

SERBIAN MEDIA SCENE VS EUROPEAN STANDARDS

Report based on Council of Europe's
Indicators for Media in a Democracy

List of endorsing organizations

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Association of Local Independent Media (Local Press)
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Independent Journalists' Association of Vojvodina (NDNV)
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Civil Rights Defenders
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Introduction

One of the key events in the history of democratic development was the cognizance of the importance of free press. Many technological revolutions, which ensued in the following two centuries, were a breeding ground for the new media, and while the most recent digital revolution is unfolding right now, before our very eyes, the freedom of media in its increasingly diverse forms of public communication has preserved the status of an indispensable ingredient of a functional democracy and a crucial issue for the organisation and regulation of any media system.

Among experts there is still a dispute over the way in which the freedom of media should be measured, although comparative assessments at the global level have been made for almost four decades (since 1973). The concept of media freedom is widely accepted, but it is defined and interpreted differently in different parts of the world. Even when measuring scales and indicators are the same, they have different specific weight in different political systems and cultural traditions.

No one disputes, however, that the assessment of media freedoms, as a sort of public exercise in scrutiny of the issue of importance for the whole society, is necessary and useful. There are several initiatives for formulating a standardised instrument for the measurement of the degree of development of media freedoms. Before compiling its own list of indicators for the assessment of the degree of media development, UNESCO has enumerated 26 such lists. Their own lists of indicators were developed, for example, by Freedom House, Reporters without Borders, IREX (Media Sustainability Index, MSI), World Bank, Committee to Protect Journalists, European Federation of Journalists, Media Institute of Southern Africa, etc. What they all have in common is the understanding of freedom of expression as a foundation for all other democratic freedoms and the conviction that assessments of the circumstances in which media operate are helping pinpoint problematic issues and potential flaws of the media system as well as to define new operational or systemic solutions which will advance free operation of the media.

One such list for the assessment of freedom of expression, freedom of information and freedom of media, under the name of “Indicators for Media in a Democracy”, was developed under the auspices of the Council of Europe. In 2008, the Parliamentary Assembly of the Council of Europe adopted this list (Resolution 1636/2008), and along with it a recommendation (Recommendation 1848/2008), suggesting to member countries – above all the national parliaments – to draw up periodic reports and analyses of the media freedom in their countries on the basis of this list. At the same time, it was recommended to the Committee of Ministers of the Council of Europe to take into account the list of indicators when assessing media situation in member countries.

The list of the Council of Europe “Indicators for Media in a Democracy” features, in fact, 27 principles pertaining to media freedoms, which the Council of Europe has already identified as desirable standards of media practice in earlier resolutions and recommendations of the Parliamentary Assembly or the Committee of Ministers. The Council of Europe itself refers to them as “basic principles”. They are set apart as basic values which, for the purpose of consolidating democratic stability of Europe, should be protected together and individually by each and every one of the 47 Council of Europe member countries – the United Kingdom as much as Russia, Sweden as much as Moldova. Hence, the proposed catalogue of values and principles may be considered the least common denominator of the Council of Europe member countries’ commitment to protect human rights, democracy and the rule of law in the field of public communication, irrespective of differences in tradition, economy, political culture and development of the media system.

Criteria of the “developed West” (“Western bias”), hardly applicable in different cultural environments, which is something that is often reproached to other measuring instruments for the assessment of media freedom, have not been incorporated in the list of indicators. Variations in comprehension of the social responsibility of the media, which are always historically and culturally conditioned, are overcome by focusing on the role of media in the creation of conditions for the participation of public in the democratic

decision-making process – the public should be well-informed and it should be entitled to free debate on diverging opinions.

There are neither many references to new multimedia forms of communication – no mention of digital dividend, dangers of ownership concentration between telecommunications operators and traditional media, advantages of regulators' convergence or citizen journalism. The concepts which are used by "Indicators for Media in a Democracy" and their discourse are traditional. They speak about the media instead of audiovisual services. They advocate classical European liberal and pluralist values in the legal, economic, political and professional environment for free media operation. What is needed is legal protection of the right to freedom of expression and information; the authorities must be open to the media and journalists must have freedom to criticise public officials; the state should not be a hidden proprietor of private media, but it may help them in a transparent and neutral manner, at the same time taking into account the need to prevent monopolies and foster pluralism; public service broadcasters are desirable, but they must be independent; journalists should be guaranteed all labour rights, the right to trade union organising and self-regulation.

The Council of Europe recommends an active national media policy to its member states, but also participation in the activities at the European level so as to find solutions to common and specific problems. At the same time, the Council of Europe is inviting all the media professionals, media associations and media outlets to apply and further advance the proposed list of basic principles for the development of free media.

Application of "Indicators for Media in a Democracy"

With the intention to encourage the National Assembly of the Republic of Serbia to comply with the recommendation of the Parliamentary Committee of the Council of Europe and start to regularly analyse the media situation in Serbia on the basis of proposed parameters, the Association of Independent Electronic Media (ANEM), together with partner organisations – NUNS, NDNV and Local Press, launched an initiative in 2011 to compile the first comprehensive report on the media situation in Serbia, using 27 indicators of the Council of Europe. This report is intended to draw attention of media policy creators, competent state organs, media owners and media professionals, professional associations and organisations, media experts and interested public, in addition to legislators, to deviations of domestic practice from European values as well as to point out the problems in legal and institutional structure of the media system which hamper the implementation of the Council of Europe's standards.

The report is based on legal and communicological analysis of data on legislative, political, economic and professional environment for media operation. In addition to collection and classification of statistical data from publicly available sources, surveys, interviews and in-depth interviews were used to gather relevant disaggregated sets of data. Using specially designed questionnaires, a survey was conducted on a sample of 240 editors-in-chief of as many news media outlets (news agencies, dailies and other newspapers, radio and TV stations, and Internet media) from 79 cities and towns in Serbia (a questionnaire with 47 questions), 69 media owners (a questionnaire with 29 questions), 40 senior officials of various political parties from 10 cities and towns in Serbia with different combinations of parliamentary majority (a questionnaire with 25 questions), 50 representatives of nine national minority communities who are either members of national minority councils and their organs or journalists from minority media outlets (a questionnaire with 16 questions) and presidents of four journalist and media associations. Twenty-six interviews were conducted with the representatives of competent state organs (the parliamentary Committee for Culture and Information, the Government's Office for Media Relations, the Commissioner for Information of Public Importance, the Protector of Citizens / Ombudsman, the Commission for Protection of Competition, the Public Broadcasting Agency, the Electronic Communications Agency), representatives of three municipalities which are allocating budgetary funds through public competition to media outlets, representatives of management bodies of the national and provincial public service broadcasters, journalist trade union, the Press Council and 12 journalists from the media experiencing particular pressure on their editorial independence.

The survey was conducted by ANEM, NUNS, NDNV and Local Press, with the financial support of Civil Right Defenders. The analysis of legal regulation of the media sector was compiled by ANEM expert team ("Živković & Samardžić" Law Office, Belgrade) with the support of a Local Press' legal expert (Dragan Lazarević Law Office, Kragujevac).

Assessment of Media Situation in Serbia

Only several out of 27 principles of the Council of Europe have been consistently and fully implemented in the Serbia's media system. Although domestic legislation is being intensively approximated to the European law, the majority of principles are being enforced only to an acceptable degree, with minor or major weaknesses which are due to either incomplete and inconsistent legal regulations and insufficient capacities of the institutions which are supposed to apply them or lack of strength within the profession itself which has not as yet mastered the art of self-regulation and professional solidarity. In some areas there are drastic deviations from the European standards. These are media economy, independence of media from political influences, labour-related and social rights of journalists and their safety. Vested interests of the ruling political elite and unfavourable economic environment for media operation – which has additionally deteriorated under the impact of the global and domestic economic crisis – preclude changes which most media professionals deem necessary.

As regards the 27 analysed principles, there is in place full, unproblematic and applicable legal protection for four European standards of media freedoms: freedom to enter journalistic profession (indicator no. 4), freedom of access to the Internet and foreign media (17), separation between involvement in organs of executive power and professional media activities (23) and limitation of the right of media to exclusive reporting on major events of public interest (indicator no. 9). The first standard mentioned above has always been applied, the second – since 2001, and the last remaining two – only recently, following the passage of the Anti-Corruption Agency Act (2008) and the ratification of the European Convention on Transfrontier Television (2009).

Most standards are relatively well supported by laws, but in practice there are deviations from the desired outcomes. Reasons for this are manifold. Sometimes the legislation is incomplete and only partially harmonised with the European law, as in the case of a balancing act between the protection of state secret and freedom of information (indicator no. 10), protection of the confidentiality of sources of information (indicator no. 8), enforcement of equal access for media to distribution channels (16) and the right of political parties to equal access to media during election campaigns (5). At times, the regulations lack the prescription of sanctions for violations of obligations, as in the case of the government organs' obligation to be open to the media in a fair and equal way (indicator no. 24) or the obligation of media to be open to all the political parties under equal conditions (5). Sometimes at issue is a legal detail which may undermine the enforcement of the protected right or freedom (indicator no. 8 on the protection of confidentiality of journalists' sources of information and indicator no. 6 on non-discrimination of foreign journalists).

In several cases, legal regulations are simply not being implemented or are implemented in a manner contrary to the clear intent of the law. This is happening due to the weakness of implementing institutions, but also because of the partocratic nature of the political system allowing particular political interests to take precedence over the principle of the rule of law, without any legal consequences. Domestic judiciary, which is for the most part perceived in public as inefficient, politicised and corrupt, has displayed major weaknesses in the implementation of the legal protection of the right to freedom of expression (indicator no. 1) and freedom to criticise state officials (2). In the domestic law, despite announcements over the past years about its eventual abolishment, the treatment of insult and defamation as criminal offences still persists. However, a much bigger problem for the media and journalists is the judicial practice of awarding damages for injuries to one's honour and reputation, which does not serve public interest, inflicts manifold harm to the accused journalists and generally encourages self-censorship, whilst discouraging investigative journalism. Weaknesses of the judiciary and the organs for protection, but also political opportunism (or more precisely, abuse of public office and political power) are the main culprits for inadequate protection of

journalists' safety, which is way below the European standard (indicator no. 14). Judiciary, but also the organs for protection, are perceived as opponents rather than allies of journalists, despite the fact that journalism has received stronger legal protection and treatment reserved for sectors of public importance. Holders of public offices are even, more often than not, sources of threats to journalists and media. Frequent unequal treatment of media at the hands of a government organ in its capacity as the source of information (indicator no. 24) is also the result of a demonstration of political arbitrariness which persists with impunity. A combination of flaws in the legislation, weaknesses of new institutions and political influences on these institutions with regard to law enforcement is the reason for the failure to reach the European standards regarding the independence and efficiency of the public broadcasting regulatory organ (15) and the independence of public service broadcasters (20 and 21).

