

**FREEDOM OF EXPRESSION AND MEDIA
FREEDOM IN SERBIA IN THE EU INTEGRATION
PROCESS**

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Summary

Freedom of expression and media freedom as its constitutive part represent a fundamental human right and the foundation of every democratic state functioning under the rule of law. Having in mind the complexity and the broad scope of the freedom of expression, Civic Initiatives monitor the situation in this area through six negotiation chapters, believing that all the aspects significant for the preservation and protection of this right may be perceived only through such multisectoral approach. Civic Initiatives are the coordinator of the Intersectoral group for freedom of expression and the media under the National Convention on the European Union which has contributed to the comprehensive monitoring of the activities both institutions and civil society. The trends concerning the area of freedom of expression are analyzed in chapters 5, 8, 10, 23, 28, and 32. The analysis tracks the progress towards the defined objectives of the online tools for monitoring the freedom of expression and media – the Media Freedom Matrix. The analysis covers the period from the adoption of the set of media laws in 2014 until mid-September 2018 and relies on the existing reports of national and international organizations and institutions, legal acts and research papers.

Chapter 5 regulates the area of public procurement. The objective of monitoring this chapter refers to the funding of the media through public procurement. Numerous state bodies as well as the local self-governments continue their financing practices through public procurement thereby neglecting the rules on the competitive co-financing of the media and indirectly influence the editorial policy. The most drastic example, described in the analysis, is the case of the state agency Tanjug. The confusion in this area is caused by the unclear and contested provisions of the Law on Public Procurement that allow for the spread of abuse practices. The adoption of the new Law on Public Procurement was announced for 2019, although the Serbian government pledged in the Action plan for Chapter 23 to do so in 2018.

The objectives of monitoring **Chapter 8** concerning competition policies, are the control of the

media financing through state aid. Many issues have been noted also in this area, where the state openly discriminates against the media that critically report on the work of its bodies and violates the rules on protection of competition by selectively giving state aid. The drastic example illustrated in the analysis is the granting of loans to the Pink Television network by the Serbian Export Credit and Insurance Agency on several occasions. It is also necessary to regulate the issue of work and competences of the Commission for Protection of Competition. The Commission, as an independent institution, has the authority to investigate the distortion of the free market. The Commission did not conduct an analysis of the sectoral media market with the explanation that for now there are no legal requirements for it to be implemented.

The analysis of **Chapter 10**, which concerns the information society and the media, includes the independence of the Republic Broadcasting Agency (REM), the independence of the work of public services of Serbia and Vojvodina, as well as the control of program contents for the protection of minors and vulnerable groups. The analysis demonstrates numerous shortcomings and irregularities related to the work of REM, which concern its composition, the elections for members of the REM Council, reporting during pre-election campaigns for local and parliamentary elections, as well as elections of the management boards of public services of Serbia and Vojvodina. Furthermore, the problems with the work of the REM are related to the control of media content in the context of the protection of human rights in the media with the national frequency, in which hate speech and the lynching of those who criticize the authorities are often observed. Here too, the state completely ignored the numerous recommendations and comments contributed by the OSCE, the European Union, journalists' and media associations and civil society organizations.

The central chapter, where freedom of expression and the media are concerned, is **Chapter 23** regulating the area of justice and fundamental rights. The objectives of the monitoring of this chapter concern the protection of journalists, the regulation of state funding of the media, the termination of the media control exercised by the state and the leaking of information from the investigation into the media. A special section in this chapter refers to providing information in minority languages. The trend of physical assaults, verbal threats and pressures on journalists has been on the rise since 2013 and reached its peak in 2017. The analysis shows numerous instances of attacks where the competent institutions reacted inadequately, very slowly, or not at all.

Concerns about the safety of journalists have, besides domestic professional associations and civil society organizations, been expressed by many international institutions who emphasized that the state of Serbia is obliged to carry out activities that will contribute to a more efficient system of prevention as well as of the sanctioning of the attacks carried out on journalists. One of the issues that attracted great public attention in this area concerns the improvement of normative and institutional frameworks for the protection of media freedom and the drafting of the new Media Strategy. The entire process of drafting the Media Strategy was marked by numerous controversies and non-transparency during the formation of the Working Group for drafting the Strategy, by exclusions of civil society organizations from the work of the Working Group, as well as by the failure to publish the draft strategy. A new process, which has not corrected all the irregularities, has been launched. Serious irregularities and abuses have also been observed with respect to competitive co-financing of media content, especially at the level of local self-governments. The analysis illustrates numerous problematic instances and cases reported by journalists, media and associations of citizens, where the reactions of the competent institutions and the sanctioning of errors were absent. Almost no progress has been detected regarding the full withdrawal of the state from the ownership of the media, or the prevention of unauthorized disclosure of information from the investigation to the media. It is important to stress that Chapter 23 is crucial in the European integration process; it was open at the outset and it shall not be closed until the end of the negotiations. Additionally, all deadlines stipulated by the Action plan for Chapter 23 have long been missed.

Chapter 28 regulates the area of consumer protection and health protection, and the purpose of monitoring this chapter refers to the control of the media through financing of the advertising content. This area is problematic due to the lack of legal framework that provides for its comprehensive regulation. The solutions that are present in the Law on Advertising of 2016 apply only to commercial advertising, while state and political advertising are not regulated by any other law. In its report for 2015, the Anti-Corruption Council pointed to numerous issues concerning the misuse of public funds in order to control the media. In the Report, the Council also submitted recommendations regarding which nothing has been done so far.

Monitoring of finances is regulated by **Chapter 32**. Within this chapter, freedom of expression and the media includes the supervision of the spending of budgetary funds by the State Audit Institution

for financing political parties and the competition for co-financing of the media. Since 2015, the State Audit Institution has audited 11 political parties and found numerous irregularities. However, as it commonly happens in practice, any sanctions have been omitted. During the revision of the REM, the State Audit Institution pointed to certain omissions in their work. The key irregularities have not yet been amended, and the State Audit Institution has not done a revision of the business expediency.

The following analysis contains a more detailed overview of the situation and trends in all six chapters, relying on legal regulations, reports, analyses and other documents of international and domestic institutions and organizations, as well as the documents connected to the process of Serbia's accession to the European Union. The annexes of this analysis contain the recommendations of the Media Freedom Group, civil society organizations, journalists' and media associations.

INTRODUCTION

Freedom of expression is one of the oldest human rights protected in many international conventions. As such, it represents the foundation of every modern democratic state, but also the foundation of the European Union as a supranational creation. Freedom of expression is a complex right encompassing a wide range of social relations and containing multiple legal institutes and guarantees. Media freedom is an integral part of this right and a condition for its uninterrupted enjoyment. Controlled media that do not respect ethical standards are exposed to political or economic pressures and serve the private interests of individuals or groups. They prevent the development not only of the freedom of expression and the entire system of human rights protection, but also the democratic and legal state itself.

The Civic Initiatives (CI) monitor all aspects of freedom of expression in the process of European integration from the very beginning. At the initiative of the CI, the Inter-sectoral group of the National Convention on the European Union was established, which examines the progress of Serbia in the field of freedom of expression in a comprehensive manner, through all the Chapters that deal with this area in any way.¹

The process of European integration is technically easier to follow through the already defined chapters, which include the entire legal acquis of the European Union. However, complex areas such as freedom of expression (and the freedom of the media as an integral part of this right) are often intertwined and subject to the simultaneous attention of different legal norms placed in various chapters. The titles of the negotiation chapters and the focus placed in the media, but also in the statements of the officials of both Serbia and the European Union, can often deceive and impede the comprehensive understanding of development and progress in the field of freedom of expression. For example, it is beyond doubt that much of the legal acquis related to freedom of expression are found in Chapter 23 - Judiciary and Fundamental Rights. A part of that chapter,

¹ More on the Intersectoral Subgroup on the official website of the National Convent:
<http://eukonvent.org/medusektorska-podgrupa-za-slobodu-izrazavanja-i-mediije/>.

which deals with fundamental rights, also bears the title of freedom of expression. Chapter 10 - the Information Society and the Media, as its name implies, deals with the media and encompasses technical elements necessary to ensure the media freedom and pluralism, including the independence of the regulatory body, the freedom of broadcasting and re-broadcasting, but also the substantive elements, such as the protection of minorities or the prohibition of hate speech and discrimination.

The focus of these two chapters in the field of freedom of expression leaves out of the purview other chapters which are essential for the creation of a comprehensive system of protection of this important human right. Such chapters are those dealing with public procurement, state aid, protection of competition, consumer protection (in this case, media content users), or audits of state finances. Even the European Commission's officials have the tendency to simplify the whole matter as much as possible and link one topic to one chapter no matter how broad and complex it may be.

Civic Initiatives advocate for a multisectoral approach as the only way to protect freedom of expression in all its aspects and to ensure progress in this area through the reform of the state apparatus as a whole. For the sake of clarity of the material and its better use, our analysis is also divided into chapters, however, with a remark that certain topics overlap and can be found in different chapters, and that it is necessary to coordinate the negotiating groups dealing with these chapters. Furthermore, Civic Initiatives will continue to advocate for greater inclusion of topics in the area of freedom of expression in those chapters where they are not a focal point. Therefore, in addition to Chapters 23 and 10, this analysis also contains an overview of the situation and trends in Chapters 5, 8, 28, and 32.

The following analysis relies on the overview of the situation which was published by Civic Initiatives in 2016, entitled Monitoring of the freedom of expression and media freedom in the process of EU integration.² Methodologically, the progress (or absence thereof) is monitored in

² <https://mediji.gradjanske.org/wp-content/uploads/2018/07/Pra%C4%87enje-slobode-izra%C5%BEavanja-i-medijskih-sloboda-u-procesu-EU-integracija.pdf>.

accordance to the goals defined for each chapter by the Media Freedom Matrix.³ For those chapters where there are action plans, the implementation of these plans is also monitored, but so are also those elements that may not be covered by the plan. The activities determined by the state (with the consent of the European Union) as necessary for achieving the goals serve as a good indicator but are certainly not the only measure of achieving neither individual nor general goals. We should always have in mind that the negotiations on European integrations in this area, as well, are also a mean of achieving the goal, which is to ensure the highest level possible of freedom of expression in Serbia.

The analysis relies primarily on the existing reports of international and domestic organizations and institutions, the analysis of legal acts, investigative texts by journalists and organizations, as well as on the media analysis. For the purpose of integrity and easier perception of trends, the analysis covers the entire period from the adoption of the set of media laws in 2014 up to the moment of writing, i.e. September 2018. The emphasis is placed on the information and examples from previous two years, for the sake of being up-to-date with the developments and in order to examine possible changes where the state of media freedom and freedom of expression in general are concerned. The aim of the analysis is to determine the degree of progress of Serbia in the field of freedom of expression through monitoring the achievements of set goals within EU integration process.

³ <https://mediji.gradjanske.org/matrica-slobode-medija/>.

CHAPTER 5

Financing the Media through Public Procurement

Chapter 5 regulates the field of public procurement. Providing funds to the media through public procurement represents neglecting the meaning behind the media reform and the circumvention of the rules on the competitive co-financing of media content of public importance. According to the Ministry of Culture and Information, the sole exceptions where the media may receive funds through public procurement procedures are the broadcasting of the Assembly sessions, the printing of the municipal/city bulletins, and the maintenance of the websites of the local self-government.⁴ Nevertheless, numerous local self-governments, as well as the state entities, continue to practice the media financing through public procurement. In this manner there is an indirect influence being carried out on editorial policies through the concealed subsidization of the media.

The most drastic case is the state agency Tanjug. Even though this agency was officially shut down by the Government's decision at the end of 2015⁵, it continues working and receives funds and other gifts from state institutions. According to the CINS survey, from 31st October 2015, when it was officially closed, by the end of 2017, Tanjug received 114.4 million Dinars from 33 state institutions.⁶ These benefits were mostly provided through public procurement or through direct agreements without a public call.

Through public procurements, Tanjug has received funds, i.e. from the Ministry of Public Administration and Local Self-Government, the Office for Kosovo and Metohija, the Belgrade Festival Center, the City of Belgrade, the Development Agency of Serbia, and the like. Through procurements without a public call, funds were provided to Tanjug by the Ministry of Foreign Affairs, the Ministry of Trade, Tourism and Telecommunications, the Ministry of Labour, as

⁴ <https://www.danas.rs/drustvo/opstine-raspisuju-tendere-umesto-konkursa/>.

⁵ Decision on legal consequences of the cessation of the public enterprise news agency Tanjug, Official Gazette RS nos. 91/2015 and 102/2015 (Odluka o pravnim posledicama prestanka javnog preduzeća novinska agencija Tanjug, Službeni glasnik RS br. 91/2015 i 102/2015).

⁶ <https://www.cenzolovka.rs/drzava-i-mediji/drzavne-institucije-tanjugu-isplatile-vise-od-114-miliona-dinara/>.

well as the public services of Serbia and Vojvodina. The Public Procurement Office granted permission to these institutions to conclude direct contracts with Tanjug without a public call. In its reasoning, the Public Procurement Office states that the money is provided "for technical, i.e. artistic reasons, due to which only one bidder, in this case a news agency, may perform this job".⁷

Local governments frequently use public procurement to avoid the competitive financing of media content. Slavko Ćuruvija's Foundation research on the media situation in Požarevac can also serve as an example. The research found that the media received public funds in the amount of 3,410,000 Dinars, and as much as 6,274,500 Dinars on the basis of public procurements, in 2016.⁸

The Bor Municipality also pays significantly more to the media through public procurement than through competitions. In the budget for 2018, the City of Bor allocated only 500,000 Dinars for co-financing of media content, and even 5,300,000 Dinars for broadcasting advertisements, announcements in electronic media, advertising in printed media and the Official Gazette.⁹ In 2017 the situation in this municipality was similar.

In 2017, the city of Loznica published a call for public procurement for public information services after it had already distributed funds through the call for proposals.¹⁰ Journalists and media associations publicly warned Loznica that such a mechanism of allocating funds is illegal and that "publishing the latest news about events in the city" cannot be treated as a subject of public procurement.¹¹

The Coalition of Media and Journalists' Associations has since 2015 continuously warned about the practice of circumventing public competitions through the application of the public

⁷ Ibid.

⁸ <http://www.slavkocuruvijafondacija.rs/wp-content/uploads/2017/07/Gradski-izvestaj-Pozarevac.pdf>.

⁹ <http://nuns.rs/reforma-javnog-informisanja/projektno-finansiranje-medija/35501/koalicija-bor-da-obustavi-javnu-nabavku-za-promovisanje-rada-opstine-i-funkcionera.html>.

¹⁰ <http://nuns.rs/reforma-javnog-informisanja/projektno-finansiranje-medija/31338/koalicija-loznica--u-javnoj-nabavci-nema-informisanja-ni-javnog-interesa-za-gradjane.html>.

¹¹ Ibid.

procurement institute. The Coalition addressed the relevant ministries for individual applications, and remarks were also provided in a separate report on the state of the project co-financing of the content of public interest called the *White Paper of the Competitive Co-Financing of Public Interest in the Sphere of Public Information*.¹²

Unclear provisions of the Law on Public Procurement also contribute to the confusion in the field of public procurement. According to the analysis conducted by the organization Transparency Serbia, the Law established a three-fold regime for the procurement of advertising services.¹³ The procurement system explicitly exempts purchase, development, production or co-production of radio and television programs or the time for broadcasting programs, but not the procurement of goods, services or works required for this production.¹⁴ Other exemptions include procurements aimed at further sale, which excludes those suppliers who continue to provide services on the market.¹⁵ Other forms of advertising by public authorities, such as through print media, on billboards and other bulletin boards or on the Internet, have remained in the public procurement regime.

