

SHADOW REPORT

ACTION PLAN FOR NEGOTIATING CHAPTER 23

Following the Shadow Report submitted in 2017¹, Balkan Investigative Reporting Network – BIRN Serbia, submits this report to the EU Delegation in Serbia as contribution to the compilation of next European Commission Country Report. This report focuses on Negotiating Chapter 23 – Judiciary and Human Rights, particularly the section on Freedom of Expression, offering the insight and alternative narrative on state of progress in this area.

This shadow report puts special emphasis on freedom of expression and media pluralism issues, as precondition of overall democratic dialogue in the country. Lack of advancement, constant shrinkage in media freedoms and freedom of expression and absence of social, political and economic setting conducive to development of professional and sustainable media sector is a matter of concern, influencing country's overall democratic capacity.

Additionally, this report offers overview of progress and fulfilment of Action Plan for Chapter 23, as indication of key issues and problems to be addressed. This report calls for **changes and update in AP 23 during 2019**, as measures that are in our focus (laid out in section 3.5.2 related to media legislation and cease of undue pressures on media coming from state bodies) will be formally fulfilled with passing of the next media strategy document and consequent amendments to the laws, while true reforms of the sector will be lagging behind.

This report is a 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 EU through IPA Civil Society Facility instrument.

This report focuses primarily on **allocation of state funds in media sector**, as BIRN's long term monitoring indicates that this is one of the key preconditions for economic sustainability of the media outlets, and as such a powerful instrument of misuse and corruption. As 2018 Serbia Country Report rightfully concluded that “Serbian authorities should ensure that informal pressure on editorial policy is not exerted through the distribution of advertising funds, including from public companies, as well as project co-funding from local budgets. Co-funding

¹ See the following link <https://kazitrazi.rs/wp-content/uploads/2018/07/Shadow-Report-Action-Plan-for-Negotiating-Chapter-23.pdf>

of media content serving public interest should be brought into line with existing legislation and criteria, and implemented in a fair and transparent way which is not detrimental to market equality”.

Issues of transparency of allocation of state budgetary funds, their control and evaluation of effects they have on media freedoms and editorial policies will be the **corner stones of the forthcoming debate on next media strategy** and will trace the significant changes to the legislative environment. Civil society organizations involved in this process (BIRN included) are expecting legal response to the issues highlighted in 2018 Country Report as well as setting where media pluralism and reporting in public interest could be financed through budgetary funds in fair and transparent manner.

Moreover, significant changes of the legal setting calls for European Union to put issues of freedom of expression and media pluralism high on accession agenda and **install monitoring mechanisms** which will lead to reforms and/or their consistent implementation.

In its key underlying message, this shadow report will demonstrate that some of the processes stipulated in the AP23 have been launched, especially after the EU call to make the “adoption of a new strategy for the development of a public information system through inclusive consultation with stakeholders”. Apart from that, little progress can be notified, as pluralism of content is missing (especially in mainstream media where biased reporting prevails), legislative framework is not fully implemented, administrative pressures on independent media is increasing (e.g. through six months tax inspection of portal Juzne vesti), significant abuses of funds through project co-financing scheme still persists, and media are often discriminated because of their editorial policies (access to sources, documents and information are denied). Public discourse and hostile statements coming from the highest officials (e.g. president Vucic comments on N1 and RTS work implicating their ownership structures related to opposition party members, Security Agency director on “traitors” coming from media and civil society sector, story on “foreign mercenaries” among journalists working for the USA interests published in state owned Ilustrovana Politika) are detrimental to media freedoms and put additional pressures on independent media outlets.

Majority of these issues are put forward to the Government to be deliberated through Coordination Body, an *ad hoc* mechanism that was established as a dialogue platform between media and journalistic associations and government. So far, 4 monthly meetings were held and media community submitted 13 requests² to governing bodies. Success of this mechanism is yet to be proven, with mild results achieved in the previous period.

Conclusion listed 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

² Details of requests are available here <http://rs.n1info.com/a412244/Vesti/Novinarska-udruzenja-predala-13-zahteva-Vladi-Srbije.html>

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

As records available on official web site of Serbian National Assembly show³, in 2018 in total 4 meetings (in April, May, September and November) of the Parliamentary Board for Culture and Information were held, and on two of those, report of Ministry of Culture and Information activities were discussed. These meetings were aired live on Parliamentary web site and these are only records publicly available. Reports that Ministry submitted on these occasions are not available on Parliamentary web site.