Media environment in Serbia resembles the developed European model the least in terms of the market media operation and the protection of media from political influences. The reason for this are not only many weaknesses of the regulations related to the principles in the field of media economy – inadequate treatment of state ownership (indicator no. 22), transparency of ownership and prevention of monopolies (18) and neutrality of state's financial assistance (19) – but also deficiencies in the enforcement of protection of the independent editorial policy (13). In this respect, legal regulations are indeed utterly inadequate – contradictory, incomplete, mostly declarative, and the provisions that are applicable are actually brutally violated. Weaknesses of the practice in these areas are mutually deeply interconnected and are the consequence of much deeper, i.e. structural social factors: inherited social anomalies, the nature of media system transition, economic power of media players, prevailing professional ideology of journalists, and, above all, the need of political forces to use the media for the purpose of achieving a social consensus on the direction for development of a traumatised and divided society.

Only in the past five to six years of relative political stability the media sector in Serbia has started to take on the contours of a market-based and profit-driven activity. In fact, foreign investors introduced the logic of commerce as a priority, although small media owners, who had never even had the intention of transforming their media into relevant sources of information of public importance, had been abusing it, albeit on a smaller scale. Exceptionally, big domestic players, such as TV Pink, would follow the logic of the market. While all the media now are operating on the basis of market principles, there is no in place as yet a regular and functional media market. On the existing market, political deals and vested interests distort the distribution of market punishments and rewards. On one hand, the market is too small for such an excessive number of, above all, electronic media which were allowed to survive (Serbia is a record-holder in terms of the number of electronic media in the region) thanks to imprudently devised media policy of initial market regulation (2006/2008), hence the media are forced to seek additional sources of financing. This inbuilt deficit of economic viability is further aggravated by the important role of the state in the media industry which has persistently precluded a free and fair economic competition despite its commitment as far back as 2001 (specifically with regard to the media scene in 2002) to relinquish its position of a media owner.

The state has three direct channels at its disposal for exerting influence on the results of market-based operations of not only the media which it owns but also all the others. It provides subsidies for the media with the status of public enterprises (there were 120 of them out of 467 radio and TV broadcasters with licences in 2008), and also allows them to operate commercially on the market, thus putting private media at a disadvantage. Private media have to be more successful in commercial terms in order to survive. Secondly, the state is in the position to control the inflow of advertising money to the media thanks to its supervision of the public enterprises, which for the most part are large advertisers (one of the biggest is the state-run telecommunications operator Telekom). It is also possible to control media content in this manner because advertising revenues may be used to reward desirable and punish undesirable programmes. Thirdly, the state organs may directly advertise in the media in a variety of ways (as no one controls this area) as well as conclude special contracts on special types of services, which might also influence the economic survival of the media and their news output.

The functioning of the media market, where, as in any other impoverished society, television has dwarfed all the other types of media in terms of both its share in advertising revenues (56%, press – 23%, radio – 5% in 2010) and audience loyalty (the citizens of Serbia are European record-holders when it comes to the time spent watching television – 5 hours and 16 minutes, on average, per day), is burdened by the persistent survival of illegal broadcasters (50-60 in 2011), which the state has failed to eliminate in the past three years, but also by informal alliances of ruling political forces and big industrial and commercial businesses which are allowed to infiltrate the media in a non-transparent way and fulfil through them the common interests of the state and the businesses.

Long-standing imbalances on the media market are not the consequence of negligence on the part of the ruling political parties with regard to the media sector. They are a result of the government's preoccupation to keep its allies on the existing media scene, hence no changes are welcome for as long as possible. Actual need of the government to use the media as a channel for drumming up public support for its policies and maintaining its position in power despite poor results while in office is the reason why the state has been reluctant for the whole past decade to carry out a radical transformation of the media system and provide for a free functioning of market forces as well as the development of autonomous editorial policies of commercially sustainable media. This same need has brought about frightful politicisation of the whole society and partocratic organisation of the state which has spread its tentacles all the way to politically motivated appointments of not only directors of public enterprises but also communal police officers and cemetery managers.

None of individual media indicators of the Council of Europe touches directly upon this anomaly of the Serbia's media system. The closest illustration would be a principle which is similar to the principle from the UNESCO list of indicators for assessment of media development, which obliges the state to ensure conditions for media business development in a non-discriminatory manner by way of pursuing appropriate business policy measures. The creation of a normal business environment for media development will be the task of some future Serbian government. Having adopted the strategy, the current government postponed the necessary changes to the public information system, although it admitted the need for a change by cataloguing all its dysfunctional aspects. Once the state assumes a role which would not disrupt the normal functioning of the market, conditions will be put in place for media development on a non-political basis, for possibility of media outlets' autonomy and successful resistance to political pressure. Only then will the implementation and control of the principles on transparent ownership, prevention of monopolies and neutral financial assistance of the state, which must take priority in the new media regulations, become possible.

Another priority in the overhaul of the media market, which should be organised in a different manner, are labour-related and social rights of journalists (indicator no. 11), whose enforcement should put this profession back to where it belongs, given its importance for the whole of the society.

The impending reform of principal media laws, as stipulated by the Public Information System Development Strategy, must start with the regulation of the role of the state, and then deal with the independent regulatory bodies, in the media system. Withdrawal of the state from the position of media owner will not bring desired results unless this entails a completely new model of relationship between the state and the media based on financing the media services with a view to the interest of the public. The government is claiming already that it has established such a relationship through co-financing of some projects at the national and provincial levels, although the principal mechanisms of market operation have not changed. The most recent experience where the government has had no qualms about abandoning one media strategy without any public explanation or justification – the digitalisation strategy - is a warning sign. The media community has a duty to put necessary structural and legislative reform of the media system on the agenda of government's top priorities.

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Known and Unknown Facts about Media Sector

		Source	Note
Number of media outlets	1,053	Register of Public Media, April 2011	Non-updated data
Number of print media	591	Register of Public Media, April 2011	Non-updated data daily newspapers – 20 weeklies – 94, biweeklies – 43 monthlies – 224
Number of TV broadcasters / number of valid licences for broadcasting TV programme	111 / 134 National broadcasters – 6 Regional – 30 Local – 98	Register of Public Media / Strategy (Republic Broadcasting Agency - RBA)	<i>Derived from non-updated Register's database:</i> Private founders – 66 Joint-stock companies – 10 Citizen associations, NGOs – 6 Public enterprises – 29
Number of radio broadcasters / number of valid licences for broadcasting radio programme	214 / 321 National – 5 Provincial – 1 Regional – 48 Local – 267	Register of Public Media / Strategy (RBA)	<i>Derived from non-updated Register's database:</i> Private founders – 136 Joint-stock companies – 13 Citizen associations, NGOs – 12 Public enterprises – 53
Number of Internet media outlets	107	Register of Public Media, April 2011	
Number of news agencies and other media	20 + 10	Register of Public Media, April 2011	Other: Other electronic publications and other mass media
Number of illegal broadcasters	56	Strategy (RATEL, July 2011)	47 radio broadcasters, 9 TV broadcasters; since 2008, about 160 "pirate stations" have been closed
Number of public radio and TV broadcasters	82 / 86	Register of Public Media / Strategy (RBA)	Register of Public Media does not include 5 RTS programme channels
Number of print media publishers	323	Register of Public Media, April 2011	<i>Derived from non-updated Register's database:</i> Private founders – 224 Joint-stock companies – 25 Citizen associations, NGOs – 54 Public enterprises – 13 National minority councils - 6, Political party – 1
Number of privatised media outlets	56	Privatisation Agency	Number of rescinded contracts – 25; of which 10 in bankruptcy proceedings
Number of journalists /media professionals	unknown	"Journalist Database": 3,987 self-registered journalists (2,206 men, 1,781 women)	Members of UNS – 6,767 (4,072 men, 2,695 women) NUNS members – 3,483 (2,141 men, 1,342 women) NDNV members: 545 (women – approx. 60%)
Number of employees in larger media companies	RTS – approx. 4,000* RTV – 1,198* Pink Int. – 713 Kompanija Novosti – 460 TV B92 – 357 Politika NIM – 355 Tanjug – 240 TV Avala – 132	2010 financial statements	In 2009, RTS had 4,024 employees and lay-off plan for 650 employees; RTV data originated from RTV management (December 2011)
Number of journalists – trade union members	unknown		There are trade unions only in public media and some privatised media.
Average journalist salary	approx. 30,000 dinars	estimate based on several sources	
Share of households owning...	98.9% – TV set 82.5% – cell phone 52.1% – computer 44% – cable TV	Serbian Statistical Office, 2011	
National TV broadcasters' audience share	77.7%	AGB Nielsen, 2010	Population over 4 years of age
Most watched national TV broadcasters (audience share)	RTS 1 – 24%; Pink – 20% Prva – 15%; B 92 – 8% RTS2 – 4%; Avala – 3% Happy TV/Happy K – 2%	AGB Nielsen, 2011	RTS – the most watched for 340 days