In the report *Legal Analysis of Project Co-Financing of the Content of Public Interest in the Republic of Serbia*, drafted for Independent Journalists Association of Serbia (NUNS) by Miloš Stojković, the use of the public procurement system for financing media content is criticized as concealed subsidization of the media that gives leeway to unlawful influence on editorial policy.¹⁶ The analysis suggests leaving only the printing of municipal bulletins, maintenance of local government websites, and under special conditions, broadcasting the sessions of local assemblies in the public procurement system.¹⁷

The Anti-Corruption Council in its *Report on the potential impact of public sector institutions on the media through the payment of advertising and marketing services* from December 2015 also

¹² <http://www.ndnv.org/wp-content/uploads/2016/06/BelaKnjigaWEB.pdf>.

¹³ http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Za%C4%8Darani_krug_ogla%C5%A1avanja_javnog_sektora.pdf.

¹⁴ Law on Public Procurement (Zakon o javnim nabavkama), Official Gazette of (Službeni glasnik) RS, nos. 124/2012, 14/2015 and 68/2015, Art. 7 Para. 1 Subpara 10.

¹⁵ Law on Public Procurement (Zakon o javnim nabavkama), Art. 7 Para. 1 Subpara. 6.

¹⁶ <http://nuns.rs/sw4i/download/files/cms/attach?id=76>.

¹⁷ Ibid, p. 18.

notes numerous examples of circumvention of the media law and media financing through the public procurement system.¹⁸ In their recommendations, they propose legal amendments aiming at bringing entire video production into the public procurement system.¹⁹

Various coalitions of civil society organizations dealing with this area have also called on the Government to define public procurement in this area more distinctly.²⁰ The *Alternative report on the implementation of the Anti-Corruption Strategy 2013-2018 and of the Action Plan* published by the organizations Legal Scanner and Three Dots states that the widespread practice of public procurement misuse in order to covertly finance the media contrary to the rules of project co-financing, referring to the case of the city of Pančevo.²¹

The Government of the Republic of Serbia pledged in the Action Plan for Chapter 23 to adopt a brand-new Law on Public Procurement in 2018. However, according to the Assistant Minister of Finance, this law remains on the 2019 agenda.²² Despite the remarks outlined in this analysis, which have been continually submitted to the government representatives for three years now, the redefinition of the relationship of content of public interest in the sphere of public information and public procurement system has not been mentioned by those competent in the Ministry of Finance.

¹⁸ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/Izvestaj%20o%20medijima%20konacna%20verzija.pdf>.

¹⁹ Ibid, p. 101.

²⁰ See <http://www.nadzor.org.rs/pdf/Analiza%20ZJN%20sa%20predlozima%20za%20izmene.pdf> or <https://mediji.gradjanske.org/wp-content/uploads/2018/07/Pra%C4%87enje-slobode-izra%C5%BEavanja-i-medijskih-sloboda-u-procesu-EU-integracija.pdf>.

²¹ <http://www.acas.rs/wp-content/uploads/2016/02/Pravni-skener.pdf?pismo=lat>.

²² <https://www.danas.rs/ekonomija/naredne-godine-novi-zakon-o-javnim-nabavkama/>.

CHAPTER 8

1. Control of Concentration of Media Ownership and Competition in the Field of Media;

2. Control and/or Financing of the Media through State Aid

Chapter 8 covers state aid and the protection of competition. Both areas are crucial for further development of the media and media freedom in Serbia, since the state can favor those close to it, and at the same time discriminate against the media that critically report on the work of public officials and institutions, by selectively providing state aid and violating the rules on the protection of competition.

According to the Law on Public Information and the Media, the competition co-financing of the media is subject to state aid legal rules and regulations.²³ In this manner, all media benefits are classed as state aid, even though their goal is not to assist the media, but to protect the public interest in the field of information. The Rulebook on the co-financing of public interest projects in the field of public information also contains the provision that these funds are to be allocated in accordance with the rules on granting state aid.²⁴

Given the limitations to the amount that the media can obtain, these benefits fall into de minimis state aid, which is one of the state aid categories (up to 23 million Dinars over a period of 3 years).²⁵ According to EU regulations this aid cannot be provided to the same legal entity more than 3 times consecutively. This way, the functioning of many media, especially at the local level, may be endangered. On the other hand, the State Aid Control Commission permitted the Ministry of Culture and Information not to consider aid to television networks as de minimis

²³ Law on Public Information and Media (Zakon o javnom informisanju i medijima), Official Gazette of (Službeni glasnik) RS nos. 83/2014, 58/2015 and 12/2016) – authentic interpretation, Article 17.

²⁴ Rulebook on the co-financing of public interest projects in the field of public information, Official Gazette of (Službeni glasnik) RS nos. 16/16 and 8/17 (Pravilnik o sufinansiranju projekata za ostvarivanje javnog interesa u oblasti javnog informisanja), Articles 3 and 31.

²⁵ Regulation on Rules for State Aid Granting (Uredba o pravilima za dodelu državne pomoći), Official Gazette of (Službeni glasnik RS) nos. 13/10, 100/11, 91/12, 37/13, 97/13 and 119/14, Article 95.

aid.²⁶ In this manner, other media are discriminated against, and the Ministry has been given the opportunity to help the already most popular media with budgetary funds, which was done prior to the presidential elections in 2017.²⁷

The State Aid Act does not recognize media co-financing as a separate category, and it treats it the same as any other type of aid. The de minimis aid, by law, is not to be approved by the State Aid Commission but by the provider itself. Equally, there is no preliminary control; there is only a possibility that the Commission subsequently exercises control on the basis of an application or its own findings. The problem with the Law on State Aid is also reflected in the absence of clear sanctions for its violations. In the event of unauthorized expenditures in media competitions, the Commission can practically solely report to the prosecution about the irregularities it has encountered. If the co-financing of media content remains state aid in future media reforms, recipient's obligations should be specified, as well as the manner of reporting and supervision; equally, the powers of the Commission (or any other institution that would perform this task) should be strengthened, especially in the area of sanctioning for law violations.

In Serbia there is also a practice of approving favorable state loans as a special form of state aid. The CINS survey showed that the pro-government TV network PINK received more than 10 million Euros from the Serbian Export Credit and Insurance Agency (AOFI) from 2014 to 2017.²⁸ During 2014, when it was on the list of the largest tax debtors in Serbia, Pink firstly received a guarantee from the AOFI in the amount of up to 2.5 million euros in favor of AIK Bank.²⁹ A few months later, Pink was approved a loan in the amount of 1.4 million Euros.³⁰

In years to follow, the practice of granting loans to this company by the AOFI continued. In 2015 it was granted a loan of 3.5 million Euros, and then a similar amount in 2016, when it also receives a little over 9 thousand Euros from the account of the AOFI with the transaction code "other placements".³¹ In March 2017, PINK received another loan from the AOFI in the amount

²⁶ <https://www.cenzolovka.rs/drzava-i-mediji/drzavna-pomoc-televizijama-novac-onima-bliskim-vlasti/>.

²⁷ Ibid.

²⁸ https://www.cins.rs/srpski/research_stories/article/pink-ponovo-dobio-kredit-od-aofi-ja.

²⁹ https://www.cins.rs/srpski/research_stories/article/drzava-pomogla-pinku-sa-39-miliona-evra.

³⁰ Ibid.

³¹ <https://www.cins.rs/news/srpski/article/pink-dobio-najmanje-sedam-miliona-evra-kredita-od-drzave>.

of 3.2 million Euros.³² In 2018, PINK sold its companies in Bosnia and Herzegovina and Montenegro.³³

The AOFI refused to provide its data on the use of these loans to CINS despite the decisions of the Commissioner for the Protection of Information of Public Importance who had already fined the AOFI twice for violating the Law on Free Access to Information.³⁴ The Serbian government has not responded to the Commissioner's request to ensure the enforcement of his decisions in the case of AOFI for more than 2 years.³⁵

Other studies also confirm that funds are frequently awarded to pro-government media, even those who hold record in breaking violations of the journalistic codex. For instance, the two daily newspapers that are most frequently condemned before the Press Council - *Informer* and *Srpski telegraf* (*Serbian Telegraph*) – received more than 23 million Dinars during 2016 and 2017 from various local self-governments (including the City of Belgrade).³⁶

The Commission for the Protection of Competition is an independent institution that has the authority to examine any distortion of the free market, including the media market. The Commission also has the authority to perform a sectoral analysis of a market "in cases where price fluctuations or other circumstances point to a possibility of limiting, distorting or preventing competition".³⁷ The Commission has not conducted an analysis of the media market so far; however, at the session of the National Convent for the EU in April 2018 a representative of the Commission announced that it would do so, albeit without specifying the deadlines.³⁸ Nevertheless, in a report to the Council for the Implementation of the Action Plan for Chapter 23 published in July 2018, the Commission for the Protection of Competition stated that for now there are no legal requirements for conducting a sectoral analysis of the media market.³⁹

³² https://www.cins.rs/srpski/research_stories/article/pink-ponovo-dobio-kredit-od-aofi-ja.

³³ <https://www.danas.rs/drustvo/vlasnici-tv-n1-kupili-pink-bih-i-pink-montengro/>.

³⁴ Ibid.

³⁵ <https://www.cins.rs/srpski/news/article/dobijanje-informacija-o-pinkovim-milionima-sada-u-rukama-vlade-srbije>.

³⁶ https://www.cins.rs/srpski/research_stories/article/milioni-sa-medijjskih-konkursa-za-srpski-telegraf-i-informer.

³⁷ Law on Protection of Competition (Zakon o zaštiti konkurencije), Official Gazette of (Službeni glasnik) RS nos. 51/2009 and 95/2013, Art. 47.

³⁸ <https://mediji.gradjanske.org/2018/04/02/kontrola-drzavne-pomoci/>.

³⁹ <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Aktionog%20plana%20za%20Poglavlje%2023.pdf>, p. 683.

In this report to the Council, the Commission for the Protection of Competition also referred to various legal criteria followed by the Ministry of Culture and Information and the Republic Broadcasting Agency when examining the distortions of media pluralism, and by the Commission itself when examining competition distortions. The Commission stated the issue of transparency of ownership was considered in light of the Law on Protection of Competition when considering the effects of concentration on the media market and added: "Although there certainly are points of common interest, media pluralism and its protection are not subject of consideration in the procedure before the Commission. Moreover, since media pluralism is not a criterion which influences the Commission when assessing the permissibility of concentration, a situation may arise in practice where a decision on the permissibility of certain merger/unification/concentration may be decided by the Regulator and the Commission at the same time, providing that the outcomes - the decisions more precisely - may be different."⁴⁰

Such an explanation leaves too much room for legal uncertainty when it comes to media concentration and it requires more precise regulation, in order to avoid resulting in a legally unacceptable outcome, i.e. having two independent bodies adopting different decisions on the same issue. It remains unclear how the Commission for the Protection of Competition deemed this possibility legitimate and undisputable in its report.

⁴⁰ <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202018%20o%20sprovo%C4%91enju%20Aktionog%20plana%20za%20Poglavlje%2023.pdf>, p. 681.

Chapter 10

1. *Independence of Regulatory Bodies in the Media field*
2. *Independence of the work of Public Services*
3. *Program Content Control for the Purpose of Protecting Minors and Endangered Groups*

Within Chapter 10, dealing with information society and the media, the Serbian authorities should ensure independence of the Regulatory Authority for Electronic Media, as well as the independence of public services of Serbia and Vojvodina. The situation in these fields is still really bad, with the tendency of worsening regarding independence of public services. None of the numerous recommendations given by the EU, OSCE, professional organizations, journalists' and media associations, or those given by the citizens' associations has been fulfilled.

*The Council of the Regulatory Authority of Electronic Media is currently working with only 6 members out of the 9 prescribed. Earlier elections of REM Council members were burdened by irregularities and controversial candidates which almost entirely destroyed the legitimacy of this body.*⁴¹ Illegitimate Council continued the previous practice of closing their eyes to political abuse of media, phenomena such as hate speech, media lynch, leading party campaigns in the pre-election period and similar.

Until the parliamentary elections in 2016, REM had the practice of publishing reports on conduct of broadcasters during the pre-elections campaign. Even though it was prepared, the report on 2016 Elections has never been published. Gordana Suša, who was a REM Council member until March 2016, confirmed that the monitoring has been carried out and that it showed enormous

⁴¹ Out of numerous problematic cases, see for example: <https://www.cenzolovka.rs/drzava-i-mediji/odbor-za-kulturu-i-informisanje-krsi-ustav-zakon-i-osnovna-ljudskaprava-birajuci-savet-rem-a/>; <https://www.cenzolovka.rs/vesti/unapred-se-znalo-koje-ce-clanove-saveta-rem-a-izabrati-skupstina-srbije/>; <https://www.cenzolovka.rs/drzava-i-mediji/koordinacija-manjine-zaobidene-u-izboru-kandidata-za-rem/>; <https://www.cenzolovka.rs/drzava-i-mediji/rem-i-dalje-u-krnjem-sastavu/>

difference in media coverage in favor of the ruling coalition.⁴² Since then, the practice of developing such reports has been abandoned, and the reports on 2017 and 2018 elections have not been developed. Instead, it was announced that the reports will be developed only in case of citizens' requests.⁴³ REM Council explained that this decision was brought in accordance to the Law, since it does not stipulate the publication of such reports, even though media supervision is the legal obligation of this authority.⁴⁴ Because of this decision, the members of the opposition submitted the request for dismissal of all the REM Council members, but there was no discussion on this topic in the Serbian assembly.⁴⁵

Civil society organizations who carried out the monitoring of pre-election campaign for the 2016 parliamentary election, reported that the absolute dominance of the ruling coalition is present in both national and local televisions.⁴⁶ *During the pre-election campaign for the 2017 presidential elections, according to the results of the BIRODI organization monitoring, the candidate of the ruling coalition, Aleksandar Vucic, had 15,000 seconds more time on all the leading televisions in the country than all the other candidates altogether.*⁴⁷

After the presidential elections in 2017, the OSCE Observer Mission reported that that the ruling party candidate Aleksandar Vučić dominated the coverage on all national channels and leading dailies, with a notable exception of cable N1 and daily Danas.⁴⁸ Likewise, in the periods outside the pre-election campaigns, almost all broadcasters with national coverage openly promoted the ruling coalition, thus violating the Law on Electronic Media, whose implementation and supervision is the responsibility of REM Council.⁴⁹ For this attitude of the Council members towards the law they are supposed to supervise, the Independent Journalists' Association of Serbia has submitted criminal charges against the Council members.⁵⁰ The Prosecutor's Office had no reaction to these charges.

