed the lack of competence, the lack of serious supervision, a certain factor of influence on the work of an independent body, the lack of interest of the Ministry, conscious and deliberate absence of the real role of the Parliament, poor implementation of the law (the Regulator is neither efficient nor effective), the wrong setting of the Regulator (announcements and costing instead of efficient legal procedures and effective results), the lack of transparency in its work.

It is clear that certain monitoring is conducted as regards broadcasters, and the analyses of the REM lead to a conclusion that in most cases broadcasters do not comply with the expected obligations regarding programme content. The measures envisaged are good, but they do not pose a serious threat to the broadcaster

violating the law, since almost every broadcaster repeated the same or similar irregularities. Although it is clear that the very submission has a weaker effect than the ability to control prosecution and sanctioning, it is still a very effective means. The essence is to process without delay, and without exception, whereas the possible discretionary impact and the role of the decision-maker in this case should be regulated and limited. Effectiveness is also affected by the fact that complaints are mostly filed before the expiration of the statute of limitations.

The Regulator clearly and precisely determines who, when and how committed violations; however, after several years of practical application, it seems that the Regulator is actually powerless in conducting the control. There are several reasons for this: political and economic impacts, the lack of support from the Ministry, the lack of essential independence, inobservance by the broadcasters, fears to engage in serious problem solving, the mode of election of the members of the Council, the incompetence of the Council in these kinds of jobs.

The Regulator should continue to publish as much data as possible in relation to its activities, to adapt them and make them available for further use, in particular to highlight data related to the very work on monitoring and control. The opinion of the professional public is that the basic problem of the REM is that from its establishment it has not been able to position itself as an autonomous body that is not subject to political pressures.⁸⁴

⁸⁴ Source: professional academic public;







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