Average daily TV viewing time	5 hours and 16 minutes	AGB Nielsen, 2010	UK – 4 hours and 2 minutes (2010)
Most listened-to national radio broadcasters (audience share)	Radio S – 16%; Radio B92 – 8% Radio Beograd – 5% Radio Indeks – 4% Radio Roadstar – 3%	Strategic Marketing, May 2010	1,558,339 listeners tune in weekly to Radio S, which exceeds by about 500,000 the number of Radio B92 weekly listeners.
Sold copies of daily newspapers	approx. 850,000	estimate based on several sources	
Daily newspapers by circulation	Blic – 121,480 Alo – 113,842 Večernje novosti – 109,736 Press – 74,672 Politika – 55,970	Blic, first ten months in 2011	Data for Kurir daily newspaper are not in public domain (its circulation is not audited)
Fall in daily newspapers circulation	3.32%	Strategy, first half of 2011/2010	Source: V. Novosti (2011/2010) V. Novosti – 3.7 % Blic – 9.9% Press – 5.3 % Politika – 4.5 % Pravda – 29.0%
Sold copies of weekly newspapers	approx. 3,500,000 copies	Strategic Marketing, August 2011	
Weekly newspapers by circulation	Blic žena – 819,049 Pošalji recept – 411,811 Lepota i zdravlje – 390,260 Svet – 287,209 Scandal – 282,457	Strategic Marketing, August 2011	
Monthly circulation of local print media	approx. 650,000 copies	Local Press' estimate	(Weekly, biweekly and monthly newspapers) Monthly circulation in the aggregate of 30 members of the association of local independent media Local Press amounts to approx. 300,000 copies
Estimate of real investments in media advertising	EUR 175 million	AGB Nielsen, 2010	
Media share in estimated overall value of advertising market	TV – 56% Press – 23% Radio – 5% Internet – 4%	AGB Nielsen, 2010	
Average annual business revenue for 81 commercial RTV broadcasters	EUR 831,373	Derived from data published in Taboo magazine (2010 financial statements)	The 35 most successful broadcasters generate average annual revenue of EUR 1,883,304
Business results of national TV broadcasters	Losses, except for TV Pink	2010 financial statements	
Financial assistance of the state in 2011	2,512,856,070 dinars (approx. EUR 25 million)	Strategy	Republic – EUR 5 million (out of which, for competitions – 115 million dinars, for 4 public enterprises – 382 million dinars) Vojvodina – EUR 3.5 million Local self-governments – EUR 16.5 million
Share of households with broadband Internet access	31%	Serbian Statistical Office, 2011	In the UK, 74% of the population have broadband Internet access
Share of persons (aged between 16 and 74) who have used computers within the past three months	54.3%	Serbian Statistical Office, 2011	Users: 55.3% men, 53.4% women Number of computer users increased by 3.6% compared to 2010; 40.1% persons have never used computers
Share of persons who have used the Internet within the past three months	42.2%	Serbian Statistical Office, 2011	Number of Internet users increased by 1.1% compared to 2010 Users: 43.9% men, 40.5% women 53% have never used the Internet
Share of persons with social networks' accounts (Facebook, Twitter)	91.8% of the population aged between 16 and 24	Serbian Statistical Office, 2011	2010: 2 million persons aged 18-34 UK – 48% of adults

Protection of the Right to Freedom of Expression and Information

Indicator I – The right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable; a high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice

International organisations evaluating freedom of media rank Serbia among the countries with partial media freedom. On the 2010 Freedom House list, Serbia was evaluated as partially free and ranked 72nd out of a total of 196 countries (near the top of the second third of the list), whilst the Reporters without Borders ranked Serbia 85th out of 178 countries (in the middle of the list). International assessments of the trend of changes in Serbia's media sphere differ. According to the former organisation, in 2010 some progress was made in comparison to the previous two years, hence Serbia ranked higher than Bulgaria, Montenegro, Croatia, Romania, Macedonia and Bosnia-Herzegovina; according to the latter, Serbia dropped 23 places and ranked worse than all the aforementioned neighbouring countries except for Montenegro. According to IREX, freedom of speech score increased slightly in 2010 and amounted to a little more than 2 (on a scale of 0 to 4).

Most journalists in Serbia have been evaluating freedom of media in negative terms for the past several consecutive years. Out of 240 news media editors, surveyed in late 2011, only 6 (2%) were of the opinion that media freedoms and journalist rights were fully enjoyed last year, whilst 21% said that only sporadic incidents were occurring. About three quarters of journalists (72%) thought that Serbia had a big problem regarding media freedom: there were either serious obstacles to its enforcement (67%) or no conditions in place at all for it (5%).¹ Changes to evaluations in comparison to previous years are minor, but the trend is, nonetheless, negative. Media freedom in 2009 was evaluated in negative terms by 66% of the surveyed news media editors,² and 65% in 2008.³ All the interviewed presidents of media associations (ANEM, NUNS, NDNV and Local Press) estimated that media freedom in 2011 deteriorated year-on-year.

Legal Regulations

In Serbia there are many legal guarantees for freedom of expression and media freedom. They are, above all, guaranteed by the Constitution, and then specified in the Public Information Act and the Public Broadcasting Act. Serbia also ratified the most important international treaties safeguarding freedom of thought and press freedom – the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Serbian Constitution requires that the provisions on rights related to freedom of expression and media reporting be interpreted to the benefit of the promotion of values of a democratic society, pursuant to valid international standards and practice of international institutions, including the European Court of Human Rights (article 18).⁴

Under the Constitution, freedom of expression may be restricted solely in exceptional cases which are exempted in accordance with the limitations set by international acts. Prohibition of the dissemination of information via media is also in accordance with international norms. Such a prohibition is possible in order to prevent incitement to a violent overthrow of the system in the country or violation of its territorial integrity, to prevent warmongering or instigation to direct violence and advocacy of racial, ethnic or religious hatred which fosters discrimination, hostility or violence – by way of a court decision only, and if necessary in a democratic society (article 50).

The Serbian Constitution and media legislation affirm the importance of media reporting on the issues of public importance. Constitutional guarantees for the right to be informed were significantly strengthened by the Free Access to Information of Public Importance Act, although Serbia was one of the last countries in Europe and the region to adopt this law (2004).

Legal guarantees to freedom of expression and freedom of media are, however, neither comprehensive nor entirely consistent. The existing legislation qualifies insult and defamation as criminal offences despite long-

standing government's pledges to decriminalise them. The protection of secrecy of journalist sources of information is undermined by some provisions of the Electronic Communications Act (see principle no. 8). Penal policy with regard to attackers on journalists is not consistent. In addition, the 2009 Criminal Code introduced disallowed public commenting on court proceedings as a new criminal offence, which allows for various interpretations. The definition of this criminal offence (article 336a) restricts the right to report and comment on ongoing trial proceedings.

A particular problem of the legal regulations on freedom of expression and information is that they are failing to keep abreast of technological developments. This exclusively applies to traditional media. New forms of communication, made possible by the ICT revolution, are not the subject of any law. The Public Information System Development Strategy envisages harmonisation of domestic regulations with the Audiovisual Media Services Directive of the European Union by late March 2013.

Commitment of both the current government and the Serbian political elite to strengthen guarantees for freedom of expression and freedom of media was dramatically discredited in 2009 by the adoption of the Amendments and Addenda to the Public Information Act. The explanation of these legal changes was that they were designed to introduce a higher degree of responsibility in public discourse and adequate sanctions for media "atmosphere of lies, libels and threats", i.e. for various forms of unprofessional conduct of journalists which, indeed, were present in the media, above all in the tabloid press, as well as to prevent the media founders from closing the companies with excessive outstanding debt and setting up new ones. The actual reason for enactment of new legal provisions was the intention of the G17 Plus political party to curb persistent negative coverage of this party and its leader, Mladen Dinkić, serving also as a minister in the Serbian Government, in tabloid *Kurir*,⁵ which involved violations *en masse* of ethical norms of journalism.

These changes to the Public Information Act precluded foreign natural and legal persons from establishing directly media outlets in Serbia and prohibited the transfer of founding rights to a public media outlet from the founder to other persons, contrary to the constitutional guarantees of freedom to establish media outlets and the right to property. Several new commercial offences were introduced which might result in the imposition of a ban on the media outlet's operation, irrespective of the existing constitutional and legal solutions (for example, in the event of publication of media which have not been entered in the Register of Public Media). Transgressions of professional journalist norms, such as violations of the presumption of innocence and the rights of juveniles, were qualified as commercial offences, contrary to the logic of the Commercial Offences Act. Fines higher than those prescribed for any other commercial offence were stipulated for a failure to observe the ban on the media outlet's operation. The amounts of the fines for violating the presumption of innocence and protection of minors are commensurate with the print media circulation and advertising revenues. Some fines, which had been in place earlier, were increased manifold, which might be conducive to actual closures of fined media outlets, contrary to the European judicial practice. The power to deliberate over transgressions of professional journalist norms was placed under the authority of commercial courts (not the regular ones), which had never before dealt with cases related to media operations. The proposal of the amendments to the law featured even more drastic forms of media freedom violations, contrary to the Constitution (introduction of a mandatory deposit of EUR 50,000 prior to the establishment of a media outlet), but these provisions were withdrawn before tabling the proposed amendments in the parliament.

Civil society was strongly opposing the amendments to the Public Information Act, describing them as a retrogression of the legal framework for media freedom and a consequence of the treatment of media legislation as an instrument for protection of the state from media instead of vice versa. Following a legal action brought by the Protector of Citizens (Ombudsman) before the Constitutional Court requiring an assessment of constitutionality of the aforementioned changes to the law, they were declared unconstitutional in the judgements pronounced in November 2010 and June 2011, respectively, but neither has been enforced.

The episode with contentious amendments to the Public Information Act shows that the Serbian political elite is willing to sacrifice the freedom of media for the sake of its petty political interests as well as that

media freedom is still not receiving the treatment of the civilisational accomplishment of a democratic society.

Institutional Protection

The institutional protection of freedom of expression and media freedom is inconsistent and insufficiently effective. In the opinion of the surveyed news media editors, the least effective are state institutions vested with greatest powers regarding the protection of rights of the public, media and journalists – judiciary (35% of the respondents), executive branch of power (23%) and regulatory agencies (18%). As the most effective, the respondents singled out professional associations (50%), then the media and journalists themselves (43%) and independent state institutions of the Commissioner for Information of Public Importance and the Protector of Citizens / Ombudsman (29%).

Journalists perceive judiciary as an opponent rather than an ally in the enforcement of their rights. Above all, court proceedings related to freedoms of speech, expression and information are painstakingly slow. For instance, in July 2011, a court ruling in connection to a journalist article published 14 years ago was finally handed down. Then, judicial practice so far has been inconsistent, hence judgements vary considerably in disputes of the same type. Court rulings to the detriment of journalists have more often than not (self-)censoring effect and discouragement of investigative journalism instead of raising the bar regarding the responsibility for public speech and development of professionalism.