⁴² <https://www.cenzolovka.rs/drzava-i-mediji/izvestaj-rem-koji-ne-postoji-pokazuje-favorizovanje-sns-a/>

⁴³ <https://insajder.net/sr/sajt/tema/3268/>

⁴⁴ <https://www.blic.rs/vesti/politika/gordana-susa-ovo-je-pocetak-kraja-rem-a/m53jxhs>

⁴⁵ <https://www.cenzolovka.rs/drzava-i-mediji/poslanici-opozicije-zahtevaju-smenu-kompletnog-saveta-rem-a/>

⁴⁶ <http://www.istinomer.rs/clanak/1525/Monitoring-medija-pokazuje-da-u-Srbiji-nema-fer-kampanje>

⁴⁷ https://insajder.net/sr/sajt/predsednicki_izbori_2017/3841/BIRODI-Vu%C4%8Di%C4%87u-250-minuta-vi%C5%A1e-nego-svim-ostalim-kandidatima-zajedno.htm

⁴⁸ <https://www.osce.org/sr/odihr/elections/serbia/330296?download=true>

⁴⁹ <http://crta.rs/medijska-i-funkcionerska-kampanja-pre-izborne-kampanje/>

⁵⁰ <https://insajder.net/sr/sajt/vazno/4844/5>

Furthermore, during the pre-election campaign for the local election in Belgrade in March 2018, REM made no announcement and in no way tried to prevent the absolute dominance of the ruling coalition in the media and fierce abuse of public functions, by leading the so-called functional campaign. Civil society organizations and citizens submitted more than 310 complaints to REM during the pre-election campaign, pointing to various violations of the law by the media, but REM had no reaction.⁵¹ On the contrary, one member of the Council, Olivera Zekić, made a severe violation of the electoral silence after attacking the public service in an open letter and promoting one of the ruling party candidates for the Belgrade election.⁵²

CRTA, the organization that monitored the Belgrade media, reported numerous cases of harsh public function abuse, as well as the logo of one healthcare institution in the ruling party video and the appearance of the ruling party candidates for municipal assembly members in entertaining TV shows, which is forbidden by the law.⁵³ The REM Council had no reaction to a single one of these complaints. The only publication of this independent institution on its website was the decision they brought on three videos, following the request submitted by the public service. REM did not publish any complaints made by the citizens, despite the fact they are obliged to do so in accordance with their own Rulebook on the manner of taking measures against media service providers.⁵⁴

The REM Council is also in charge for the election of management boards of public services of Serbia and Vojvodina. The election of two members of the RTS Management Board to vacant positions in September 2017 experienced numerous disapprovals. Two new members that the REM Council elected were journalist Zoran Panović and marketing expert Nebojša Krstić, who is well-known for his pro-government attitudes and financial arrangements with the state institutions.⁵⁵ Journalists' associations had severe reactions to this selection, stating that these people have no capacity to contribute to better operation of the public service.⁵⁶ Due to these

⁵¹ <https://www.danas.rs/politika/crta-zatvorenici-ma-onemoguceno-pravo-glasa/>

⁵² <https://www.cenzolovka.rs/drzava-i-mediji/budjenje-rem-a-u-sred-izborne-tisine-otkuda-politicki-objeno-pismo-olivere-zekic/>

⁵³ http://crta.rs/wp-content/uploads/2018/08/CRTA_BG-izbori-finalni-izvestaj.pdf

⁵⁴ Ibid.

⁵⁵ See more on <https://pistoljka.rs/home/read/738>

⁵⁶ <http://rs.n1info.com/a332407/Vesti/Vesti/UNS-i-NUNS-o-Krsticu-i-Panovicu-u-RTS.html>

controversies, the *Cenzolovka* portal required REM to deliver the audio recording and minutes of the meeting held during the session on election of new members, but REM denied this request despite the legal obligation.⁵⁷ REM also denied to act in accordance with the decision of the Commissioner for Information of Public Importance that ordered delivering the requested information to *Cenzolovka*, thus continuing the fierce violation of the Law on Free Access to Information by this institution.⁵⁸

In 2016, the RTV Management Board replaced the program director of this media, Slobodan Arežina. This replacement made many editors and journalists leave the public service and caused civil protests in Novi Sad.⁵⁹ Arežina sued his media house and verdict in his favor has been brought.⁶⁰ After the verdict became final, RTV refused to implement it, but first appointed two directors, replacing Arežina again.⁶¹ The First Instance Court assessed this decision of RTV as "a sort of attempt to disqualify a final court verdict", deciding again in favor of Arežina.⁶² The failure to comply with a final court verdict by the management and the RTV Management Board was not sufficient for the REM Council, who elected the Board, to make an announcement on this occasion and initiate the procedure for determining the responsibility of the members of the RTV Management Board. Journalists' associations have demanded criminal responsibility of members of the Management Board and Director of RTV for disregarding a final court verdict.⁶³

*Among requests submitted to the Serbian authorities in November 2017 by the Group for media freedom, an informal association of civil society organizations, the media and press and journalists' associations, is also the request to initiate the procedure for dismissal of REM Council members and coherent obedience of law in selection of new members.*⁶⁴

⁵⁷ <https://www.cenzolovka.rs/drzava-i-mediji/rem-krije-audio-zapis-sa-sednice-na-kojoj-su-u-upravni-odbor-rtv-a-izabrani-krstic-i-panovic/>

⁵⁸ <https://www.cenzolovka.rs/drzava-i-mediji/rem-mesecima-krije-podatke-o-sednici-i-ignorise-poverenika/>

⁵⁹ <https://podzirtv.wordpress.com/>

⁶⁰ <https://www.cenzolovka.rs/drzava-i-mediji/apelacioni-sud-nalozio-rtv-da-arezinu-vrati-na-mesto-direktora-programa/>

⁶¹ <https://www.cenzolovka.rs/pritisci-i-napadi/slobodan-arezina-dobio-otkaz-na-rtv/>

⁶² <https://www.cenzolovka.rs/pritisci-i-napadi/sud-rtv-pokusao-da-dezavuisse-presudu-kojom-je-arezina-vracen-na-mesto-direktora-programa/>

⁶³ <https://www.cenzolovka.rs/pritisci-i-napadi/nuns-i-ndnv-krivicna-odgovornost-za-clanove-uo-i-direktora-rtv-a/>

⁶⁴ <https://www.danas.rs/drustvo/grupa-za-slobodu-medija-predala-zahteve-premierki/>

Both public services refrain from any critical tones at the expense of the authorities, especially in central news programs. According to the research of the Slavko Ćuruvija Foundation and the Support RTV alliance, the Vojvodina public service fully follows the government agenda, giving less opportunity to the opposition or citizens who criticize the government.⁶⁵ The analysis before the presidential election also showed Aleksandar Vučić's huge advantage in public services. From March 9 to March 20, 2017 on RTS, Vučić spoke almost 1,500 seconds, whereas the first person after him spoke less than 200 seconds.⁶⁶ The Novi Sad School of Journalism observed the central information shows of public services (and other television) in January, finding out that Serbian Progressive Party (SPP) representatives had spoken 82% of the time in the 2 RTS evening news, while this percentage for the public service of Vojvodina was 72%.⁶⁷

Organization Transparency Serbia requested the Higher Public Prosecutor's Office and the Prosecutor's Office for Organized Crime to announce if they had taken any action with regard to the claims made by actor and film director Lazar Ristovski who said that with Vučić's support and "his discussion" with RTS, "he reached the point when RTS had to" support his film financially.⁶⁸ Transparency points out that, by giving such statement, Ristovski accused the President of the Republic for committing the criminal offence of abuse of office, since he used his position to illegally influence RTS, thus obtaining financial gain to Ristovski.⁶⁹ The Prosecutor's Office made no announcement regarding this request.

REM fails to properly carry out its responsibilities even about protection of minors and human rights protection (including the prohibition of hate speech). Happy Television, a broadcaster using national frequency and openly protecting the ruling party in its shows, received 6 warnings for "broadcasting content that may harm physical, moral and mental development of minors, disrespect of minors' personality, violation of general obligations of media service providers with regard to program content, hate speech and disrespect of human dignity, and broadcasting

⁶⁵ <http://www.slavkocuruvijafondacija.rs/monitoring-uredjivacka-politika-rtv-sledi-agendu-vlasti/>

⁶⁶ <https://www.cenzolovka.rs/scena/vucic-ubedljivo-najvise-vremena-na-pinku-i-javnim-servisima/>

⁶⁷

<https://www.facebook.com/novosadska.novinarskaskola/photos/a.438651909586416/1226828567435409/?type=3&theater>

⁶⁸ <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/10150-ispitati-optuzbe-ristovskog-na-racun-vucica>

⁶⁹ Ibid.

unsuitable content for persons under the age of 18 before 11 pm” in the period from June 1, 2015 to June 1, 2017.⁷⁰ Despite the warnings, TV Happy hosted the Italian porn star Cicciolina in its morning open program, when she showed off her naked breasts after the host’s approval. REM Sector for Supervision and Analysis started an ex officio procedure and found violations of numerous laws and rulebook in this kind of conduct of a public broadcaster.⁷¹ REM Council made the decision to initiate proceedings against Happy TV, but since the representatives of this TV station did not respond to this call, the REM Council decided to stop the proceedings, ”having in mind the level of endangering protected goods and the scope of the consequences that the violation had caused”.⁷²

Not only did this type of fierce violation of the law and rulebook, including failure to respond to the call of the regulatory authority, remain unpunished, but on that same day, REM decided to postpone the decision on suspension of operation approval to TV Happy, despite the fact that this television has not paid the fee for media services not even after additional deadline.⁷³

Hate speech and the lynching culture of individuals who dare to critically speak about the authorities are getting stronger by the year, both in printed tabloids and on the most watched television stations, such as TV Pink and TV Happy.⁷⁴ Although it has the competence to prevent these phenomena, the REM Council never reacts ex officio, and citizens' reports are regularly refused.⁷⁵ The most frequent victims of hate speech are Croats and Albanians, who are often called by the abusive name of Siptar, which also goes by unpunished.⁷⁶ *The European Commission Report against Racism and Intolerance (ECRI) of the Council of Europe on Serbia, published in 2017, warns about the inappropriate conduct of REM in the fight against hate speech, with a note that "it is believed that a general lack of functioning of the results of political influence contributes to the de facto restriction independence of REM".*⁷⁷

⁷⁰ <http://www.istinomer.rs/clanak/2057/REM-Ciccolina-je-nevina>

⁷¹ <http://www.istinomer.rs/multimedia/pdfs/208276271156644.pdf>

⁷² <http://www.istinomer.rs/multimedia/pdfs/253096836415577.pdf>

⁷³

<http://rem.rs/uploads/files/Zapisnici/ZAPISNIK%20186.%20redovna%20sednica%20Saveta%20REM%20odrzana%2007.06.2017.%20godine.pdf>

⁷⁴ <https://www.cenzolovka.rs/mediologija/pravo-na-medije-govor-mrznje-u-srbiji-kao-devedesetih/>

⁷⁵ <https://www.slobodnaevropa.org/a/srbija-veREMlni-linc/29017662.html>

⁷⁶ For example, see: <https://vimeo.com/252316006>

⁷⁷ <https://rm.coe.int/third-report-on-serbia-serbian-translation-/16808b5bf6>, p. 22 and 23.

CHAPTER 23

1. *Protection of journalists;*
2. *Regulation of state media financing (withdrawal of the state from media ownership);*
3. *The end of state control over the media;*
4. *Leaking information from investigation into the media;*
5. *Freedom of media and expression in minority languages*

Chapter 23 deals with the judiciary and fundamental rights and is a central chapter in the issue of freedom of expression and the position of the media. The chapter deals with the media through a special section within the framework of basic rights - freedom of expression and through the rights of national minorities, when it comes to informing in minority languages. This chapter is one of the three key chapters (in addition to Chapter 24 and 35) and the standstill in it stops the entire process of European integration of Serbia⁷⁸. Chapter 23 was opened immediately at the beginning of the process and will not be closed until the end of the negotiations between Serbia and the EU.

The Government of the Republic of Serbia established the Council for the implementation of the Action Plan for Chapter 23, as a special working body for the expert support to the Negotiating Group for this chapter. The Council publishes periodic reports in which it assesses the fulfillment of the objectives and activities defined in the Action Plan. The estimates of the Council and civil society organizations on the degree of fulfillment of the set goals do not usually correspond, i.e. The Council provides a "fully implemented" assessment of the activities for which it is evident that this is not the case.⁷⁹

⁷⁸ http://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracki_okvir.pdf

⁷⁹ For example, see Alternative Report of BIRN, NUNS, AOM on implementation of the activities from the Action Plan related to journalists' security (Alternativni izveštaj BIRN, NUNS i AOM o ispunjenosti aktivnosti iz Akcionog plana u vezi sa bezbednošću novinara): <http://www.aom.rs/wp-content/uploads/2018/06/komentar-organizacija-civilnog-drustva-izvestaj-ek-napredak.pdf>

Almost all the deadlines set by the Action Plan for Chapter 23 have long been missed. Many activities have been delayed for several years. All this led to the need for a serious revision of the Action Plan, which is announced for 2018.⁸⁰

The Action Plan, in the part dealing with freedom of expression as a human right, contains two recommendations from screenings divided into 35 activities.

Recommendation 3.5.1. of the European Commission to the Republic of Serbia based on screening process:

Ensure protection of journalists against threats and violence, in particular through effective investigations and deterrent sanctioning of past attacks

This recommendation should be implemented through 5 activities. Together, activities should contribute to more effective protection of journalists against threats of violence, improvement of the prevention system and more effective sanctioning of the carried-out attacks.

The number of attacks on journalists, including physical attacks, property attacks, pressures and verbal threats has steadily increased since 2013, to reach its peak in 2017 with a total of 92 attacks.⁸¹ This trend continued in 2018, when 57 attacks on journalists were registered in the first eight months.⁸² The concern for the safety of journalists in Serbia was expressed by the OSCE Media Representative Arlem Dezir⁸³ and the President of the European Federation of Journalists Mogens Bjeregard⁸⁴.

