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LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

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Osmi put u protekle četiri godine, koliko sa svojim pravnim timom sprovodi pravni monitoring srpske medijske scene, ANEM pruža priliku zainteresovanoj javnosti da kroz kvalitetne stručne tekstove u Monitoring Publikaciji više sazna o pojedinim pitanjima od značaja za medijsku situaciju u Srbiji i da ih bolje razume. Tekstove za ovu **OSMU Monitoring Publikaciju** napisali su: adv. Kruna Savović – Zašto još nema medijske reforme u Srbiji; adv. Slobodan Kremenjak – Kontrola državne pomoći i medijske reforme u Srbiji; Zaštitnik građana, Saša Janković – Sloboda izražavanja; doc. dr Boban Tomić – Medijska pismenost kao društvena strategija. Peti tekst predstavlja sažet prikaz dve presude Evropskog suda za ljudska prava koje se odnose na primenu člana 10 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda: *prva* se odnosi na povredu slobode širenja informacija a *druga* na povredu slobode izražavanja.

Sadržaj Publikacije odredili su rezultati pravnog monitoringa medijske scene u Srbiji u prvoj polovini 2013. godine.

Medijsku scenu Srbije u prvih 6 meseci ove godine karakteriše izostanak očekivanih promena i ponavljanje već ustaljenog modela ponašanja svake vlasti kada je reč o medijima i medijskom sektoru, odnosno, deklarativna a ne istinska spremnost na medijske reforme.

Naime, prema Akcionom planu za sprovođenje Medijske strategije, predlozi nekoliko novih medijskih zakona trebalo je da budu gotovi 18 meseci nakon usvajanja Strategije, tačnije krajem marta 2013. g. Očekivalo se da će ti rokovi biti ispoštovani i da će novi zakoni, polazeći od principa utvrđenih Strategijom, već ove godine doprineti poboljšanju medijskog regulatornog okvira a time i uslova za rad medija i novinara. Međutim, iako je početak godine bio obećavajući – krajem februara objavljen je Nacrt zakona o javnom informisanju i medijima a tokom marta je sprovedena i javna rasprava o njemu; Nacrt zakona o elektronskim medijima bio je u završnoj fazi izrade – ni krajem juna nijedan novi medijski zakon nije donet. Pri tom, nema nikakvih informacija o tome šta se posle javne rasprave dešava s Nacrtom zakona o javnom informisanju i medijima, ne zna se ni koje primedbe su uvažene, da li se od nekih rešenja odustalo, kao ni kada će se Nacrt naći pred vladom, niti kada će biti upućen parlamentu na usvajanje. Odlaganje donošenja ovog zakona dovodi u pitanje i njime predviđene rokove za okončanje privatizacije medija, kao i za prestanak direktnog budžetskog finansiranja medija i prelazak na projektno finansiranje medijskih sadržaja. A upravo to je od suštinskog značaja za poboljšanje situacije u medijskom sektoru, jer je u uslovima nerazvijenog i nekonkurentnog medijskog tržišta, država postala dominantan igrač koji netransparentnim trošenjem javnih sredstava utiče na opstanak velikog broja medija i na njihovo izveštavanje, dovodeći ih u zavisan položaj i tako ih čineći ranjivijim i podložnijim uticajima. Pri tom, oko 80% javnog novca koji različiti nivoi vlasti troše na medije, završava u privilegovanom krugu od manje od 10% medija, bez jasno definisanog mandata koji bi takvi mediji trebalo da vrše i bez kontrole na koji način se ta sredstva troše. Zato je naročito važno osigurati da se državna sredstva medijima dodeljuju radi ostvarivanja njihove uloge u informisanju građana o stvarima od javnog interesa a ne za prenošenje informacija koje su u interesu vladajućih struktura i njihovog opstanka na vlasti, da se dodela sredstava obavlja na transparentan i nediskriminatoran način koji ne dovodi do narušavanja konkurencije na tržištu, kao i da se uspostavi efektivna kontrola celog procesa. Kada je reč o Nacrtu zakona o elektronskim medijima, do zastoja u proceduri njegovog donošenja došlo je nakon izjava najviših funkcionera vlade o ukidanju pretplate i budžetskom finansiranju javnih servisa, što je u direktnoj suprotnosti s Medijskom strategijom i prvobitnim Nacrtom zakona, rađenim u skladu sa Strategijom i evropskom regulativom. Oba dokumenta pretplatu predviđaju kao osnovni oblik finansiranja javnih servisa i kao sredstvo za očuvanje njihove nezavisnosti i od države i od najvećih oglašivača. Zbog dileme o pitanju finansiranja javnih servisa, još nije izvesno da li će Nacrt zadržati i odredbe o javnim servisima, ili će regulacija javnih servisa biti predmet posebnog zakona, a naročito je neizvesno koja verzija Nacrta će i kada biti na javnoj raspravi. U ovom periodu, Medijska strategija nije poštovana ni u pogledu obaveze primene Zakona o kontroli državne pomoći u medijskoj oblasti, a upravo njegova primena kao i primena propisa o zaštiti konkurencije – od ključne su važnosti za medijske reforme, uzimajući u obzir uticaj

koji država i budžetski novac imaju na funkcionisanje medija; takođe, nije došlo ni do otklanjanja kolizionih normi iz ne-medijskih zakona, koje su 2007. g. zaustavile privatizaciju medija i u direktnoj su suprotnosti s Medijskom strategijom. Nije bilo pomaka ni u drugim oblastima od značaja za medijski sektor. Na napade i pritiske na medije i novinare ni u ovom periodu nije bilo odlučne reakcije nadležnih organa koja bi jasno pokazala spremnost vlasti da zaštiti prava novinara i medijske slobode. Otuda i povratak ekstremističkog govora na javnu scenu, pozivi na diskriminaciju i raspirivanje mržnje i na zabranu pojedinih medija i nevladinih organizacija, koji umnogome podsećaju na turobno vreme pre 5. oktobra 2000. godine. Ipak, ima i pozitivnih izuzetaka u radu nadležnih organa – kao što su pojedine presude Apelacionog suda u Beogradu koje podižu standarde zaštite slobode izražavanja u Srbiji ali koje nažalost ostaju usamljeni primer dobre prakse u medijskim slučajevima zbog nespremnosti ostalih sudova da ih slede. Problem medija sve više postaje i ozbiljno kašnjenje države u sprovođenju digitalizacije, nedostatak konkretnih informacija o troškovima koje će imati u procesu prelaska na digitalno emitovanje TV signala, koja su im prava i obaveze u tom procesu, neregulisano pitanje prilagođavanja dozvola u procesu digitalne tranzicije i dr. Dodatno, nedavno raspisivanje tendera za još jednu analognu nacionalnu komercijalnu televiziju na frekvencijama koje su bile planirane za širenje Inicijalne mreže za testiranje digitalnog TV signala, može dovesti u pitanje proces digitalizacije a time i ugroziti medije. Pored navedenog, finansijska iscrpljenost medija zbog ekonomske krize i visokih nameta, a posebno nelojalne konkurencije, već dugo je prisutan problem u medijskom sektoru, pa tako i u ovom periodu. Nedostatak kvalitetnih programa i istraživačkog novinarstva, nepostojanje pluralizma ideja, sve prisutnija autocenzura medija, samo su posledica sveopšte loše medijske situacije u Srbiji.

Upravo zbog ovakve, nepromenjene slike medijske scene u Srbiji već dugi niz godina, gde se gotovo ista pitanja ponavljaju i ostaju bez odgovora i tako postaju ozbiljan problem i prepreka razvoju medijskog sektora, želeli smo da u ovoj Publikaciji ponudimo moguće odgovore na neka od tih pitanja. Otuda se autori tekstova bave razlozima zbog kojih još nema medijske reforme u Srbiji; značajem kontrole državne pomoći za medijske reforme; slobodom izražavanja kao uslovom i ishodom demokratije, njenom suštinom, elementima i ograničenjima; neophodnošću medijske pismenosti, kako tvoraca i pošiljalaca medijskih sadržaja – medija/medijskih profesionalaca, tako i njihovih primalaca – publike, kako bi mediji na pravi način ostvarivali svoju ulogu u demokratizaciji društva.

Beograd, jun 2013.

Zašto još nema medijske reforme u Srbiji

Kruna Savović, advokat[1]

Dnevni list „Danas“, objavio je 18. juna da Evropska komisija priprema vanredni izveštaj, koji će biti objavljen pre redovnog godišnjeg izveštaja o napretku Srbije u procesu evrointegracija, a koji će se odnositi isključivo na probleme s primenom Medijske strategije koju je Vlada Srbije usvojila krajem septembra 2011. godine. „Danas“, pozivajući se na nezvanične informacije, tvrdi da će u izveštaju biti izneta kritika nadležnih u Srbiji zbog neimplementiranja Medijske strategije i nepoštovanja rokova iz Akcionog plana koji je sastavni deo te strategije.

Činjenica je da je usvajanje Medijske strategije bio jedan od uslova za pozitivno mišljenje EU o dobijanju statusa kandidata. Nesporno je i da se s njenom implementacijom kasni. U konkretnom slučaju, međutim, problem se čini ozbiljnijim od pukog probijanja rokova iz jednog od brojnih strateških dokumenata i jednog od brojnih akcionih planova koje je Srbija poslednjih godina donosila. Kašnjenje Srbije s medijskim reformama mnogo je ozbiljnije od kašnjenja u odnosu na rokove predviđene Akcionim planom uz Medijsku strategiju.

Srbija, naime, ne uspeva da reformiše sektor medija već duže od deset godina. Medijska strategija, paradoksalno, 2011. godine ponavlja dobar deo onoga što je trebalo da bude završeno, a nije, još u prethodnoj deceniji.

Neka od opredeljenja Strategije, da nisu tužna, bila bi smešna. Recimo, Strategija se opredeljuje za povlačenje države iz medijskog vlasništva. Problem s ovim opredeljenjem je što je u Zakonu o radiodifuziji, usvojenom još 2002. godine, u članu 96, pisalo da radio i televizijske stanice čiji su osnivači opštine i gradovi, imaju obavezu da se privatizuju u roku od četiri godine od dana stupanja tog zakona na snagu. Taj rok je kasnije produžen do 31. decembra 2007. godine, ali je čak i s takvim produženjem istekao pre pet i po godina.

Da sve bude još i gore, u Zakonu o javnom informisanju, usvojenom 2003. godine, u članu 101. stav 2, pisalo je da će javna glasila čiji su osnivači država i teritorijalna autonomija, ili ustanova, odnosno preduzeće koje je u pretežnom delu u državnoj svojini ili javno glasilo koje se u celini ili pretežnim delom finansira iz javnih prihoda, a na koja se ne primenjuju odredbe zakona kojim se uređuje oblast radiodifuzije, prestati s radom u roku od dve godine od dana stupanja na snagu ovog zakona. Kasnije je ovaj rok produžen na tri godine, ali su i te tri godine istekle pre 2006. godine.

Strategija se tako opredeljuje za povlačenje države iz medijskog vlasništva, i ostavlja rokove za to, iako po važećim medijskim zakonima takvi mediji zapravo ne bi trebalo da postoje već pet i po ili sedam godina.

Slično je i s delovima Medijske strategije koji se odnose na javni servis čiju celovitu reformu Srbija ne uspeva da sprovede i čije stabilno finansiranje ne uspeva da obezbedi već duže od 10 godina. Štaviše, nova vlada u odnosu na finansiranje javnog servisa najavljuje upravo suprotno onome što je prethodna Strategijom predvidela. Konkretno, najavljuje se finansiranje iz budžeta, iako je Strategijom predviđeno zadržavanje pretplate kao osnovnog oblika finansiranja, uz podizanje nivoa njene naplate.

Jedina suštinski nova ideja ili rešenje u Medijskoj strategiji jeste njeno insistiranje na kontroli državne pomoći i projektnom finansiranju. Sve ostalo, tek je uz manje korekcije iznuđene tehnološkim promenama koje su u poslednjoj deceniji stigle i u Srbiju, ili kucaju na njena vrata, ponavljanje temeljnih opredeljenja koja su već, na jedan ili drugi način, bila sadržana, a nesprovedena, i u zakonima usvajanim pre deset i više godina.

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

Iz takve slike nameće se zaključak da, ako govorimo o za nekoliko meseci probijenim rokovima iz Medijske strategije, promašujemo suštinu. Ispravnije bi bilo reći da smo za sedam godina probili rokove predviđene starim Zakonom o javnom informisanju, ili za pet i po godina probili rokove predviđene starim Zakonom o radiodifuziji. Tek ako na sve pogledamo na taj način, postaju jasnije razmere problema s kojim se suočavamo. Srbija je zemlja koja duže od decenije reformiše svoj medijski sektor a da se u reformama ne pomera s početka.

Zašto je to tako i zašto pravih medijskih reformi u Srbiji još uvek nema? Odgovor koji se najčešće čuje jeste da za reforme ne postoji politička volja. Srbija je u poslednjih desetak godina promenila više vlada pa bi odsustvo političke volje da se medijske reforme sprovedu bila jedna od retkih crvenih niti koja sve te vlade povezuje. Čini se, međutim, da se svaljivanjem krivice na nedostajuću političku volju, prikrivaju neki drugi nedostaci. Najvažniji je odsustvo kapaciteta države da osmisli i definiše ciljeve javne politike, da ih pretoči u pravni i regulatorni okvir i da takav okvir nakon toga implementira i sprovede.

Mehanizam na koji se u Srbiji definišu javne politike potpuno je nedelotvoran i čak kontraproduktivan. Ovo se vrlo jasno videlo u procesu koji je prethodio usvajanju Medijske strategije. Kada je bivša vlada pod pritiskom medijskih i novinarskih udruženja prihvatila da donese Medijsku strategiju, videlo se koliko ona zapravo ili nije znala šta želi, ili ako je i znala šta želi, koliko to što želi nije smela javno da prizna.

Umesto da javno objavi i definiše svoje ciljeve, zatim se o takvim ciljevima konsultuje sa svim zainteresovanim stranama, i napokon postignuta kompromisna rešenja poveri profesionalcima da ih pretoče u novi regulatorni okvir, vlada je formirala radnu grupu u koju je uključila predstavnike zainteresovanih udruženja i stručne javnosti, a od koje grupe je pri tom krila svoje prave namere (ako ih je uopšte imala) i koju je ostavila bez ikakvog vođstva. Na jasna i više puta ponovljena pitanja o tome koji su to ciljevi koje vlada ili nadležno ministarstvo želi da Strategijom afirmiše, nikada nije bilo odgovora, mimo zaklanjanja iza floskule o postizanju evropskih standarda. Ovo je onda dovodilo do paradoksa da se javno raspravlja o nacrtima koji ne oslikavaju ambicije vlade, već ekspertskih radnih grupa, a da vlada ili makar pojedine stranke vladajuće većine, umesto da u javnoj raspravi brane formalno svoje nacrte, ohrabruju one koji će im oponirati. To se, recimo, dogodilo s idejom o regionalnim javnim servisima. Dok je ekspertska radna grupa zastupala tezu da je nerealno na neuspešnom republičkom javnom servisu s nerešenim finansiranjem graditi model po kome će se formirati nužno neuspešni regionalni javni servisi s takođe u najavi problematičnom finansijskom podlogom, i dok je takvu tezu pretočenu u nacrt Strategije tadašnji ministar potpisao i pustio u javnu raspravu, stranka istog tog ministra organizovano je minirala javnu raspravu potpuno suprotnom tezom da su regionalni javni servisi jedino što može spasiti srpsku medijsku scenu. Regionalni javni servisi su na kraju, bez argumenata, ipak ubačeni u tekst Medijske strategije.

Negativan izveštaj Evropske komisije, nažalost, sam po sebi neće promeniti bilo šta ako ne bude bio praćen i konkretnom pomoći za jačanje kapaciteta srpske vlade da definiše, usvaja i implementira javne politike. Srbija ne kasni i ne zaostaje samo u sprovođenju reformi, Srbija, odnosno njena vlast, ima ozbiljan deficit kapaciteta da definiše ciljeve i osmisli reforme koje će tim ciljevima težiti. Problem Srbije nije samo odsustvo političke volje – problem Srbije je što i kad ima volje, ne zna kako i ne ume .