Independent monitoring conducted by the civil society, however, points out major problems with implementation of the laws and calls for their amendments in 2019 (right after the new Media Strategy is adopted). This report offers overview of the main issues in regards to the effective implementation of the laws:

- Law on Public Information and Media: numerous problems and serious abuses were spotted in application of the project based co-financing model; Media Register is not enabling the track of budgetary funds in media sector; privatization of media outlets not fully concluded;
- Law on Electronic Media: Regulatory Body for Electronic Media has no political or financial independence from executive powers and big media businesses; it often fails to react to serious breaches of professional conduct of electronic media; it has no developed mechanisms to give feedback to the citizens' and be transparent and accountable to them;
- Law on Public Service Broadcasters (PBS): PBSs have no financial autonomy as they are mostly financed through direct budgetary subsidies, opposing the provisions of the law which states that the subscription fee is the main source of financing; election of the governing bodies is often subject to political deals, not to transparent and competitive process; PBS demonstrate lack of diversity in informative and political programs;

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

³ Available here <http://www.parlament.gov.rs/aktivnosti/narodna-skupstina/radna-tela/odbori,-pododbori,-radne-grupe.2391.html>

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 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

Three above listed measures have commenced with implementation, as work on the Strategy for the Development of Public Information System (colloquially known as Media Strategy) is being re-started since June this year⁴. Draft document submitted to the Ministry by initially formed working group was severely criticized by professional organizations, especially its strategic direction aiming towards further influence of state in media

⁴ Work of the initially formed working group was from the start hampered by various controversies, culminating with four members of the group terminating its engagement (Nedim Sejdinovic representing five media organizations, Ljiljana Smajlovic representing Journalists Association of Serbia, Dalila Ljubicic representing Association of Media and Dejan Nikolic, independent expert). 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.

sector. Eventually, it was discarded by Government itself and new working group was formed with the task to write new strategic proposal. Entire process is more inclusive with 9 media professional organizations having their representatives in working group (Journalists' Association of Serbia, Independent Journalists' Association of Serbia, Independent Journalists' Association of Vojvodina, Association of Local Independent Media – Local Press, Association of Independent Electronic Media, Association of Online Media, Association of Media, Radio Association of Serbia and Journalists' Union of Serbia) as well as nine representatives of the state institutions. OSCE is facilitating the process and provides legal and administrative aid, while EU Delegation on Serbia is monitoring the compliance of the strategy with EU norms and aqu. It was agreed that draft strategy should be over by the end of this year, while public consultations will start in the beginning of 2019. So far, some 30 working group meetings were held covering various range of topics (pluralism and quality of content, professional standards, journalists' safety and socio-economic standard, challenges of technology, regulation and self-regulation, privatization and its effects, state funding and advertising market, digitalization etc.). Process has been inclusive as numerous institutions and civil society organizations were called to come to the meetings and provide inputs on state of affairs and possible ways forward. Analysis of effects of previous strategy (point 3.5.2.2) will be integral part of the new one, along with action plan (point 3.5.2.4.).

Once the new Media Strategy is adopted, formally three obligations deriving from AP 23 will be fulfilled. However, in order to ensure its proper implementation new, independent monitoring mechanisms should be established and action plan amended in order to ensure further reforms.

This is especially important having in mind previous experience with laws being adopted three years after the strategy (almost at its very end) and drafting the new one is starting with two years of delay.

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

Following the comment of previous AP 23 points, BIRN report can notice the beginning of implementation of these measures.

BIRN research on Transparency Index mapping the transparency of five major budgetary lines for financing of media projects, services and state advertising graded with the lowest scores the transparency of data and information related to reporting of the expenditures (institutions score in average 30% out of possible 100%). This emphasizes the importance of functional Media Register which enables budgetary tracking.

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

BIRN created its proposal for upgrade of Register functionality⁵, which as part of our advocacy activities became integral part of Open Government Partnership Action plan for 2019-2020 as well as part of measures to be addressed in new Media Strategy. If processed by OGP plan, technical upgrade of Register should be expected in first half of 2019.

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

⁵ Available here <https://kazitrazi.rs/wp-content/uploads/2017/11/TRANSPARENTNOST-PODATAKA-DRZAVNA-POTROSNJA.pdf>

System of co-funding of media projects was deeply corrupted since its establishment in 2015 by the Law on Public Information and Media. Although it was rightly designed as a state's most important mechanism to support the production of media content in line with affirmation of public interest in informing, over the years it became its opposite.