The prosecution still does not react, or it responds to the attacks very slowly and inadequately. The most drastic case happened during the oath of the President of the Republic Aleksandar Vučić in May 2017, when six journalists were attacked by the security, in the organization of the ruling Serbian Progressive Party. The newspaper Danas, whose two journalists were attacked,

⁸⁰ <https://www.blic.rs/vesti/politika/revizija-akcionog-plana-za-poglavlje-23-do-jeseni/wc3ct5g>

⁸¹ <http://www.bazenuns.rs/srpski/napadi-na-novinare>

⁸² Ibid

⁸³ <http://rs.n1info.com/a379197/Vesti/Dezir-OEBS-posebno-zabrinut-za-bezbednost-novinara.html>

⁸⁴ <http://www.rts.rs/page/stories/sr/story/125/drustvo/3007724/bjeregord-zabrinut-za-bezbednost-novinara-zadovoljan-jer-ce-se-susreti-sa-vucicem.html>

submitted criminal charges to the prosecution against the Serbian Progressive Party and unknown individuals, adding photographs from which it is clearly seen that physical force was used against the journalist.⁸⁵ After 5 and a half months of investigation, the prosecution rejected charges with the explanation that the journalists had to be removed from the meeting due to possible incidents and lynx that threatening them.⁸⁶ In addition, the prosecution adds that "the persons who participated in it behaved fairly, that they did not threaten anyone, that they asked for the cessation of provocations and the like."⁸⁷ After the appeal of journalist Lidija Valtner to the Higher Prosecutor's Office, this case was again returned to the First Basic Prosecutor's Office, but it again concluded that there was no basis for initiating proceedings.⁸⁸ After such decision, the Association of Media and the Association of Online Media froze their participation in the Working Group on the Safety of Journalists⁸⁹, while the Independent Journalists Association of Serbia (NUNS) and Independent Association of Journalists of Vojvodina (NDNV) assessed that the judicial system in Serbia did not function in accordance to the law and justice, but to the interests of the authorities and the ruling parties.⁹⁰

Threats to reputable journalists writing critically about work and government results continued. The editor-in-chief of the agency Beta and NUNS deputy leader Dragan Janjić went through social networks' hell after the president of the Republic Aleksandar Vučić mentioned him in a negative context at a press conference after the murder of Oliver Ivanović.⁹¹ Janjić was threatened via social networks, and a sponsored post on Facebook also published his address with an undisclosed call for violence⁹². Both journalists' associations and certain opposition parties asked the prosecution to initiate the proceedings, but no results were obtained.⁹³

The complaint submitted by Predrag Blagojević, editor of the *Južne vesti* portal (*Southern News* portal), in March 2017, against an unknown person who was following him and filmed him with

⁸⁵ <https://www.danas.rs/drustvo/krivicna-prijava-protiv-sns-zbog-napada-na-novinarku/>

⁸⁶ <http://rs.n1info.com/a343822/Vesti/Vesti/Prekrsajni-postupak-za-napadace-na-novinare-na-inauguraciji.html>

⁸⁷ *Ibid.*

⁸⁸ <https://www.cenzolovka.rs/pritisci-i-napadi/ponovo-odbacena-krivicna-prijava-lidije-valtner/>

⁸⁹ <https://jugpress.com/aom-asocijacija-medija-suspendovali-ucesce-u-radnoj-grupi-za-bezbednost-novinara/>

⁹⁰ <http://rs.n1info.com/a342783/Vesti/Vesti/NUNS-i-NDNV-Sramna-odluka-Tuzilastva-o-odbacivanju-krivicnih-prijava-protiv-napadaca-na-novinare.html>

⁹¹ <https://www.cenzolovka.rs/pritisci-i-napadi/nuns-ugrozena-bezbednost-dragana-janjica/>

⁹² *Ibid.*

⁹³ *Ibid.*

a camera from a car, has also never been prosecuted.⁹⁴ Although the police have been provided with details on registration plates, the prosecution has not yet completed the investigation or revealed the identity of the person who was following the journalist.⁹⁵

The highest officials continued their name calling practices accusing journalists and media for the treason and mercenary. President of the Republic Aleksandar Vučić accused the journalists' associations in July 2017 of being paid to campaign against him, stating that "some media associations were getting money to run a campaign with regard to the illegal demolition in Savamala"⁹⁶. On this occasion, NUNS and NDNV asked the Prosecution to hear the president because he was aware of the criminal offense being prosecuted *ex officio*.⁹⁷ The associations announced in a statement that Vučić "is once again abusing the regime media and its function to attack and diffuse those whom he proclaims to be his political opponents and additionally threaten media freedom in Serbia."⁹⁸

In addition to current cases, without even an investigation opened, let alone the verdict, the situation did not improve even in the cases of murder of journalists Slavko Ćuruvija and Milan Pantić as well as unclear death of Dada Vujasinović. The state has also set up a special commission to deal with these killings which is headed by Veran Matić. Although the EU welcomed the establishment of this commission, the issue of its competencies and the legal background of the Commission's extensive powers remained unclear, including discussions with potential witnesses and the gathering of evidence. Meanwhile, the commission's jurisdiction in April 2018 was extended to cases of murdered and missing journalists during the wars in the former Yugoslavia.⁹⁹ It is unclear how it is possible for any commission to have more opportunities to come to evidence and to shed serious criminal offenses than the prosecution and the police, the organs that otherwise serve for such dealings.

⁹⁴ <https://www.juznevesti.com/Hronika/8-meseci-kasnije-Jos-se-ne-zna-ko-je-pratio-Blagojevic.a.html?>

⁹⁵ *Ibid.*

⁹⁶ <https://www.cenzolovka.rs/drzava-i-mediji/nuns-i-ndnv-tuzilastvo-da-saslusa-vucica-nakon-gostovanja-na-pinku/>

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ <https://www.danas.rs/drustvo/vlada-prosirila-nadleznost-komisije-za-istrazivanje-ubistava-novinar-a-na-kosovo-i-metohiju-i-bivsu-sfrj/>

Despite the controversy surrounding the legal status of the Commission, the fact remains that neither of these killings is even close to solving. Matić himself repeatedly publicly evaluated that the data collected in the case of murder of Milan Pantić were in the prosecutor's office for more than a year "without results and epilogues, in addition to the indisputable evidence that exists"¹⁰⁰, that the court obstructs the process in the case of trial to the accused of murder of Slavko Ćuruvija which "leads to the intention to decide on the release of the defendants much before the end of the trial"¹⁰¹, while the death of Dada Vujasinović, after 24 years, still remains in the pre-trial proceedings¹⁰². All these statements triggered a reaction by the expert public, judiciary and attorneys' councils, thus opening the discussion on the boundaries to the extent of the critique of the court and judicial decisions, as well as of the place that such a Commission has in the Serbian legal system and its relations with institutions such as the prosecutor's office and the police.

Not only that, despite all the clear evidence that the goal of increasing the security of journalists and the effective sanctioning of perpetrators has not been met, but the situation has worsened in the meantime, and the Council for Implementation of the Action Plan for Chapter 23 assessed in its report of July 2018 that out of the five planned activities, three are fully and two other are successfully implemented in continuity.¹⁰³ The Council founds its assessments on formal events such as the signing of a memorandum of cooperation between prosecutors' offices and journalists' associations, meetings of various commissions or guidelines to the prosecutor's offices on keeping records of criminal offenses against journalists and even completely meaningless moves such as the signing of a cooperation agreement between two institutions that are legally bound to day-to-day cooperation - the Ministry of the Interior and the Republic Public Prosecutor's Office.¹⁰⁴

Recommendation 3.5.2 of European commission to Republic of Serbia based on screening process: Changes and additions of legislative and institutional frame for media freedom protection by implementing media strategy, regarding adequate regulation of state financing

¹⁰⁰ <https://www.cenzolovka.rs/pritisci-i-napadi/celija-ceka-ubicu-milana-pantica/>

¹⁰¹ <https://www.cenzolovka.rs/pritisci-i-napadi/slucuj-curuvija-kritike-matica-i-odgovor-sudija-advokata/>

¹⁰² <https://www.cenzolovka.rs/pritisci-i-napadi/u-nedelju-se-navrsava-24-godine-od-smrti-dade-vujasinovic/>

¹⁰³ <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%2023.pdf>, p. 660-664

¹⁰⁴ *Ibid.*

and ending the media being controlled by state. Urgent actions need to be taken to stop the threats and violence over journalists as well as information leaking related to actual or planned criminal investigations.

Measures within this recommendation will also be implemented relating to PG10.

This second recommendation is far more extensive and covers much wider area of speech freedom as a human right. In the Action plan it is divided in four parts:

1. Advanced normative and institutional frame for media freedom protection;
2. Complete withdrawal of state ownership from the media;
3. Larger percentage of journalists' safety protection;
4. Absence of unauthorized announcing related to current or planned criminal investigation to the media.

In the Action plan, Government specified the means of verification of these goals, without mentioning the ministry's reports. These would be reports by the EU, Protector of citizens and internationally credible indicators for measuring media freedom. All these reports pointed out that there is no progress, or there is a significant deterioration of the situation in the media freedom field in the last few years.

The European commission in their last report published in 2018 concluded the following regarding the freedom of speech:

*"Serbia achieved a certain level of preparation regarding the freedom of speech. However, during the reporting period there was no progress and that deficiency is the reason for more concern. Comprehensive situation is still not enabling this request to be fulfilled. Cases of threats, intimidation and violence against journalists are still a concern, while investigations and final convictions remain rare."*¹⁰⁵

All the international organizations and institutions dealing with media freedom agreed on the continuous decline of Serbia in this field. The two most famous world indexes for freedom of

¹⁰⁵ <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>, p. 25

speech validation are the Reporters without Borders and Freedom House organization. Reporters without Borders published their latest report in April 2018 and Serbia has fallen by ten positions (from 66th to 76th place), which is one of the greatest declines in the world.¹⁰⁶ In their explanation, this organization included the following:

*“Under President Aleksandar Vučić, Serbia has become a country where it is unsafe to be a journalist. This is clear from the alarming number of attacks on journalists that have not been investigated, solved, or punished, and the aggressive smear campaigns that pro-government media orchestrate against investigative reporters.”*¹⁰⁷

Serbia is among the countries with the greatest decline on the free media list also in the report from the organization Freedom House published in 2017 (a drop of 4 positions, one of the worst ones besides Poland, Turkey, Burundi, Hungary, Bolivia and the Democratic Republic of Congo)¹⁰⁸. The organization’s editor for media freedom, Shannon O’Tool, stated in the article from October 2017, the following: *The increasingly authoritarian government has steadily broken-down press freedom over the past four years.*¹⁰⁹

Protector of citizens stated the following in his regular annual report for 2017:

*“Protector of Citizens has noted that the condition in the field of freedom of expression and media has not changed compared to previous reporting years. Journalists and media experts agree that the media freedom has been endangered for a long time, which is also noted in international reports.”*¹¹⁰

So, all the institutions and organizations the government specified as verifying organs for achieved goals are unanimously agreeing that the Action plan goals are not achieved and, furthermore, that the situation is worsening. Nevertheless, the report of the Council for Action

¹⁰⁶ <http://rs.n1info.com/a382671/Vesti/Veliki-pad-Srbije-na-listi-medijskih-sloboda-Reportera-bez-granica.html>

¹⁰⁷ *Ibid.*

¹⁰⁸ <https://freedomhouse.org/report/freedom-press/freedom-press-2017>

¹⁰⁹ <https://www.krik.rs/fridom-haus-vlast-gusi-medijske-slobode-u-srbiji/>

¹¹⁰ <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>, p. 10.

plan for the Chapter 23 from July 2018 states that out of 30 activities, 18 were completely implemented, 4 partially and 8 were not implemented¹¹¹. If two thirds of activities are implemented and the situation is worsening the question arises how relevant such an Action plan is or how honest are the government institutions in giving their marks for an activity implementation.

Goal 1: 1. Advanced normative and institutional frame for media freedom protection;

From the activities planned in this field, the most public attention (professional and in general) attracted the new Media strategy plan, although this program document has no legal force or sanctions for disrespecting it. After the old strategy expired, the Government formed a Working group that drafted a new one, but that draft has never been publicly announced, although some parts made it to the media¹¹². After the media and journalists' associations protested about the non-transparent work methods of the Working group, but as well as about the offered solutions that got to the public and after their leaving the group, the president's media advisor, Suzana Vasiljević, stated at the meeting of the National convent in April, 2018 that work on the strategy has been stopped and a new working group will be formed.¹¹³ The fact that this decision was announced by the President's advisor (sitting next to the state secretary for information who heard about this decision for the first time) with the explanation that President himself decided "in consultation with the Prime Minister", pointed out who is really in charge in Serbia, at the same time violating the law and constitutional norms for governing and state institutions inherence.¹¹⁴

The following few months passed in the mutual accusations and discussions between the government representatives and media associations about the composition and the work method of the new working group. After it was finally formed, as well as the Coordinating group for cooperation with media that should help the dialogue between the media and Government at the

¹¹¹ <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Aktionog%20plana%20za%20Poglavlje%2023.pdf>, pp. 664-706.

¹¹² <https://www.danas.rs/drustvo/ta-pise-u-suspendovanom-tekstu-medijske-strategije/>

¹¹³ <https://www.cenzolovka.rs/drzava-i-mediji/zaustavljena-izrada-medijske-strategije/>

¹¹⁴ <https://www.cenzolovka.rs/drzava-i-mediji/vucic-ponizio-vladu-i-preko-savetnice-pokazao-ko-odlucuje-o-medijskoj-strategiji/>

end of June 2018¹¹⁵, public discussions were continued, especially between representatives of the Working group and the minister of culture Vladan Vukosavljević.¹¹⁶ The request from civil society organizations dealing with the freedom of speech to include their representatives in the Working group was denied.¹¹⁷ It is still uncertain if the Working group will manage to produce any results, considering the low level of confidence between the government and journalists, but also the situation in the media freedom field which is worsening each day.

State institutions such as Tax Administration are also used to put pressure on free and professional media. After the closing down of *Vranjske* newspaper in September 2017 after numerous, several-weeks long controls of tax inspectors¹¹⁸, the next target of the same institution became the most read portal in the south of Serbia – *Južne vesti* (the South News). Two tax control started parallel thorough examination of business activities of *Južne vesti* in 2018, seeking unreasonable requests from the management and endangering the work of the editorial board. At the same time, the inspectors also called the business partners of *Južne vesti* and members of their families, putting pressure on them to end their cooperation with this portal, calling them “foreign spies”.¹¹⁹ After thorough control no irregularity was found, apart from the fact that the chief editor was not registered as employee.¹²⁰ Since such legal requirement does not exist, the tax inspection has referred to the Catalogue of work positions in public services and other public sector organizations, which does not refer to private enterprises.¹²¹ The media and journalists’ associations marked this as an attempt to put pressure on the media and asked for revisions of the procedure and establishing professional liability of the Tax Administration

¹¹⁵ <https://www.cenzolovka.rs/drzava-i-mediji/vlada-formirala-koordinacionu-grupu-za-saradnju-sa-medijima/>

¹¹⁶ <https://www.cenzolovka.rs/drzava-i-mediji/otvoreno-pismo-vukosavljevic-narusio-integritet-radne-grupe-za-medijsku-strategiju/>

¹¹⁷ <https://www.danas.rs/drustvo/ukljuciti-predstavnike-udruzenja-gradjana-u-radnu-grupu-za-izradu-medijske-strategije/>

¹¹⁸ <http://www.021.rs/story/Info/Srbija/186215/Slucaj-Juzne-vesti-Zloupotreba-Poreske-uprave-za-obracun-sa-nezavisnim-medijem.html>

¹¹⁹ <https://www.vreme.com/cms/view.php?id=1621557>

¹²⁰ <https://www.juznevesti.com/Ekonomija/TS-Ugrozavanje-opstanka-medija-kroz-naplatu-izmisljenog-poreskog-dugovanja.sr.html>

¹²¹ <https://www.juznevesti.com/Drustvo/Novinarska-udruzenja-traze-od-Vlade-Srbije-reviziju-postupka-protiv-Juznih-vesti.sr.html>

Director.¹²² Prime Minister Ana Brnabić ignored all the evidence and, in a few words, referred the *Južne vesti* to file an appeal if they were not satisfied¹²³.

Tenders for co-financing media content of public interest are formally organized by different institutions (although no all), but there are many problems, illegalities and political impact. The part of irregularities is explained in the analysis part dealing with Chapter 5 and tenders. Journalists' organizations and associations for tender monitoring have pointed out the many problems like illegally formed commissions, voluntary decisions by municipal or state authorities to change decisions made by the commissions, covert financing of media close to municipality or republic authorities, lack of evaluation of projects implemented and so on.