Out of 240 surveyed news media editors, only 6% held the view that the Serbian judiciary was efficiently protecting the freedom of expression. Every third respondent (37%) thought otherwise because the judiciary was slow and inefficient, in their view, whilst every fourth interviewed editor (28%) believed that this was so due to corruption and susceptibility to various influences. About 17% believed that the judiciary was not efficient because prosecutors and judges were not trained to decide in cases related to media and journalists.

Journalists also reproach judges for their lacking knowledge of media law as well as inability to grasp the gist of media legislation promoting public interest in the field of public information. Instead, journalists say, in their deliberations, judges are primarily guided by the Criminal Code. In journalists' view, judges are not familiar with the specific nature of media content production, journalist procedures for ascertaining the veracity of information (which differ from judicial ones) and justifiability of value-based judgements within the boundaries of professional ethical standards. In addition, judges are not sufficiently acquainted with the case law of the European Court of Human Rights in its application of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Out of four cases from Serbia related to freedom of expression which the European Court of Human Rights has processed thus far, in all four the court found that the right of the applicants to freedom of expression had been violated, i.e. that domestic courts had not been right when they had passed guilty verdicts for defamation in criminal cases and awarded damages for defamation in civil lawsuits.⁶

Discrepancy between professional journalist standards and domestic judicial practice created at times absurd situations, such as in case of charges – and subsequent guilty verdict – against the author of a satirical piece,⁷ but also provided incentives for a large number of charges seeking damages for alleged injuries inflicted to the plaintiffs' honour and reputation.

Civil judgements ordering payment of damages for injuries to honour and reputation are not governed by the requirement to satisfy public interest in a given dispute. Neither do they take into account other forms of protection against defamation (the right to correction and reply) except for payment of damages to injured parties, which is what the plaintiffs only seek.⁸ Whilst European case law indicates that such rulings should strive to concede symbolically that the plaintiff was right without ordering payment of damages for mental anguish suffered, domestic courts allow for damages claims worth millions, tens of millions, or up to 100 million dinars.

In 2011, before the Higher Court in Belgrade, there were 242 civil lawsuits concerning the publication of information in the media (22% fewer than in 2010).⁹ In 93% of cases, the plaintiffs sought damages for injury to their honour and reputation, whereas in only 7% of all the cases they demanded that a correction or a reply be published (in 2010, the plaintiffs demanded payment of damages in 97% of the cases). The most charges were brought against print media (47 against the publications of *Ringier Axel Springer*, 34 against daily *Kurir*, 27 against daily *Press*, 17 against daily *Novosti*, 14 against daily *Politika* and 3 against daily *Danas*). Regarding electronic media, the following were most often sued: *B92* (8), *TV Pink* (6) and *RTS* (4). As regards the Internet media, four lawsuits were brought against *E-Novine*. An average damages claim was worth about three million dinars (around EUR 30,000), and in some cases as much as 100 million dinars was claimed by the plaintiffs.¹⁰

Exorbitant figures in damages claims actually serve the purpose of instilling fear in media and are intended to exhaust them through payments of court taxes and legal expenses, which are proportionate to the amount of damages claimed. True enough, awarded damages are considerably lower than those sought (most often amounting to 100,000 or 200,000 dinars, typically not exceeding 600,000 dinars), but they, nonetheless, may deliver a serious financial blow to the media,¹¹ and this then reinforces self-censorship, which is contrary to the original intention. Awarded damages in a court of law further contribute to intimidation and self-censorship of journalists and media more so than to the development of their professionalism and responsibility. Although more familiar with the way in which the media are functioning, the courts of second instance are systemically motivated to process the cases as soon as possible without delving deeper into them, which is why they typically uphold the judgements passed by lower courts in civil lawsuits, but reduce the damages awarded.

Unlike courts, at the top of the list of entities defending media freedom which are trusted by journalists are journalist associations (UNS, NUNS, DNV and NDNV) and media associations (ANEM, Local Press, Media Association) as well as other professional organisations. They are regularly monitoring the cases threatening media freedoms and journalist rights, and they are often joining forces to protect those under threat as well as to draw the attention of the public and advocate the interests of journalists and media vis-à-vis state organs. Professional associations have been already providing for the past several years free legal consultations and free legal aid (defence counsellors) in court proceedings, insisting on the changes to the legislation restricting media freedom, defending economic rights of media as well as labour-related and social rights of journalists.

As regards other institutions, as an independent body acting to protect freedom of expression, the Commissioner for Information of Public Importance has particularly come to the fore. This institution receives complaints in the event of state organs' refusal to allow access to the information in their possession. The 2010 amendments to the law conferred the power to the Commissioner (instead of disinterested and passive government) to conduct proceedings in relation to the enforcement of its decisions (the only such competent body of second instance in the country). By consistently acting upon received complaints, readily exercising legal powers bestowed upon him and publicly naming the state organs which do not comprehend, do not respect or are not yet prepared to perform their obligation to provide public insight into the information in their possession, the Commissioner has been promoting in public at large the right to access to information of public importance and fostering creation of a more favourable atmosphere in state organs with regard to fulfilling the requests for information that they receive.¹² His activities are of particular importance for investigative journalism.

However, the work of the Commissioner is obstructed in many ways. Since its inception, the authorities have failed to provide support to the full establishment of the new, independent institution. Problems have persistently plagued this regulatory body, such as lack of offices, inadequate funds from the budget for staff positions stipulated by the founding act, absence of support intended to establish the Commissioner's office as an institution independent from the authorities. In mid-2010, the Serbian National Assembly adopted new Rules of Procedure, introducing a possibility to reject annual reports on the work of independent regulatory organs, such as the Commissioner for Information of Public Importance, the Protector of Citizens and the State Auditing Institution, as well as to launch the procedure for their dismissal. Following

the objections voiced by the European Commission to the new Rules of Procedure, these provisions were deleted in early 2011.

Violations of Media Freedom and Journalist Rights in Practice

In practice, in their everyday work, journalists are encountering limitations to their rights and freedoms which take a wide variety of forms, ranging from physical assaults, threats to their safety, cancellations of advertising contracts, personnel changes and various forms of pressure, through to new forms of restrictions such as prevention of information dissemination by way of blocking web sites. Journalists are working in the conditions characterised by their conspicuous financial dependence (on the interests of owners, advertisers, state financiers), which is effectively resulting in self-censorship and censorship. All this has been aggravated in the past several years by the ongoing economic crisis (see principle no. 13). And yet, direct assaults on media freedom come for the most part from the political quarters and affiliations with political interests.

According to the survey of news media editors-in-chief, in 2011, only 22% of media outlets did not experience some form of violation of media freedom in their everyday work. Out of those who did, one third (34%) were denied access to information of public importance; another third of them (30%) received unequal treatment, compared to other media, at the hands of the sources of information; one fourth (27%) had their advertising contracts cancelled, and another fourth of them (26%) experienced interference in their editorial policies (in the form of a ban on publication of certain information, designation of “desirable” and “undesirable” content, etc.). Other forms of violations of freedoms and rights occurred at fewer than 20% of media outlets.¹³

As the sources of greatest pressure exerted on their media, the surveyed media editors named the ruling political parties (47%), organs of executive power (32%), opposition parties (26%), and, in the same measure, private companies in their capacity as advertisers (16%) and public enterprises (16%).

An analysis of specific cases of media freedom violations, which received the most media publicity, also showed that the most frequent direct violations of media freedoms originated from the political arena.¹⁴ In 2011, there were 73 such cases reported. Nine physical attacks on journalists (excluding assaults taking place on the territory of Kosovo and Metohija) and 18 threats to personal safety stand out as particularly serious, and this represents an increase in the number of such incidents in comparison to 2010.¹⁵ There were four dismissals of editors-in-chief or general managers as well as four attacks on the media properties. Fifteen cases were related to the pressure exerted on the editorial policy and another nine pertained to denial of attendance or prevention of journalists’ reporting from public events. The remaining cases include disruption of information dissemination or threats of disruption (6), discrimination against the media (4) and verbal violence (3).

Most frequent perpetrators of the violations of media freedoms and rights in the aforementioned cases were holders of public office (22%), including presidents of municipal assemblies or presidents of municipalities of Kula, Arandelovac, Aleksandrovac, Piroć, Vranje and Zvezdara, mayors of Jagodina and Niš, a police chief in Bor as well as two MPs, the Serbian president and the office of the president.¹⁶ In addition, the pressure from the public sector was also coming from directors of public enterprises and national minority councils. Political parties’ officials (10%) and sports officials (10%) follow suit. They violated media freedoms and rights more often than bodyguards, hooligans and other individuals.

Dismissals of media managers also testify to the domination of vested political interests and motives in direct attacks on the freedom of media and the freedom of speech, and these are typical examples of pressure on editorial policy. In an old-guard-type-of move, the editor-in-chief of daily *Alo* was sacked for criticising the President of the Republic of Serbia. Daily *Magyar Szó* editor-in-chief and director of RTV Pannon were also made redundant because they were not promoting enough the founders of these media – the Hungarian National Minority Council, i.e. the Alliance of Vojvodina’s Hungarians, the political party

wielding dominant influence in the council. The following cases also qualified as instances of pressure exerted on the media editorial policies – the president of the Serbian Progressive Party, SNS, the biggest opposition party, threatened to serve a notice of dismissal to the general manager of the national public broadcasting service once he came to power because his party was not receiving sufficient air time in the news shows; a senior official of the ruling Democratic Party, DS, made sure that a Radio Belgrade show, which was promoting pluralism of political views, more so than other shows of this broadcaster, be abolished; a religious leader threatened to bring charges for exorbitant damages if a press release of a political organisation in which he was presented in negative light were to be carried; a senior official of the Democratic Party of Serbia, DSS, demanded that the publication of information about the involvement of his party members in a commercial scandal be stopped; the chairman of the Albanian National Minority Council declared a journalist, whose questions were not to his liking, as collaborators of BIA (the Security Information Agency) and UDBA (former Yugoslav state security service).