Under the auspices of the "Public Money for Public Interest" project, consortium of BIRN, IJAS and Slavko Curuvija Foundation were able to track this state financing mechanism, documenting numerous problems (articles available at <https://kazitrazi.rs/novinarske-price/>) but also giving policy recommendations that would affect upgrades in regulatory system⁶. This policy paper concluded numerous problems, ranging from transparency (Transparency Index research graded it 38.6 out 100) to evaluation of the process, and lack of proper monitoring (as stipulated in point 3.5.2.10. of AP 23). Apart from Ministry of Culture and Information which is publishing the evaluation reports for projects supported under their scheme, there is no public record that other institutions are conducting same evaluation. This refers to analysis of content produced as well as to proper use of allocated funds.

Moreover, research carried under "Public Money for Public Interest" project shows the inefficiency of court proceedings – as some 60 verdicts were adopted, effectively demonstrating the breach of the law, yet without proper reaction (no changes in regulation were made, nor in allocation of funds).

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 through which some RSD 1.2 billion was allocated (e.g. web site finansiranjedemija.rs run by UNS, BIRN kazitrazi.rs etc.).

Advocacy efforts are, at this point, directed to amendments of the rule book regulating co-financing procedure which is negotiated through Coordination Body mechanism. Results of these negotiations are still pending.

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 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

⁶ Policy recommendations available here <https://kazitrazi.rs/wp-content/uploads/2017/11/URE%C4%90ENJE-PROJEKTOG-SUFINANSIRANJA.pdf>

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.

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

Discretionary and non-transparent procedures of Tax administration lead to specific type of pressures and administrative harassments, where partisan intervention of governing bodies is also exercised. 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.

Several cases of uneven treatment of media outlets, discriminated according to their editorial policies and connections with executive powers, can witness to this conclusion. Public was familiarized with the case of Pink International Company, owner of TV Pink, media outlet highly supportive of current government, being for years one of the country's biggest debtors (debt rescheduled for four times).

Opposite to this, media organizations recently reacted to the tax inspection in Južne vesti, portal in South Serbia having critical editorial direction, which was subject to the exhausting 6-months long inspection resulted in RSD 1 million of fines, even though same portal had 4 different tax inspections in last 5 years, none of which found any irregularities.

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 (public consultations ended one week ago), however, the amendments proposed by Procurement Office fail to adequately respond to shortcomings identified in this AP 23 measure.

Current Procurement Law contains vague definition of media related services, specifically mentioning them in Article 77, which stipulates exemptions from the law, particularly noting “the acquisition, development, production or co-production of radio or television program or broadcasting time“. Besides vague definition, this article effectively discriminates electronic media over print/online, and as such is vastly (ab)used 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.

Transparency Index shows average grade of 37 out of 100, with lowest grades given to evaluation and access to the materials and content contracted this way.

Project Consortium (BIRN, IJAS and SCF) submitted proposal to amend the disputed articles of the law, having in mind 1) public service broadcaster and its specific position in regards to this exempts, in accordance with EU Directive and 2) overlapping the content production supported through project based co-funding scheme.

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. Ministry of Economy announced the new privatization round for Tanjug, this time brand name of this news agency will be put forward to sale. Independent revision of value of Tanjug brand

⁷ Public Procurement Law is available here [https://pistalijka.rs/public/fck_files/file/zakoni/Public%20Procurement%20Law\(1\).pdf](https://pistalijka.rs/public/fck_files/file/zakoni/Public%20Procurement%20Law(1).pdf)

is currently being carried out. There are no solutions by the Government for ending state ownership in two dailies.

Moreover, state is regaining control over some of previously privatized outlets and this has harmful effect on media market and fair competition (in terms of equal access to state funds) and editorial independence. The case of Radio television Kragujevac (RTK) is such case. Based on Government Regulation (May 2017) which effectively brings back the privatized media to the local self-government supervision, city of Kragujevac took over governing of RTK. 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. Even though six months period passed in February this year, local self-government still hasn't called for new round of privatization. Instead, RTK is heavily subsidized (including court fines of previous private owner) and quality of programing dropped, turning towards propagandas of local self-government. Meanwhile, city of Kragujevac still hasn't implemented project based co-funding scheme, effectively breaking the law and denying other media access to funds.

Alongside these examples of unsuccessful privatizations, it is worth noticing the creation of parallel structure of recently privatized media outlets now closely connected to ruling SNS party. Apart from media outlets privatized by Radoica Milosavljevic and Kopernikus Cable Network (all explained in BIRN previously submitted shadow report) new addition comes from purchasing of Novi Sad based daily Dnevnik, bought by Srbija danas, company owning internet portal Srbijadanas.net, with tabloid style of reporting, continually praises government moves.