According to the analysis by NUNS in 2017, 133 municipalities had public calls, 39 of which reported serious irregularities¹²⁴. Irregularities included decisions that only media from the municipality can take part in tenders. Also, dissolution of commissions whose decisions did not appeal to the local authorities and forming of new commissions (like in Kladovo, Smederevo)¹²⁵. Municipalities also often avoid appointing members recommended by the most established journalists' associations, instead they choose people with questionable biographies recommended by unknown or newly formed associations. Municipalities in Vojvodina presented a specific case. Thirty-eight of them had tenders and only four appointed members recommended by the biggest associations (NUNS, UNS, NDNV, Local Press, ANEM), only one in each municipality¹²⁶. The bizarre case of Malo Crniće municipality from 2018 where the commission could not make a decision after the municipality lost one of their submitted projects¹²⁷ speaks of how understanding project financing was not taken seriously, as well as of the capacities of Serbian municipalities for this kind of work.

¹²² <https://www.juznevesti.com/Ekonomija/Brnabic-Ako-Juzne-vesti-misle-da-Poreska-ne-radi-dobro-mogu-da-se-zale.sr.html>

¹²³ <http://nuns.rs/info/news/35038/sufinansiranje-javnog-interesa-u-javnom-informisanju.html>

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ <http://nuns.rs/reforma-javnog-informisanja/projektno-finansiranje-medija/37541/u-opstini-malo-crnice-izgubili-projekat-medija.html>

¹²⁷ *Ibid.*

The cities with the most irregularities are also the cities with the largest funding resources. In 2017 Belgrade continued to finance pro-government media and or unknown and newly founded companies. From the total of 90 million dinars, 23 million has been allocated to pro-government TV Studio B and its associated companies, multi-million amounts were given to pro-government tabloids “Informer”, “Alo” and “Srpski telegraf”, and also companies registered a few days before the tenders started. None of the media with critical attitude received the money from City of Belgrade.¹²⁸ It was similar in Niš and Novi Sad. For all three towns it is typical that their commissions were composed of representatives of unknown associations and people from media close to the authorities (such as Dragomir Anđelković, the analyst).¹²⁹

The situation worsened in 2018. During the first six months there were 120 public calls were numerous irregularities and abuse were recorded. The most of attention was attracted by the tenders of Ministry of culture and informing, highly graded during the past years. This year, the ministry, according to journalists’ and media associations (NUNS, NDNV, ANEM, Lokal Press) made the financing process absolutely pointless “by appointing a lot of corrupted media and pseudo media workers, from fake associations or associations that work closely with the government to tender commissions.”¹³⁰ That decision made association withdraw their members from commissions adding that it is “sad that this scandalous practice of co-financing media content from local to the state level.”¹³¹ Ministry implemented these tenders and allocated the biggest amount to the company Essentis, registered for dealing with media content only one day before the tender ended and without any employees.¹³² The second largest amount was given to a company from Novi Sad not even registered for media content production, but for marketing and advertising.¹³³

¹²⁸ *Ibid.*

¹²⁹ <http://rs.n1info.com/a386514/Vesti/Novinarska-udruzenja-povukla-clanove-iz-konkursnih-komisija.html>

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

Large amounts were also given to companies and media owned by people very close to authorities, including the son of BIA director Bratislav Gašić, Zorana Veličković, president of association PROUNS and Vitko Radomirović, local businessman from Niš.¹³⁴

Numerous failures have been noticed on tenders in Niš, Koceljeva, Topola, Nova Varoš, Lajkovac and other municipalities.

Tender co-financing has been seriously taken as criminal activities in certain cases. From numerous examples that newly founded and unknown companies took millions on tenders, we emphasize the case that the portal Cenzolovka investigated: companies Brifing Banat from Pančevo and Brif Media net from Novi Sad registered at the end of 2016, received money in 2017 on 16 tenders in different Vojvodina municipalities and took around 277,000.00 Euros.¹³⁵ Brifing Banat won in all the eight municipalities in Southern Banat where the tender was open, which is especially interesting. Both companies run portals openly supporting the policy of SNS.¹³⁶

Journalist and media associations, as well as civil society organizations in this field, have sent dozens of suggestions and comments regarding project co-financing in ten years. None of these have ever been appreciated, or mistakes corrected or sanctioned. After detailed analyses and following tenders for many years, organizations NUNS, NDNV, ANEM, AOM and Local Press adopted in May 2018 common attitudes regarding the content of the future media strategy and published the document entitled: Enclosures for public informing system development strategy by 2023.¹³⁷ The document provides detailed recommendations of measures for improving the project co-financing media system.

Goal 2: Complete withdrawal of state ownership from the media is achieved

¹³⁴ <https://www.cenzolovka.rs/drzava-i-mediji/mladi-nepoznati-ali-uspesni-277-000-evra-za-portale-koje-spaja-podrska-vlastima/>

¹³⁵ *Ibid.*

¹³⁶ <http://mcvojvodine.org/wp-content/uploads/2018/06/PRILOZI-ZA-IZRADU-STRATEGIJE-RAZVOJA-SISTEMA-JAVNOG-INFORMISANJA-DO-2023-GODINE.pdf>

¹³⁷ <http://rs.n1info.com/a279192/Vesti/Vesti/Grad-ponovo-preuzeo-Radio-televiziju-Kragujevac.html>

State would keep being the owner of share part in the companies publishing daily newspapers *Politika* and *Večernje novosti* and has the right to appoint editors in both newspapers. Both magazines are strictly pro-governmental. Privatization of shares owned by the state in these two companies was never initiated. The same goes for the sports channels, Arena sport, owned by the company Telekom Srbija.

The uncertain destiny of Tanjug agency i.e. violation of decision to shut it down by many ministries and other institutions have already been explained in chapter 5 – tenders. In Kragujevac, local station RTV Kragujevac, was taken over again by City Assembly after the privatization contract was terminated.¹³⁸ The city has referred to the regulation of the Serbian Government that allows local self-governments to take over the media after the privatization contract is terminated but only for 6-month period, which should be followed by a sale.¹³⁹ This regulation has been changed in 2017 allowing the retaking, although it is very debatable if this kind of solution is legal since it is contrary to the obligation of the state to exit the media.

Journalists' and media associations have been warning for many years that privatization is often reduced to media being taken over by individuals or companies close to the authorities, thus continuing of their financing through fake financing projects or tenders.¹⁴⁰ According to BIRN, out of 34 privatized local media, 18 have new owners connected to political parties.¹⁴¹

As per Law on Public Informing and Media, the buyer of a privatized media has the obligation to provide media content continuity during the next 5 years, including keeping all the program types, maintaining programs in the languages of minorities and so on.¹⁴² Respecting this regulation is controlled by the Ministry of Economy, taking over from the Privatization Agency

¹³⁸ Regulation on transferring capital without compensation to employees of the media Publisher (Uredba o prenosu kapitala bez naknade zaposlenima kod izdavača medija), Official Gazette of (Službeni glasnik) RS, nos. 65/15 and 31/17. Art 10, Para. 2.

¹³⁹ For example, see: <https://www.cenzolovka.rs/drzava-i-mediji/posle-medijskog-konkursa-jos-33-miliona-za-rtv-vranje/>; <http://nuns.rs/reforma-javnog-informisanja/projektno-finansiranje-medija/32188/nuns-i-ndnv-niski-konkurs-za-medije-realizovan-po-zelji-vlasti-.html>;

¹⁴⁰ <http://www.aom.rs/wp-content/uploads/2018/06/komentar-organizacija-civilnog-drustva-izvestaj-ek-napredak.pdf>, p. 29.

¹⁴¹ Law on Public Information and Media, Art. 142.

¹⁴² *Ibid.*

which ceased to exist, with the fact that for electronic media control, they rely on the reports from REM.¹⁴³ Media and journalists associations warned that the Ministry does not have enough capacities for this kind of control, also confirmed by the fact that there were no reports published about privatized media control.¹⁴⁴

Goal 3: Higher level of journalists' safety protection achieved

This goal is discussed in more detail in the part of this chapter dealing with journalists' safety.

Goal 4: Prevent unauthorized press releases regarding information on current or planned criminal investigations

There has been no progress in preventing unauthorized delivery of information on investigations to the media. This type of information is most often used in campaigns against the political opponents, but also for tabloid stories that sell papers. One of the most abundant tabloid stories was the murder of singer Jelena Marjanović in 2016. Tabloids continue to use this case, publishing data and information from the investigation which no one can confirm as true and valid, as well as crime scene investigation photographs. No one was ever charged for this fierce violation of law and giving away protected data. On top of it all, tabloid Informer announced the arrest of the victim's husband, Zoran Marjanović after he enters one of the reality programs on TV Happy, two weeks before this actually happened.¹⁴⁵ The police waited for Marjanović to enter the abovementioned reality program to arrest him only 24h hours later. The same day he was arrested, the President of the Republic Aleksandar Vučić, called him a murderer and said: *"These monsters deserve the highest possible punishment. When someone does this to the mother of his own child, breaks her skull so many times... I will support the proposal of the law*

¹⁴³ *Ibid.*

¹⁴⁴ <http://mcvojvodine.org/wp-content/uploads/2018/06/PRILOZI-ZA-IZRADU-STRATEGIJE-RAZVOJA-SISTEMA-JAVNOG-INFORMISANJA-DO-2023-GODINE.pdf>, p.12.

¹⁴⁵ <https://www.cins.rs/srpski/news/article/nema-politicke-volje-da-se-spreci-curenje-informacija>

prescribing even more severe punishments than the ones we have now for this type of violence."¹⁴⁶

President Vučić continued to present information from investigations, which he should have access to in the first place. In case of murder of one investor in Belgrade in September 2018, for which the suspect was Stojanka Stojanović, Vučić called the suspect a cold-blooded murderer, adding: *"Do you want to see the records of this harridan, what she did and whom she wanted to kill, and no one asks for those whose father was killed... We live in the land of pathology, where everyone is saying "Long live the murderer"*".¹⁴⁷ After that, the pro-government media out of a sudden got the video of the murder and published it, competing afterwards in publishing fantastic details from the life of Ms. Stojanović, getting to the point to claim that she was a hired assassin of secret services.¹⁴⁸

Informing in minority languages

Informing in languages of minorities is included in Chapter 23 within the part dealing with rights of minorities. In this field, a particular action plan for realization of rights of national minorities was adopted¹⁴⁹. One chapter of this Action Plan is dedicated to culture and media, having in mind that 11 subchapters out of total 13 are dealing with media (the total of 5 activities).¹⁵⁰

Informing in languages of minorities is carried out in three ways: through public services of Serbia and Vojvodina that have the legal obligation to inform in the languages of minorities, then through the media established by the National Council of Minorities and through private media that have programs in languages of minorities. All three groups face the same issues that trouble

¹⁴⁶ [https://insajder.net/sr/sajt/vazno/6930/Ministar-Stefanovi%C4%87-o-hap%C5%A1enju-mu%C5%BEa-ubijene-peva%C4%8Dice-Policija-ne-tempira-hap%C5%A1enja-o-tome-odlu%C4%8Duje-tu%C5%BEilac-\(VIDEO\).htm](https://insajder.net/sr/sajt/vazno/6930/Ministar-Stefanovi%C4%87-o-hap%C5%A1enju-mu%C5%BEa-ubijene-peva%C4%8Dice-Policija-ne-tempira-hap%C5%A1enja-o-tome-odlu%C4%8Duje-tu%C5%BEilac-(VIDEO).htm)

¹⁴⁷ https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=09&dd=13&nav_category=11&nav_id=1443308

¹⁴⁸ <https://www.kurir.rs/crna-hronika/3120959/senzacionalno-istina-o-babi-ubici-coka-radila-za-db-bivsu-misicu-obucile-tajne-sluzbe-citajte-u-kuriru>

¹⁴⁹

http://www.ljudskaprava.gov.rs/sites/default/files/prilog_fajl/akcioni_plan_za_sprovodjenje_prava_nacionalnih_majnjina_-_sa_semaforom.pdf

¹⁵⁰ *Ibid.*

the media in Serbian language as well, but they also face some specific challenges related to wider politics towards the national minorities in Serbia.

RTS does not implement the legally prescribed obligation to introduce programs in minorities' languages and form appropriate editorial boards for years now. In that manner, the minorities living outside of Vojvodina are brought into discriminatory position, because they do not have the possibility to be informed in their own language like their counterparts in Vojvodina. Most explanations provided by RTS refer to lack of financial resources, which definitely cannot be the reason for their failure to comply with their legal obligations.¹⁵¹ The Public Service of Vojvodina has programs in language of minorities, but the editorial boards are controlled by the ruling structures in the national councils of those minorities, which poses a threat to independent and free information of citizens.¹⁵²

The media owned by the national councils have specific issues related to their legal position. They are the only media, apart from public services, exempted from the obligation of privatization and withdrawal of the state from the media. This kind of situation enabled their existence, but on the other hand, it allowed the control of dominant parties in each of the national communities over their own media. Pluralism and respecting information freedom in the media controlled by the national councils is not recognized in none of the activities referred to in the Action Plan for Minorities, thus it is not included in the reporting on AP implementation. The research that was carried out in 2017 by the Centre for Civil Society Development showed that these media were under great pressure of the ruling structures in national councils, which in the end goes down to the same ruling party as on the national level – SNS, except for Hungarian and Bosnian national councils.¹⁵³

The private media that have program in minorities' languages are left to the market and open competition co-financing. Specialized open competitions for these media are organized by the

¹⁵¹ http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/izvestaj_1-2018.pdf

¹⁵² <http://cdcs.org.rs/wp-content/uploads/2017/06/Informisanje-na-jezicima-manjina.pdf>

¹⁵³ *Ibid.*

Republic and Province, and only a few local self-governances.¹⁵⁴ Since there is no legal obligation for the local self-governments to separate the public calls for the media in Serbian languages and the media in languages of minorities, they most often do not separate them. Some municipalities go to other extremes and organize public calls only for the media having program in language of minorities, such as in Preševo, which also represents violation of the law and discrimination.¹⁵⁵

Coalition of journalists' and media associations has developed a set of recommendations for improvement of information in minorities' languages. Some of the recommendations include recognition of interculturalism as an important public interest, provision of legal mechanisms for independent editorial politics of the media owned by national councils, introduction of programs in language of minorities on RTS, simulative measures for the media having program in the language of minorities and similar ones.¹⁵⁶ Amendments to the Law on National Councils of Minorities developed in June 2018 made harmonization with the terminology and basic solutions from the set of media law, but the objections presented by the representatives of expert community have not been resolved.¹⁵⁷

¹⁵⁴ <http://www.ndnv.org/wp-content/uploads/2017/10/Informisanje-na-jezicima-nacionalnih-manjina-%E2%80%93-na-sporednom-koloseku.pdf>

¹⁵⁵ <https://www.juznevesti.com/Drustvo/Medijska-udruzenja-Presevo-diskriminise-nealbanske-medije.sr.html>

¹⁵⁶ <http://www.ndnv.org/wp-content/uploads/2017/10/Informisanje-na-jezicima-nacionalnih-manjina-%E2%80%93-na-sporednom-koloseku.pdf>, pp. 29-31.

¹⁵⁷ Law on National Councils of National Minorities (Zakon o nacionalnim savetima nacionalnih manjina), Official Gazette of (Službeni glasnik) RS nos. 72/2009, 20/2014 – CC decision, 55/2014 and 47/2018

CHAPTER 28

Media Control through Financing Advertising Content

Chapter 28 deals with consumer protection and health protection. In the context of consumer protection, this chapter also applies to advertising. Advertising public authorities is a broad topic that runs through almost all the chapters discussed here (5, 8, 10, 23). Due to the importance of the topic itself and the clarity of the analysis, we decided to present the entire area of advertising through Chapter 28. With advertising, all other forms of government funding for non-competitive co-financing media (discussed in Chapter 23) and public procurement (treated in Chapter 5), such as donations and sponsorships.