It is a worrying trend that even fundamental rights of journalists, which need to be enforced in their line of work, such as the right to attend a public event, are blatantly and brutally violated. Journalists were prevented from attending the sessions of municipal assemblies of Kula (twice), Aleksandrovac (twice) and Vranje, filming the session of the municipal assembly of Pirot, reporting from a public event of the United Regions of Serbia, a political party, and the matches of the Football Club “Vojvodina” and Basketball Club “Partizan”, respectively. The bans were imposed by the most senior officials of these organisations, and in most cases on account of their dissatisfaction with earlier reporting of these journalists.

Freedom to Criticise State Officials

Indicator 2 – State officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment.

The aforementioned principles of the Council of Europe are incorporated in the national legislation. In practice, media outlets are not being closed, nor are the journalists being detained for critical comment at the expense of public officials. The new 2005 Criminal Code abolished the possibility of handing down prison sentences for defamation and insult, but such punishments had not been meted out to journalists for decades before that. However, journalists and media outlets may still receive high fines, which in turn may threaten the survival of media outlets, particularly in the times of economic crisis that still held Serbia in its grip in the course of 2011.

With regard to criticism and insult, domestic legislation does not protect state officials in any particular manner more so than other persons. Moreover, between the right of the public to know and the right to protection of privacy of state officials and politicians, domestic legislation gives precedence to the right of the public. Between the protection of honour and reputation, on one hand, and the right of journalists to exercise their profession, on the other hand, domestic legislation opts for the right of journalists if in their work they do not have the intent to denigrate.

The Public Information Act (2003) expressly stipulates that the right to protection of privacy shall be limited for a holder of public or political office if the information related to him/her is of “public relevance” (article 9). In addition, the level of restriction to the protection of privacy is not specified, but stipulated to be “proportional to the justified interest of the public” and subject to evaluation in each specific case. At the same time, the Criminal Code (2005) specifies that insult is not a punishable offence, including the insult in the media, if the perpetrator of the offence has given a statement as part of a serious criticism, while exercising journalistic profession, in defence of a right or defence of justifiable interests, and if it is evident from the manner of expression or other circumstances that this has not been done with the intent to denigrate (article 170).

Protection of the right to criticise public officials is further reinforced by the constitutional obligation of courts (article 18) to interpret provisions on human rights pursuant to international standards and practice, i.e. the case law of the European Court of Human Rights (ECHR) in its application of the article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Serbian Supreme Court recommended, in 2008, for example, in a special document, direct application of the case law of the European Court of Human Rights in the context of its judgements against Serbia in two cases pertaining to public criticism of a state official. Criticism centred on the mayor of Babušnica. In both cases, domestic courts had passed guilty verdicts for criminal defamation.¹⁷ However, ECHR found that these convictions constituted a violation of the rights of the applicant under article 10 of the European Convention, reasoning that “the limits for acceptable criticism for public figures are wider than for private individuals”¹⁸ and that the guaranteed freedom of expression encompassed the expression of value judgements about public figures. According to the ECHR judgement, the criticism of the mayor was justified as it pertained to matters of public interest. ECHR particularly highlighted the reasoning of domestic courts in their guilty verdicts, according to which honour, reputation and dignity of the mayor “had more significance than... [honour, reputation and dignity]... of an ordinary citizen – as unacceptable. The ECHR case law allows criticism employing harsher and more provocative language (even when it is insulting, shocking or disturbing), if centred on the issues of public interest instead of private lives of public figures.

Nonetheless, domestic public officials and politicians often seek court protection from criticism, precisely while holding public offices, alleging first criminal defamation and insult (criminal trial) and then filing civil complaints for damages on account of alleged violations of their honour and reputation (civil lawsuit). In criminal trials, defendants may be ordered to pay out up to 450,000 dinars. In civil lawsuits, where, at times,

millions of dinars are sought in damages, courts order payments of fines that they themselves deem fair, but often amount to several hundred thousand dinars, which effectively may endanger the survival of the media outlet in question.

Out of 242 civil lawsuits in 2011 before the Higher Court in Belgrade on account of the publication of information in the media, public figures appear as plaintiffs in at least 40% of the cases. Among them are celebrities and two tycoons, but also at least 10 public officials and politicians such as government ministers, mayors, Serbian MPs and former holders of public offices.¹⁹

According to the data of Local Press, from 2005 until late 2011, there were 68 legal cases launched against the members of this local media association under the Criminal Code or the Public Information Act. In the past two years, the number of plaintiffs vested with public powers and more authority than ordinary citizens has increased. Fifteen out of a total of 16 in 2010 and 2011 were such plaintiffs: three businessmen, five politicians, two police officers, two members of local parliaments, a director of a state-run public company and two judges. What also happened was that the colleagues of these two judges from the same court, even the same office, were presiding over the court proceedings and pronouncing judgements.²⁰

The aforementioned judgements of the European Court of Human Rights have led to certain corrections in the domestic case law, but individual rulings whereby holders of public and political office are granted a higher degree of protection than other citizens still occur in practice, particularly in case of courts of first instance. Thus, in March 2011, the Basic Court in Čačak ruled in favour of the plaintiff, Velimir Ilić, an MP, New Serbia party leader and former government minister, on his criminal defamation charges against the author of a commentary and humorous article, Stojan Marković, director and editor-in-chief of “Čačanske novine” newspaper. The Court of Appeal in Kragujevac overturned the ruling in July 2011. However, a year earlier, in a separate civil lawsuit pertaining to the same newspaper articles, the Higher Court in Čačak had ordered Marković to pay 180,000 dinars in damages, in compensation for the mental anguish suffered. This ruling was subsequently upheld by the Court of Appeal. Former Serbian health minister Tomica Milosavljević decided to bring charges against the media outlets reporting on his responsibility for controversial procurements of swine flu vaccines in 2009/2010 (which led to arrests of several individuals) in spite of the Serbian Press Council’s conclusion in October 2011 that his complaint against one of the media outlets (“NIN” weekly news magazine) was not justified given the right of the public to know how the functions of public office are performed, which is also safeguarded by both domestic legislation and European case law.²¹

In July 2011, the Ministry of Justice announced impending full decriminalisation of insult and defamation “so that the media outlets could be relieved of the burden of severe punishments threatening their survival”.²² Case law analysis, however, shows that, despite a high incidence of criminal defamation charges filed, guilty verdicts are rarely final, and even when they become *res judicata*, penalties are typically lower than compensations for damages awarded by courts to plaintiffs in relation to the same articles, shows or public statements in civil lawsuits.²³

The impending decriminalisation of defamation and insult, as announced, will not solve the problems which the media and journalists are facing when criticising state officials. Other safeguards are also required for the protection of freedom of expression which should protect the journalists’ right to criticism and the right of the public to know in civil litigations. The principles enshrined in the Council of Europe’s Declaration on Freedom of Political Debate in the Media need to be more consistently implemented in national media regulations. Better education of both judges and public at large about relevant judgements of the European Court of Human Rights is also required since there are no Serbian translations of all the Court’s judgements available, particularly those pertaining to the application of article 10 of the European Convention on Human Rights with which domestic courts are obliged to comply.²⁴

Necessity and Proportionality of Restrictions to Freedom of Expression

Indicator 3 – Penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed.

Serbian Constitution allows for restrictions to the right to freedom of expression “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” (article 46). However, the Constitution endeavours to reduce the scope of restrictions to a degree necessary in a democratic society which does not infringe upon the substance of a guaranteed right. Hence, the Constitution instructs the state organs, “particularly the courts”, when considering restrictions to this right, as well as other human and minority rights enshrined in legislation, to take into account several issues, including the pertinence of restriction, nature and extent of restriction as well as “possibility to achieve the purpose of the restriction with less restrictive means” (article 20).

Principles of necessity and proportionality are thus protected with regard to punishments stipulated in the Criminal Code for a whole range of criminal offences against the constitutional order and security of the Republic of Serbia (including the criminal offences of instigating national, racial and religious hatred and intolerance) and against public peace and order (e.g. causing panic and disorder by disclosing or disseminating untrue information or allegations). A separate criminal offence is also specified in the Data Secrecy Act, which regulates the system of protection for secret data of interest to national security and public safety, defence, internal and foreign affairs of the Republic of Serbia.

In practice, these provisions are rarely and sporadically used. In the past several years, there have been no instances of politically motivated enforcement of penal laws which regulate the protection of public order or national security. Charges brought against journalist Jelena Spasić and editor Milorad Bojović of Novi Sad daily newspaper “Nacionalni građanski”, which marked the year 2011, may be considered an exception. They were charged with disclosing a state secret having published the article entitled “State Organs Are Completely Unprepared for War” (June 2010) which cited data from a Ministry of Defence’s report compiled for the members of the National Assembly’s Committee on Defence and Security, which was classified as “secret”. The article showed that many state organs and state-run public enterprises were ignoring the preparations for the defence of the country as stipulated by law. Many civil society actors stood up for these two journalists, arguing that the content in the published article served the interest of the public to learn about the state of the country’s defence. However, the investigation into this case carried on regardless. The law prescribes a punishment of between six months’ and five years’ imprisonment for the criminal offence with which the journalists were charged.

With regard to elimination of hate speech, Serbia is closer to European than American model of regulation. Speech inciting hatred and discrimination is punishable in Serbia. However, public controversy over penalising hate speech looms large, both with respect to recent past and present-day practice.

In the Slobodan Milošević’s regime, which was based on nationalist patriotism, ethnic intolerance, warmongering policy and xenophobia as constituent elements of the then prevailing ideology, hate speech was a predominant form of discourse about others in the state-controlled media. Back then the state was also a party to all the international conventions and treaties prohibiting hate speech. Moreover, the state’s own laws prohibited any form of discrimination against social groups. Nonetheless, the then public prosecutor had never brought charges on account of public discrimination or incitement to violence.

Radical discontinuity with political and media practice of hate speech as a socially accepted form of public speech has never been effected. An effort to lustrate proponents of hate speech in elections for public

offices by way of adopting the Lustration Act (2003) failed due to lack of political will to implement it. Despite the new government's pledge in the year 2000 to introduce new morality into public life and responsibility for public discourse, persisting ideological and political divisions in the society over the course of the subsequent decade were conducive to relatively frequent public displays of hatred towards others and those who were different – for which punishment was rarely meted out. The Public Information Act expressly prohibits “publication of ideas, information and opinions that incite discrimination, hatred or violence against an individual or a group of individuals on grounds of their race, religion, nationality, ethnicity or sex, or their sexual inclination, notwithstanding whether a criminal offence has been committed by such a publication” (article 38). Hate speech charges are, however, for the most part rejected for formal reasons or the proceedings are unjustifiably protracted,²⁵ causing great discontent of a part of the society.