Kontrola državne pomoći i medijske reforme u Srbiji

Slobodan Kremenjak, advokat[1]

Ekonomska kriza sa kojom se Srbija suočava i koja traje već godinama, ozbiljno ugrožava poslovanje tradicionalnih medija. Tiraži štampe padaju, slušanost radija takođe. Marketinški budžeti koje oglašivači plasiraju u televiziju su manji, a konkurencija za te budžete sve oštrija u okruženju višekanalnih kablovskih, satelitskih i IPTV platformi. U takvim uslovima, imajući u vidu nasleđen nerealno veliki broj medija u Srbiji, novac koji u ovaj sektor plasira država, bilo neposredno, ili posredno kroz javna i druga preduzeća u državnom vlasništvu, postaje sve značajniji. Taj novac često je presudan za opstanak medija koji ga dobijaju, ali i za gašenje onih kojima biva uskraćen. Stoga i nije čudno što su medijska i novinarska udruženja insistirala da Medijska strategija detaljno uredi pitanje finansiranja medija iz javnih izvora.

Strategija, u delu koji se bavi analizom zatečenog stanja, kaže da je vrednost finansijske podrške države medijskom sektoru u 2011. godini iznosila oko 25 miliona evra.[2] Pri tome, ovi podaci su daleko od potpunih, budući da ne obuhvataju, niti sve opštine u Srbiji, niti sredstva od radio-televizijske pretplate, a posebno jer ne obuhvataju sredstva koja u medije plasiraju javna preduzeća kontrolisana od različitih nivoa vlasti. Istovremeno, po procenama AGB Nilsena (AGB Nielsen), prihodi medija od oglašavanja, koji opet uključuju i prihode koje mediji ostvaruju oglašavajući državne organe, organizacije i javna preduzeća, iznose oko 175 miliona evra, od čega je 98 miliona završilo u televiziji, 41 milion u štampanim medijima, 8 miliona na radiju i 6,5 miliona u Internet medijima.[3] Potpuni podaci o vrednosti finansijske podrške države medijskom sektoru, kada bi se uporedili sa prihodima medija od oglašavanja umanjenim za prihode od oglašavanja državnih organa, organizacija i javnih preduzeća, nesumnjivo bi pokazali svu dramatičnost uticaja javnih sredstava na medijski pejzaž i javno mnjenje u Srbiji. Ono što čitavu sliku čini još gorom, jeste što se uticaj ostvaruje u neuređenom i netransparentanom sistemu, u sistemu koji ostavlja preširok prostor arbitrarnosti. Posledica je medijski sistem zasnovan na zloupotrebi javnih sredstava zarad ostvarivanja uticaja na medije, u cilju ostvarivanja partikularnih interesa političke oligarhije.

Svedoci smo da vlast u Srbiji, osim deklarativno, po pravilu nije bila voljna da se odrekne mehanizama uticaja na medije. Zato bi pokušaj da se uredi pitanje finansiranja medija iz javnih izvora, ako Medijska strategija bude dosledno implementirana, predstavljao ozbiljan iskorak u potpuno novom smeru. Jedan od razloga zbog kojeg bi do takvog iskoraka ovoga puta ipak moglo doći, jeste i međunarodna obaveza Srbije, koja proizilazi iz Sporazuma o stabilizaciji i pridruživanju (SSP), da svoje propise i praksu harmonizuje sa onima u Evropskoj uniji, između ostalog i u odnosu na kontrolu državne pomoći.

Šta SSP tačno kaže i na šta se Srbija tim sporazumom zapravo obavezala? Prvo, obavezala se da će uskladiti svoje zakonodavstvo s propisima Unije. Drugo, obavezala se da će obezbediti da tako usklađeno zakonodavstvo bude pravilno primenjeno i sprovedeno (član 72. stav 1, SSP). Prioritet u usklađivanju ima, između ostalog, pravo konkurencije a posebno suzbijanje kartela, zloupotrebe dominantnog položaja i nedozvoljene državne pomoći. Pri tome, SSP (član 73. stav 2) izričito predviđa da će se postojanje kartela, zloupotrebe dominantnog položaja i nedozvoljene državne pomoći, ocenjivati na osnovu kriterijuma koji proističu iz primene pravila konkurencije koja se primenjuju u EU i instrumenata tumačenja koje su usvojile institucije EU. Naposletku, Srbija se obavezala i da će ista načela prava konkurencije koja primenjuje na komercijalne učesnika na tržištu, primeniti i na javna preduzeća.

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

[2] Strategija razvoja sistema javnog informisanja u Republici Srbiji do 2016. godine („Službeni glasnik RS“, br. 75/2011

[3] Citirano po IREX Media sustainability index 2012, http://www.irex.org/system/files/u105/EE_MSI_2012_Serbia.pdf

Zbog svega ovoga, važno je znati i razumeti šta podrazumeva evropski standard kontrole državne pomoći, kao što je i veoma bitno znati šta se uopšte podrazumeva pod državnom pomoći.

Državna pomoć je svaka pomoć data od države (uključujući njene organe, organe teritorijalne autonomije i lokalne samouprave, tela nad kojim država, posredno ili neposredno, ima uticaj, kao što su državna i javna preduzeća), koja primaocu omogućava ekonomsku prednost u odnosu na konkurente, čime se narušava ili može narušiti konkurencija na tržištu. Ovakva pomoć može se dati neposredno, npr. subvencijama, ili posredno, npr. oslobađanjem jednog konkurenta od troškova koje drugi konkurenti imaju.

Shodno ovome, i naš Zakon o kontroli državne pomoći usvojen 2009. godine[4], dakle, nakon potpisivanja SSP-a, državnu pomoć definiše kao „svaki stvarni ili potencijalni javni rashod ili umanjeno ostvarenje javnog prihoda, kojim korisnik državne pomoći stiče povoljniji položaj na tržištu u odnosu na konkurente, čime se narušava ili postoji opasnost od narušavanja konkurencije na tržištu". Pri navedenom, davalac državne pomoći može biti i Republika, i Autonomna Pokrajina, i jedinica lokalne samouprave, preko svojih nadležnih organa, ali i svako pravno lice koje upravlja, odnosno raspolaže javnim sredstvima.

Državna pomoć je po pravilu zabranjena. Izuzetno, ona je dozvoljena ako je socijalnog karaktera, a dodeljuje se individualnim potrošačima bez diskriminacije u odnosu na poreklo robe, odnosno proizvoda, koji konkretnu pomoć čine, ili ako se dodeljuje radi otklanjanja šteta prouzrokovanih prirodnim nepogodama ili drugim vanrednim situacijama.

Za razliku od prethodna dva slučaja, u kojima državna pomoć jeste dozvoljena, postoji i niz slučajeva u kojima ona može biti dozvoljena. To su slučajevi u kojima se državna pomoć dodeljuje radi unapređenja ekonomskog razvoja područja sa izuzetno niskim životnim standardom ili sa visokom stopom nezaposlenosti, ili slučajevi u kojima se dodeljuje radi izvođenja projekata od posebnog značaja ili otklanjanja ozbiljnog poremećaja u ekonomiji. Takođe, državna pomoć može biti dozvoljena ako se dodeljuje za unapređenje razvoja određenih privrednih delatnosti ili određenih privrednih područja, ukoliko se time ozbiljno ne narušava konkurencija na tržištu, kao i za unapređenje zaštite i očuvanja kulturnog nasleđa.

Državna pomoć medijima, nesumnjivo može biti dozvoljena. S jedne strane, mediji mogu imati važnu ulogu u očuvanju kulturnog nasleđa; s druge, određeni medijski projekti svakako jesu od „posebnog značaja", ili od „javnog interesa". Zato uređen sistem finansiranja medija iz javnih izvora, pre svega, treba da nam dâ odgovor na pitanje šta u medijskoj sferi jeste od javnog interesa – drugim rečima, šta u medijskoj sferi eventualno može biti finansirano državnom pomoći.

Medijska strategija je ovo pokušala da reši davanjem opšte definicije javnog interesa u medijskoj sferi. Ona je prvo odredila vrste sadržaja koji mogu biti od javnog interesa (npr. opšti informativni sadržaji ali i specijalizovani sadržaji iz politike, kulture, obrazovanja, religije, ekonomije, razonode i dr.) a zatim i propisala kada takve vrste sadržaja jesu od javnog interesa (npr. kada su od značaja za očuvanje i unapređenje pluralizma medija i raznovrsnosti medijskih sadržaja).

Pri tome, Medijska strategija ide i dalje i insistira na javnosti postupka dodele državne pomoći, kao i na jednakim i nediskriminatornim uslovima pod kojima bi se ta pomoć dodeljivala. Strategija insistira i na tome da u procesu odlučivanja o izboru projekata koji bi dobili finansijsku podršku države, učestvuju nezavisne komisije, sastavljene od kompetentnih predstavnika javnosti, profesionalnih udruženja i sektora koji se ne finansira iz budžeta.

Ovo je međutim samo početak. Sledeći korak je usvajanje Zakona o javnom informisanju i medijima u tekstu koji ne bi odstupao od temeljnih opredeljenja Strategije, nego bi ih, naprotiv, dopunjavao i unapredio. Nakon usvajanja novog zakonodavstva, potrebno je i da ono bude pravilno primenjeno

[4] Zakon o kontroli državne pomoći („Službeni glasnik RS", br. 51/2009)

i sprovedeno. Za ovo je opet neophodno unaprediti mehanizme kontrole. Od jednakih i nediskriminatornih uslova pod kojima se pomoć dodeljuje na papiru (bilo u Strategiji ili Zakonu), do jednakih i nediskriminatornih uslova u praksi – dug je put. Takođe, pored kontrole javnosti, neophodna je i institucionalna kontrola. Pragovi tzv. državne pomoći male vrednosti predviđeni drugim propisima, prete da veliki deo državne pomoći koji bi se dodeljivao medijima izuzmu iz režima obaveznog prijavljivanja Komisiji za kontrolu državne pomoći, što svakako ne bi bilo dobro.

Srbija ima priliku da pređe liniju nakon koje finansiranje medija iz javnih izvora više nikada neće biti isto. Bilo bi veoma loše da tu priliku ne iskoristi. Novi sistem i nova pravila, ako budu usvojeni, verovatno neće odmah ispuniti sva očekivanja, niti će biti lišeni dečjih bolesti i posrtanja, ali to nikako ne može biti razlog da se od promena odustane ili da se one dalje odlažu.

Sloboda izražavanja

Saša Janković[1]

Sloboda izražavanja jedno je od najstarijih „klasičnih“ ljudskih prava i sloboda. Kao i ostala prava i slobode s kojima je nedeljivo vezana, ona jeste uslov i ishod demokratije kakvu danas znamo. Iz nje logički i istorijski proizlaze sloboda javnog informisanja i sloboda (pravo) na pristup informacijama od javnog značaja. Bez nje smisao gube sloboda misli, savesti i religijskog opredeljenja, okupljanja i udruživanja. Ako se današnje doba smatra erom komunikacija[2], sloboda izražavanja je u samom njenom temelju.

Iako vekovima univerzalno prihvaćena i garantovana, sloboda izražavanja pri ostvarivanju, zaštiti i ograničavanju izaziva mnoštvo nesporazuma od kojih mnogi završavaju pred sudom. Jedan od razloga je to što intuitivno osećamo da nam ljudska prava i slobode pripadaju samim rođenjem, da su nam svojstveni, te ne osećamo potrebu da o njima posebno učimo. Takođe, svaka sloboda i pravo imaju dve strane – dužnosti i obaveze a na tim stranama se po pravilu nalaze različiti ljudi ili organizacije. Njihove bitno drugačije perspektive otežavaju im saglasnost. Posmatrani čak i iz sličnih uglova, kakve imaju npr. sudije istog suda, sporovi o slobodi izražavanja često se okončavaju podelom mišljenja u kojoj samo neparan broj sudija garantuje da će odluka da bude doneta, a stavovi i praksa iz godine u godinu se menjaju.

Osnovni cilj ovog teksta jeste da ukazivanjem na normativu i primere, praktičaru u medijskoj sferi približi slobodu izražavanja, da učini vidljivijom granicu između njenog korišćenja i zloupotrebe i tako pospeši njeno ostvarivanje. Nije neophodno posebno podsećanje na značaj te slobode za slobodu ličnosti i razvoj demokratije jer je to već notorno. Međutim, i ovaj put nametnuće se zaključak da rezultanta divergentnih interesa oličenih u korišćenju, zaštiti i ograničavanju te slobode, sem u banalnim slučajevima, izmiče egzaktnoj prognozi, odnosno predviđanju ishoda konkretnih slučajeva, iako su pravila po kojima se sporne situacije razrešavaju univerzalna i poznata. Ali poznavanje tih pravila omogućava da donosimo razumne, odgovorne stavove i odluke o svom i tuđim pravima i obavezama koji proističu iz slobode izražavanja.

Sloboda izražavanja je živa, dinamička sloboda koja svaki dan dobija nove pojavne oblike i susreće se s novim izazovima, a čak i kada su oni isti, protok vremena menja stvarnost, primoravajući i nas da naizgled iste stvari danas preispitujemo i vrednujemo drugačije nego juče. Zbog toga onaj ko razmatra konkretna pitanja slobode izražavanja ili njenog (ne)osnovanog ograničavanja, uvek treba da ispituje kako i koliko se nečijim konkretnim izrazom, ili ograničenjem tog izraza u datom kontekstu, doprinosi svrsi te i svih drugih garancija ljudskih sloboda i prava — očuvanju dostojanstva čoveka u slobodnom društvu.

Ustav Republike Srbije i međunarodno pravo

Ustav Republike Srbije uspostavlja hijerarhiju pravnih normi u kojoj su opšteprihvaćena pravila međunarodnog prava i potvrđeni međunarodni ugovori sastavni deo pravnog poretka i neposredno se primenjuju, pri čemu potvrđeni međunarodni ugovori moraju da budu u saglasnosti sa Ustavom[3] (što znači da su mu podređeni).

[1] Zaštitnik građana Republike Srbije
[2] Liza Henderson, Daniel Burrus i drugi
[3] Član 16 st. 2 Ustava Republike Srbije

Za razliku od Evropske konvencije o ljudskim pravima[4], koja slobodi izražavanja posvećuje poseban član, naš Ustav je u članu 46 garantuje zajedno sa slobodom mišljenja (slično Američkoj konvenciji o ljudskim pravima iz 1969. godine). Čini to, nažalost, na način koji sporno sugeriše da sloboda izražavanja nije isto što i sloboda da se govorom, pisanjem, slikom ili na drugi način traže, primaju i šire obaveštenja i ideje[5] a upravo to je srž slobode izražavanja – sloboda iskaza, individualnog ili kolektivnog, načelno neograničena formom, ni temom, ni granicama.

Sloboda izražavanja pravno se uobličava već u ranim dokumentima o ljudskim pravima, kao što je engleska ***Deklaracija o pravima*** (Bill of Rights) iz 1689. godine koja je garantovala slobodu govora u Parlamentu, ili u ***Deklaraciji o pravima čoveka i građanina***, koja je usvojena tokom Francuske revolucije 1789. godine.