Advertising of various public authorities is not yet fully regulated by law. Partial solutions exist in the Law on Advertising, but the general intent of this Law was to deal primarily with commercial advertising. Advertising of public entities is dealt with only through general norms such as the prohibition of hate speech or the protection of minors, and even some of the provisions that existed in the previous law (for example, the prohibition on advertising by a political organization, party or politician)¹⁵⁸ have been eliminated. Public and political advertising was not regulated by any other laws, which could be expected to achieve that, such as media laws.

The advertising market in Serbia is chaotic and unregulated, and there is no reliable estimate of how much money is allocated annually for these purposes. Some estimates say that the amounts in question are approx. 174 million Euros for 2017, but it is unknown how much of it goes to public entities.¹⁵⁹ However, all agree that the state and other public entities, including public utilities and institutions, are the main and the largest market participants.

¹⁵⁸

http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Za%C4%8Darani_krug_ogla%C5%A1avanja_javnog_sektora.pdf, p. 4.

¹⁵⁹ Media Association study, Prava mera medija (Real Measure of Media), 2018, <http://asmedi.org/misc/PravaMeraMedija.pdf>

In addition to funding through competitive co-financing and through public procurements, advertising and similar forms of giving (including donations and sponsorships) represent the third important pillar of state investment in the media. Due to the already mentioned non-regulation, the issues are much bigger here than in the first two forms of money-giving by the public authorities. Issues were first pointed out in detail by the Anti-Corruption Council, a government advisory body, which made reports on the state's influence on the media in 2011 and 2015.¹⁶⁰ Both reports pointed to the continuity of the abuse of public money in order to control the media. In the general conclusion of the report of 2015, the Council states that "through the advertising and marketing of public sector institutions, a very strong relationship between the media and representatives of all levels of government is created. This relationship is mostly direct or indirect through marketing agencies that are close to political parties. The media has a financial benefit in this relationship, while the government representatives have more "flexible" and more servile media, who are blackmailed by the possibility of losing money from advertising and marketing".¹⁶¹

In the report of 2015, the Council identified and described many problems in the field of advertising public entities, including discretionary decision-making, links between politicians and owners of marketing agencies that influence the acquisition of a job, the lack of control over the work of public utilities, engagement for marketing firms which are not registered for that purpose, ordering public opinion surveys or goods and services for which there is no justification in the business of the institution, and the like. The Council also gave 24 recommendations for correcting all shortcomings. So far, nothing has been done concerning these conclusions and recommendations.

The organization Transparency Serbia also warned before the adoption of the Law on Advertising in 2016 that, in this way, there is room for continued pressures on the media through

¹⁶⁰ Report on Pressure on and Control of Media for 2011. (Izveštaj o pritiscima i kontroli medija iz 2011), available at: <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/izvestaji/cid1028-1681/predstavljen-izvestaj-o-pritiscima-i-kontroli-medija-u-srbiji> and Report on possible influence of the public institutions in the media through paying the advertising and marketing services from 2015 (Izveštaj o mogućem uticaju institucija javnog sektora na medije kroz plaćanje usluga oglašavanja i marketinga iz 2015) available at: <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/izvestaji/cid1028-3007/izvestaj-o-mogucem-uticaju-institucija-javnog-sektora-na-medije-kroz-placanja-usluga-oglasavanja-i-marketinga>

¹⁶¹ Report of the Anti-Corruption Council for 2015, p. 3 and 4.

advertising of state institutions.¹⁶² In an expert's report *Media Reform after Five Years from Adoption of the Media Strategy*, it is stated that the regulation of public advertising is one of the priorities in the continuation of the media reform.¹⁶³ They suggest to regulate the entire field of advertising by the state and other public entities by a separate law with the involvement of the civil sector, professional and media associations.¹⁶⁴

In order to at least partially correct the above-mentioned issues, the Law on Public Information and Media stipulates the establishment of the Media Registry which would be under the Agency for Business Registers authority. However, from the very beginning, this Registry is accompanied by numerous deficiencies that were pointed out by media and journalists' associations and civil society organizations. The problems range from the widely-defined classification of money-giving to the media (funds received in the name of state aid and funds that are not allocated on the basis of state aid), data inaccessibility, incompetence of the Business Registers Agency on this subject, impracticality of the browser in the Registry, to the imprecision about which documents should be submitted by the public authorities to the Registry.¹⁶⁵

A particular problem is the fact that not all data on giving to the media is in one place, i.e. that the Media Registry is not the only database. The Register of Media Service Providers is established by the Law on Electronic Media and contains information about the providers of audio-visual media services.¹⁶⁶ This Register is maintained by the Regulatory body for electronic media and should serve as an additional one with the Media Registry, providing numerous data on electronic media, which is important for a more transparent view of the media market.¹⁶⁷ However, the conclusion of media and journalists' associations is that the registry of media

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http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Za%C4%8Darani_krug_ogla%C5%A1avanja_javnog_sektora.pdf

¹⁶³ *Ibid.*, p. 26

¹⁶⁴ *Ibid.*

¹⁶⁵ <https://kazitrazi.rs/wp-content/uploads/2017/11/TRANSPARENTNOST-PODATAKA-DRZAVNA-POTROSNIJA.pdf>

¹⁶⁶ Law on Electronic Media (Zakon o elektronskim medijima), Official Gazette of (Službeni glasnik) RS no. 83/2014 and 6/2016 – state law, Art. 86.

¹⁶⁷ <http://www.rem.rs/sr/registar-pruzalaca-medijskih-usluga>

service providers is too complicated and terminologically confusing, and that there is even non-conformity of the name for the same categories in two registries.¹⁶⁸

The Commission for State Aid Control has its own register of de minimis aid in which they registered the funds received by the media through a competition (which according to the law fall under de minimis)¹⁶⁹, while public procurement is registered on a special public procurement portal managed by the Public Procurement Directorate.¹⁷⁰ These registers too are quite complicated to use and are certainly not compatible with the Media Registry. In the legal analysis Transparency of Data about State Expenditure on the Media Sector published by BIRN, the Slavko Ćuruvija Foundation and NUNS Foundation, all the data on the media that the state collects and publishes in various registers and the issue of their non-compliance, as well as the flaws of each separate registry, are analyzed in detail.¹⁷¹ In the analysis, it is recommended to establish a central hub for all data on media grants which also be a reformed Media Registry.¹⁷²

The 2015 Anti-Corruption Council Report specifically referred to suspicious allocations of public utilities for various marketing campaigns, advertising, donations and sponsorship services.¹⁷³ The Law on Public Enterprises failed to regulate this area, so that these entities were left with enormous freedom to spend money on advertising and marketing at their discretion. The Council has concluded that a large part of these deals is for covert financing compliant media, but also for pressure on their editorial policy. The organization Transparency Serbia conducted a new survey for 2015 and 2016, which were not covered by the Council's report. The results showed that almost nothing has changed and that the practice of non-transparent money spending has continued.¹⁷⁴ This organization concluded *"several cases, among the approved contracts, were found in which the media accepted the obligations that could impair the independent*

¹⁶⁸ <http://mcvojvodine.org/wp-content/uploads/2018/06/PRILOZI-ZA-IZRADU-STRATEGIJE-RAZVOJA-SISTEMA-JAVNOG-INFORMISANJA-DO-2023-GODINE.pdf>, p. 30.

¹⁶⁹ <http://www.kkdp.gov.rs/lat/de-minimis.php>

¹⁷⁰ Law on Public Procurement (Zakon o javnim nabavkama), Official Gazette of (Službeni glasnik) RS no. 124/2012, 14/2015 i 68/2015, Art. 69 and 135.

¹⁷¹ <http://birnsrbija.rs/wp-content/uploads/2017/11/TRANSPARENTNOST-PODATAKA-DRZAVNA-POTROSANJA.pdf>

¹⁷² *Ibid.*

¹⁷³ <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/izvestaji/cid1028-3007/izvestaj-o-mogucem-uticaju-institucija-javnog-sektora-na-medije-kroz-placanja-usluga-oglasavanja-i-marketinga>

¹⁷⁴ http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Politicki_uticaj_na_javna_preduzeca_i_medije.pdf

*editorial policy. Also, public procurement of space in printed media for advertising was spotted as having specifications that clearly indicate that they were ‘targeted’ for particular media.”*¹⁷⁵ Some of the companies that have the most contracts with the media, such as the Post Office of Serbia, refused to submit the documentation.¹⁷⁶

According to the 2016 survey of South News, Niš municipalities and utility companies have donated more than 12 million Dinars to pro-government media on the basis of technical cooperation agreements, bypassing thus even the Law on Public Information.¹⁷⁷ The contracts were designed to present "mutual cooperation in the form of development, co-production and production of radio and television programs, video materials with the theme of current events and activities of the City Municipality, as well as the purchase of time for broadcasting recorded program" the subject of the contract, thus ensuring not going to public procurement, because precisely these activities are excluded from the procurement regime by the Law on Public Procurement.¹⁷⁸

Public utilities from Novi Sad have spent more than 300 000 Euros for advertising services, including paid polls.¹⁷⁹ Even market monopolist companies, such as The Water Supply and Sewerage or the City Thermal Power Plant¹⁸⁰ were advertised. The Water Supply and Sewerage spent most of its money for the promotional anti-theft water campaigns, which makes the regulation of promotional campaigns in public and public-utility companies and the prevention of discretionary decisions of the management to put aside large amounts of money for campaigns whose reach and purpose were never properly measured, questionable.

Apart from all the money received through the system of public procurement procedures explained in Chapter 5, the Tanjug Agency received a 1.5 million Dinars-worth donation from the Chamber of Commerce of Serbia for the purchase of video equipment.¹⁸¹

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ <https://www.juznevesti.com/Istrazujemo/Novcem-gradjana-placaju-sopstvenu-promociju-u-medijima.sr.html>

¹⁷⁸ *Ibid.*

¹⁷⁹ <http://www.politika.rs/sr/clanak/384340/Dnevno-900-evra-za-reklame-javnih-preduzeca>

¹⁸⁰ *Ibid.*

¹⁸¹ <https://www.cins.rs/srpski/news/article/privredna-komora-srbije-donirala-tanjugu-video-opremu>

Managing investments on a political basis in order to affect the media is a special type of misuse of public utilities. In September 2018, the announcement that the State Telecommunication Company Telekom intends to buy a couple of cable program distributors in Serbia.¹⁸² The N1 TV, whose owner is also the owner of the SBB cable system expressed its concern that Telekom could give a much higher price for the companies it wanted to buy than their actual worth is, but that it could eliminate the N1 channel from those providers' offer, too.¹⁸³ This story attracts an additional amount of attention since N1 is the only broadcaster with national coverage (cable distribution only, though) that criticizes the Serbian authorities, while the management of Telekom is installed by the ruling political party.

Another controversial topic related to advertising is the ban to interrupt foreign re-emitted programs with domestic ads. The re-emission of foreign content is free - it requires no permission from REM on the basis of the European Convention on Transfrontier Television ratified by Serbia in 2003.¹⁸⁴ Since the Convention protects the re-emission of the original program, without any interruption or cutting in, the Law on Advertising banned the insertion of advertisements in order to protect the domestic media market from wasting money on the companies which are not registered in Serbia, or evade paying taxes.¹⁸⁵ The Law on Electronic Media defines re-emitting as emitting the original program without inserting content, including advertisements.¹⁸⁶

Certain distributors protested fiercely because REM is not doing its job and is turning a blind eye to the insertion of domestic advertisements in re-emitted programs.¹⁸⁷ The Law on Advertising automatically entrusted REM with this since it belongs to the area of advertising in electronic media.¹⁸⁸

¹⁸² <http://rs.n1info.com/a421097/Biznis/Drzava-kao-kablovski-operater.html>

¹⁸³ *Ibid.*

¹⁸⁴ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007b0d8>

¹⁸⁵ Law on Advertising, Art. 27, Para. 4.

¹⁸⁶ Law on Electronic Media, Art. 74.

¹⁸⁷ <http://www.politika.rs/sr/clanak/371964/TV-kanalima-milioni-oticu-u-sivu-zonu>

¹⁸⁸ Law on Advertising, Art. 74, Para 2.

In his analysis, Miloš Stojiljković, a lawyer and an expert on Media Law warns about the problematic nature of the solution provided by the Law on Advertising.¹⁸⁹ it would be enough for foreign channels to register in one country and emit their whole content from there, including advertisements from Serbia, falling under the protection of the Convention, thus making the ban provided by the Law on Advertising pointless. He also warns about the nonchalant use of such a strict measure as a ban or scrambling of the content is. He proposes that the authority be transferred from REM (which, additionally, has no technical capacity to do this) to the Commission for Competition Protection, since it is all basically revolves around the possible infringement of competitors' freedom, while the possible tax evasion should be dealt with by the tax authorities which are originally in charge of it.¹⁹⁰

¹⁸⁹ <http://pravoikt.org/novi-zakon-o-oglasavanju-reemitovanje-stranih-kablovskih-programa/>

¹⁹⁰ *Ibid.*

CHAPTER 32

The Supervision of Budget Money Spending for Political Parties Financing and Calls for Proposals for Media Co-financing Carried out by the State Audit Institution

Chapter 32 covers the internal and external audit of State finances, protection of the EU's financial interests and the protection of the Euro from falsifying. The external audit area includes the functioning of the State Audit Institution (DRI). Given the fact that the DRI supervises the control of finances and political parties, but also state institutions (including their expenditures for the media), the freedom of the media is what makes this area interesting.

One of the activities included in the Action plan for Chapter 32 has been entrusted to DRI. This activity requires carrying out the revision of financial reports of the parliamentary political parties in relation to advertising co-financed from the budget during the election campaign in 2014, with the notice that it is related to Chapter 32.¹⁹¹ Although the DRI has carried out an audit of eleven political parties since 2015 and an audit of 4 political parties in 2017 and established a series of irregularities with 10 of them, there is no data on any type of sanctions. Serbia has been reporting on a full implementation of this measure, although the indicator also defines the sanctions directed towards the political parties.¹⁹² This is just another example of the formalist view of the activities and goals of the Action Plan for Chapter 32. The Formal fulfillment of this measure has not contributed to the establishment of misuse and pressure on the media through the advertising of the political parties, nor the prevention of repetition of similar situations in the future.

¹⁹¹<https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nact-%20Konačna%20verzija1.pdf>, activity.5.2.30.

¹⁹²<https://mediji.gradjanske.org/wp-content/uploads/2018/07/Komentar-OCD-na-Izve%C5%A1taj-EK-o-napretku-RS-za-2017.pdf>

During the revision of REM's business in 2016, DRI has established a number of errors in this institution's functioning, some of them dating as far back as 2013.¹⁹³ At that moment no audit checking the purposefulness of REM's functioning could point out to some of the issues spotted while tracking Chapter 23. Braking of the Law on Electronic Media, Law on Accounting and REM's Statute was found among other things.¹⁹⁴ The irregularities have not been removed yet.

One of the recommendations of the Anti-Corruption Council dating back to 2015 asked the DRI to carry out the control of the purposefulness of media services on a relevant target group, that is, the services of video production, promotion and advertising of the public sector institutions.¹⁹⁵ The government did not reflect on the Council's reports, according to the Action Plan for Chapter 32 it was bound to do so.