Public tolerance of hate speech was particularly conspicuous in relation to the Belgrade Pride Parades in 2010 and 2011.²⁶ Such a discourse has long been tolerated in reality shows as well. It was not until the anti-Semitic statements of two singers, the participants in TV Pink “Dvor” (“Castle”) reality show, broadcast in February 2011, that hate speech caused a tangible reaction – the charges against TV Pink brought by the Federation of Jewish Communities in Serbia and criminal charges against these two singers filed by the Higher Public Prosecutor's Office in Belgrade for instigating national, racial and religious hatred and intolerance. The incident prompted a reaction on the part of the Public Broadcasting Agency Council which issued a mandatory instruction prohibiting live broadcasts of reality shows and prescribing deferred transmission with a delay of several minutes in order to preclude intolerant public speech.

In 2011, an old controversy, instigated by an effort of the Independent Journalist Association of Serbia to have journalists and editors of the media churning out warmongering propaganda in the 1990s - punished, was rekindled. Namely, the Independent Journalist Association of Serbia (NUNS) filed criminal charges in 2009 with the War Crimes Prosecutor's Office against responsible persons from Radio Television Belgrade, Radio Television Novi Sad, dailies “Politika” and “Večernje novosti”, and other media outlets, which were conducting political and propagandistic preparations by way of hate speech and dissemination of false information so as to engender a conviction of the general public that the war was justified, as well as for grave violations of the norms of humanitarian law for the duration of the war. Both journalistic professional public and public at large in Serbia are divided over the purposefulness of this attempt, more than a decade after the toppling of the Milošević's regime, to have journalists punished for dissemination of hate speech, particularly in relation to their actions linked to incitement to the commission of war crimes. The War Crimes Prosecutor's Office is still conducting the investigation on criminal charged filed by NUNS.

Freedom to Practise Journalism

Indicator 4 – Journalists must not be subjected to undue requirements by the state before they can work.

Journalism in Serbia is not a “licensed” (or “hard”) profession as is the case with doctors, pharmacists, lawyers or engineers. It belongs to open professions. No special or more rigorous requirements than in other professions are stipulated for professional journalism such as minimum qualifications, education, type of education, verification of professional knowledge in the form of a professional exam or mandatory apprenticeship with competent institutions.²⁷ However, there are increasingly more of those practising journalism with specialised knowledge.

Journalistic work is regulated by the Labour Act which applies to all unlicensed professions.

The work of professional journalists differs from other professions in its ethical dimension governed by the code of professional conduct. The Code of Conduct of Serbian Journalists, which was jointly adopted by the Association of Serbian Journalists (UNS) and the Independent Association of Serbian Journalists (NUNS), and was subsequently embraced by other professional associations, defines ethical standards for professional conduct of a good journalist. Compliance with the code of conduct is enforced by professional journalist associations.

The notion of journalist in its customary meaning applies to various media-related professions such as news photographer, cameraman, picture editor, sound engineer, newsreader, presenter, proofreader, etc. Such a collective approach to various media professions is also applied by professional journalist associations. They do not either make a distinction between full-time employees and freelance journalists, including permanent part-time contributors and those with occasional engagements. In Serbia, the status of a freelance journalist is a matter of necessity (due to high unemployment rate) instead of a personal choice, as in the countries with more developed protection of the profession. However, a distinction is being made between journalists and persons dealing with public relations, which is an area experiencing accelerated rate of professionalization.

It is not known how many journalists there are in Serbia. There are no accurate data available on the number of media outlets because the two registers managed by the Business Registers Agency and the Public Broadcasting Agency are not updated, and there are also illegal radio and TV broadcasters whose number varies frequently. Fluctuations of employees are substantial due to lay-offs, changes of ownership, transfers of journalists to other newsrooms, concealment of the true number of employees by the owner, etc.

According to the last available results of the population census, journalists were in the group labelled “journalists and other publicists”, and in 2002 there were 6,148 of them in total. Among them 21% were engaged in activities “other” than strictly journalist ones (radio- and TV-related activities – 34%, newspaper publishing – 26%, news agencies’ activities – 6%, magazine publishing – 2%) and those close to journalist profession (publishing of books and brochures – 6%, printing of newspapers and other publications – 2% and other – 2%)²⁸ — hence, the number of actual journalists in 2002 may be estimated to have been about 4,200.

The only more recent publicly available source of such information is the database of media professionals, set up by NUNS in 2008, in which the journalists themselves voluntarily enter their personal data.²⁹ The database is open to all media-related professions (journalist-editor, journalist-reporter, journalist-columnist, presenter, author of a show, newsreader, producer, director, news photographer, cameraman, sound/recording engineer, picture editor, proofreader, etc.). This database was envisaged to primarily achieve commercial and programming objectives (it was designed as a ‘meeting place’ for employers and candidates for engagement in media businesses as well as the basis for planning education programmes and

activities intended to improve social and economic position of journalists), therefore, it is disputable how comprehensive it is. At present, there are 3,987 journalists in the database, out of whom 1,400 work for TV broadcasters, about 1,200 – for radio broadcasters, about 400 – for daily newspapers, 800 – for periodicals, and 60 – for Internet media outlets. The majority of those registered in the database are men (55%) with secondary education (53%), aged between 35 and 49 (43%).

There are various forms of education available in Serbia for journalistic profession. The first journalism studies had been introduced in 1968 at the Faculty of Political Sciences in Belgrade. They had been the only form of higher education for journalists until 2002. There were no restrictions whatsoever imposed on access to journalistic profession. In the meantime, the number of journalism courses increased. In 2007, there were academic journalism studies available at eleven faculties in six cities throughout the country, along with a specialist study programme (sports journalism). In total, there were 1,710 undergraduate students of journalism who were predominantly women (75% or 82% at some faculties).³⁰ Journalist education has its many other forms such as schools, courses and trainings which are organised by professional and media associations, nongovernmental organisations, foundations, lifelong learning institutions and, albeit exceptionally, media companies themselves. In the course of 2004/2005 school year, over 100 non-university educational programmes implemented by 34 organisations were registered.³¹

Whilst the state is not imposing any particular requirements for practising journalism, individual journalists and professional associations advocate the idea to introduce journalist licences in order to further strengthen the ethical aspect to the profession. Citing drastic forms of media abuses intended to promote the 1990s regime's policies and the ongoing process of forceful commercialisation and tabloidisation of media resulting in mass violations of professional standards and journalist ethics in the past decade, individual journalist associations raise from time to time the issue of licences,³² which would be designed to protect the dignity of profession and to set apart "quality journalists" from those who are not,³³ as well as to make a distinction between true media outlets, on one hand, and "propaganda machines" and "profit-driven sensationalist publications". Some proponents of this idea advocate the principle of volunteerism when seeking licence as a sort of official certificate that a journalist holding it is committed to respect for moral and professional standards, and, in their view, it would be, above all, relevant to a journalist's employment with public media outlets. Opponents believe that the introduction of licences would be tantamount to a restriction of freedom of expression as well as that it would be contrary to the European Charter on Press Freedom.

Openness of Media to Political Parties

Indicator 5 – Political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns.

Legal regulations and self-regulatory measures oblige the media to enforce a fair and equal treatment of political parties, but, failing to comply with these obligations, the media do not suffer the consequences at the hands of either regulators and professional associations or the public. During election campaigns, drastic media discrimination against political parties or candidates is rare. Nonetheless, equal representation of participants in the elections is not a generally accepted norm. In everyday media coverage, most media outlets favour ruling parties, giving them greater and more positive publicity due to either financial dependence in a highly partocratic state or direct political pressures.

A vast majority of 240 surveyed news media editors-in-chief (92%) claimed that their media outlets respected or mostly respected the right of political parties to an equal access to the media. Only 2% said that this right was not respected, whilst 4% said that for the most part it was not respected. Political party leaders held a completely opposite view³⁴: 70% of surveyed officials from central and local branches of political parties, be it those in power or in opposition, were of the opinion that the principle of equal representation was not at all or mostly not respected; 63% described the influence of political parties on the media as big rather than medium or small; and 53% believed that the majority of media were failing to treat in the same way the events of the same type depending on whether a given event was organised by a ruling or an opposition party. Most editors-in-chief (35%) thought that the main characteristic of media reporting on political parties was that the parties were given coverage proportionate to the interest of the public and the relevance of parties' activities. Most party officials (58%) were of the opinion, however, that the media coverage was characterised, above all, by disregard for opposition political parties without any justified professional reasons.

Sporadic surveys of individual media outlets' coverage testify to unfair and unequal treatment of political parties. An analysis of national daily newspapers from December 2010 showed that the biggest party within the ruling coalition, the Democratic Party, DS, received by far the most extensive coverage in comparison to other (numerous) parties, including its coalition partners.³⁵ According to an analysis of TV Studio B coverage from the same period, only the activities of the ruling parties were reported, whereas the opposition parties were ignored, except for one but not the biggest opposition party (the Liberal Democrat Party, LDP). On RTS programmes, the frequency of appearance of state officials from various political parties was commensurate with the share of these parties in the ruling coalition, but the harshest opposition criticism was sidelined or even presented extremely improperly from the professional point of view.

The surveyed party officials reproach the media most often for open political bias in favour of the ruling parties ("although all the media in our city are privately owned, all of them are absolutely favouring the political parties which are in power locally"; "the local TV is fully instrumental in promoting the local government; it glorifies its activities and never criticises it"; "statements are published selectively and the criticism of the authorities is never carried"; "our political party receives only 8 minutes of coverage a month, whereas reports on the party running the city council are broadcast daily"). Another objection relates to favouring one specific political option ("it has completely come under the influence of one political party"; "it follows only one political party and its leader"; "it openly favours political parties and other organisations close to one person"; "absolutely untrue, biased and unprofessional reporting which is instrumental in exclusively promoting one organisation"). Party leaders point out that some media sideline their parties without any justified reason ("they are completely ignoring political activities of our party, although we are a parliamentary party at the both city and national level"; "closed to our activities as if we did not exist"; "they have not aired a single item on the party activities in the past six months"; "totally inaccessible for presentation of our party's activities") or complain that they receive predominantly negative coverage ("disparagement and ridicule of character and work of our party officials"; "they present us

exclusively in a negative context”; “even if something is published, it is most often sensationalist and untrue”; “they only dabble in smearing individuals, most probably because of personal animosities”). Only one out of 40 surveyed party officials objected to the quality of professional journalist work (“illiteracy, lack of professionalism, lack of expertise”), whilst another respondent complained about the use of media for the promotion of its owner’s political interests (“since the owner is politically active, he mostly uses his media to promote his own and similar political views”).