U ***Univerzalnoj deklaraciji o pravima čoveka (UN)*** iz 1948. godine, sloboda mišljenja i izražavanja izražena je na ovaj način: „*Svako ima pravo na slobodu mišljenja i izražavanja, što obuhvata i pravo da ne bude uznemiravan zbog svog mišljenja, kao i pravo da traži, prima i širi obaveštenja i ideje bilo kojim sredstvima i bez obzira na granice*“. Sličan iskaz sadrži i član 19 ***Međunarodnog pakta o građanskim i političkim pravima Ujedinjenih nacija***: *„Niko ne može biti uznemiravan zbog svog mišljenja. Svako ima pravo na slobodu izražavanja. To pravo, bez obzira na granice, podrazumeva slobodu iznalaženja, primanja i širenja informacija i ideja svih vrsta, u usmenom, pisanom, štampanom ili umetničkom obliku, ili na bilo koji način po slobodnom izboru. Ostvarivanje tih sloboda podrazumeva posebne dužnosti i odgovornosti. Sledstveno tome, ono može biti podvrgnuto izvesnim ograničenjima koja moraju, međutim, biti izričito određena zakonom a potrebna su iz razloga: poštovanja prava ili ugleda drugih lica; zaštite državne bezbednosti, javnog reda, javnog zdravlja i morala.*“[6]

U članu 13. ***Američke konvencije o ljudskim pravima*** (1969) stoji: *„Svako ima pravo na slobodu mišljenja i izražavanja. To pravo uključuje slobodu da se traže, primaju i šire informacije i ideje svih vrsta, bez obzira na granice, kako usmeno tako i pismeno, u umetničkoj formi i bilo kojim sredstvom po vlastitom izboru. Primena prava obezbeđena prethodnim stavom ne sme biti predmet prethodne cenzure ali će biti podložna sledećim ograničenjima, čiji će opseg biti ustanovljen zakonom do mere koja je nužna da bi se osiguralo: poštovanje prava i ugleda drugih ili zaštite nacionalne bezbednosti, javnog reda, javnog zdravlja ili morala. Sloboda izražavanja ne sme biti ograničena indirektnim metodama ili značenjima, kao na primer, zloupotrebom javne i privatne kontrole kroz štampu, radio frekvencije ili opreme koja se koristi za širenje informacija, ili bilo koji drugi način s namerom da se spreči komunikacija i širenje ideja i mišljenja“.* Ipak, ova konvencija izričito predviđa da javni zabavni sadržaji mogu, u skladu sa zakonom, da budu predmet prethodne cenzure, ali samo da bi se regulisao pristup dece i mladih tim sadržajima a radi zaštite njihovog morala. Takođe, ona izričito propisuje ograničenje slobode izražavanja, putem pretnje zakonskim kaznama, za ratnu propagandu ili zagovaranje nacionalne, rasne ili religijske mržnje koja podstrekava na nezakonito nasilje ili slična dela protiv bilo koje osobe ili grupe osoba po bilo kojoj osnovi, uključujući rasu, boju kože, veru, jezik ili etničko poreklo.

Član 10 ***Evropske konvencije o ljudskim pravima*** (1950) garantuje slobodu izražavanja ovako: *„Svako ima pravo na slobodu izražavanja. To pravo uključuje slobodu imanja sopstvenog mišljenja; primanja i saopštavanja informacija i ideja bez mešanja javne vlasti i bez obzira na granice. Ovaj član ne sprečava države da zahtevaju dozvole za rad televizijskih, radio i bioskopskih preduzeća*.“[7]

Često se, međutim, prenebregava stav 2 istog člana Konvencije koji glasi: „*Upražnjavanje ovih sloboda, s obzirom na to da one sa sobom nose dužnosti i odgovornosti, može biti predmet takvih procedura, uslova, ograničenja ili kazni kakve su propisane, odnosno propisani zakonom i neophodni u demokratskom društvu i to u interesu nacionalne bezbednosti, teritorijalnog integriteta ili javne*

[4] Tačan naziv je „Konvencija za zaštitu ljudskih prava i osnovnih sloboda“ (Convention for the Protection of Human Rights and Fundamental Freedoms)
[5] Tu nespretnost ustavotvorca moramo pripisati brzopoteznom načinu na koji je Ustav iz 2006. godine donet.
[6] Pakt je usvojen 16. decembra 1966. godine a stupio je na snagu 23. marta 1976. godine.
[7] Srbija je ratifikovala Evropsku konvenciju o ljudskim pravima 3. marta 2004. godine.

bezbednosti, prevencije nereda ili kriminala, zaštite zdravlja ili morala, zaštite reputacije ili prava drugih osoba, prevencije objavljivanja informacija koje su dobijene u poverenju ili radi održavanja autoriteta i nezavisnosti sudstva".

Ustav Srbije o istom kaže: „*Sloboda izražavanja može se zakonom ograničiti ako je to neophodno radi zaštite prava i ugleda drugih, čuvanja autoriteta i nepristrasnosti suda i zaštite javnog zdravlja, morala demokratskog društva i nacionalne bezbednosti Republike Srbije.*"[8] Istovremeno, za bilo koje ograničenje ljudskih prava pa i ovo, Ustav propisuje: „*Ljudska i manjinska prava zajemčena Ustavom mogu zakonom biti ograničena ako ograničenje dopušta Ustav, u svrhe radi kojih ga Ustav dopušta, u obimu neophodnom da se ustavna svrha ograničenja zadovolji u demokratskom društvu i bez zadiranja u suštinu zajemčenog prava. Dostignuti nivo ljudskih i manjinskih prava ne može se smanjivati. Pri ograničavanju ljudskih i manjinskih prava, svi državni organi, a naročito sudovi, dužni su da vode računa o suštini prava koje se ograničava, važnosti svrhe ograničenja, prirodi i obimu ograničenja, odnosu ograničenja sa svrhom ograničenja i o tome da li postoji način da se svrha ograničenja postigne manjim ograničenjem prava*."[9]

Upravo ove procedure, uslovi, ograničenja i, posebno, kazne, najčešći su uzrok nesporazuma.

Ceneći da li je (pod pretpostavkom da su ispunjeni procesni uslovi za to, što često nije slučaj) došlo do kršenja prava na slobodu izražavanja, Evropski sud za ljudska prava primenjuje svojevrstan test kojim se proverava da li je uopšte došlo do mešanja u pravo na slobodu izražavanja; da li je to mešanje bilo propisano zakonom (koji mora da bude dostupan i dovoljno konkretan da bi bio predvidiv); da li je ograničenje slobode imalo legitiman cilj i da li je bilo neophodno u demokratskom društvu (što uključuje test proporcionalnosti).

Razmotrimo primer ograničavanja slobode izražavanja radi čuvanja autoriteta i nepristrasnosti suda. Tu se ograničenje ogleda, između ostalog, i u zabrani da se iznose, pogotovo javno, informacije koje potiču iz istraga u toku. U predmetu **Tourancheau i July protiv Francuske (2005)**, pred Evropskim sudom za ljudska prava, novinar i urednik tvrdili su da im je povređena sloboda izražavanja jer ih je sud u domovini krivično osudio zato što su objavili dokumente iz drugog krivičnog predmeta koji je bio u fazi istrage. Drugi predmet ticao se ubistva devojčice. Evropski sud je prvo ocenio da krivična osuda novinara predstavlja mešanje u slobodu izražavanja, ali i da je takvo mešanje propisano francuskim zakonom. Ispitivao je i zaključio i da su novinar i urednik, s obzirom na njihovo iskustvo, mogli da predvide da objavljivanjem delova krivičnih spisa mogu da dođu pod udar krivičnog zakona. Evropski sud je uvažio argument francuskih vlasti o štetnim posledicama objavljivanja članka po ugled osumnjičenih i njihovo pravo da budu smatrani nevinim do eventualne pravosnažne presude o krivici. Ali, Sud je uvažio i ocenu francuskih vlasti da se objavljivanjem poverljivih podataka iz istrage negativno utiče na autoritet i nepristrasnost pravosuđa, posebno zbog mogućeg uticaja teksta na članove porote. Sud je zaključio da je cilj mešanja u slobodu izražavanja (krivičnog progona novinara i urednika) bio da zaštiti „ugled i prava drugih" i da očuva „autoritet i nepristrasnost pravosuđa". Ocenjeno je da interes podnosilaca predstavke da saopšte podatke o toku krivične istrage i interes javnosti da takve informacije dobije, nisu prevagnuli nad interesima koje su francuske institucije želele da zaštite kada su krivično kaznile novinare. Sud je ocenio i da su kazne izrečene podnosiocima predstavke bile proporcionalne legitimnim ciljevima kojima su vlasti težile. Ipak, odluka nije bila jednoglasna; glasovi sudija bili su podeljeni – četiri prema tri.

Treba znati i da će, s obzirom na to da se smatra da audio-vizuelni mediji imaju neposredniji i jači uticaj nego štampani, Evropski sud pre prihvatiti potrebu mešanja države u slobodu izražavanja ako je ona upražnjavana preko medija koji koriste zvuk i sliku.

Kada sudovi cene domet zaštite koju garancija slobode izražavanja pruža **novinarima** kod izveštavanja o stvarima od opšteg značaja, polaze od pretpostavke da novinari postupaju u dobroj veri u cilju pružanja tačne i verodostojne informacije u skladu s novinarskom etikom. Činjenica ili okolnost

[8] Član 46. st. 2.
[9] Član 20. Ustava Republike Srbije.

koja govori suprotno, biće od uticaja na presudu. Obaveza je novinara da u razumnoj meri, koliko je to u konkretnom slučaju moguće i primereno težini tvrdnji koje se iznose, kao i drugim okolnostima slučaja, proveri tačnost informacije koju iznosi ili prenosi. Praksa Evropskog suda, međutim, govori i da kada novinari citiraju zvanične dokumente organa vlasti, po pravilu nisu u obavezi da provere verodostojnost navoda koje ti dokumenti sadrže.

Tumačenje slobode izražavanja teži tome da se najveća zaštita pruži političkom govoru, onom koji se odnosi na institucije države, politiku i političare, bilo lokalne, nacionalne ili međunarodne. Kritika na račun države ili političara, izražena na najrazličitije načine, štiti se najrobusnije. Što su tema i sadržaj onog što se izražava bliže javnom interesu, to je i zaštita jača. Stav da činjenični iskazi treba da budu dokazivi, a vrednosni sudovi ne, ovde se pojavljuje u punom sjaju, mada ipak ostaje potreba da se vrednosni sud naslanja na bilo kakvu, makar najmanju činjenicu koja može da se stavi u logičku vezu sa sudom tako da se on, makar i najproizvoljnije, zasniva na toj činjenici. U protivnom bi se moglo doći u situaciju da se štite akti čiste mržnje i diskriminacije. Granica dozvoljenog se smatra pređenom ako se iskazom koji, ponovimo, može da bude u bilo kojoj formi, poziva na nasilje ili se pokaže da ga iskazi podstiču.

Nasuprot političkim temama i političarima, gde ograničenja slobode izražavanja moraju da budu najrestriktivnija, države su slobodnije da se mešaju i ograničavaju slobodu izražavanja kada se učinjeni ili pripremljeni iskaz tiče ličnih uverenja drugih građana u oblasti morala ili religije. Sud će tako imati mnogo više prostora da, čak, postupa preventivno i zabrani prodaju knjige ili distribuciju karikature za koju oceni da će ozbiljno da povredi verska osećanja nekih građana, dok će veoma teško da nađe dobro opravdanje da zabrani publikaciju ili kazni nekoga zato što je javna ličnost, posebno ako je političar, okarakterisana na način koji vređa nju ili njega i njegove glasače, bez obzira na to što ih može biti mnogo više nego pripadnika neke verske zajednice.

Sloboda izražavanja znači i pravo da se neki iskaz, neke misli i ideje ne učine, da se ostane „nem“. Niko se ne sme naterati da se „izrazi“, ali je moguće da neke kategorije građana zbog neprihvatanja da se pridruže kolektivnom izrazu vrednosti, kakva je na primer zakletva, ostanu bez drugih prava ili interesa. U tužbi protiv Nemačke iz 1995. godine, nastavnica koja je dobila otkaz jer je odbila da položi zakletvu lojalnosti Ustavu nije dobila spor pred Evropskim sudom za ljudska prava. Sudije su zaključile da država ima pravo da na taj način uspostavlja ravnotežu između slobode volje pojedinca i legitimnih interesa demokratske države. Dakle, korišćenje prava na slobodu izražavanja može da ima različite posledice u zavisnosti od toga da li pravo koristi državni službenik, novinar ili drugi građanin.

Na kraju, apstraktno pravno i konkretno sudsko regulisanje ostvarivanja slobode izražavanja, pojedinačno i sveukupno posmatrano, treba da bude takvo da podstiče različitost pogleda i ideja; da štiti kritičku misao, makar ona bila i duboko uznemirujuća za deo populacije ili celo društvo. Ograničenja, iako mogu da budu zasnovana na brojnim i raznovrsnim razlozima, moraju da budu izuzetak, a ne pravilo. Klasični organi državne vlasti su prečesto rigidni da bi s dovoljno takta odlučivali o suštinskoj pravilnosti uživanja tako iznijansirane slobode kakva je sloboda izražavanja, posebno ako se koristi kroz novinarstvo i putem medija. Teži se da ostvarivanje slobode izražavanja preko medija pretežno regulišu medijska i novinarska udruženja, edukacijom i radom etičkih odbora. Ideal je da svaki novinar i urednik poznaje suštinu, elemente i ograničenja slobode izražavanja i iznova i iznova preispituje da li njen, odnosno njegov rad doprinosi svrsi zbog koje je ta sloboda uopšte garantovana kao jedno od osnovnih ljudskih prava – deo temelja ljudskog dostojanstva i demokratije.

Medijska pismenost kao društvena strategija

Doc. dr Boban Tomić[1]

Razvoj elektronskih medija u drugoj polovini XX veka, odvijao se uglavnom kroz ekspanziju radija, televizije i filma a poslednjih godina naglo se razvijaju digitalne komunikacije, Internet i novi mediji. Nove tehnologije, većinom digitalne prirode, donele su nam i nove izražajne mogućnosti, ekspanziju forme i sadržine svih – a ponajviše elektronskih medija. Nova rešenja u oblasti informaciono-komunikacionih tehnologija stvaraju dinamičan, inovativan i efikasan svet novih medija, unutar koga posebno vrednujemo web tehnologije i platforme društvenih mreža. Taj nagli tehnološki razvoj obogaćuje medijsku ponudu na emitujućem polu komunikacione šeme ali i pospešuje medijsku potrošnju na primajućem polu. Komunikološkim žargonom rečeno – komunikaciona šema i komunikaciona situacija[2] postaju složenije i funkcionalnije.

U savremenom dobu, broj radio-aparata, televizijskih prijemnika, potom i personalnih računara, mobilnih telefona, tablet računara i hibridnih uređaja sa smart komunikacionim softverima, naglo raste, a svoj skoro dramatičan rast nastavlja i u prvim godinama XXI veka. U ovom trenutku, skoro da je teško prebrojati sredstva i načine masovnog komuniciranja unutar koncepcije i prakse novih medija. Skoro svakodnevno se razvijaju mogućnosti i proširuju polja na kojima se javno i masovno komuniciranje realizuje. Upravo taj nagli i dinamičan razvoj masovnog komuniciranja, dovodi do brojnih promena u društvenoj strukturi ali i izmena u ponašanju potrošački orijentisane publike.

Mediji postaju deo svakodnevice, dokolice, ali i radnog vremena. Sve vreme u jednom danu prožeto je, na neki način, medijskim sadržajima i savremeni čovek skoro da nema šanse da izbegne susret s medijskim porukama u svetu oko sebe. U takvim okolnostima, nužno su se nametnule brojne dileme o mestu i ulozi savremenih medija, a posebno one koje su motivisane negativnim uticajima medija na medijsku publiku, kao i na mlade, posebno osetljive i nezaštićene delove masovne publike. U shvatanju da mediji, poput svih dobara, mogu biti dobar sluga a zao gospodar, leži klica interesovanja za aktivnost koja će se mnogo decenija kasnije iskristalisati kroz pojmove medijskog obrazovanja i medijske pismenosti.

Zabrinutost nad onim štetnim i problematičnim efektima koje mediji masovnog komuniciranja mogu da izazovu u masovnoj publici, pojavila se veoma rano a sazrevala je zajedno s tehnološkim i programskim razvojem masovnih medija. Problematični i štetni efekti tabloidnog novinarstva aktuelizovani su kada je žuta štampa doživela svoj procvat – u SAD početkom XX veka, kroz poznati istorijski sukob imperija Džozefa Pulicera i Vilijama Randolfa Hersta. Orson Vels je napravio bum uznemirivši radijsku publiku svojom čuvenom radio dramom o iskrcavanju Marsovaca, ali je teoretičarima postavio veliki zadatak na polju istraživanja uticaja i deontologije elektronskih medija. Učešće televizijskih kamera u realnim situacijama, od ratnih dejstava (Zalivski rat), do svakodnevnih života pojedinaca (rijaliti programi), postalo je nezaobilazna praksa televizijskih stanica širom sveta. Ova tri primera, s početka, sredine i kraja XX veka, pokazuju da su štampani, radio i televizijski mediji nadrasli svoje funkcije i da su iz sfere informativnog, uveliko prodrli u područja s kojih veoma efikasno mogu delovati na masovnu publiku, izazivajući pri tom širok spektar uticaja na pojedinca ili masovnu publiku.