In December 2017, several media and journalist societies as well as civil society organizations have asked DRI to start the audit, that is, the evaluation of the process of calls for proposals of the media co-financing due to a large number of established irregularities.¹⁹⁶ The DRI has not accepted the initiative yet.

¹⁹³ <https://www.dri.rs/B0-2017.371.html>

¹⁹⁴ *Ibid.*

¹⁹⁵ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/Izvestaj%20o%20medijima%20konacna%20verzija.pdf>, p. 102.

¹⁹⁶ <https://www.cenzolovka.rs/drzava-i-mediji/udruzenja-uputila-zahtev-drzavnoj-revizorskoj-instituciji-da-ispita-konkursno-sufinansiranje-medija/>

Conclusion

In its essence, the report on tracking the chapter concerning the freedom of the media shows that there has been a worsening in all areas of practice and that the same was established with the legal framework which has been stable up to now. It is important to point out that the findings of this report do not comply with the positive official findings of the institutions reporting in these chapters which boil down to the technical reporting on duties met.

The key issues of every chapter include: confusing and controversial provisions of the Law on Public Procurement Procedures (Chapter 5), imprecise obligations of those receiving financial help from the State, the way of reporting and supervising as well as the insufficient degree of authority of the State Aid Control Commission, legal insecurity in terms of media concentration arising from the existence of two independent bodies deciding on the same matter (Chapter 8), too much influence on the functioning of REM, as well as the public media (Chapter 10), a constant increase in the number of attacks on journalists criticizing the work of the authorities, an increase in the number of tenders for media co-financing showing irregularities and misuse, the continuation of the privatization process often boiling down to the media being overtaken by the companies or individuals close to the authorities, the trend of unauthorized delivery of investigation data to the media, the fact that RTS is evading the introduction of the content in the languages of national minorities, its lawful obligation (Chapter 23), the non-existent lawful framework which would regulate the advertising of different organs of public authorities on the whole (Chapter 28); the non-establishing of misuse and pressure on the media through the advertising of political parties during the election campaigns. (Chapter 32).

Broad spectrum of authorized bodies; the non-existence of action plans for each chapter, the impossibility of short-term establishing the degree of success of certain measures; the unequal degree of readiness of state organs to co-operate, as well as the insufficient transparency in their

functioning-all these parameters can be spotted and are also defined by the CI as risks following the monitoring of this area in the process of European Integrations.¹⁹⁷

As the basics of each healthy democratic society, these freedoms must be protected in accordance to the highest standards. The analysis clearly that shows cross-cutting approach to the protection of media freedom is necessary. Only by fulfillment of the criteria from this six chapters dealing with the freedom of expression, it is possible to create the integral system of this right protection and provide standards similar to those in developed countries of European Union.

Civic Initiatives continues to intensively monitor all the aspects of freedom of expression in EU integration process, to point out on issues following this area, in the legal framework and in practice, as well as to advocate for stronger co-operation and co-ordination of all negotiation groups whose chapters include freedom of expression and media.

¹⁹⁷<https://mediji.gradjanske.org/wp-content/uploads/2018/07/Pra%C4%87enje-slobode-izra%C5%BEavanja-i-medijskih-sloboda-u-procesu-EU-integracija.pdf>, pp. 30-31.

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ANEXES

ANEX 1

DEMANDS OF THE GROUP ON MEDIA FREEDOM OF SERBIA

November 2017

1. Government representatives, primarily the highest state **officials should stop with public announcements and attempts to discredit journalists and media.** To the Government, ministries, its members and representatives of other state institutions, when delivering invitations for public events, answering questions of journalists and media requests for interviews and statements, in the same way, without selection or discrimination, to treat all media that respect the Code of Journalists of Serbia
2. That the **competent authorities in an expedited process should shed lights on attacks on journalists and cases of threats to their security and to act against the perpetrators.** To urgently carry out and publish the results of an analysis of the conduct of the police and prosecution in cases of murders and attacks on journalists;
3. **Ministry of Culture and Information immediately should stop working on a new strategy of development of public information** due to inadequate methodology and structure of the Working group, which is the most numerous representatives of journalists' and media associations to prevent substantial influence on the development of

this major document. After the expulsion of four members of the Working Group, the group lost the necessary legitimacy. The Ministry of Culture and Information, in dialogue with representatives of the media community and civil society, to establish a different methodology and structure of a new working group for the Strategy for the Development of the Public Information as soon as possible to be in the best interests of the journalistic profession, the media, their publishers and citizens;

4. he National Assembly of the Republic of Serbia should initiate the procedure for dismissal of members of the Council of REM and in the process of appointing new members of the Council it should eliminate the possibility of executive and legislative authorities influencing the proposals from other promoters. The parliamentary committee for culture and information is not competent to examine the eligibility of members elected by the nominees, or the Assembly to refuse to plead on proposals for the election of members of the Council. Changes to the Law on Electronic Media, should define such selection criteria of the Council members that would ensure that the candidates are proven professionals in their work, who have indisputable moral credibility. To exclude authorities and political institutions from the circle of authorized proposers by amending the Law.

5. To consistently enforce the laws relating to the completion of the privatization process of the media, establishing non-state ownership in *Politika*, *Večernje novosti* and *Dnevnik* and the withdrawal of the state from the ownership of these newspapers, as well as the immediate deletion of Public Utility “Tanjug” from the Register of Companies, “Tanjug” service from the Register of the media and termination of the Agency, based on the decision of the Government of Serbia on 3 November 2015;

6. To enable legally guaranteed editorial and commercial autonomy and financial independence of public media service. To protect their editorial independence, Government of Serbia should provide a public media service that is predominantly financed from the charges, as it was defined by the law;

7. The Ministry of Culture and Information, the Commission for State Aid Control, the State Audit Institution, the Competition Protection Commission, the Public Procurement Office and the Council for the fight against corruption, within its competence, **should continuously supervise and control the use of funds for projects in the contests for co-financing media, public procurement** for the provision of media services and sponsorship and donations from public funds;

8. Serbian government **should form an independent commission to analyze the system of co-financing of media content in the public interest** and to propose measures to prevent abuse of competition at all levels. The Ministry of Culture and Information, through legislative amendments, should specify the conditions and the criteria for decision making at competitions for funding media programs and introduce an effective mechanism for challenging the decisions for allocating funds, before they are spent;

9. To improve working situation of journalists through the strict implementation of the Labour Law, in respect of the work of labor rights and the basis of engagement in employment and out of employment, and the implementation of the Law on Prevention of Harassment at Work.

10. The Serbian Government **should ensure implementation of the Commissioner for Information of Public Importance and Personal Data Protection, which have not been made**, that the mere act at all backward requests for access to information and to the future after these requests are treated within the legal deadline, in the manner prescribed by the Law on Free Access to Information of Public Importance;

11. **To comprehensively and strictly regulate advertising government bodies and other bodies** by changing the law on public procurement or the adoption of the Law on advertising of public authorities;

12. The Ministry of Justice should **form an independent commission for the preparation of the records and analysis of court proceedings against media**

publishers, editors and journalists, in accordance to the European Court of Human rights. We demand strict respect for copyright in the media sphere and any amendment of the Copyright Act that would prevent the financial pressures on the media publishers the judgment with excessive amounts of money for copyright infringement, also in line with the European Court of Human Rights;

13. **The Serbian Government should adopt all additional incentives and benefits from printing media and regional and local media**, which are enumerated in the previous Development Strategy of Public Information System in the Republic of Serbia, but so far none of them was implemented, and to consider the possibility of establishing mandatory percentage allocations from the budgets of local governments for project co-financing of media content of public interest.

Annex 2

REPORTS ON THE FREEDOM OF EXPRESSION FROM THE COMMENT OF THE CIVIL SOCIETY ORGANIZATIONS ON THE EUROPEAN COMMISSION'S REPORT ON THE DEVELOPMENT OF SERBIA IN 2017.

April 2018

Chapters 5 and 8

The Serbian government should

- ensure the implementation of laws, the implementation of its decisions on canceling Tanjug, thereby ensuring the equality of actors on the market.

- Improve regulations that will allow for more efficient state aid control. It is necessary to make specific regulations on state aid in the field of public information.

- Introduce sanctions for not reporting data on state aid granted and granting state aid beyond the law.
- Ensure more active approach of the State Aid Control Commission in cases of violation of state aid regulations in the field of media. In relation to this, it is possible to open a wider scope discussion on the current position of the State Aid Control Commission and the necessity of its transformation (setting up an independent body or the fusion with the Commission for the Protection of Competition).
- regulate the Law on Public Procurement (Art. 7, Para. 1, Item 10), the exemption from implementation of the law for the purchase of broadcasting time, since this can be interpreted as the basis for making direct contracts with the media for the purchase of promotional terms and for direct broadcasts or recordings broadcasting on the activities of local authorities.

Chapter 10

- Change the way of selecting the members of the REM Council and carry out the re-election of members of the Council, since the practice so far has shown that it is not possible to evolve the Council's work.
- define court procedures for the protection of proponents' rights for members of the REM Council in order to reduce violations of executive and legislative procedures.
- The introduction of only one mandate for members of the REM Council.

- Improve the legal solution regarding the obligation of the REM to control media reporting at the time of the election campaign, as well as the way REM deals with electronic media in cases of not meeting their program obligations.
- Strengthen laws and by-laws in order to ensure adequate protection of children and juveniles against inappropriate media content. Introduce the possibility for REM to impose direct fines.
- It is necessary to ensure that public services are primarily financed from subscriptions/fees, that is, the money of viewers.
- Improve procedures for selecting public media service bodies, with particular emphasis on strengthening the efficiency of the Program Councils and its communication with the public/citizens.
- Introduce mandatory analysis of the quality of media content of public media services as well as control of information indicators in the public interest that need to be formulated. RTS and RTV have public opinion, programs and audience research centers that use to analyze the quality of media content. Public media services should improve the work of these centers and enable them to analyze the quality of media content which is not their job now.

Chapter 23

- Take all necessary measures to improve the protection of journalists' sources by amending the Law on Electronic Communications.
- Education of judicial office holders on cyber-attacks is necessary, as well as the capacity building of state agencies dealing with attacks and other security threats in the online environment. Protect other media actors, that is, all persons performing media activity/informing the public

- Institutions are to ensure transparency of their work and to publish the results of analyzing existing and previous activities of the police and the prosecutor's office in cases of assaults and murders of journalists.
- Inclusion of judicial representatives in the process of protecting journalists' safety. Ensure the education of journalists, media owners about their rights.
- Set conditions in order to be possible to sign a branch collective agreement, which would lead to more organized and more systematic solution of the problems of social and economic existence of media workers.
- Ensure the full inclusiveness of the decision-making process and include proposals from organizations and associations. If the proposals are not accepted, explain the reasons for rejecting them.
- Introduce the obligation to evaluate the competition-based co-financing of public interest projects in the field of public information - achieved goals and public interests, as well as the evaluation of media products.
- Improve the transparency of the media registry - provide insight into data about which body has provided aid or other means and for which purposes.
- regularly initiate accountability procedures and sanction cases of non-reporting the data into the media register.
- Finish the privatization process, in a transparent and legal manner, and complete withdrawal of the state from media ownership in order to ensure free editorial policy and the equity of media actors.

- the work of public services must be free from both the state and political pressures coming from political parties dominant in National Councils.
- the state is obliged to recognize informing in minority languages as a public interest by the new media strategy and legislation and to protect it at all levels.
- It is particularly important to protect the media owned by the National Council from the pressure of political parties, by defining management and supervisory structures independent from the National Councils and by encouraging self-regulation within the media communities of national minorities.
- Media calls for proposals, by which, among other things, public content in minority languages is financed, have to be more transparent, places in commissions must be obtained by experts who are not in conflict of interest and adequate evaluation of the results of realized projects has to be ensured.
- Fill out the indicators from the Action Plan for Chapter 23 related to the amendments to the by-laws and codes and add qualitative indicators that will follow the fulfillment of the changed legal framework.

Chapter 28

- define and argue the needs for the marketing of public enterprises, both at the legal level and in cases of approving financial plans.
- Establish more detailed and consistent relations between publicly-owned media companies and media advertising, in the context of amendments to the Public Procurement Act, Public Enterprise Law, Mediation or Advertising Act.

- The issue of advertising publicly owned and state-owned enterprises should pay attention to the forthcoming Media Strategy, considering the findings of relevant research, as well as the reports of Anti-Corruption Council for 2011 and 2015.

Chapter 32

- The state should conduct a review of the regularity of operating, as well as the purpose of operating in 2018; Determine the responsibility of the auditing company that do the revision of the REM annually; Review the decision to engage the current auditing firm.
- Ensure that all institutions react adequately to identified irregularities during audits. Ensure that the audit reports are sent to audit entities and publish those that are sent to the state.

ANNEX 3

RECOMMENDATIONS OF THE WHITE BOOK ON COMPETITION BASED CO-FINANCING OF PUBLIC INTEREST IN THE AREA OF PUBLIC INFORMATION

- Coalition of media and journalists' associations (NUNS, UNS, NDNV, ANEM, Local press) Novi Sad, 2016
- It is necessary to take immediate steps to ensure transparency of the competition-based co-financing process, evaluation of the approved projects, as well as clearly defined sanctions for the authorities and bodies in charge of public information that violated the laws, respecting the existing ones and adopting new laws and by-laws.

- Mechanisms should be provided to ensure the highest degree of transparency in the overall process: from preparatory actions and defining public interest at the local level, through announcing the calls for proposals, the selection of the commission, the work of the commission, the results of the work of the commission, all the way to the results of the implemented projects and their evaluation.
- Representatives of civil society should be enabled to actively participate in determining the public interest that will be co-financed, as well as participating in the evaluation of implemented activities within the approved projects and the entire process. It is also necessary to guarantee them to be present as observers at the meetings of independent expert commissions for evaluating proposals for media projects, while making clear rules and procedures not to disturb its work.
- It is necessary to calculate and elaborate the method of implemented projects evaluating so that all stakeholders can gain insight into their quality, achieved goals and results. The lack of evaluation in the short term allows for the misuse of competition n-based co-financing, and in the long run, prevents the incitement of better quality media content and, in particular, more complex and demanding journalistic forms and genres.
- It is necessary to define precisely what can be the subject of public procurement in the sphere of information, and what is not, given the fact that some local governments have misused public procurement to finance the media and thus ruined the point of reforming the media. It is necessary to harmonize the Law on Public Procurement with the spirit of media laws, i.e. change of this law that will enable information services, according to the Ministry, can be the objects of public procurement - to be clearly implemented, with no possibility of being abused.

- Given the lack of sanctions for the previous drastic violations of the Law on Public Information and the Media and the Rulebook on co-financing projects for public interest in the area of public information, we can expect retrograde processes in the field of competition-based co-financing, because there is a danger that even those local self-governments that have obeyed the law so far, will decide to violate it. First, this will be due to the fact that the largest and most visible local self-governments in the country have violated the laws and have not had any sanctions. It is therefore necessary to provide effective sanctions for those entities that violate laws.

- It is mandatory to start a public debate and search for mechanisms in order to prevent malpractices in nominating and electing members of the expert commission, i.e. in order to prevent the practice that local self-governments elect members of independent evaluation committees for selecting projects in the area of public information proposed by the non-representative, completely unfamiliar journalists and media associations.

