

SHADOW REPORT

ACTION PLAN FOR NEGOTIATING CHAPTER 23

Balkan Investigative Reporting Network – BIRN Serbia, submits this shadow report as alternative perspective to Governments reports on implementation of actions stipulated under Negotiating Chapter 23 – Judiciary and Human Rights.

This shadow report puts special emphasis on freedom of expression and media pluralism issues, as precondition of overall democratic debate in the country.

The report is submitted to the EU Delegation in Serbia as contribution to the compilation of next European Commission Progress Report, mapping Serbia path in integration processes, particularly in effective establishment of mechanisms that enable rule of law and human rights, essential for country's democratic development.

At the same time, this shadow report calls for more Government accountability in implementation of measures laid out in Action Plan for Chapter 23 (AP 23), particularly section 3.5.2 related to media legislation and cease of undue pressures on media coming from state bodies, exercised through allocation of state budgets.

Serbia today lacks a functional, vital, and competitive media market. Taxpayer funds are now one of the most important sources for survival of media outlets. However, public monies are deployed with partisan intent. There are no official consolidated data on government spending in the media sector, nor publicly available reports on the effects and results of these allocations. Lack of transparency allows uncontrolled discretionary spending that is a primary enabler of “soft censorship”.

Shadow report is result of BIRN overall engagement in the field of media development and media freedoms, but also as part of the activities under the project “Public Money for Public Interest” supported by EC through IPA Civil Society Facility instrument.

Specific measures to be presented in the report that follows are selected according to BIRN expertise as those that BIRN can make the most constructive input. Measures selected are also good indicators and milestones in description of current media landscape.

The latest 2016 EC Progress Report scored media freedom issues as one of the lowest in the entire report. Report specifically states that “As regards freedom of expression, the situation has not improved. There is a need to

maintain and foster space for political dialogue, critical discussion and debate and expression of differing opinions both in mainstream media and in social networks... Hate speech is often tolerated in the media and is rarely tackled by regulatory authorities or prosecutors. Statements by state officials in relation to the investigative work of journalists have not been conducive to creating an environment in which freedom of expression can be exercised without hindrance”.

In its key underlying message, this shadow report will demonstrate that no progress has been made during 2017 in comparison to evaluations presented in 2016.

Media and journalists, especially those in investigative journalistic centers, are often subjects to pressures and administrative harassment (smear campaigns of the highest political figures, denied access to events, obstructed when accessing official documents, subjects to various inspections etc.). Others are strictly controlled through ownership structures leading to ruling parties or are dependent on discretionary allocation of state budgets or other resources governed by national and local administrations, which is one of the most effective means of control and/or censorship.

Gravity of situation calls for European Union to put issues of freedom of expression and media pluralism higher on accession agenda and insist on its implementation during negotiation process.

Overall conclusion are that, opposite to what was set to be key policy impact stipulated in AP 23, state bodies failed to terminate their own excessive influence over media (through new model of budgetary financing and privatization process, more controlled and transparent state advertising and ending direct state ownership over media outlets). Additionally, state bodies have shown lack of ability to trace development of media sector and formulate new media strategy. All this has negative impact on media pluralism which obstructs exercise of freedom of expression.

Conclusion above are supported with description of the following measures:

3.5.2.1 – Implementation and efficient monitoring the implementation of the set of media laws and periodic reporting

Responsible authority: Ministry for culture and information

Result: Reports of the Ministry for culture and information indicating effective implementation of the set of media laws are publicly available.

Timeframe/deadline: Continuously, starting from 2015

Apart from the report¹ available on the official web site of Ministry of Culture and Information regarding evaluation of projects supported under Ministry’s co-financing scheme in 2015, there are no other public records

¹ Report available here <http://www.kultura.gov.rs/cyr/konkursi/izvestaji-sektora-za-informisanje-i-medije-o-realizaciji-sufinansiranih-projekata-na-konkursima-iz-oblasti-javnog-informisanja-u-2015--godini>

nor specific reports of Ministry indicating how efficient the implementation of the media laws is. Therefore, the result of this measure is lacking.

Additionally, there are no indications nor public records that implementation of the media laws was deliberated during the sessions of the Board for Culture and Public information² in National Assembly during 2017.