Uporedo s razvojem medija, razvijala se i svest o potrebi da se na neki način kontroliše, usmerava ili obuzdava spektar neželjenih posledica medijske emancipacije, odnosno medijske slobode. Već 60-ih godina prošlog veka, u krugovima Organizacije ujedinjenih nacija za obrazovanje, nauku i kulturu (UNESCO), začinju se program i aktivnosti o društvenoj odgovornosti i ulozi mas-medija. Tada UNESCO počinje da podstiče javne rasprave o učinku televizije i ostalih medija masovnog

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[2] M. Radojković i M. Miletić, „Komuniciranje, mediji i društvo“, Stylos, Novi Sad 2006.

komuniciranja na publiku, s posebnim osvrtom na štetne efekte. Cilj ovakvog pristupa i aktivnosti bio je da se učini nešto kako bi se sprečio, ublažio ili onemogućio svaki oblik negativnog delovanja masovnih medija – a posebno prema mladima i deci. U tom pravcu UNESCO je već sedamdesetih godina prošlog veka ukazivao na značaj medija u svakodnevnom životu ljudi, pojedinaca, porodice i zajednice, pokrenuvši i uzdižući ideje o podizanju medijskih kompetencija pojedinaca na znatno viši nivo. To je doslovno bio prvi alarm na uzbunu protiv stihije neželjenih dejstava mas-medija na društvo.

Ideja o mogućem lošem delovanju medija na decu, mlade, porodicu, pa tako i društvo u celini, sazrevala je godinama u globalnoj javnosti. Jedna od prvih konkretnih aktivnosti koje su preduzete unutar UNESCO porodice jeste rad na izradi i usvajanje Deklaracije o medijskom obrazovanju 1982. godine. Predstavnici 19 država sastali su se na UNESCO Međunarodnom simpozijumu u nemačkom gradu Grinvaldu, gde su 22. januara 1982. godine usvojili Deklaraciju o medijskom obrazovanju[3]. Iako je to doba izgledalo sasvim nevino u odnosu na decenije koje će tek uslediti, potpisnici Deklaracije su predočili sve negativne i problematične aspekte razvoja medijske kulture i prodiranja medija u sve delove života pojedinca, porodice i društva. Ne želeći da taj razvoj medija ograničavaju, ni sputavaju, potpisnici Deklaracije su predočili potrebu stvaranja nove discipline u obrazovnim sistemima, koja bi imala cilj da sveobuhvatno razvija medijske kompetencije kod publike a prvenstveno kod dece.

U ranoj fazi razvoja, koncept obrazovanja za medije uglavnom se odnosio na masovnu publiku i najmlađe kao najosetljivije segmente društva. Taj koncept je upućivao države i vlade sveta na aktivnosti uspostavljanja školskih i vanškolskih programa medijskog obrazovanja kojim će se mladi naraštaji osposobljavati za kritičku potrošnju medijskih sadržaja i uspešno tumačenje medijskih poruka. Međutim, koncept medijskog obrazovanja i medijske pismenosti kao njegovog konačnog cilja, istovremeno je zahtevao i od proizvođača medijskih sadržaja, dakle, od samih medija i njihovih vlasnika, da se prilagode i saobraze konceptu medijskog obrazovanja i pismenosti. To je za njih doslovno značilo da moraju da vode računa o tome ko i kako će se baviti proizvodnjom medijskih programa, konkretno stvaranjem i uređivanjem programa radio, TV stanica i novina. Od medija se traži da angažuju školovane stvaraoce, novinare i urednike a da se proces sakupljanja, uređivanja i masovne diseminacije medijskih sadržaja obavlja na odgovoran način uz maksimalno uvažavanje istine, mere i potreba publike.

Pojam medijske pismenosti, još uvek nedovoljno razumljiv a ponekad i konfuzan, u suštini se svodi na veoma jednostavnu formulu uspeha, kako za medije, tako i za publiku. Medijske kuće (ovde ih nazivamo – *mediji*) proizvode svoje programe i putem štampe ili radio talasa šalju ih pojedincima koji (svi zajedno) čine publiku. Najjednostavnije rečeno, medijske kuće su pošiljalac a publika primalac informacija. Da bi taj proces funkcionisao na održiv način, stabilno i dugoročno, mediji u svom radu moraju da poštuju visoke standarde civilizacije, kulture, profesije i zajednice a za to su im potrebne visoke performanse znanja i veština. Isto važi i za publiku koja takođe mora da bude osposobljena da očita i rastumači sve vrste sadržaja koje medijske kuće odašilju ka njoj. Dakle, i jednima i drugima je potrebno mnogo znanja i veštine! Ta znanja i veštine se stiču učenjem i radom. Dakle, medijski profesionalci moraju proći kroz proces institucionalnog i vaninstitucionalnog medijskog obrazovanja za rad u medijima. To nazivamo i obrazovanje za medijsku proizvodnju (*produkciju*). Kasnije, kada se zaposle, moraju imati priliku za *update*-ing novih znanja, a to nudi koncept permanentnog obrazovanja za medije. Na drugoj strani, publika se takođe mora školovati; to školovanje se odnosi na medijsku potrošnju i to počinje u porodici kada dete prvi put komunicira sa okolinom i očitava sliku TV ekrana i sl. Kasnije, obrazovanje za medijsku potrošnju se stiče u osnovnoj i srednjoj školi, na fakultetu ali i u privatnom društvenom i ličnom životu. Kada se ta dva koncepta slože, dakle, kada dobijemo obrazovane medijske proizvođače na jednoj strani, i obrazovane medijske potrošače na drugoj strani, tada će procesi javnog komuniciranja biti na značajno visokom nivou a svaki pojedinac će biti osposobljen da prima, tumači, analizira i kritički vrednuje medijske sadržaje. Tako se dobija kritički potrošač medijskih poruka. Konačno ishodište i cilj svih aktivnosti u domenu obrazovanja za medije možemo da nazovemo medijska pismenost.

[3] Grünwald Declaration on Media Education 1982

Medijska pismenost danas podrazumeva skup razvijenih kompetencija, kako za prijem (potrošnju), tako i za odašiljanje (proizvodnju) medijskih sadržaja. To je robustan i vibrantan sistem usvojenih i primenjenih vrednosti i kriterijuma, unutar koga se obavlja proces masovnog komuniciranja kao svojevrstan proces razmene dobara između medija i publike, pri čemu publika dobija vesti, pouku i zabavu a mediji dobijaju pažnju. Svoje teorijske obrise, medijska pismenost je počela da dobija posle Konferencije o medijskoj pismenosti 1992. godine (National Leadership Conference of Media Literacy, 1992) na kojoj je ona definisana kao *sposobnost pristupa, analize, vrednovanja i odašiljanja poruka posredstvom medija*. Sasvim je jasno da su teoretičari medija postigli saglasnost o tome da se pod medijskom pismenošću podrazumevaju razvijene kompetencije (sposobnosti), kako kod onih koji medije proizvode, tako i kod onih koji medije konzumiraju. Na toj platformi, kreirani su i program i planovi delovanja za izgradnju medijskih kompetencija, odnosno za postizanje visokog nivoa medijske pismenosti na globalnom nivou. To prevashodno podrazumeva rešenost vlada i država da koncepte medijske pismenosti ostvaruju kroz osmišljene i pouzdane koncepte obrazovanja za medije. Programi obrazovanja za medije moraju da obuhvate razvijene nastavne planove (kurikulume) za institucionalno obrazovanje medijskih delatnika - novinara, urednika, multimedijalnih stvaralaca i sl. Takođe, državama se preporučuje da podstiču i razvoj vaninstitucionalnog obrazovanja za medije kroz certifikovane programe medijskih udruženja, privatnog sektora i organizacija civilnog društva. Na drugoj strani, obrazovanje za medijsku potrošnju mora da bude dostupno najmlađima u toku redovnog školovanja ali i starijima kroz vaninstitucionalne forme i načine medijskog opismenjavanja.

Funkcionisanje masovnih medija, kao i celokupnog medijskog sistema Srbije, uveliko je određeno opštim društvenim okolnostima u kojima se srpsko društvo nalazi protekle dve decenije. Opšta društvena destrukcija kroz koju su prošle zemlje bivše SFRJ, odrazila se na sve segmente lokalnih društava pa i na medijasferu. Savremeni civilizacijski trendovi, kao što su deregulacija medija, digitalizacija radiodifuznog spektra, transparentnost vlasništva i ostali koncepti, veoma sporo bivaju implementirani u postkonfliktna društva Balkana pa i Srbije. Otuda su indeksi održivosti i medijskih sloboda na problematičnoniskim pozicijama a profesionalizam i odgovornost u medijima često bivaju na udaru i degradirani od strane političkih centara moći, odnosno neprofesionalnog dela medijske struke. U vremenu kada medijski sistem Srbije zaokružuje tehnološku i programsku platformu sopstvenog opstanka i razvoja, od ključnog interesa jeste upravo koncept medijske pismenosti kao nužni alat za razvoj i održivost medija i njihove publike.

Uzajamnost medijske pismenosti i održivosti medija od presudnog je značaja za razvoj medija. Bez medijski pismenih delatnika (novinari, stvaraoci, urednici u najširem smislu…) nema kvalitetnog medijskog proizvoda (informativni, edukativni i zabavni programi). Samo stručno osposobljeni, obrazovani i obučeni medijski delatnici mogu proizvoditi kvalitetan program po meri kvalitetne publike. S druge strane, publici je takođe potrebna medijska edukacija kako bi i ona bila medijski pismena. Koncept medijske pismenosti postiže se medijskim obrazovanjem, od kruga porodice, preko škole i društvenog okruženja, s jedinstvenim ciljem da se ukupne medijske kompetencije pojedinca maksimalno izgrade i razviju. Masovna publika je sastavljena od pojedinaca a njihove pojedinačne sposobnosti su ključne za formiranje celokupnog proseka auditorijuma. Medijski pismena publika mora biti u stanju da stiče, tumači i vrednuje sve vrste medijskih poruka koje do nje dopiru, zatim da poseduje sposobnost očitavanja i razumevanja denotativnog i konotativnog značenja medijskih poruka, otkrivanja kontekstualnih poruka i skrivenog značenja u masovnoj komunikaciji; takođe, nužno je da ta publika bude upijač informacija sa svojstvima filtera koji je ujedno u stanju da poruku primi, objektivno protumači, semantički raskrinka i kao takvu prihvati i/ili prosledi dalje. Takva publika nikada neće biti potcenjena niti nipodaštavana od strane medija, jer je uspostavljanje trajne veze interes održivosti i medija i publike.

Koncepti medijske pismenosti u Srbiji još uvek nisu razvijeni a na utemeljivanju konkretnih programa državni organi još uvek ne čine dovoljne pomake. Iako je Medijskom strategijom predviđena obaveza države da se stara o unapređenju stepena medijske pismenosti stanovništva, za sprovođenje takvih strateških smernica, neophodni su stabilni mehanizmi i konkretni koraci napred. U regionalnom okruženju, Srbija može primere pojedinih dobrih praksi u sprovođenju obrazovanja za medije preuzeti od Slovenije i Hrvatske, ali ih svakako mora adaptirati za svoje prilike. Usmeravajući dokumenti, kao

gradivo od koga se može graditi uspešna nacionalna strategija medijske pismenosti, postoje u brojnim UNESCO-ovim izveštajima i dokumentima.[4]

Medijska strategija može biti dobro polazište iz kojega je neophodno razviti strategiju medijske pismenosti kao konačni cilj. Ne zaboravimo da je medijska pismenost ishodište i cilj dugoročnog i permanentnog obrazovanja i medijskih delatnika i publike i da do nje treba dosegnuti. Dakle, osnovni preduslov za postojanje medijski pismenog društva jeste stvaranje, razvoj i trajanje koncepcije medijskog obrazovanja. Ta koncepcija se mora razviti od strane ključnih učesnika – države, medijskog sektora i civilnog društva kao ključnih strana u tom procesu; takođe, treba da bude osmišljena i usvojena na nivou institucionalnog i vaninstitucionalnog obrazovanja. Država mora da preuzme odgovornost za uvođenje gradiva medijskog obrazovanja u predškolsko, osnovno, srednje i visoko obrazovanje. Hoće li to gradivo biti (poput nastave građanskog obrazovanja i veronauke) unutar jednog fakultativnog ili obaveznog predmeta u toku školovanja, ili će biti raspoređeno u već postojeće srodne predmete (jezik, književnost, nauka o društvu, tehničko obrazovanje …), prilično je važna dilema. Takođe, nužno je da država preuzme obavezu jačanja uslova za rad srednjih škola i fakulteta gde se obrazuje kadar za rad u medijima, kako bi profesionalizacija struke bila dostupnija većem broju budućih medijskih delatnika. U tom pravcu delatno je povećanje broja zanimanja za rad u medijima kao i omogućavanje njihove regionalne rasprostranjenosti.

Medijsko obrazovanje u funkciji stvaranja medijski pismene profesionalne zajednice mora da bude stalni zadatak medijskih institucija i udruženja ali i organizacija civilnog društva. Vlasnici medija i njihova udruženja treba da afirmišu koncepte permanentnog obrazovanja za zaposlene u medijima kako bi oni mogli da blagovremeno ovladavaju novim tehnologijama, znanjima i veštinama. Zaposleni u medijima moraju imati pristup savremenim znanjima kako bi svoj profesionalni profil permanentno osavremenjivali. Taj proces se odvija izvan institucija države, ali to ne isključuje obavezu države da bude prema njemu konstruktivna i da ga potpomaže finansijski i materijalno.

Savremeni teoretičari medija medijskoj pismenosti dodaju i atribute informatičke pismenosti, tako da se u novijim razmatranjima ove problematike sve više pojavljuje termin *medijsko-informatička pismenost* (*Medija and Information Literacy MIL*)[5]. Ovaj trend naglašava sve veće učešće novih informatičko-tehnoloških inovacija u polju delovanja mas-medija. Jačanje koncepta novih medija i sve veća uloga i važnije mesto koje novi mediji zauzimaju, obavezuju društvo u celini da svoje medijske kompetencije (osposobljenost) proširuju s polja konvencionalnih medija (štampa, radio i televizija) na polje novih medija (Internet, web, društvene mreže, digitalne platforme).

Srbija u tom kontekstu ima mnogo posla i još više pojedinačnih konkretnih obaveza koje mora što pre usvojiti i primeniti u praksi. Sve negativne posledice koje mediji ostavljaju na društvo u Srbiji, već odavno su na delu. Nabujalo tabloidno novinarstvo, kič i šund u elektronskim medijima, zloupotrebe stvaralačkih medijskih sloboda, manipulisanje medijima od strane političkih centara moći i interesnih grupa, netransparentno vlasništvo i na kraju značajna kršenja zakonskih normi, doprinose opštoj stagnaciji i regresiji društva u celini. Laički utisak da su se mediji oteli svakoj *kontroli* mogao bi da se razume i potkrepi, ali znalački profesionalni utisak da su se mediji oteli svakoj odgovornosti, sasvim je neupitan. U takvoj situaciji, odlučujući korak mora da preduzme i država, ali i medijska struka. Koncept medijske pismenosti, kao ishodište integrisane i permanentne obrazovne politike usmerene na medije i na publiku, može i treba da bude spasonosni obrazac za razvoj medijski pismenog društva, kao preduslova za otvoreno, demokratsko i zdravo društvo.