The prevalent view in both the media community and public at large is that the failure to observe the rights of political parties to equal treatment is not the result of a lack of professional knowledge but the pressure exerted on the media. Media editors who were experiencing pressure in the course of 2011 pointed at the ruling political parties (47%), organs of executive power (32%), opposition parties (26%), private companies in their capacity as advertisers (16%) and public enterprises (16%) as the main sources of pressure.

Treatment of Parties in Election Campaigns

Election media coverage in Serbia carries a heavy legacy of the nineties. At the time, the state media were operating as an ideological political service of the ruling party/coalition, and their propagandistic activities were stepped up during each of many election cycles (1990, 1992, 1993, 1997 and 2000). A huge number of participants (between 40 and 80) in the elections were competing in every campaign, and they were treated equally in free-promotion programmes, but extremely unequally in news shows. In terms of electoral communication, not a single election in the nineties could be described as free and fair.³⁶ Media coverage of elections is, therefore, an important indicator of not only normalisation of the functioning of the media, but also democratisation of the election process in Serbia.

Media reporting on election campaigns normalised after the year 2000, but there are still many flaws. The media have failed to come up with an adequate form of election programmes which would not discriminate against election participants, but enable the voters to distinguish the differences among their political platforms, within reasonable time and without much effort required, in an informative, educational and attractive manner. Regulations governing media conduct during elections are imprecise, incomplete and fail to fully comply with the Council of Europe’s recommendations. Deficiencies are present in the rules related to every particular form of election communication – regular journalistic reporting on election campaigns, promotional appearances of election participants, political advertising – since current solutions fail to give precedence to voters’ interests. Paid propaganda became the main form of communication between the parties and the citizens. Paid time slots and ads made up 75% of the total amount of election campaign programmes broadcast by six national TV channels during the 2008 presidential election,³⁷ thereby rendering the objective of legal regulations designed to prevent better odds for election victory of participants with deeper pockets – meaningless.

In addition to voters, political parties were neither pleased with the election coverage. The majority of surveyed party officials (60%) thought that political parties did not or mostly did not have a fair and equal access to the media for the 2008 (general, provincial and local) elections.

Regulations governing the election process in Serbia acknowledge the importance of the principle of equal access to the media for political parties and candidates during an election campaign. This principle is embedded in the media’s obligation to ensure equal representation in reporting “on all the submitters of election lists and candidates from those lists”, as stipulated in the Deputies Election Act (article 5) and the Local Elections Act (article 4). These laws, however, prescribe neither mechanisms of control over the enforcement of this obligation, nor sanctions for its violation.³⁸ Media regulations governing their conduct in the election process include both supervisory mechanisms and sanctions, but media obligations are not accurately defined, hence penalties imposed on the media are rare and mild.³⁹

Pursuant to the recommendations of the Council of Europe, media legislation does not encompass private print media which are allowed to have a recognisable editorial stance and to express particular political preferences. Responsibility for proper election coverage with these media is governed by self-regulatory measures.

The key legal source for regulation of radio and TV broadcasters' operations over the course of election campaigns is the General Binding Instruction to Broadcasters on Conduct in Election Campaigns, which is issued ahead of forthcoming elections by the Public Broadcasting Agency.⁴⁰ These instructions highlight the principle of non-discrimination in various types of all broadcasters' programmes, but fail to specify it in more detail in a clear fashion and pursuant to the public interest. For example, the instructions on news programming do not specify in any form or way how to reconcile applicable journalist standards for current affairs and the relevance of an event, on one hand, and the principle of balance in treatment of a large number of political parties of varying political strengths. The media are required to report in accordance with the "principles of objectivity, equal representation and protection of public interest", but they are also afforded latitude to interpret this obligation as they see fit when reporting on parties with 30% and 3% of electorate support, respectively, and on those who may or may not abuse public office in the state administration for the purpose of promotion of his/her political party.

Due to vague wording of the media rules, broadcasters' comprehension of their obligations varied exceedingly during the 2008 parliamentary election. According to the Public Broadcasting Agency's report⁴¹, in news shows, out of 22 election participants, RTS gave equal treatment to three such participants who received considerably more air time than others; on TV Avala this was the case with four election participants; TV B92 and TV Fox favoured one participant; and TV Košava and Pink gave preferential treatment to two election participants. Reporting of all these TV stations was assessed as non-discriminatory by the Public Broadcasting Agency, but two cases were singled out as problematic. The first pertained to Jagodina-based TV Palma plus, which favoured in particular in all its programmes the coalition (two times more air time than all the other participants) whose leader was also the owner of this TV station. The second was related to Regionalna TV from Novi Pazar, which allocated ten times more air time to one specific election list than all the others put together and whose coverage of political opponents assumed the "proportions of media demonisation". On account of its failure to enforce the principle of equal representation, only TV Palma plus received a public warning.

As regards official promotions of election participants, the Public Broadcasting Agency's regulations comply with the Council of Europe's recommendation on their free-of-charge presentation in the media funded from public revenues. However, the recommendation to introduce proportional (instead of equal) allocation of free-of-charge promotional time slots commensurate with the political parties' respective parliamentary strengths and their abilities to field a maximum number of candidates was not observed. Hence, the media were still producing awkward, tedious and non-informative promotional programmes which the voters rated very poorly.

Paid political advertising is not receiving an adequate treatment given the danger that it may well overwhelm other forms of providing information about contenders for elected public offices. Media are allowed to broadcast political TV ads, but not other types of advertising. Private broadcasters are under obligation to offer their advertising time under equal terms and at the same prices to all election participants, but the CoE's recommendation to limit the total air time dedicated to political propaganda has not been incorporated in domestic rules.

Regulations governing media conduct during elections are neither dealing in an appropriate manner with the specific role of the provincial public service broadcaster RTV, which is broadcasting a large number of programmes in languages of ethnic minorities. Its role during the 2008 provincial election campaign had not been specified, hence, when the national and provincial (and local) elections were held on the same day, what happened was that RTV focused more on the national general election than on provincial polls, thereby duplicating the role of the national public service broadcaster RTS and disregarding its own role of a unique source of information on the provincial general election. Lack of regulations specifying how to meet the needs of voters from ethnic minority communities allowed some RTV programmes in minority languages to drastically favour one candidate from a given minority community over all the others without realising that they were in breach of fundamental principles of a public service broadcaster and that they were violating the democratic character of the electoral process.⁴²

Non-Discrimination of Foreign Journalists

Indicator 6 – Foreign journalists should not be refused entry or work visas because of their potentially critical reports.

Since the change of the regime in 2000, not a single foreign journalist has been denied a work visa in Serbia.

However, domestic legislation allows for a refusal of work visas for foreign journalists under conditions which are not specified.

According to official data, in late 2011, permanent accreditations for work in Serbia were held by 216 foreign press representatives, among whom there were both foreign and Serbian nationals. A significant number of accredited journalists report for foreign media not only from Serbia but also other countries in the region. Except for permanent correspondents, other foreign journalists have been rarely coming to Serbia to report on extraordinary events. In 2011, the arrest of The Hague indictee Ratko Mladić was the only event to have attracted considerable attention of foreign media. Without taking into account permanent correspondents, only one foreign journalist sought accreditation to cover the event, whereas three years earlier, when Radovan Karadžić had been arrested, around 30 media outlets had applied for accreditations.

Under the Public Information Act, foreign natural and legal persons in the field of public information enjoy the same rights and obligations as domestic ones. However, unlike domestic journalists, foreign journalists are under obligation to register and obtain work permit for discharging their professional duties in the form of an accreditation issued, by way of a special decision, by the Ministry of Culture, Information and Information Society. The obligation to register and obtain accreditation is regulated by a law which was adopted 37 years ago in the Socialist Federative Republic of Yugoslavia (the Law on Import and Dissemination of Foreign Mass Communication Media and Foreign Information Activities in Yugoslavia, 1974). Transitional and final provisions of the Public Information Act abolished all the parts of this law except for the one “regulating the status of foreign information dissemination institutions and representatives of foreign mass communication media”.

Under the surviving provision of the abolished former Yugoslav law, a decision on an application for registration of a foreign journalist “shall be made on the basis of free evaluation and shall not be explained” (article 28). Until the year 2000, the provision had been used to deny unwelcome foreign journalists and media entry into the country.

At present this provision is included in the Rules of Procedure governing the operation of the Department for Work with Foreign Media Representatives and Foreign Information Institutions of the Ministry of Culture, Information and Information Society, whose task is to issue accreditations and keep the register of foreign correspondents and bureaux. The Ministry issues two types of accreditations: temporary ones (for special reporters covering individual events, i.e. for journalist work lasting up to 30 days) and permanent accreditations (for permanent correspondents, i.e. for continuous journalistic work of at least a year).

The procedure regulating the status of foreign journalists implies the right of the Ministry of Culture “to refuse an accreditation request” without any explanation. The Ministry is also entitled to alter the conditions for granting accreditations and temporary stay of journalists “without prior notice”⁴³. Neither the conditions and reasons for denying work permits, i.e. refusal of accreditation, nor the conditions under which the procedure for issuing accreditations may be altered have been specified in any manner or form. This legal void allows for arbitrary administrative bans of foreign journalists’ work in Serbia.

That the 1974 legal provision – which is obviously outdated and inconsistent with the guarantee of equal rights for foreign and domestic media representatives – is still in force constitutes a reason for concern about a possible conflict between the domestic law and the said Council of Europe’s principle regarding the work of foreign journalists, even though it has not been enforced in practice since the year 2000 to date.

Freedom to Choose Language of Communication

Indicator 7 – Media must be free to disseminate their content in the language of their choice.