BIRN conclusion is opposite to findings of Negotiating Group monitoring application of Action plan for Chapter 23 within Ministry of Justice. In its latest monitoring report³ (July 2017) Group stated that “Activity is being successfully implemented. The Ministry of culture and information regularly submits quarterly reports to the National Assembly”. BIRN couldn’t find any evidence of such activity in public domain – information doesn’t exist on official web site of Ministry or one of Assembly.

At the same time, various independent monitoring and evaluation actions conducted by media and journalists’ professional organizations demonstrate numerous problems in law implementation.

Application of provisions of Law on Information and Media came into various pitfalls regarding two key policy novelties introduced by the Law - new model of budgetary co-funding of public information and privatization process – both initially introduced to limit the overarching influence of state over media outlets. Through its intervention, instead of supporting media pluralism, state found one of the most effective mechanism of control⁴.

Project based co-funding of media content production, the new budgetary model introduced by the Law, turned into effective means of “soft censorship”. For example, research⁵ carried out by Media Coalition⁶ in 2015 and 2016 shows that almost 20% of all open calls were not in line with the law, while in almost 70% of some sort of procedural mistakes were noted. These breaches, usually stayed without appropriate response from governing authorities, opened the door for further partisan allocation of budgetary funds and abuse of this state funding model. More to be explained in points 3.5.2.10, 3.5.2.12 of this report.

Privatization process and state withdrawal from media failed as well. Major dailies Vecernje Novosti, Politika still remain in partial state ownership and news agency Tanjug functions in legal void. Out of 73 once state-owned media enterprises, 50 of them entered the privatization process through portfolio of Privatization Agency, while 23 applied different methods, some were shut down, while others used different legal modalities (e.g. joint-stock

² Minutes and agenda of Board sessions in 2017 available at National Assembly official web site <http://www.parlament.gov.rs/aktivnosti/narodna-skupstina/radna-tela/odbori.-pododbori.-radne-grupe.2391.html>

³ Report is available here

<https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter-%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>

⁴ BIRN research of soft censorship practices are depicted here

<http://www.balkaninsight.com/en/file/show/SoftCensorship%20Serbia%202015%20update%20final.pdf>

⁵ Research available here <http://www.ndnv.org/wp-content/uploads/2016/06/BelaKnjigaWEB.pdf>

⁶ Media Coalition refers to informal association of five journalistic and media organizations – Independent Association of Journalists, Association of Journalists, Independent Journalists Association of Vojvodina, Association of Independent Electronic Media and Lokal Press

companies). Out of the 50 media, only 34 found new owners. According to the BIRN research, 17 out of the 34 have new owners with known affiliations to political parties⁷.

There are indications that state will regain control of some previously privatized media outlets. The Government passed the latest Regulation (May 2017) which effectively brings back the privatized media to the local self-government supervision. According to the Regulation, local self-government bodies can receive special approval from the Government to take managerial control over media for six months and prepare it for a new round of privatization. So far, according to the findings of BIRN, local self-governments are taking back RT Kragujevac, TV Blace, TV Pruga and Backopalanacki nedeljnik (local weekly newspaper). The concern remains, as Regulation doesn't stipulate, what happens if media are not privatized in the six-month period.

3.5.2.2 - Conduct a thorough analysis of the effects of the Strategy for the Development of Public Information System (2011-2016) in order to: - identify the shortcomings for its implementation - identify strategic aims that will be developed in the new Strategy -provide recommendations to overcome the identified shortcomings in implementation.

Responsible authority: Ministry for culture and information

Result: A thorough analysis of the effects of the Strategy for the Development of Public Information System (2011-2016) conducted. Shortcomings to its implementation identified. Strategic aims of the new Strategy identified. Recommendations to overcome the identified shortcomings in implementation provided.

Timeframe/deadline: III quarter 2016

3.5.2.3 - Develop a new multiannual Strategy for the Development of Public Information System in line with the recommendations from the analysis to ensure its full implementation, in particular focusing on: -further enhancement of transparency of media ownership, -follow up on effects of media privatization, -prevention of media control resulting from excessive dependence on state financed advertising, -strengthening media pluralism, - strengthening media literacy, -strengthening co- and self-regulation.