[4] Media Education: A Global Strategy for Development – A Policy Paper, Prepared for UNESCO, Sector of Communication and Information by Professor David Buckingham, Institute of Education, University of London, England, March 2001

[5] Fez Declaration on Media and Information Literacy 2011

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

Informator br. 159/ januar 2013

ČLAN 10 *Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda*

Sloboda širenja informacija _____

Presuda u krivičnom postupku zbog obelodanjivanja javnosti slučajeva nelegalnih prisluškivanja telefonskih razgovora: *povreda*

Bukur i Toma protiv Rumunije – 40238/02
Presuda 8.1.2013. g. [III deo]

Činjenice **–** Prvi podnosilac predstavke radio je u vojnoj jedinici Rumunske obaveštajne službe (RIS), u sektoru za nadzor i beleženje telefonskih komunikacija. U toku svog rada, nailazio je na brojne nepravilnosti. Takođe, telefoni koji su pripadali novinarima, političarima i biznismenima bili su prisluškivani, naročito posle udarnih vesti ili priča koje su imali veliki publicitet. Podnosilac predstavke je potvrdio da je prijavio te nepravilnosti kolegama i šefu odeljenja koji ga je, navodno, zbog toga ukorio. Uvidevši da njegovi sagovornici nisu pokazivali interesovanje za ovo pitanje, podnosilac predstavke je kontaktirao s poslanikom koji je bio i član Parlamentarne komisije zadužene za nadzor nad radom RIS-a. Poslanik mu je ukazao na to da je održavanje konferencije za novinare najbolji način da se građani informišu o nepravilnostima koje je otkrio. Po njegovom mišljenju, obaveštavanje Parlamentarne komisije ne bi imalo svrhe, uzimajući u obzir vezu koja postoji između predsednika Komisije i direktora RIS-a. Dana 13. maja 1996. godine, podnosilac predstavke je održao konferenciju za novinare, koja je postala glavna vest u zemlji i inostranstvu. Svoj postupak je pravdao željom da se Ustav i zakoni njegove države poštuju. U julu 1996. godine, protiv njega je pokrenut krivični postupak. Između ostalog, optužen je za prikupljanje i prenošenje tajnih informacija u toku vršenja službene dužnosti i 1998. godine, osuđen je na uslovnu kaznu zatvora dve godine.

Podnosilac zahteva je učinio javno dostupnom jednu od traka koja sadrži snimak obavljenog telefonskog razgovora, koji se nalazi u kući drugog i trećeg podnosioca predstavke, a između trećeg podnosioca predstavke, maloletne ćerke drugog podnosioca predstavke i njene majke.

Pravo – Član 10: Presuda kojom se podnosilac predstavke oglašava krivim, krši njegovo pravo na slobodu izražavanja, pozivanjem na legitimni cilj sprečavanja i kažnjavanja krivičnih dela koja ugrožavaju nacionalnu bezbednost. Pitanje predvidljivosti pravnog osnova za osudu ne mora da se ispituje detaljno pošto mera u svakom slučaju nije neophodna u demokratskom društvu.

(a) *Da li je (ili ne) podnosilac zahteva imao druge načine da prenese informacije do kojih je došao* – Nije postojala zvanična procedura. Sve što je podnosilac predstavke mogao da uradi jeste da obavesti nadređene o uočenim nepravilnostima. Međutim, nepravilnosti koje je uočio pogađale su direktno njegove nadređene. Zato i jeste malo verovatno da bi bilo kakvo obraćanje unutar službe dovelo do pokretanja istrage o nezakonitom prisluškivanju, odnosno do zaustavljanja tih nezakonitih radnji. Što se tiče mogućnosti obraćanja Parlamentarnoj komisiji koja je zadužena za nadzor RIS-a, podnosilac predstavke je kontaktirao s poslanikom koji je bio član te komisije i koji mu je ukazao na to da obraćanje neće imati nikakvu svrhu. Zbog toga Sud nije ubeđen da bi formalno obraćanje Komisiji bilo efikasno sredstvo za sprečavanje nepravilnosti. Trebalo bi napomenuti da je Rumunija donela posebne

[1] Izvodi iz zvaničnih „Informatora o praksi Suda“ Evropskog suda za ljudska prava, dostupnih na Internet prezentaciji Suda; prevod uradila advokatska kancelarija „Živković&Samardžić“, Beograd

zakone o zaštiti uzbunjivača u javnim službama. Međutim, ovi zakoni, čije donošenje je pohvaljeno jer ih inače veoma mali broj država ima, doneti su mnogo kasnije posle aktivnosti podnosioca predstavke pa se ne odnose na njega. Shodno tome, neposredno otkrivanje informacija javnosti bilo je opravdano.

(b) *Javni interes u odavanju informacija* – Presretanje telefonskih komunikacija imalo je poseban značaj za vreme komunističkog režima, u društvu koje je naviklo na prismotre od strane tajnih službi. Pored toga, vrednosti civilnog društva direktno su pogođene time što je svačiji telefon mogao da bude prisluškivan. Informacije koje je podnosilac predstavke obelodanio, vezane su za zloupotrebe koje su činili visokorangirani službenici a koje su uzdrmale demokratske temelje države. Reč je o veoma važnim pitanjima o kojima treba da se vodi politička debata u demokratskom društvu, koja je od legitimnog interesa za javno mnjenje. Ipak, domaći sudovi nisu uzeli u razmatranje ovaj argument podnosioca predstavke.

(c) *Tačnost javno obelodanjenih informacija* – Podnosilac predstavke je uočio veliki broj neregularnosti. Svi dokazi su ukazivali na to da nije bilo naznaka da postoji bilo kakva pretnja po nacionalnu bezbednost koja može da opravda presretanje telefonskih poziva i da zaista ne postoji nalog javnog tužioca kojim se RIS ovlašćuje da prisluškuje telefonske razgovore. Pored toga, sud je odbio da ispita da li postoji osnov da RIS presreće telefonske pozive. Shodno tome, domaći sudovi nisu ispitali sve aspekte slučaja, nego su prosto prihvatili da postoji osnov za presretanje telefonskih poziva. Podnosilac predstavke je u odbrani izneo dva argumenta: prvo, RIS nije dobio neophodne naloge i drugo, nije bilo dokaza o bilo kakvoj opasnosti po nacionalnu bezbednost koja bi eventualno mogla da opravda neovlašćeno presretanje telefonskih razgovora brojnih političara, novinara i javnih ličnosti. Štaviše, vlada nije uspela da objasni zašto su informacije koje je podnosilac predstavke otkrio kvalifikovane kao „strogo poverljive“; umesto toga, odbijeno je dostavljanje kompletnog dosijea koji je sadržavao zahteve RIS-a i naloge javnog tužioca. Pod takvim uslovima, Sud može samo da veruje kopijama takvih dokumenata koje je dostavio podnosilac predstavke, a koje se odnose na presretanje telefonskih razgovora drugog podnosioca predstavke, gospodina Tome. Međutim, ovi dokumenti pokazuju da RIS nije imao osnov da traži od javnog tužioca dozvolu za prisluškivanje. Zbog toga je prvi podnosilac predstavke imao osnova da veruje da su informacije koje su otkrivene istinite.

(d) *Šteta pričinjena RIS-u* – Opšti interes u obelodanjivanju nelegalnih aktivnosti u okviru RIS-a je toliko važan u demokratskom društvu da nadjačava interes da se očuva poverenje javnosti u ovu instituciju.

(e) *Podnošenje zahteva u dobroj veri* – Nije bilo razloga da se veruje da je podnosilac zahteva bio vođen bilo kojim drugim motivom osim željom da se državna institucija pridržava zakona Rumunije, a naročito njenog Ustava. Ovome u prilog govori i činjenica da podnosilac predstavke nije izabrao da se obrati direktno medijima, čime bi se svakako postigao veći publicitet, već se prvo obratio članu Parlamentarne komisije koja je odgovorna za nadzor nad radom RIS-a.

Shodno tome, ograničavanje slobode izražavanja podnosioca zahteva, a posebno njegovo pravo da saopštava informacije, nije bilo neophodno u demokratskom društvu.

***Zaključak*:** povređeno pravo podnosioca zahteva iz Konvencije (jednoglasno)

Sud je utvrdio da je došlo do kršenja člana 6. u odnosu na prvog podnosioca zahteva, kao i kršenja člana 8. i člana 13, u vezi sa članom 8, u odnosu na drugog i trećeg podnosioca predstavke

Član 41: Podnosiocima predstavke dosuđen je iznos u rasponu od 7.800 evra do 20.000 evra na ime naknade nematerijalne štete, a prvom podnosiocu odbijen je zahtev za naknadu na ime materijalne štete.

(Videti takođe *Guja protiv Moldavije* [GC], br. 14277/04, 12. februar 2008, Informator br. 105)

ČLAN 10 *Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda*

Sloboda izražavanja _____

Privremeni sudski nalog za blokiranje Internet stranice obuhvaćene krivičnim postupkom koji je imao za posledicu uzgredno blokiranje pristupa drugim Internet stranicama i Internet stranicama koje pružaju uslugu hostinga: *povreda*

Ahmet Yıldırım protiv Turske – 3111/10
Presuda 18.12.2012. g. [II deo]

Činjenice – Podnosilac predstavke je vlasnik i administrator Internet stranice na kojoj objavljuje sadržaj koji, između ostalog, uključuje i njegov naučni rad. Internet stranica je postavljena korišćenjem *Google* servisa za kreiranje Internet stranica i hosting usluge. Prvostepeni krivični sud je, na osnovu Zakona o regulisanju izdanja na Internetu i borbi protiv prestupa na Internetu, 23. juna 2009. godine naložio blokiranje druge Internet stranice. Nalog je izdat kao privremena mera u odnosu na sprovođenje krivičnog postupka. U toku istog dana, primerak naloga je poslat Upravi za telekomunikacije radi izvršenja. Na dodatni zahtev Uprave za telekomunikacije od 24. juna 2009. godine, prvostepeni krivični sud je promenio prethodni nalog i naložio blokiranje pristupa svim *Google* sajtovima, što je imalo za posledicu nemogućnost podnosioca predstavke da pristupi sopstvenoj Internet stranici. Podnosilac predstavke je 1. jula 2009. godine podneo zahtev da se iz naloga za blokadu izuzme njegova Internet stranica jer nema nikakve veze sa stranicom koja je blokirana zbog nedozvoljenog sadržaja. Krivični sud je odbacio zahtev podnosioca predstavke 13. jula. U aprilu 2012. godine, podnosilac predstavke još uvek nije mogao da pristupi svojoj Internet stranici iako je, po njegovim saznanjima, krivični postupak protiv vlasnika spornog sajta obustavljen u martu 2011. godine.

Pravo – Član 10: Nakon blokiranja druge Internet stranice kao preventivne mere, sud je naknadno, na dodatni zahtev Uprave za telekomunikacije, naredio blokiranje pristupa svim *Google* sajtovima koji su pružali uslugu hostinga i Internet stranici podnosioca predstavke. To je dovelo do ograničenja prava na slobodu izražavanja podnosioca predstavke.

Blokiranje sporne Internet stranice imalo je osnova u zakonu, ali je bilo jasno da ni Internet stranica podnosioca predstavke, kao ni *Google* sajtovi koji su pružali usluge hostinga, ne potpadaju pod opseg odredaba relevantnog zakona, s obzirom na to da nije bilo dovoljno razloga za sumnju da je sadržaj tih stranica nezakonit. Nijedan sudski postupak nije bio pokrenut protiv ovih Internet stranica. Štaviše, iako su *Google* sajtovi smatrani odgovornim za sadržaj Internet stranica kojima pružaju usluge hostinga, zakon nije sadržavao odredbu koja ovlašćuje blokiranje pristupa ovoj usluzi na veleprodajnom nivou. Takođe, nije bilo indicija da su *Google* sajtovi obavešteni da pružaju uslugu hostinga za Internet stranice koje sadrže nezakonit sadržaj, niti da su odbili da se pridržavaju privremene mere koja se tiče Internet stranice koja je bila predmet krivičnog postupka u toku. Osim toga, zakon daje široka ovlašćenja organu uprave, odnosno Upravi za telekomunikacije, u sprovođenju naloga za blokiranje, imajući u vidu da je taj organ uprave mogao da zahteva proširenje obima naloga, iako nikakvi postupci nisu bili pokrenuti u vezi sa Internet stranicom ili domenom i iako nije postojala stvarna potreba za blokiranjem usluge na veleprodajnom nivou.

Ovakva prethodna ograničenja u principu nisu u skladu s Konvencijom, ali su morala biti predviđena zakonom, uz obezbeđenje stroge kontrole nad opsegom zabrane iz naloga i uz mogućnost efektivne naknadne sudske provere naloga, u cilju sprečavanja mogućih zloupotreba. Međutim, u nalaganju blokiranja pristupa svim *Google* sajtovima, prvostepeni krivični sud se isključivo oslanjao na mišljenje Uprave za telekomunikacije, koja je naznačila da je blokiranje svih *Google* sajtova jedina moguća mera koja je mogla da se primeni da bi se blokirala i sporna Internet stranica, i to bez utvrđivanja da li je i

manje stroga mera mogla da dovede do istog cilja. Pored toga, jedan od glavnih argumenata podnosioca predstavke, u zahtevu od 1. jula 2009. godine, bio je da se iz blokiranja izdvoje druge Internet stranice koje su uzgredno pogođene merom u pitanju, a koje nisu sporna Internet stranica, i da se pronađe način da samo sporna Internet stranica postane nedostupna. Međutim, nije bilo indicija da je sud, procenjujući ovaj zahtev podnosioca predstavke, uzeo u obzir različite interese koji bi mogli biti pogođeni naknadno izmenjenim nalogom. Ovaj nedostatak je samo posledica formulacije samog zakona, koji nije utvrdio bilo kakvu obavezu za domaće sudove da ispitaju da li je blokiranje *Google* sajtova na veleprodajnom nivou bila mera koja je neophodna, a imajući u vidu kriterijume koje je Sud utvrdio u vezi s primenom člana 10 Konvencije. Ovim činom blokiranja, veliki broj informacija postao je nedostupan, čime su, kao kolateralna šteta, značajno ograničena prava Internet korisnika. Stoga, mešanje u pravo nije bilo unapred predviđeno a podnosiocu predstavke nije obezbeđen dovoljan stepen zaštite u skladu s principom vladavine prava u demokratskom društvu. Mera u pitanju je imala arbitrarne efekte i nije se moglo reći da je imala cilj jedino da blokira pristup spornoj Internet stranici. Pored toga, sudska provera naloga za blokiranje Internet stranica nije bila dovoljna da zadovolji kriterijume za izbegavanje zloupotreba; domaći zakon nije predvideo dovoljne garancije koje bi sprečile da se nalog za blokiranje konkretne Internet stranice ne iskoristi kao sredstvo blokiranja pristupa Internetu u celini.

***Zaključak*:** povreda prava iz Konvencije (jednoglasno)

Član 41: dosuđeno 7.500 evra na ime naknade nematerijalne štete

INTRODUCTION

For the eighth time in the last four years – the period ANEM with its legal team has been conducting its legal monitoring of the Serbian media scene – ANEM has provided the opportunity for the public to learn more about pertinent issues related the media situation in the country, through quality expert texts in its Monitoring Publication. The contributors to this 8th Monitoring Publication have been: Kruna Savovic, Attorney at Law (Why is there still no Media Reform in Serbia); Slobodan Kremenjak, Attorney at Law (State Aid Control and Media Reforms in Serbia); Sasa Jankovic, Ombudsman (Freedom of Expression); Boban Tomic, PhD (Media Literacy as a Social Strategy). The fifth text is a summary of two ECHR verdicts concerning the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: *the first* concerns violations of the freedom to disseminate information and *the second* is about violations of freedom of expression.

The content of the Publication was determined by the results of the legal monitoring of the media scene in Serbia in the first half of 2013.

The first six months of the year were marked by the absence of the expected changes and the continuation of the long-established model of behavior of every government when it comes to the media and the media sector: lip service instead of genuine willingness to pursue media reforms.