- It is necessary that the state, through special programs, strongly supports the development of media capacities for creating and implementing media projects, in order to help their sustainability and development, but also to improve the overall process of competition-based co-financing.

- Associations with the right to propose members of expert committees must develop capacities to adequately respond to the challenges that the competition-based co-financing process brings, which also includes the development of knowledge and skills of candidates for expert commissions, as well as the selection of those candidates who have unambiguous moral credibility.

- Precise mechanisms for resolving and defining the conflict of interests of members of expert committees should be envisaged, as the existing solutions are not satisfactory.

- Having in mind the issues identified in the implementation of the Law on Public Information and Media at the local level in the field of competition-based co-financing of media content on minority languages, it is necessary to provide precise mechanisms and obligations for the competition based co-financing of public interest in the field of information in minority languages through legislative changes in order to avoid confusion in this area.

ANNEX 4

RECOMMENDATIONS FOR REFORMING REGULATORY FRAMEWORK FOR PROJECT CO-FINANCING

*Legal analysis of project co-financing of content of public interest in the Republic of Serbia,
NUNS, 2017*

1. RECOMMENDATION: In order to define media content of public interest as precise as possible and define the purpose of the calls for proposals better, amendments to the law should prescribe:
 - the definition of media content of public interest as content that covers events, processes, or phenomena that are important to citizens, so that they can make decisions that are important for improving their lives based on the information that this content provides, and which do not refer to media reporting on the activities of the body that announced the call for proposals or other public bodies;

- the obligation of the bodies announcing calls for proposals for project co-financing to carry out the needs assessment for certain media contents at least once in three years, which will include an economic analysis of the costs of producing certain media content, depending on the needs of the specific population of the local self-government, the autonomous province or the republic.
- After the assessment, the authorities would invite citizens and civil society organizations to get acquainted with the results of the analysis and to participate in the public debate, after which the topics of public interest would be determined, which would then be formulated in the form of a decision on determining the public interest, which would then become an integral part of the public call for the next competition.

2. RECOMMENDATION: In order to prevent the monopolization of the minority media scene and the implementation of measures of "affirmative action" in the field of public information, consider thematic calls for proposals intended for relevant informing of national minorities (and of disabled persons) within the framework of general calls for proposals, through amendments to the Law on Public Information.

3. RECOMMENDATION: In order to implement the principle of non-discrimination, consider defining a list of behaviors that are considered discriminatory.

4. RECOMMENDATION: In order to identify the real funds needed for the calls for proposals and not to allow the allocation of inappropriate funds to certain media, the law should specify the lowest and highest amount that could be allocated through calls for proposals, while at the same time defining that the amounts that are allocated are to be applied according to the "cost principle", that is, to reflect real costs that the media would have in producing and distributing media content of public interest, in accordance to the results of the economic part of the assessment in Recommendation 1.

5. RECOMMENDATION: In order to improve the work of the expert commission and re-affirm the importance of the expert commission in allocating funds according to the system of project co-financing and reducing the possibilities for arbitrary actions of the

body that signs the decision on allocation of funds, through amendments to the Law on Public information should:

- define the term "media expert" in the way that it is a person who must be or who has the appropriate academic education in the field of media or that (s)he is the media expert with many years of experience in relation to the media or who is a person with experience in project evaluation, and at the same time, in order to improve the predictability of the commission work, consider that the basic rules of work of the commission are also specified by the provisions of the Law on Public Information, that the commission has a president, that the work of the commission takes place in the sessions, that the work of the commission is recorded, that decisions are made by the majority of votes, that the proposal for the allocation of funds is signed by the members of the commission, and that the commission is supported by the expert service of the body that announced call for proposals;
- specify that the public body does not have the right to change the proposal of the expert commission (not even with regard to the project proposed, or in terms of the amounts allocated to these projects), and that it has the possibility to request the commission to correct irregularities or mistakes, as well as a proposal within a specified time limit only in the written form. In this way, the integrity of the commission will be preserved, and there is certainly no fear that lawfulness is not protected, since ultimately judicial protection of legality in administrative dispute is ensured;
- define what does the prohibition of the "conflict of interest" and "performing a public function" mean in the context of participating in the work of expert commission, based on the definitions of these categories in the Law on the Anti-Corruption Agency.

6, RECOMMENDATION: In order to ensure transparency, the amendments to the Law on Public Information should allow the transparency of the entire procedure, through:

- organizing public hearings and publishing pre-competitive documents in relation to Recommendation 1 - transparency of the pre-competitive phase;

- publishing all documents on the website of the bodies that are being published up to now, adding compulsory publication of the minutes from the sessions of the expert commission (anonymizing personal data and omitting the data on which member voted) - the transparency of the tender phase and decision-making phases;
- publishing the narrative and financial reports (internal evaluation of the project), external evaluation results - individual and aggregate (from Recommendation 6) and organizing public debates on the achieving the goals of public interest after project implementation - transparency of the post-tender phase;

7. RECOMMENDATION: For the purpose of better analyzing the achieved goals of public interest, it should

- clarify the procedure of internal analysis, by amending the law or by issuing instructions, in order to envisage the methodology that the users of the funds are obliged to apply in the internal analysis and with the possibility of prescribing a uniform evaluation form for all levels of government and specify the deadlines for conducting the analysis, referring to the deadline from the Rulebook - March 31 of the current year for projects implemented in the previous year and March 31 of the following year in relation to the year in which the three-year project was implemented;
- introduce an external evaluation (analysis) as a compulsory step in the post-competitive phase, which will be implemented by civil society organizations, or other independent entities with appropriate expertise (which can be partly financed from the funds earmarked for project co-financing for a specific project) for each call for proposal individually and collectively for all levels of government in a calendar year

8. RECOMMENDATION: In order to improve the mechanisms for controlling the implementation of the provisions on project co-financing:

- Formalize the cooperation of the ministry responsible for culture and information (the Ministry of Culture and Information) and the regional body responsible for information (when monitoring the legality of acting in accordance to the Article 132 of Law on Public

information), on one hand, and the ministries responsible for local self-government (Ministry of State Administration and Local Self-Government) on the other, through exchanging of information on irregularities in law enforcement at the local level, compulsory reporting of law violations, along with recommendations to align with the law and similar mechanisms in order to reduce abuse at the local level, and undertaking other possible means envisaged by the laws regulating the state administration;

- consider the possibility of prescribing jurisdiction to the Administrative Inspection in cases of illegal acting of the authorities announcing call for proposal;
- Determine the clear jurisdiction of the Ministry of Culture and Information and the State Aid Control Commission (as well as the Ministry of Finance) in the process of monitoring in compliance with the rules on the control of low-value state aid (de minimis).

9. RECOMMENDATION: In order to prevent irregularities and abuse in practice, and in particular to prevent situations where the public authority: does not announce a public call for proposals at all, does not publish the prescribed documents, improperly compiles the expert commission, sets discriminatory criteria in the tender, deviates from the proposal of the expert commission, as well as to prevent abuse of the user himself, and in order to ensure proper implementation of the regulations on state aid control and in order to avoid other situations that are perceived by the expert public as controversial, for each of these situations, it should prescribe at least the responsibility for the misdemeanor and the maximum possible fines for the legal entity and the responsible person for the legal entity.

Annex 5

RECOMMENDATIONS FROM THE DATA TRANSPARENCY ON STATE EXPENSES FOR MEDIA SECTOR

BIRN, Slavko Ćuruvija Foundation, NUNS, 2017

Recommendation 1: In order to clarify more precisely the obligation to provide data on monetary funds, it is proposed to define more closely the types of public funds provided to the media, in accordance with the typology proposed in Chapter III, section 3.1. defining can be determined by a special instruction of the competent ministry as a sub-legal act which "determines the manner in which the state administration bodies and holders of the public authority enforce certain provisions of the law or other regulation"¹⁹⁸;

Recommendation 2: Centralizing and improving the presentation of data on monetary donations by establishing a central hub for all information relevant to the financial giving of public authorities to the media. This "central hub" would be in the existing media register. The issue of presenting funds would be resolved by prescribing a clear obligation that the registry should publish data and clearly define what kind of data are to be inputted.

The categories of data that would be publicly available would refer to the following:

- identification data on the state aid provider or the contracting authority in the public procurement procedure;
- Identification data on the state aid beneficiary or the bidder to whom the contract was awarded in the public procurement procedure;
- number, date and title of the decision on granting state aid or number, date and title of the decision on awarding contracts in the public procurement procedure;
- the legal basis for decision making on the granting of state aid or the decision to award contracts;
- the amount of state aid or value of contracts in the public procurement procedure;

¹⁹⁸ Art. 15 Para. 4. of the Law on State Administration.

- source of financing (the specific budget item from which state aid or public procurement is financed);
- possibly other data.

The legal basis for establishing new model of presentation would be amendments to the Law on Public Information and the Media, which would regulate the availability of these data in details and the obligation of special registrars that keep the data related to giving funds to the media to submit the data to the media register. The by-law (rulebook) would regulate more closely the way of publishing and the technical report.

Recommendation 2a: As a transitional solution until the appropriate changes proposed in Recommendations 2 and 3 are made, consider including the Public Procurement Portal, SBRA (related to the media register) and the Commission into the open data system (<https://data.gov.rs/en/>) so that the categories of data (recommendation 2) and the corresponding decision (recommendation 4) are available to users in the manner envisaged by this system (which would also mean that these data would be available in one place through the open data portal)¹⁹⁹.

Recommendation 3: The obligation to update the registry of the media should be regulated by the appropriate regulation, most likely Law on public information, the article of the law should clearly point out the obligation of the SBRA to regularly publish and update all the information on the media, together with the deadlines in which it is obliged to do so, leaving the possibility for the method of fulfilling these obligations to be regulated more closely by the by-law or the Rulebook mentioned in Recommendation 2.

Recommendation 4: define "authorized person of the public authority", using instructions as a by-law.

¹⁹⁹ It should be noted here that the Public Procurement Portal is already in the Open Data system, the data is available at the following link: <http://bit.ly/2tiMZFa>. Nevertheless, these are aggregate data relating to public procurement of all goods and services, and do not have a filter on goods or services that are purchased, and therefore it is not easy to get information on the purchase of "media services" and "advertising services".

Recommendation 5: More closely define the documents that are submitted to the media register when recording data related to the monetary benefits of public authorities in the way that: 1) Firstly, amend the provision of Article 43 of the Law on public information and the Media in the way to extend the authority for adopting a by-law in the following manner: "The Ministry in charge of public information issues prescribes the documentation that is enclosed in the process of registering the media in the register, as well as the documentation that is enclosed in the procedure of registration of data referred to in Article 39, paragraph 1, item 9 and 10)", and then to adopt the new Rulebook which, in addition to the documentation submitted by the media in the registration procedure, will also specify the documentation submitted by the public authority regarding the cash benefits.

Recommendation 6: Provide clearer rules in relation to the obligations of the authorized persons for the submission of data in each of the public authorities that announces public calls for proposals in which the internal rules will clearly regulate which body is authorized to deliver data, how and in which period (within the legal deadline).

Annex 6

RECOMMENDATIONS FOR INFORMING IN MINORITY LANGUAGES

Coalition of Journalists' and Media Associations (NUNS, NDNV, ANEM, AOM, Lokal Press), 2017

- the drafting of media legislation, the legislator failed to recognize the value of intercultural society, i.e. inter-ethnic communication and cherishing the spirit of tolerance
- as a public interest, which led to the poor position of the multilingual media. Indirectly, this legislator encouraged ghettoization and self-ghettoization of minority communities. It is necessary that interculturality in the new Strategy and laws is recognized as one of the

basic foundations of a multi-national society and as a very important public interest in the field of public information, and not only in the sphere of media

- public media services must start respecting the law strictly, and above all, the Radio-television of Serbia, which must include program in minority languages in its program scheme, as it is prescribed by the Law on Public Media Services. It is also necessary that this program is of a good quality. It is necessary to oblige the public media service of Serbia to introduce programs in Albanian, Bosnian, Hungarian, Aromanian and Bulgarian languages, as well as to improve the program in the Roma language.
- The independence and autonomy of public services in all aspects, including the aspects of minority information and minority languages have to be strengthened by legal solutions. This implies independence from the authorities in Serbia, but also from the national councils of national minorities.
- Through the process of amending the Law on National Councils of National Minorities it is necessary to envisage clear mechanisms for stable, adequate and non-discriminatory financing of the media founded by national councils, which are excluded from the general rules that are applied to other media under the Law on Public Information and Media.
- Considering the fact that the media of the national councils have been placed in the position of a kind of minority public services, it is also necessary to provide for changes in this law to protect the editorial policy from the influence of the founders, according to the logic that the legal definition of public services requires. The strategy should envisage the tripartite board of directors of media publishers in minority languages, established by national councils. These should be composed of representatives of national councils (1/3), representatives of the editorial office (1/3) and representatives of civil society (1/3), with additional protection mechanisms.

- The strategy should oblige national councils to develop self-regulatory mechanisms that will further enable the protection of editorial policy of the media indirectly founded by national councils from the influence of the founder.
- Despite the stable financing of media founded by national councils of national minorities, the state is still under an obligation to co-finance other media content in minority languages, and this should be done by respecting the principles of media freedom, pluralism of opinion and media content. Having in mind the numerous issues in the implementation of the Law on Public Information and the Media at the local level in the sphere of competition-based co-financing of media content, it is necessary that the state provides precise mechanisms and obligations for the competition based co-financing of the public interest in the field of information in minority languages for the media not founded by national councils through the changes in media legislation.
- It is necessary to improve the process of competition-based co-financing of public information by respecting the existing laws and improving the media legislation, so that it really serves the interests of the citizens, not the authorities. In this regard, it is necessary to ensure full transparency of the process, smooth functioning of project evaluation committees, which will be composed of independent experts delegated from representative non-conflicting associations, as well as allocation of adequate financial resources. In this respect, it is important to ensure the presence of competent persons in the field of minority information in the commissions.
- It is necessary to predict and elaborate the method of evaluating implemented projects so that all stakeholders can gain insight into their quality, achieved goals and results. The lack of evaluation in the short term allows for the misuse of competition based co-financing, and in the long run, prevents the incitement of better quality media content and, in particular, more complex and demanding journalistic forms and genres.

- In the new Media Strategy, it is necessary to envisage the control of the continuity of producing media content in accordance with Article 142 of the media law, which implies defining sanctions for new media owners who do not comply with this legal provision.
- It is necessary to provide special stimulating measures for electronic media that provide content in minority languages (for example in terms of abolishing or reducing costs, such as digital dividends, costs for Serbian Music Authors' Organization (SOKOJ), Phonogram Producers Organisation of Serbia (OFPS) and others).
- It is necessary to envisage programs and stimulating measures that will increase the capacities of the local media especially in the sphere of using new technological information platforms, as well as in the field of project management, including the use of international (cross-border) projects. Online media reporting in minority languages can significantly substitute traditional media platforms that were closed in the meantime.
- A special action plan for exercising the rights of national minorities is an extremely important sign of respecting the rights of national minorities in the area of public information as well. However, the fact that the concept of media freedom and media pluralism, that is, a mechanism to protect against political pressures on editorial policy is not sufficiently represented in this action plan is discouraging. Therefore, the Strategy for the Development of the Public Information System must pay particular attention to this aspect.