Responsible authority: Ministry for culture and information

Result: A new multiannual Strategy for the Development of Public Information System developed in line with the recommendations from the analysis, in particular focusing on -further enhancement of transparency of media ownership, - follow up on effects of media privatization, -prevention of media control resulting from excessive dependence on state financed advertising, -strengthening media pluralism, - strengthening media literacy, - strengthening co- and self-regulation.

Timeframe/deadline: IV quarter 2016

3.5.2.4 - Develop Action Plan for implementation of a new multiannual Strategy for the Development of Public Information System in particular focusing on measures enabling: -further enhancement of transparency of media

⁷ More on media privatization issues available at BIRN- Reporters Without Borders research on media ownership here <http://serbia.mom-rsf.org/en/findings/indicators/>

ownership, -follow up on effects of media privatization, -prevention of media control resulting from excessive dependence on state financed advertising, -strengthening media pluralism, - strengthening media literacy, - strengthening co- and self-regulation and ensure its full implementation by: - developing objective indicators that allow for effective monitoring of implementation of the Strategy -establishing clear mechanism for monitoring implementation of the Strategy.

Responsible authority: Ministry of Culture and Information

Timeframe/deadline: For development of Action Plan: I quarter of 2017. For implementation: Continuously, commencing from I quarter of 2017

With the delay of one year in drafting and implementation of Media Strategy (and thus failing to reach the result of AP measures 3.5.2.2, 3.5.2.3, 3.5.2.4), Ministry of Culture has initiated the work on creation of this strategic document by assembling the working group with the task to draft strategic proposal which could be publicly presented and deliberated before being adopted by the Government.

Yet, the performance of the working group is from the start hampered by various controversies, recently culminating with three members of the group terminating its engagement (Nedim Sejdinovic representing five media organisations, Ljiljana Smajlovic representing Journalists Association of Serbia and Dalila Ljubicic representing Association of Media). Former members of the working group claim that methodology of work set up by Ministry is inefficient and won't result in strategic document which could be supported by professional community. So far, according to information obtained by BIRN, working group is working on the analysis of current state of affairs, although this job was trusted to Ministry (AP 23 measure 3.5.2.2) and partly conducted within "Towards new media policy in Serbia" Follow-up to speak up! Conference.

Media Strategy has no clear aims yet, but according to the chapters of draft document, Strategy will encompass the chapters highlighted in measures of the AP 23. This structure, however, doesn't provide much information on how the state financing issues will be treated, as BIRN finds this one of the most effective means to exercise influence on media.

3.5.2.5 – Establishment of an efficient comprehensive and transparent Registry of the media ownership structure and regular update of the data, in order to secure full transparency and public availability of media ownership, pursuant to Chapter VI of the Law on Public Information and Media.

Responsible authority: Ministry of Culture and Information, Serbian Business Registry Agency

Result: Efficient comprehensive and transparent Registry of the media ownership structure established and operational. Data on media ownership structure in the Registry regularly updated.

Timeframe/deadline: Continuously, commencing from III quarter of 2015.

3.5.2.6 – Efficient monitoring of the functioning of Registry of the media ownership in line with the Law on Public Information, through data collection and follow up

Responsible authority: Ministry of Culture and Information

Result: Regular data collection from Business Registers Agency regarding changes in the Registry. Sanctioning failures to report all media ownership data in line with the Law on Public Information.

Timeframe/deadline: Continuously

Overview of data available in the Media Register demonstrates that it only partially fulfills its role thus results stipulated in measures 3.5.2.5 and 3.5.2.6 are not achieved. Even though the latest report⁸ of Negotiating Group for Chapter 23 claims both measures are implemented successfully, BIRN research demonstrates numerous problems in practice.

Media Register had its primary purpose as controlling mechanism, enabling all interested stakeholders and wider public to trace budgetary spending going through various financing models in media sector.