Under the Action Plan for the implementation of the Media Strategy, the drafts of several new media laws should have been finished 18 months after the adoption of the Strategy – in March 2013. The expectation was that these deadlines were going to be respected and that the new laws, founded on the principles established by the Strategy, will help upgrade the media regulatory framework and, accordingly, provide for better working conditions for the media and the journalists. Although the start was promising (in late February, the Draft Public Information Law was released, with the public debate that took place in March; the Draft Law on Electronic Media was in its final stage), but by the end of June, not a single new media-related regulation was adopted. At the same time, there is still no information whatsoever about the fate of the Draft Public Information Law after the public debate (whether any objections to it were accepted, if the drafters have given up certain concepts, when will the government review the Draft or when will it be tabled to Parliament for adoption). The delay in the adoption of this Law has also brought into question the deadlines it contains for the completion of media privatization, as well as for the cessation of direct budget financing and a switch to project-based funding of media content. The latter is of paramount importance for improving the media situation; on an underdeveloped and uncompetitive media market, the state has become a dominant player, which, with its non-transparent expenditures of public funds, affects the survival of a great number of media, as well as their reporting, making them dependent on the government, which, again, makes them even more vulnerable and prone to undue influence. Besides, 80% of public funds have been allocated to a privileged circle of less than 10% of media in Serbia, without a clearly defined mandate of these media and without adequate control of their expenditures. That is why it is particularly important to make sure that state funds are allocated in such a way that the media may realize their purpose of informing the citizens about matters of public interest, instead of merely conveying information pleasing the ruling parties, helping them to hold on to power. It is important that the funds are allocated in a transparent, non-discriminatory manner, which will not undermine market competition, as well as to establish effective control of the whole process. As to the Draft Law on Electronic Media, the standstill in the adoption thereof happened after high government officials hinted about scrapping the subscription fee and moving to budget financing of the public service broadcaster, which is in direct contravention of the Media Strategy and the initial Draft Law, produced in accordance with the Strategy and European regulations. Both documents foresee the subscription fee as the main form of financing of the public service broadcasters, as well as a tool for preserving their independence from both the state and the biggest advertisers. Due to the dilemma about the financing, it is still uncertain if the Draft will also contain provisions about public service broadcasters, or if the latter will be regulated by a separate law. Another uncertainty is related to what version of the Draft will be tabled for public debate and when. In this period, the Media Strategy wasn't adhered to

either, in its part concerning the mandatory enforcement of the State Aid Control Law (in the field of the media); the implementation and enforcement thereof, as well as that of the competition protection regulations, are precisely the key drivers of media reforms, in view of the influence the state and the money from the budget have on the media. Furthermore, the collision norms from non-media laws weren't deleted either. In 2007, these norms stopped the privatization of the media and they are in direct contravention to the Media Strategy. No progress was made in other media-relevant areas either. The authorities failed to react or respond to attacks and intimidation against the media and the journalists, missing the opportunity to show the willingness to protect journalists' rights and media freedoms. As a result, extremist rhetoric returned to the public stage, in the form of hate speech, calls for discrimination and ban on certain media and NGOs – a stark reminder of the dark years prior to October 5, 2000.There are, however, positive exceptions in the work of the competent authorities. While they have raised the standards of freedom of expression in Serbia, the decisions of the Appellate Court in Belgrade remain a rare example of good practice in media-related cases, due to the unwillingness of other courts to emulate them. The media are also seriously affected by the delay of the state in conducting the digital switchover, including the absence of specific information about the costs to be incurred in the switchover process, the rights and obligations in that process, the lack of proper regulation of the issue of adapting the licenses in the digital transition process, etc. Furthermore, the recent tender for a new analog national commercial broadcaster, on the frequencies that were initially planned for the expansion of the Initial Network for the testing of the digital TV signal, may undermine the digital switchover, affecting the media in the process. Finally, the ever-present financial exhaustion of the media due to the economic crisis, high taxes and unfair competition, has not been removed. The absence of quality programs and investigative journalism and pluralism of ideas, as well as the growing self-censorship, is merely the consequence of the overall poor situation in the Serbian media landscape.

Amid such chronically bad situation, where the same problems remain unaddressed, threatening the development of the media sector, we have put forward, in this Publication, our opinions on how to tackle these issues. The authors have dealt with the reasons of the absence of media reforms in Serbia; the importance of controlling state aid to media; freedom of expression as the prerequisite and the outcome of democracy, the essence of that freedom, its elements and limitations; the necessity for both the media/media professionals and the audience to be media literate, in order for the media to be able to truly play their role in the democratization of society.

Belgrade, June 2013

Why is there still no Media Reform in Serbia

Kruna Savović, Attorney at Law[1]

The daily "Danas" reported on June 18 that the European Commission was preparing an extraordinary report, to be published prior to the regular annual meeting about the progress of Serbia in the process of EU integration. The report will address the problems faced in the implementation of the Media Strategy, adopted by the Serbian government in late September 2011. Citing unofficial sources, "Danas" claims that the report will criticize the authorities in Serbia for failing to implement the Media Strategy and comply with the deadlines from the Action Plan accompanying the Strategy.

The fact is that the adoption of the Media Strategy was one of the requirements for a positive EU opinion for obtaining the candidate status. There is no doubt that the implementation thereof is late. In the concrete case, however, the problem seems more serious than that of exceeding deadlines from one of the many strategic documents and action plans Serbia has adopted in recent years. Serbia's delay in implementing media reforms is much more serious than a simple breach of deadlines from the aforementioned Action Plan.

In fact, Serbia has failed to reform the media sector for more than ten years. Paradoxically, in 2011, the Media Strategy re-emphasized a good deal of the tasks that were supposed to be completed in the previous decade, but were not.

Some of the commitments in the Strategy are plain ridiculous. For example, the Strategy has committed to the withdrawal of the state from media ownership. The problem with that, however, is that under the Broadcasting Law, adopted back in 2002 (Article 96), radio and television stations, established by municipalities and towns, had to be privatized within four years from the coming into force of the Law. That deadline, subsequently extended until December 31, 2007, expired five and a half years ago.

To make matters even worse, Article 101, paragraph 2 of the Law on Public Information, adopted in 2003, stipulated that the public media founded by the state or territorial autonomy, or an institution/company predominantly controlled by the state, or a public media completely or predominantly financed from the state budget, and which is not subject to the provisions regulating the field of broadcasting, would cease to operate within two years from the coming into force of that Law. That deadline was later extended to three years, which expired before the year 2006.

The Strategy has committed to the withdrawal of the state from media ownership and has left a time period for that. However, under the applicable media laws, such media were not supposed to exist at all in the last 5.5-7 years.

It is similar with parts of the Media Strategy concerning the public service broadcaster (PSB), the comprehensive reform of which Serbia has failed to enforce (while also failing to provide for its stable financing) for more than 10 years now. What is more, the new government, when it comes to the financing of the PSB, has announced a diametrically opposite concept than that provided for by the Strategy, adopted by the previous government: financing from the budget, although the Media Strategy has committed to keeping the subscription fee as the main source of financing, while at the same time raising the collection rate thereof.

A fundamentally new idea/concept in the Media Strategy is the insistence on the control of state aid, as well as on project-based financing. Everything else (with minor corrections, due to technical changes that have come/are about to come to Serbia in the last decade) is merely reiterating the core

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principles that were already contained (while not being implemented) in the laws adopted more than a decade ago.

From such a state of affairs, it may be concluded that, with regard to the breached deadlines from the Media Strategy, we are missing the point here. The right thing to say is that deadlines from the old Law on Public Information have been breached for seven years; deadlines from the old Broadcasting Law were exceeded in the last five and a half years. Only if we look at things from that perspective, we may realize the seriousness of the problem we are facing. While attempting to reform its media sector for more than a decade, Serbia practically remains at square one to this day.

Why is it so and why we still have no genuine media reforms in Serbia? The most frequently heard response is that there is simply no political will for the reforms. In the last 10 years, Serbia has seen several governments come and go and one of their rare common denominators was the reluctance to implement those reforms. However, blaming only the lack of political will for such a state of affairs seems as an excuse for other shortcomings, the most important being the lack of capacity of the state to formulate and define public policy goals and transpose them into a legal and regulatory framework, to be implemented in practice.

The mechanism that is currently defining public policies in Serbia is completely ineffective, if not counterproductive. This was clearly visible in the process preceding the adoption of the Media Strategy. When the former government, under pressure by media and journalists' associations, accepted to enact the Media Strategy, it was clear that it did not know what it wanted, or, even if it did know, it did not dare to admit it publicly.

Instead of defining its goals and making them public, consult all stakeholders about these goals and finally entrust such conciliated concepts to professionals to formulate them in the scope of a new regulatory framework, the government had set up a working group that included the representatives of all concerned associations and the professional community. At that, the government hid its true intentions (if any) from that group and left it without any leadership whatsoever. To repeated questions about the goals, the government or the competent ministry wanted to promote with the Strategy, no clear answer was ever given, if we disregard clichés about "achieving European standards". This resulted in a paradox that public debates were held about draft laws that did not reflect the ambitions of the government, but those of expert working groups. At the same time, the government, or at least certain parties of the ruling majority, instead of defending their own proposals, encouraged those that opposed these proposals. Such a thing happened, for example, with the idea about PSBs. The expert working group was of the opinion that it was unrealistic to build, on the basis of a failed national PSB with unsolved financing, a model that provides for setting up equally ineffective regional PSBs (with an equally uncertain source of funding). Such a concept, translated into the draft Strategy, was signed by the then minister and tabled for public debate. However, the political party of the said minister obstructed the public debate by advocating for the completely opposite concept that the regional PSBs were the only thing that might have save the Serbian media scene. The PSBs were ultimately inserted in the text of the Media Strategy, without any argument whatsoever.

The European Commission's negative report will not, unfortunately, change anything, unless accompanied with concrete help for booting the capacity of the Serbian government to define, adopt and implement public policies. Serbia is not late only in implementing the reforms: its government seems incapable of defining goals and formulating the reforms that would strive for these goals. Serbia's problem is not only the lack of political will. Its problem is that, when the political will is there, the ability and skill to do the right things is not.

State Aid Control and Media Reforms in Serbia

Slobodan Kremenjak, Attorney at Law[1]

The economic crisis, which Serbia has been facing for years, is seriously threatening the survival of traditional media. The circulation of newspapers has plummeted and so has the ratings of radio stations. The advertising budgets for television are down, suffering from the increasingly stiff competition by multichannel, satellite and IPTV platforms. In such an environment, amid an unrealistically high number of media in Serbia, the money channeled by the state in that sector, either directly or indirectly through state-owned public and other companies, becomes all the more important. That money is often crucial for the survival of recipient media and conversely, it is fatal for those it is denied to. Therefore, it is to no surprise that media and journalists' associations have insisted the Media Strategy to regulate the issue of media financing from public sources in detail.

In the part analyzing the as-is situation, the Strategy says that, in 2011, the amount of financial support by the state to the media sector was around 25 million Euros[2]. However, this data is by far incomplete, as it includes neither all municipalities in Serbia nor the revenues from the TV subscription fee. Moreover, this figure has also not included the funds fed to the media by public companies controlled by different levels of the government. At the same time, in the estimate of AGB Nielsen, the advertising revenues of the media (that also include the income generated from advertising state authorities, organizations and public companies) amount to about 175 million Euros. Of that number, 98 million Euros ended up in television, 41 million in the print media, 8 million on radio and 6.5 million in online media[3]. However, once we deduct from the advertising revenues of the media the proceeds generated from advertising from state authorities, organizations and public companies, we clearly see the dramatic impact of public funds on the media sphere and public opinion in Serbia. What makes the whole picture even worse is the fact that such influence is exerted in a poorly regulated and opaque system, based on the misuse of public funds in order to control the media, with the aim of realizing the particular interests of the political oligarchy.

Regardless of public statements to the contrary, the government in Serbia was reluctant to give up mechanisms for influencing the media. That is why any attempt to regulate the financing of media from public sources, if the Media Strategy is consistently implemented, will constitute a major step forward. At the present time, it is more likely that such step forward will actually take place, since, under the SAA, Serbia has undertaken international obligation to approximate its regulations and practices – including those related to state aid control – with the EU *Acquis*.

What has Serbia committed to under the SAA? Firstly, it has obliged to harmonize its legislation with EU regulations. Secondly, it has committed to properly implement and enforce such harmonized legislation (Article 72, paragraph 1, SAA). One of the priorities for harmonization is, among other things, competition law and particularly anti-cartel law, prohibition of misuse of dominant position and illicit state aid. At that, the SAA (Article 73, paragraph 2) expressly says that the existence of cartels, misuse of dominant position and illicit state aid will be assessed under criteria stemming from the application of competition rules enforced in the EU, as well as from the interpretation instruments adopted by EU institutions. After all, Serbia committed to apply to public companies the same competition law principles commercial market players are subject to.

For the above-described reason, it is important to know and understand the meaning and the implication of the European standard of state aid control, as well as what exactly constitutes state aid.

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[2] Strategy of the Development of the Public Information System in the Republic of Serbia by 2016 ("Official Gazette of the Republic of Serbia", no. 75/2011)

[3] IREX Media sustainability index 2012, http://www.irex.org/system/files/u105/EE_MSI_2012_Serbia.pdf

State aid is any aid granted by the state (including its authorities, territorial autonomy and local government bodies, bodies indirectly or directly controlled by the government, such as state and public companies), which enables the recipient to exert economical advantage over its competitors, thereby undermining or may undermine market competition. Such aid may be granted directly (e.g. subsidies), or indirectly (e.g. releasing one competitor from costs incurred by other competitors).

Accordingly, our Law on State Aid Control, adopted in 2009[4], after the signing of the SAA, defines state aid as "each actual or potential public expenditure or reduced public revenue, by which the recipient of the state aid acquires a more favorable market position than his competitors, thereby undermining or potentially undermining market competition". At that, the grantor of state aid may be both the Republic and the Autonomous Province, the local self-government unit, through their competent bodies, but also every legal person managing/disposing of public funds.

As a rule, state aid is prohibited. As an exception, it is allowed if it is of social character, allocated to individual consumers, without discrimination as to the origin of the goods/products the concrete aid comprises, or if it is allocated in order to remedy the damage caused by natural disasters and other emergencies.

Unlike the previous two cases, where state aid is allowed, there is a series of cases where it may be allowed. These are cases where state aid is granted in order to enhance the economic development of a region with an extremely low standard of living or high unemployment rate, or cases where it is allocated in order to implement projects of particular importance, or to remedy serious economic disturbances. Furthermore, state aid may be permitted if it is granted in order to foster the development of certain economic activities or concrete economic regions, provided it does not undermine market competition. Finally, state aid may be permitted for the sake of preserving cultural heritage.

There is no doubt that state aid to the media may be permitted. On one hand, the media may have a major role to play in preserving cultural heritage; on the other, certain media-related projects may be of "special interest" or "public interest". Thus, a well-regulated system for the public financing of the media should give us an answer what is in the public interest in the media sector, or, in other words, what on the media sphere may be financed by state aid.

The Media Strategy has attempted to address this issue by providing a general definition of the public interest in the media scene. It has first laid down the type of content that may be of public interest (e.g. general news content, specialized content in the field of politics, culture, education, religion, economy, entertainment, etc.) and then prescribed when such content is of public interest (e.g. when it is crucial for preserving and improving media pluralism and media content diversity).

At that, the Media Strategy goes even further, insisting on the transparency of the procedure for allocation of state aid, as well as on equal and non-discriminatory conditions, under which such aid is allocated. The Strategy also insists on having independent commissions take part in the process of deciding about the selection of the projects to receive financial aid from the state. These commissions would consist of competent representatives of the public, professional associations and sectors that are not financed from the budget.

This is, however, merely the beginning. The next step is the adoption of the Law on Public Information and Media, in the text that would not diverge from the fundamental principles of the Strategy. On the contrary, it would complement and improve them. After the adoption of new legislation, the latter ought to be properly implemented and enforced. For that purpose, control mechanisms need to be improved. It is quite a long path between equal and non-discriminatory criteria for granting state aid on paper (in the Strategy or in the Law) to enforcing these criteria in practice. Furthermore, in addition to control by the public, institutional control is also necessary. The thresholds of so-called

[4] Law on State Aid Control ("Official Gazette of the Republic of Serbia", no. 51/2009)

small-value state aid, prescribed by other regulations, threaten to exempt a large chunk of state aid to be allocated to the media, from the obligatory notification to the State Aid Control Commission, which is definitely not a good thing.

Serbia has the opportunity to cross the line, after which public financing of media will never be the same. It would be very bad not to take advantage of that opportunity. If adopted, the new system and the new rules will probably not meet all expectations immediately, nor will they be free of initial shortcomings and setbacks. Still, the latter should not be a reason for renouncing or further postponing the changes.