Instead, Register is facing some serious problems: data visualization and presentation is inadequate, not allowing for data comparison and analysis; data allow to monitor only the total amount of budgetary money received by one media outlet in one fiscal year (without stating which public entity financed media and on what ground); information are outdated and incomplete (there are serious doubts that majority of public entities fail to inform Business Register Agency about financing); there are no sanctions if public entities fail to report spending to Register. BIRN created its proposal for upgrade of Register functionality, which was handed over to Ministry and other interested stakeholders.

Additionally, there are no public records of Ministry of Culture and Information ever conducting overview or evaluation of functioning of the Register.

3.5.2.10 - Effectively monitor the functioning of the system of co-financing media projects from the budgetary and/or public financial resources pursuant to new legislation on project funding of media.

Responsible authority: -Ministry for culture and information, Provincial secretariat for Culture and Information, Local self - government units

Result: Efficient mechanisms for monitoring the functioning of the system of co-financing media projects from the budgetary and/or public financial resources pursuant to new legislation on project funding of media established through: -Introduction and effective implementation of the obligation of public authority bodies to regularly submit reports on co-financing media projects. - Analysis of public authority bodies on the quality of the supported projects based on beneficiaries' reports on funds disbursement.

Timeframe/deadline: Continuously

⁸ Report is available here

<https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>

System of co-funding of media projects was introduced as one of key novelties by the Law on Public Information and Media, and since 2015 functions as the most important financing mechanisms to media outlets, especially local, struggling to survive in underdeveloped market. The system envisaged that budgetary money is deployed on national, provincial and local level on the basis on fair and open competition for the best scored media projects, aiming to improve quality of media production.

In its third year of implementation, the system is still poorly monitored by governing bodies thus failing to achieve the results set in measure 3.5.2.10 of AP 23. Apart from one report⁹ on evaluations of the projects supported by Ministry of Culture and Information in 2015, there are no public records of any other governing entity filing this kind of report, although obliged by the Law on Information and Media and subsequent by-law.

Partial monitoring of co-financing system was carried out by independent media and journalistic organizations, which reported numerous problems in implementation as well as serious abuses of this financing model.

Research entitled Soft Censorship: Strangling Serbia's Media, carried out by BIRN in cooperation with WAN-IFRA, shows that "Project-based financing is theoretically far preferable to state subsidies or contracts for media services. In practice, however, project financing has to date failed to prove effective in assuring either equality for applicants or the cost-effective use of public funds. Project-based financing has so far neither increased media pluralism nor visibly improved the quality of media production".

Media Coalition White Book¹⁰ based on the results of monitoring of the project-based co-financing in the period from 1 April 2015 to 1 April 2016 in 167 local self-governments shows that more than 2 billion dinars were spent in the monitored period yet evaluation of effects was not carried out. Coalition recorded some sort of procedural or legal breaches in more than 70% of open competitions. In its conclusions, White Book stipulates that "The biggest problems project based co-financing is facing are unclear legal regulations, insufficient transparency of the process, lack of evaluation approved projects and the process itself, as well as the absence of sanctions for bodies in charge of public information in the case violations of the law".

Moreover, BIRN research¹¹ evaluating programs and media content produced under this financing model (sampling 12 public entities at national, provincial and local level in 2015) shows that majority of money, counting for 60% of all projects sampled, was used to support ongoing expenses and the existence of media in scarce and impoverished media market, and not for the purpose of implementation of projects that would improve citizens' informing.

3.5.2.12 – Effectively monitor the use of tax deductions, budgetary funds and/or other forms of direct or indirect state aid which represents potential source of influence on media independence, through: -Introduction of obligation for

⁹ Report available here <http://www.kultura.gov.rs/cyr/konkursi/izvestaji-sektora-za-informisanje-i-medije-o-realizaciji-sufinansiranih-projekata-na-konkursima-iz-oblasti-javnog-informisanja-u-2015--godini>

¹⁰ Media Coalition White Book report available here <http://www.ndnv.org/wp-content/uploads/2016/06/BelaKnjigaWEB.pdf>

¹¹ Twelve reports on project based co-financing available at birnsrbija.rs

public authority bodies to report all state aid to media in the Media Registry (Article 39 Para 1 of the Law on Public Information and Media) -Sanctioning failure to report all state aid to Media Registry in line with Article 137 of the Law on Public Information and Media) -analysis of media influence through financial support by public authority bodies