Freedom of Expression

Saša Janković[1]

Freedom of expression is one of the oldest "traditional" human rights and freedoms. Just like other rights and freedoms that are indivisibly related to it, freedom of expression is a requirement and an outcome of democracy as we know it today. The latter is a logical and historical source of freedom of public information and freedom of (right to) access to information of public importance. Without it, the meaning of freedom of thought, conscience and religious affiliation and freedom of assembly and association is lost. If today's era is to be considered that of communication[2], freedom of expression is at its very foundation.

While it has been universally accepted and guaranteed for centuries, exercise, protection and restriction of freedom of expression has been a cause of numerous misunderstandings, of which many end up before a court of law. One of the reasons is that we intuitively feel that human rights and freedoms belong to us by birth and that they are inherent to us. Therefore, we don't feel the need to specifically learn about them. Furthermore, each freedom and right has two sides – duties and obligations – with each side typically involving different people or organizations. The latter's different views hamper consensus. Even when viewed from similar viewpoints (e.g. those held by judges of the same court of law), freedom of expression-related disputes often end up in different opinions, where only the uneven number of judges guarantees that a decision will be adopted, while the positions and the practice change from year to year.

By pointing to the regulations and the practical examples, this text aims to bring practitioners in the media field closer to understanding the boundary between utilizing/misusing freedom of expression, the end goal being to foster its realization. There is no need here to remind the reader of the significance of the latter for the freedom of the person and the development of democracy, since it is already well-known. However, the conclusion that could be drawn here is that the resultant of divergent interests present in the usage, protection and restriction of that freedom has been (with the exception of banal cases) for the most part very difficult to precisely forecast, i.e. it has become increasingly difficult to foresee the outcome of concrete cases, although the rules these situations are settled are universal and well-known. Knowing these rules enables us to make reasonable and responsible decisions about our rights and those of other persons, as well as about the obligations stemming from freedom of expression.

Freedom of expression is a live, dynamic freedom, appearing in new shapes and facing new challenges every day; even when these challenges are the same, the passing of time changes reality, forcing us to constantly re-examine and value seemingly identical things differently than yesterday. Therefore, the person considering specific freedom of expression related issues or instances of un/lawful restriction thereof, should always examine the extent to which someone's concrete expression or restriction thereof, in a concrete context, contributes to the purpose of that and all other guarantees of human rights and freedoms – the preservation of man's dignity in free society.

The Constitution of the Republic of Serbia and International Law

The Constitution of the Republic of Serbia establishes a hierarchy of legal norms, where the universally accepted rules of international law and ratified international treaties are a constitutive part of the legal system and are directly applied, whereas ratified international treaties must be in concordance with the Constitution[3], (which means they are subordinated to it).

[1] Protector of Citizens of the Republic of Serbia
[2] Liza Henderson, Daniel Burrus and others
[3] Article 16, paragraph 2 of the Constitution of the Republic of Serbia

Unlike the European Convention on Human Rights[4], which dedicates a separate article to freedom of expression, our Constitution, in its Article 46, guarantees it along with freedom of opinion (similarly to the American Convention on Human Rights from 1969). Unfortunately, it does it in a contestable manner so as to suggest that freedom of expression is not the same thing as using speech, writing or image (or other ways) to seek for, receive and disseminate information and ideas[5]. The latter is precisely at the core of freedom of expression – freedom of statement, individual or collective, principally unrestricted by form, topic or boundaries.

Freedom of expression has been legally shaped already in early documents on human rights, such as the Bill of Rights from 1689, which guaranteed freedom of speech in the Parliament, or the ***Declaration on the Rights of Man and of the Citizen*** adopted in the course of the French Revolution in 1789.

In the ***Universal Declaration of Human Rights (UN)*** from 1948, freedom of opinion and expression is expressed as follows: *"Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."* A similar description is contained in Article 19 of the ***International Covenant on Civil and Political Rights of the United Nations: "****Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: For respect of the rights or reputations of others; For the protection of national security or of public order (ordre public), or of public health or morals."*[6]

Article 13 of the ***American Convention on Human Rights*** *(*1969) says: *"Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.*

The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

Nonetheless, this Convention expressly stipulates that public content may, in accordance with the Law, be subject to necessary censorship, but only with the purpose of regulating access of children and youth to this content, in order to protect their morals. Furthermore, it expressly prescribes restrictions to freedom of expression under threat of legal penalties, for war propaganda or instigating ethnic, racial or religious hatred encouraging unlawful violence or similar acts against any person or group of persons on any grounds, including race, color of skin, religious affiliation or ethnicity.

Article 10 of the ***European Convention on Human Rights*** (1950) guarantees freedom of expression in the following way: "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority*

[4] The exact name is „Convention for the Protection of Human Rights and Fundamental Freedoms"
[5] This inaptitude of the constitution makers is due to the hasty way in which the Constition from 2006 was adopted.
[6] The Covenant was adopted on December 16, 1966 and it came into force on March 23, 1976.

and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."[7]

However, one often neglects paragraph 2 of the same Article, saying *"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

On the same topic, the Constitution of the Republic of Serbia says: *"Freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia."*[8] Meanwhile, for any restriction of human rights, including the latter, the Constitution says: *"Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. Attained level of human and minority rights may not be lowered. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means*."[9]

The above described procedures, requirements, restrictions and particularly penalties are most often the cause of misunderstanding.

Weighing on if freedom of expression has been violated (assuming that procedural requirements for it have been fulfilled, which often is not the case), the European Court for Human Rights (ECHR) applies a test checking if the right to freedom of expression has been interfered with at all: is that interference, if any, prescribed by the Law (which Law must be accessible and sufficiently concrete to be predictable); if the freedom of expression restriction had a legitimate goal and whether it was necessary in a democracy (which includes the proportionality test).

Let's examine the example of restricting freedom of expression for the purpose of preserving the authority and impartiality of the court. That restriction involves, among other things, the prohibition to disseminate, especially in public, information stemming from current investigations. In the case **Tourancheau and July vs. France (2005)**, before the ECHR, the journalist and the editor claimed their freedom of expression had been violated, since the court of law in their home country criminally indicted them for disclosing documents from another criminal case that was in the investigation stage. The other case concerned the murder of a little girl. The ECHR first found that the criminal indictment of the journalist constitutes interference in freedom of expression, but also that such interference had its grounds in the French Law. After having studied the case, the Court concluded that the journalist and the editor, in view of their experience, could have predicted that the disclosure of parts of criminal records may cause penal sanctions. The ECHR accepted the argument of the French authorities about the harmful consequences of publishing the article on the reputation of the defendants and their right to be considered innocent until proven guilty by a final court verdict. However, the Court also took into consideration the estimate of French authorities that the disclosure of confidential information from the investigation harms the authority and impartiality of the judiciary, especially due to the potential effect of the text on the members of the jury. The Court concluded that the goal of interfering with freedom of expression (criminal prosecution of the journalist and the editor) was to protect "the reputation and rights of others" and to preserve "the authority and impartiality of the judiciary". The

[7] Serbia ratified the European Convention on Human Rights on March 3, 2004.
[8] Article 46. paragraph 2.
[9] Article 20 of the Constitution of the Republic of Serbia.

Court found that the interest of the petitioners to publish the information about the course of the criminal investigation and the interest of the public to receive such information, did not override the interests of the French institutions aimed to protect by indicting the journalists. The Court also found that the penalties against the petitioners were proportionate to the legitimate goals strived for by the authorities. Still, the decision was not unanimous, since the votes of the judges were divided 4:3.

One should know that, since the audio-visual media have a more direct and stronger effect than the press, the ECHR will more likely support the interfering of the state in the freedom of expression, if the latter was utilized through media using image and sound.

When the courts weigh on the scope of protection of freedom of expression as a guarantee provided to the journalists, while reporting on matters of general interests, they assume that the latter are acting in good faith, with the aim of providing accurate and credible information, in line with journalism ethics. A fact or circumstances to the contrary shall have an effect on the verdict. The journalist have the duty, to the extent it is reasonably possible and appropriate to the weight of the claims they are stating and the circumstances of the case, to verify the veracity of the information he/she is disclosing or conveying. The practice of the ECHR, however, reveals that, when journalists refer to official documents of government authorities, as a rule they are not obligated to check the credibility of the claims contained in these documents.

The interpretation of freedom of expression strives for providing the greatest protection to political speech; speech concerning the institutions of the state, politics and politicians – local, national or international. Criticism of the state or politicians, expressed in various ways, is the most robustly protected. The closer the topic and the content of the expression are to the public interest, the stronger is the protection. The view that factual claims must be provable, while value judgments don't, emerges here in its full splendor, though the need remains for the value judgment to rely upon even the tiniest fact, which may be logically related to the judgment, so as to serve as its basis. In the contrary case, we might have a situation where acts of pure hatred and discrimination are protected. The boundary of the permitted shall be deemed crossed if a particular statement (which may, again, be in any form), calls to violence or if it is proven that statement encourages such violence.

Contrary to political themes and politicians, where freedom of expression restrictions must be the most restraining, states are freer to interfere and restrict freedom of expression, when a given or prepared statement concerns the personal convictions of other citizens in the field of morality or religion. The court will, for example, enjoy much greater freedom to act preventively and ban the sale of a book or the dissemination of a cartoon, for which it has found to be a potential threat to the religious feelings of some citizens. On the other hand, it is unlikely to find a good justification for banning the publishing or punish someone for characterizing a public persona, particularly a politician, in a manner that is insulting that politician and his/her voters, regardless of them being potentially much more numerous than members of a religious community.

Freedom of expression also involves the right to refrain from a statement, from stating an opinion or putting an idea into practice, i.e. to remain silent. No one can be forced to "express" themselves, but it is possible to have certain categories of citizens, due to their refusal to join a collective expression of values (such as an oath for example), be deprived of other rights and interests. In her claim against Germany from 1995, a teacher that was fired for refusing to take an oath of loyalty to the Constitution, lost her case before the ECHR. The judges concluded that the state is entitled, by such actions, to establish equilibrium between an individual's free will and the legitimate interests of a democracy. Hence, resorting to the right to freedom of expression may bear different consequences, depending on who's using it – a civil servant, journalist or other citizen.

Finally, the abstract law and the concrete court regulation of the realization of freedom of expression, individually and generally speaking, must encourage the diversity of views and ideas; to protect critical thinking, even if the latter is deeply disturbing for part of the population or the whole society. Although often based on numerous and diverse reasons, restrictions must be an exception and not a rule. Traditional state authorities are often too rigid to decide about the fundamental appropriateness

of enjoying such a subtle and nuanced freedom such as freedom of expression, especially when used through journalism and the media. The tendency is for the realization of freedom of expression through the media to be predominantly regulated by media and journalist associations, through education and the work of ethics committees. Ideally, each journalist and editor should know the essence, elements and restrictions of freedom of expression and constantly re-examine if their work contributes to the purpose for which that freedom is guaranteed as one of the fundamental rights, a part of the foundation of human dignity and democracy.

Media Literacy as a Social Strategy

Boban Tomić, PhD[1]

The development of electronic media in the second half of the 20th century took place mainly through the expansion of radio, television and film, while the last few years have seen a boom of digital communications, the Internet and new media. New, mostly digital, technologies have brought us new expressional possibilities, the expansion of the form and content of all media – electronic media in particular. New concepts in the area of ICTs have created a dynamic, innovative and efficient world of new media, inside of which we especially value web technologies and social network platforms. That sudden technological development has enriched the media supply in terms of broadcasting, as well as improved media consumption when it comes to the consumers. Speaking in communicology terms – the communication scheme and the communication situation[2] are increasingly complex and functional.

In the modern era, the number of radio devices, television sets, personal computers, mobile phones, tablets and hybrid devices with smart communication software has skyrocketed, only to continue its dramatic growth in the first years of the 21st century. At the present time, one may hardly even enumerate the means and manners of mass communication within the concept and the practice of new media. We are witnessing an almost daily development of possibilities and expansion of fields where public and mass communication is taking place. Precisely this sudden and dynamic development of mass communication is what leads to many changes in the social structure, as well as to changes in the behavior of the consumer audience.

The media are becoming part of daily life, leisure, as well as of business hours. All the time of day is filled with media content this way or another, while a modern man finds it almost impossible to escape media messages in the world around him. In such circumstances, various dilemmas have emerged as to the position and role of modern media, especially the ones related to the negative effect of the media on the audience, as well on its particularly vulnerable and unprotected segment – the youth. The understanding that the media, as all goods, may be a good servant, but also an evil master, holds the key to the interest in an activity that would have been formulated through the concepts of media education and media literacy many decades later.

The concern over harmful and problematic effects of mass media on the audience has emerged quite early and matured simultaneously with the technological and programming development of the mass media. The noxious effects of tabloid journalism became topical at the time of the burgeoning of the yellow press – in the USA in the early 20th century, through the notorious historical conflict between the empires of Joseph Pulitzer and William Randolph Hearst. Orson Welles caused widespread panic among radio listeners with his notorious drama about invaders from Mars, which later resulted in a difficult task for theoreticians: to investigate the effects and the deontology of mass media. The presence of TV cameras in real life situations, from war (The Gulf War) to the daily lives of individuals (reality shows), has become standard on television stations around the globe. These three examples, from the beginning, middle and end of the 20th century, have shown that the press and the electronic media have outgrown their function, exceeding the borders of news and deeply penetrating in spheres where they can effectively influence the mass audience, as well as the individual in many different ways.

Simultaneously with the development of the media, the awareness has grown about the need to control, manage or restrain the range of negative effects of the media emancipation/freedom. As early as in the 60s, in the circles around UNESCO, programs and activities were initiated concerning social responsibility and the role of the mass media. UNESCO started to encourage public debates about the

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[2] M. Radojković and M. Miletić, "Communications, the Media and Society", Stylos, Novi Sad 2006.

effects of television and other mass media, with a special emphasis on their harmful consequences. The goal of such an approach and activities was to do something to prevent, mitigate or block any form of ill effect of the mass media, towards youth and children in particular. In that vein, as early as in the 70s, UNESCO pointed to the significance of the media in the daily lives of individuals, the family and the community. Ideas emerged as to raising media competencies of individuals to a much higher level. It was virtually the first alarm bell amid a swarm of damaging effects of the mass media on society.

The idea of mass media being potentially harmful for children, youth, the family and hence society as a whole, matured for years in the global public. One of the first concrete activities undertaken within the UNESCO family was the drafting and adoption of the Declaration on Media Education in 1982. Representatives of 19 states gathered at UNESCO's international symposium in the German town of Grünvald, where they adopted the Declaration on Media Education[3] on January 22, 1982. Although that era now seems almost innocent compared to the decades that have ensued, the signatories of the Declaration put forward all negative and problematic aspects of the development of the media culture and the penetration of the media in all facets of the lives of individuals, the family and society. Without aiming to restrict or hamper the development of the media, they emphasized the need to create a new discipline in education systems, with the aim to comprehensively develop media competencies with the audiences, and particularly with children.

In the early stages of its development, the concept of media education mainly concerned the mass audience and the youngest, as the most vulnerable segments of society. The concept was to encourage governments to establish curricular and extra-curricular media education program that would train young people for informed and critical consumption of media content and successful interpretation of media messages. However, the concept of media education and media literacy, as its final objective, at the same time required from the providers of media content (the media and the owners thereof) to adapt and conform to these concepts. It literally meant they had to control the production of media programs, namely who would be dealing with creating and editing the programming and content of radio stations, TV stations and newspapers and how. The media were required to recruit educated creators, journalists and editors, while the process of gathering, editing and mass dissemination of media content had to be pursued in a responsible way, respecting the truth and the needs of the audience.

The concept of media literacy, still insufficiently understandable and sometimes confusing, essentially boils down to a simple formula of success, both for the media and for the audience. Media companies (here we call them "the media") make their programs and disseminate them to individuals, which all together constitute "the audience". Put in simple terms, the media companies are the sender, while the audience is the recipient of information. In order for that process to function in a sustainable and stable way in the long run, the media have been obligated to respect high operational standards in terms of ethic, culture and in line with the codes of the profession and the community. To that end, the media need a high level of know-how and skills. The same applies to the audience, which also has to be empowered to discern and recognize all kinds of content received from the media. So, both need a lot of knowledge and skills! They are acquired through education and work. Media professionals must go through a process of institutional and extra-institutional media education for working in the media. That is what we also call education for media production. Later, when they get a job, they must have the opportunity for updating their skills, which is offered by the concept of permanent education for working in the media. On the other hand, the audience must also educate itself; that education concerns media consumption and starts in the family, when the child communicates with his surroundings for the first time and deciphers the picture from the TV set, etc. Later, education for media consumption is gained in primary and secondary school, at the university, but also in one's private and personal life. When these two concepts fall into place, i.e. when we get educated media producers on one side and educated media consumers on the other, the processes of public communication will be at a substantial level and each individual will be enabled to receive them, construe and analyze media content in a critical manner. That is how an informed media consumer is

[3] Grünwald Declaration on Media Education 1982

created. Finally, the outcome and the goal of all activities related to media education may be called media literacy.

Media literacy today involves a set of competences, both for receiving (consumption) and sending (production) of media content. That is a robust and vibrant system of adopted and applied values and criteria, which is hosting the process of mass communication, as a practice of exchanging goods between the media and the audience, in which the audience receives news, education and entertainment, while the media receive attention. The theoretical concept of media literacy emerged somewhere after the National Leadership Conference of Media Literacy in 1992, where it was defined as the *ability to access, analyze, value and communicate messages through the media*. It is clear that the media scientists have reached a consensus as to whether media literacy involves developed competences (skills) of both those that produce media and those that consume them. On that platform, programs and plans have been created for building media competencies, namely for reaching a high level of media literacy at the global level. That primarily involves the resolution of governments and states to pursue media literacy concepts through formulated and reliable media education concepts. Media education programs must encompass developed curricula for institutional education of media professionals – journalists, editors, multimedia creators, etc. Furthermore, the states are recommended to encourage the development of extra-institutional education for the media as well, through certified programs of media associations, private sector and civil society organizations. On the other hand, education for media consumption must be accessible to the youngest at school, but also to the elderly, through extra-institutional forms and manners of media literacy training.

The functioning of the mass media, as well as that of the overall media system in Serbia, is to a great extent determined by the general collective circumstances faced by the Serbian society in the last two decades. The overall havoc endured by the countries of the former SFRY reflected itself on all segments of society, including the media sphere. Contemporary civilization trends, such as media deregulation, digitalization of broadcasting field, transparency of ownership and other concepts, have been implemented very slowly in post-conflict Balkan societies and Serbia is no exception. Hence the low indexes of sustainability and media freedom at the disturbingly low positions, while professionalism and responsibility in the media are often being targeted and undermined by the political powers, that is, amateurish part of the media profession. At a time when the Serbian media system is trying to complete the technological and programming platform of its survival and growth, the concept of media literacy is of key importance, as a necessary tool for the development and sustainability of the media and their audience.

The mutuality of media literacy and the sustainability of the media are crucial for the development of the latter. Without literate media professionals (journalists, creative professionals, editors in the widest sense), there may be no quality media products (news, educative content, entertainment). Only professionally trained and educated media professionals may create quality program for a quality audience. On the other hand, the audience also needs media education, in order to be media literate. The concept of media literacy will have been achieved through media education, which happens in settings such as the family, school and the community, with the unique aim to maximize the overall media competences of individuals. The mass audience consists of individuals, whose personal abilities are crucial for forming the average auditorium. A media literate audience must be able to capture, interpret and value all kinds of media messages. They must be able to discern and understand the denotative and connotative meaning of media messages, uncover contextual messages and hidden meaning in mass communication. Furthermore, it is important for the audience to absorb information akin to a filter, which is able to receive, objectively interpret, semantically dissect a message, accept it as such and ultimately disseminate it further. Such an audience will never be underestimated or undervalued by the media, since building lasting ties is in the interest of both the media and the audience.

Media literacy concepts in Serbia are still underdeveloped and the advances made by state authorities in setting up specific programs remain insufficient. Although under the Media Strategy the state is obligated to ensure the improvement of media literacy of the population, more stable mechanisms and concrete steps forward are required in order to achieve such strategic guidelines. In the regional

environment, Serbia could look for good practice in implementing media education from Slovenia and Croatia and adapt such practices to its own circumstances. Guideline documents and building blocks for a successful national strategy of media literacy may be found in numerous UNESCO reports and documents.[4]

The Media Strategy may be a good starting point for the development of a media literacy strategy as the ultimate goal. We must not forget that media literacy is the outcome and objective of long-term and permanent education of both media professionals and the audience, which should be pursued and reached. Hence, the main prerequisite for the existence of a media literate society is the creation, development and permanence of the concept of media education. That concept must be developed by the key actors – the state, the media sector and the civil society – as the pivotal stakeholders in that process; furthermore, it should be formulated and adopted at the level of institutional and extra-institutional education. The state must assume the responsibility for introducing media education curricula in pre-school, primary, secondary and high education. Will the said curricula be (akin to civil education and religious education) encompassed by a single optional or mandatory subject, or will it be incorporated in the existing related subjects (language, literature, social science, technical education…) is a considerable dilemma. Moreover, the state must also ensure better working conditions for secondary schools and faculties educating future media personnel, in order to ensure greater access to such education. In the same vein, it is necessary to increase interest for working in the media and enable their regional coverage.

Media education in the function of creating a literate professional community must become the permanent task of media institutions and associations, but also that of civil society groups. Media owners and associations ought to cherish the concepts of permanent education of media employees in new technologies and skills. Media employees must have access to contemporary skills, in order to permanently update their professional profile. That process takes place outside of state institutions, while not excluding the obligation of the state to be constructive and help the process financially and practically.

Contemporary media theoreticians have added the attribute of IT literacy to the concept of media literacy. Hence, recent works on that topic increasingly refer to the term *media and information literacy – MIL*[5]. This trend highlights the increased involvement of ICT innovations in the mass media. The strengthening of the concept of new media and their increased role have imposed to the society as a whole the obligation to extend their current media competences (mostly conventional media-related – print, radio and TV) to the field of new media (Internet, web, social networks and digital platforms).

Serbia faces a huge task in that domain and it must assume and implement many specific obligations. All the negative consequences of the media on Serbian society have already taken hold a long time ago. The media sphere is saturated by tabloid journalism, both in print and electronic media. Creative media freedoms are being misused and the media manipulated with by political centers of power and interest groups; media ownership remains opaque and legal standards are violated, which all together contributes to the general stagnation and regression of society as a whole. A layperson's impression is that the media are out of control, but in reality, what is missing is not control, but responsibility. In such a situation, the state, as well as media professionals must take a decisive action. The concept of media literacy, as an outcome of an integrated and permanent education policy targeting the media and their audience, may and should bring salvation to the aspiration of having a media literate society, as a prerequisite for an open, democratic and healthy society.

[4] Media Education: A Global Strategy for Development – A Policy Paper, Prepared for UNESCO, Sector of Communication and Information by Professor David Buckingham, Institute of Education, University of London, England, March 2001

[5] Fez Declaration on Media and Information Literacy 2011

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

Information Note No. 159/January 2013

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

Freedom to impart information

Criminal conviction for making public irregular telephone tapping procedures: *violation*

Bucur and Toma v. Romania - 40238/02
Judgment 8.1.2013 [Section III]

Facts – The first applicant worked in the telephone communications surveillance and recording department of a military unit of the Romanian Intelligence Service (RIS). In the course of his work he came across a number of irregularities. In addition, the telephones of a large number of journalists, politicians and businessmen were tapped, especially after some high-profile news stories received wide media coverage. The applicant affirmed that he reported the irregularities to his colleagues and the head of department, who allegedly reprimanded him. When the people he spoke to showed no further interest in the matter, the applicant contacted an MP who was a member of the RIS parliamentary supervisory commission. The MP told him that the best way to let people know about the irregularities he had discovered was to hold a press conference. In his opinion telling the parliamentary commission about the irregularities would serve no purpose in view of the ties between the chairman of the commission and the director of the RIS. On 13 May 1996 the applicant held a press conference which made headline news nationally and internationally. He justified his conduct by the desire to see the laws of his country – and in particular the Constitution – respected. In July 1996 criminal proceedings were brought against him. Amongst other things, he was accused of gathering and imparting secret information in the course of his duty. In 1998 he was given a two-year suspended prison sentence.

One of the tapes the applicant had made public contained a recording of a telephone conversation between the third applicant, the minor daughter of the second applicant, and her mother on the telephone at the home of the second and third applicants.

Law – Article 10: The applicant's criminal conviction had interfered with his right to freedom of expression, with the legitimate aim of preventing and punishing offences that threatened national security. Concerns about the foreseeability of the legal basis for the conviction did not need to be examined in so far as the measure was, in any event, not necessary in a democratic society.

(a) *Whether or not the applicant had other means of imparting the information* – No official procedure existed. All the applicant could do was inform his superiors of his concerns. But the irregularities he had discovered concerned them directly. It was therefore unlikely that any internal complaints the applicant made would have led to an investigation and put a stop to the unlawful practices concerned. As regards a complaint to the parliamentary commission responsible for supervising the RIS, the applicant had contacted an MP who was a member of the commission, who had advised him that such a complaint would serve no useful purpose. The Court was not convinced, therefore, that a formal complaint to this commission would have been an effective means of tackling the irregularities. It was

[1] Excerpts from the official "Information Notes on the Court's case-law" of the European Court of Human Rights, available on its web site www.echr.coe.int

worth noting that Romania had passed special laws to protect whistleblowers in the public service. However, these new laws, which were all the more praiseworthy as very few other States had introduced them, had been passed well after the activities denounced by the applicant, and therefore did not apply to him. Consequently, divulging the information directly to the public had been justifiable.

(b) *The public interest value of the information divulged* – The interception of telephone communicationstook on a particular importance in a society which had been accustomed under the communist regime to a policy of close surveillance by the secret services. Furthermore, civil society was directly affected by the information concerned, as anyone's telephone calls might be intercepted. The information the applicant had disclosed related to abuses committed by high-ranking officials and affected the democratic foundations of the State. It concerned very important issues for the political debate in a democratic society, in which public opinion had a legitimate interest. The domestic courts did not take this argument of the applicant into account, however.

(c) *The accuracy of the information made public* – The applicant had spotted a number of irregularities. All the evidence seemed to support his conviction that there were no signs of any threat to national security that could justify the interception of the telephone calls, and indeed that no authorisation for the phone tapping had been given by the public prosecutor. In addition, the courts had refused to examine the merits of the authorisations produced by the RIS for the interception of the phone calls. The domestic courts had thus not attempted to examine every aspect of the case, but had simply acknowledged the existence of the requisite authorisations. Yet the applicant's defence comprised two arguments: firstly that the requisite authorisations had not been obtained, and secondly that there was no evidence of any threat to national security that could possibly have justified the alleged interception of the telephone conversations of numerous politicians, journalists and members of the public. What is more, the Government had failed to explain why the information divulged by the applicant was classified "top secret"; instead, they had refused to produce the full criminal case file, which included the requests from the RIS and the authorisations of the public prosecutor. In such conditions the Court could only trust the copies of these documents submitted by the applicants concerning the interception of the telephone conversations of the second applicant, Mr Toma. However, these documents showed that the RIS had given no reasons for requesting the authorisation and the public prosecutor had given no reasons for granting it. The first applicant had accordingly had reasonable grounds to believe that the information he divulged was true.

(d) *The damage done to the RIS* – The general interest in the disclosure of information revealing illegal activities within the RIS was so important in a democratic society that it prevailed over the interest in maintaining public confidence in that institution.

(e) *The good faith of the first applicant* – There was no reason to believe that the applicant was driven by any motive other than the desire to make a public institution abide by the laws of Romania and in particular the Constitution. This was supported by the fact that he had not chosen to go to the press directly, in order to reach the broadest possible audience, but had first turned to a member of the parliamentary commission responsible for supervising the RIS.

Consequently, the interference with the first applicant's freedom of expression, and in particular with his right to impart information, had not been necessary in a democratic society.

***Conclusion*:** violation in respect of the first applicant (unanimously).

The Court also found a violation of Article 6 in respect of the first applicant and a violation of Article 8 and of Article 13 combined with Article 8 in respect of the second and third applicants.

Article 41: The applicants were each awarded a sum ranging from EUR 7,800 to EUR 20,000 in respect of non-pecuniary damage; the first applicant's claim in respect of pecuniary damage was rejected.
(See also *Guja v. Moldova* [GC], no. 14277/04, 12 February 2008, Information Note no. 105)

Information Note No. 158/December 2012

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

Freedom of expression

Interim court order incidentally blocking access to host and third-party websites in addition to website concerned by proceedings: *violation*

Ahmet Yıldırım v. Turkey - 3111/10
Judgment 18.12.2012 [Section II]

Facts – The applicant owns and runs a website on which he publishes material including his academic work. It was set up using the Google Sites website creation and hosting service. On 23 June 2009 the Criminal Court of First Instance ordered the blocking of another Internet site under the Law on regulating publications on the Internet and combating Internet offences. The order was issued as a preventive measure in the context of criminal proceedings. Later that day, under the same Law, a copy of the blocking order was sent to the Telecommunications Directorate for execution. On 24 June 2009, further to a request by the Telecommunications Directorate, the Criminal Court of First Instance varied its decision and ordered the blocking of all access to Google Sites. As a result, the applicant was unable to access his own site. On 1 July 2009 he applied to have the blocking order set aside in respect of his own site, which had no connection with the site that had been blocked because of its illegal content. On 13 July 2009 the Criminal Court dismissed the applicant's application. In April 2012 he was still unable to access his own website even though, as far as he understood, the criminal proceedings against the owner of the offending site had been discontinued in March 2011.

Law – Article 10: Following the blocking of another website as a preventive measure, the court had subsequently, further to a request by the Telecommunications Directorate, ordered the blocking of all access to Google Sites, which also hosted the applicant's site. This had entailed a restriction amounting to interference with the applicant's right to freedom of expression.

The blocking of the offending site had a basis in law but it was clear that neither the applicant's site nor Google Sites fell within the scope of the relevant law since there was insufficient reason to suspect that their content might be illegal. No judicial proceedings had been brought against either of them. Furthermore, although Google Sites was held responsible for the content of a site it hosted, the law made no provision for the wholesale blocking of access to the service. Nor was there any indication that Google Sites had been informed that it was hosting illegal content or that it had refused to comply with an interim measure concerning a site that was the subject of pending criminal proceedings. Furthermore, the law had conferred extensive powers on an administrative body, the Telecommunications Directorate, in implementing a blocking order since it had been able to request an extension of the scope of the order even though no proceedings had been brought in respect of the site or domain concerned and no real need for wholesale blocking had been established.

Such prior restraints were not, in principle, incompatible with the Convention, but they had to be part of a legal framework ensuring both tight control over the scope of bans and effective judicial review to prevent possible abuses. However, in ordering the blocking of all access to Google Sites, the Criminal Court of First Instance had simply referred to the Telecommunications Directorate's opinion that this was the only possible way of blocking the offending site, without ascertaining whether a less severe measure could be taken. In addition, one of the applicant's main arguments in his application of 1 July 2009 to set the blocking order aside was that to prevent other sites from being affected by the measure in question, a method should have been chosen whereby only the offending site became inaccessible. However, there was no indication that the judges considering his application had sought to weigh up the various interests at stake. This shortcoming was merely a consequence of the wording of the law itself, which did not lay down any obligation for the domestic courts to examine whether the

wholesale blocking of Google Sites was necessary, having regard to the criteria established and applied by the Court under Article 10 of the Convention. Such wholesale blocking had rendered large amounts of information inaccessible, thus substantially restricting the rights of Internet users and having a significant collateral effect. The interference had therefore not been foreseeable and had not afforded the applicant the degree of protection to which he was entitled by the rule of law in a democratic society. The measure in issue had had arbitrary effects and could not be said to have been designed solely to block access to the offending site. Furthermore, the judicial-review procedures concerning the blocking of Internet sites were insufficient to meet the criteria for avoiding abuses; domestic law did not provide for any safeguards to ensure that a blocking order concerning a specified site was not used as a means of blocking access in general.

***Conclusion*:** violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage.

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