Responsible authority: Ministry in charge of information in cooperation with Commission for state aid control, all public authority bodies on all levels

Result: Efficient monitoring over use of tax deductions, budgetary funds and/or other forms of direct or indirect state aid which represents potential source of influence on media independence established and implemented through: - reports of public authority bodies on all state aid to media available in Media Registry -regular sanctioning of public authority bodies for a failure to report all state aid to media in the Media Registry -analysis of media influence through financial support by public authority bodies developed by the Ministry for culture and information and publicly available

Timeframe/deadline: Continuously

Effective evaluation of effects of state intervention, control or sanctioning of undue influence, is obstructed by the fact that majority of funding going from public entities to media sector is not recorded in Media Registry (as already explained in points related to AP 23 measures 3.5.2.5 and 3.5.2.6). Therefore, the first step in efficient evaluation would be to make all state funding transparent.

Reports of Ministry and/or other relevant bodies in charge of monitoring are not publicly available and there are no information if monitoring and evaluation system exists.

Independent evaluations shows that economic pressures and de facto economic dependence of media on state budgets present one of the most important means of influence on media independence or editorial policies.

BIRN explained this system of influence through mechanism of “soft censorship”¹², deriving from partisan and discretionary budget allocations. These indirect forms of censorship include selective media subsidies and partisan allocation of advertising, and the biased application of regulatory and licensing powers. Among other tools deployed by the Serbian government, the report noted selective government advertising, public enterprises contracting directly with media outlets, lack of competition or monitoring, regulatory manipulation regarding licensing and ownership transparency and differing treatment of taxes and debts of media close to government.

3.5.2.23 – Ensure unified treatment of all media with status of tax debtor or with an agreement on rescheduling of debt

Responsible authority: Ministry of finance, Tax administration

Result: Unified treatment of all media with status of tax debtor or with an agreement on rescheduling of debt ensured.

Timeframe/deadline: Continuously

¹² Soft censorship report available here http://birnsrbija.rs/wp-content/uploads/2016/02/izvestaj_meka_cenzura_final.pdf

Partisan and uncontrolled intervention of governing bodies in media sector is also visible in indirect subsidies to “friendly” media, particularly through taxation system. Regulation in this area is completely missing and treatment of tax debts is one of the least transparent, which gives opportunities to many misuses in practice. Manipulation with tax debtor status is used as another leverage in influence over media, thus not providing unified treatment for all media as stipulated by AP 23.

The case of Pink International Company, owner of TV Pink, media outlet highly supportive of current government, became public once it was discovered¹³ that company received EUR 7 million tax credit from state run AOFI (Agency for promotion of export) even though at the time company was one of the largest tax debtor in the country.

Contrary to this, Vranje based influential local political magazine Vranjske were forced to shut down after numerous and financially exhausting tax revisions, which were, according to the owner Vukasin Obradovic politically motivated¹⁴ as magazine follows editorial orientation critical towards local and national government.

Same as Vranjske, another local media critical towards governments, Kikinda based Kikindske novine, was forced to shut down in 2015 due to miscalculated tax debt which put company out of work and unable to print newspaper¹⁵.

3.5.2.24 – Determine criteria for public procurement of services of videotaping and press clipping for all ministries and governmental offices

Responsible authority: Government of Republic of Serbia, Public Procurement Office

Result: Criteria for public procurement of services of videotaping and press clipping for all ministries and governmental offices determined

Timeframe/deadline: IV quarter of 2016

Public Procurement Law is currently being revised in regards to adequately respond to shortcomings identified in its application. Therefore, even with one year of delay, this measure is not fulfilled and true impact of law amendments is yet to be confirmed in practice.

Current Law contains vague definition of media related services, specifically mentioning them in Article 7¹⁶, which stipulates exemptions from the law, particularly noting “the acquisition, development, production or co-production of radio or television program or broadcasting time”.

¹³ Investigation of the Center for Investigative Journalism is available here https://www.cins.rs/srpski/research_stories/article/pink-dobio-najmanje-sedam-miliona-evra-kredita-od-drzave

¹⁴ Interview with Vukasin Obradovic, owner of Vranjske, is available here <https://www.glasamerike.net/a/ugasene-vranjske/4037384.html>

¹⁵ Zeljko Bodrozic, owner of Kikindske, explains the mechanism of undue tax administration influence in article available here http://www.b92.net/info/moj_ugao/index.php?yyyy=2015&nav_category=166&nav_id=964393

¹⁶ Public Procurement Law is available here [https://pistoljka.rs/public/fck_files/file/zakoni/Public%20Procurement%20Law\(1\).pdf](https://pistoljka.rs/public/fck_files/file/zakoni/Public%20Procurement%20Law(1).pdf)

Failing to regulate this area is vastly abused in practice, as public procurements are in most cases prescribed for acquisition of media services aiming to daily cover and report on the work of administration and public enterprises, which present corruption risk for hidden propaganda of those in power.

BIRN data base tracing budgetary spending in 33 local self-governments shows that only in 2016 more than 64 million dinars is spent through public procurement scheme applied by 14 (out of 33) sampled local self-governments, all with the purpose mentioned above.

3.5.2.26 - Ensure full transparency of media privatization procedure through publishing all relevant documents regarding privatization of media in line with Law on privatization and access to information of public importance

Responsible authority: Ministry of commerce, department for privatization and bankruptcy

Result: Full transparency of media privatization procedure achieved. All relevant documents regarding privatization of media publicly available.

Timeframe/deadline: By II quarter of 2016.

Although the Law on Public Information and Media adopted in 2014 stipulated that by July 2015 the state should divest itself from ownership in the media sector (deadline later extended to October 2015) privatization process is still not fully finished as Politika, Vecernje novosti still function as partly state owned companies, while news agency Tanjug exists in legal void.

Privatization is carefully monitored by civil society and led fairly transparently by Agency for Privatization (in the meantime Agency was shut down while its duties were transferred to Ministry of Economy). Although transparent to some extent, the process was poorly controlled as it led to specific type of concentration and creation of political party affiliated media.

Out of the 50 media that entered privatization process, only 34 found new owners. According to the BIRN research, 17 out of the 34 have new owners with known affiliations to political parties¹⁷.

Radoica Milosavljević, publicly known as close friend of Bratislav Gasic, high-ranking member of the ruling Progressive party (SNS), and Kopernikus Cable Network, also close to the same party, bought a total of 11 media. Bratislav Gasic connections also lead to Sladjana Ostojic and a consortium of Narodne novine from Nis who bought Niska TV. This consortium is also closely connected to the RTV Bella Amie, making citizens of Nis, the second largest city in the country, largely dependent of informations coming from one center. Maksim media Group is the new owner of Belgrade-based Radio and TV Studio B, spreading its media network alongside TDI Radio, Radio Karolina, Radio Jat and Hit FM radio. Although there is no clear political affiliation, program orientation of Studio B shows the support to SNS.

¹⁷ Data base of privatized media is available here <http://javno.rs/baza-podataka/budzetsko-finansiranje-privatizovanih-medija>

In Vojvodina, northern Serbian province, Srbija danas, company owning internet portal close to SNS, bought Novi Sad based TV station, Apolo, in the media privatization process. Srbijadanas.net, with tabloid style of reporting, continually praises government moves.

Moreover, recent developments indicate that state will regain control over some of privatized media. Most recently, the Government passed the Regulation (May 2017) which effectively brings back the privatized media to the local self-government supervision. According to the Regulation, local self-government bodies can receive special approval from the Government to take managerial control over media for six months and prepare it for a new round of privatization. So far, according to the findings of BIRN, local self-governments are taking back RT Kragujevac, TV Blace, TV Pruga and Backopalanacki nedeljnik (local weekly newspaper). The concern remains, as Regulation doesn't stipulate, what happens if media are not privatized in the six-month period.

Alongside these examples of unsuccessful privatizations, perhaps the most infamous case relates to the privatization of the state news agency Tanjug. Its privatization failed and as a consequence the government adopted a decision according to which Tanjug was to cease all of its operations. However, this never happened and Tanjug continues to work to present day in dubious legal regime, financially depending on contracts with state institutions.