Media legislation in Serbia treats the issue of language from two aspects –the protection of national culture from excessive impact of content in foreign languages and the protection of the right of national minorities to be informed in their own respective languages. As regards the former, the Public Broadcasting Act instructs radio and TV stations to produce and broadcast the programme in Serbian language (except for the programming in minority languages) and to ensure that the programmes in foreign languages (except for music shows) be translated into Serbian (article 72). The issue of dissemination of information for national minorities in their own respective languages is regulated by a string of regulations, which are, however, contradictory and reflect still unresolved dilemmas over viable solutions to financially sustainable, independent and quality minority media outlets.

About a million members of 21 national minorities live in Serbia. Apart from Roma, minority communities are mostly concentrated in specific regions (Albanians in South Serbia, Bulgarians in East Serbia, Bosniaks in Sandžak, i.e. Southwest Serbia), and the majority live in Vojvodina, the northern Serbian province (Hungarians, Slovaks, Romanians, Ruthenians, etc.).⁴⁴ In these parts of the country, particularly in Vojvodina, there is a long-standing tradition of public information dissemination in minority languages. According to the 2010 data, in Vojvodina alone there were 114 media outlets producing at least in part the content in 11 minority languages.⁴⁵

The rights of national minorities in the field of public information are guaranteed by the Constitution, media legislation, ratified international treaties⁴⁶, the Protection of Rights and Freedoms of National Minorities Act and the National Minority Councils Act. In order to ensure the protection of national, cultural and linguistic identity and equality of national minorities, these legal documents stipulate the rights of minorities to freedom of expression, access to all the media, public information in their own respective languages – which is free, comprehensive, timely and unbiased, and the right to establish their own mass media. The Constitution additionally guarantees that the attained level of minority rights may not be lowered (article 20).

And yet, public information dissemination for minorities today is taking place without a consistent media policy. It is caught in the midst of a legal confusion with regard to regulation of state ownership in minority language media, which is the result of political deals and bargaining within the ruling political elite. More recent regulations, adopted by legislators aware of their being contrary to the previously passed legislation, have failed, however, to create conditions for free, unbiased and quality public information dissemination for minorities in their own languages. Out of 50 surveyed members of nine minority communities, who are involved in minority media outlets (members of national councils and their bodies, journalists)⁴⁷, 50% say that they are little (38%) or not at all (12%) satisfied with the media in the language of the minority to which they belong, whilst 42% are partly satisfied and another 2% are completely satisfied.

Two solutions that have been applied in the system of public information in minority languages cause the most controversy in minority communities and the public at large. The first relates to equating the constitutional guarantee that the attained level of minority rights will not be lowered with the issue of ownership in minority media, i.e. the perception of state ownership and direct funding from the budget as the only safeguard for the future of public information dissemination for minorities,⁴⁸ whilst the second is related to the role of national councils as the founders of minority media.

Media policy has been vacillating for the whole past decade between the commitment to state ownership and the argument against it in the minority language media, and it keeps failing to focus the issue of minority media on the funding mechanisms in which the state may also participate by way of state subsidies. Media transition had started (2002/2003) with the intention to free the media sphere from state influence and an obligation to privatise all the media. This process came to a halt in case of media outlets broadcasting

programmes for minorities in late 2007, with the rationale being that there were no guarantees that private owners would keep such a programming production on account of not being profitable due to small audiences, i.e. that they would probably pull the plug on such programmes, thereby lowering the already attained level of minority rights. In the following four years, no appropriate model for privatisation, i.e. the financing of minority language media, was found.

In 2011, a working group of media and journalist associations, which prepared the Media Strategy Draft, reaffirmed the commitment that the state should not own the media and went on to propose that public enterprises, which were producing, in part or in whole, minority language content be privatised in accordance with a special programme which would ensure the continuity of this function. It was envisaged that minority media outlets operate as either commercial or entities of the civil sector, and that they be supported through project co-financing mechanism by local self-government units, the Province of Vojvodina and the Republic of Serbia. Opposition to such a prospect, just like the first time, refocused the argument on the issue of ownership along with the insistence on unacceptability of lowering already attained level of minority rights which would be inevitably threatened by the privatisation. The Government agreed to exempt the minority language media from privatisation in the adopted version of the Strategy in September 2011. The issue of public information dissemination for minorities was thus brought back to the point where it had been in 2007, the difference being that the disputed model of national minority councils as management bodies of minority language media and the state as a budgetary financier was, in the meantime, legalised and promoted in the Strategy as the final model for sustainable minority media.⁴⁹

Under the decision of the Serbian Government to suspend temporarily the privatisation of the media outlets broadcasting in minority languages, in early 2008, twenty public enterprises whose founders were local self-governments were exempted from the process. In fact, the Government's decision served as an alibi for suspension of the privatisation process in many municipalities which invoked the tradition of broadcasting programmes in minority languages or whose public media enterprises promptly introduced such programmes. Until 2010, the number of privatisations suspended on these grounds rose to 38. In addition to 15 public enterprises in Vojvodina and another seven in other parts of the country with ethnically mixed population (Dimitrovgrad, Bujanovac, Medveđa, Vranje, Novi Pazar, Tutin and Raška), the opportunity which presented itself was seized by media companies in Arandelovac, Aleksinac, Čuprija, Jagodina, Kragujevac, Kruševac, Lajkovac, Lazarevac, Niš, Paraćin, Petrovac na Mlavi, Požarevac, Smederevo, Trstenik and Šabac, as well as Belgrade-based *Radnička štampa*, one of such two publishing companies. These media have been continuously financed from the state budget, but the impact of budget funds spending on public information dissemination for minorities, whose needs they allegedly serve, have never been analysed.

In minority communities, state ownership has been widely accepted today as the best solution to the status of minority language media. Out of 50 surveyed members of minority communities engaged in minority institutions, 56% believe that the most important achievement of present-day legal solutions is that sustainability of minority media has been ensured, whilst 50% are of the opinion that the threat to acquired minority rights has been thus dispelled. Other positive effects have been mentioned by 16% or fewer respondents. A vast majority of those surveyed – 88% – are not aware of any successfully privatised minority language media outlet, whereas six, out of 50, cite the examples of Radio Srbobran or newspaper “Zrenjanin”.

The right of national minority councils to be the founders and to manage minority language media, while the state is providing funding directly from the budget, was formally introduced in 2009 by the National Minority Councils Act, but such a set-up had been in place in practice since 2004 in Vojvodina as the result of a political deal within the then ruling parliamentary majority.⁵⁰

Experiences with national minority councils' activities in their capacity as media founders are not encouraging. National minority councils have not improved the functioning of minority media in any department plagued with problems – poor technical and technological working conditions (inadequate space and outdated equipment), low level of education and professionalism of journalists, low diversity of

content, aging newsroom staff and low motivation of journalists.⁵¹ Most objections relate to unrestricted interference of national minority councils in everyday operations of the media outlets whose founders they are. Minority councils exert influence on the spending of financial resources as well as business, HR and editorial policies of these media outlets. Namely, as founders, the councils are vested with the authority to appoint management structure, and consequently select general managers and editors-in-chief, while their remaining powers and obligations, including journalist rights, are regulated by the statutes of national minority councils and media companies, which they adopt themselves, instead by a general legal act. In practice, this means that national minority councils are not held to account for either the spending of budgetary funds or the quality and development of minority language media outlets, while such institutionalised balance of power allows them to wield unlimited influence on the editorial policy. National minority councils are the bodies akin to a political structure given that their members are elected from lists featuring politicians, hence, the nature of their impact on editorial policies is, above all, political.

Two cases of personnel changes in 2011 testify to the danger of minority media turning into mouthpieces of minority political parties or elites. The Hungarian Minority Council passed a decision to dismiss editor-in-chief of daily newspaper “Magyar Szó”. Director of RTV Panon was also sacked under the influence of the Hungarian Minority Council in its capacity as the co-founder. This broadcaster was reproached for failing to cover events of special interest to the Hungarian national community, i.e. the activities of a political party – the Alliance of Vojvodina’s Hungarians, and the speaker of Vojvodina’s parliament who was the leader of this party with a dominant position within the Hungarian Minority Council.

There are no solutions for the time being, either legal or institutional ones, which would prevent or restrain political influence of national minority councils on minority language media outlets whose founders these councils are.

Negative views about the national minority councils’ interference in the work of minority media are also widespread among the members of minority communities who are engaged in the field of minority language public information or work in minority language media outlets. Out of 50 surveyed members of minority groups, 40% believe that the transfer of founding and management rights over minority language media to national minority councils has yielded more good than bad results, whereas 52% have taken an opposite view. Three quarters of respondents (72%) are of the opinion that national minority councils have no instruments at their disposal whereby they could advance the operation and development of minority language media, whilst 62% hold the view that minority media have no instruments by way of which they could protect themselves from interference in editorial policy by national minority councils. As the most negative consequences of the transfer of founding rights to national minority councils, 40% singled out unrestricted influence of national minority councils on editorial and HR policies of minority media, 34% - unrestricted influence on business policy, and 32% – that this violates the fundamental principles of a media system entailing discontinuation of direct state funding of media. About a fourth of those surveyed (approx. 24%) believe that the credibility of minority language media has been undermined and that self-censorship in these media has been on the rise.

Dysfunctionality of public service broadcasters, which are given a prominent role in public information dissemination for minorities by the Public Broadcasting Act, remains overshadowed by the dispute over state ownership and the roles of national minority councils in minority language media outlets. True enough, the role of public service broadcasters in this respect are not specified in a precise and measurable way (respect for “national and ethnic pluralism” of ideas and opinions, and “taking into account” specific social groups such as minority and ethnic groups). For years, the national public service broadcaster, RTS, has been ignoring the fact that Serbia is a multiethnic society and that this broadcaster is under obligation to provide for expression of cultural identity of national minorities. According to the 2010 Public Broadcasting Agency’s report, RTS dedicated 0.45% of its airtime to special social groups, including national minorities, children and youth, disabled persons and vulnerable groups in terms of social and health care, on its Channel 1, and 1.84% on its Channel 2, out of its total annual output. On the other hand, the provincial public service broadcaster, RTV, dedicates significant amount of airtime to minorities. And yet, RTV audience surveys show that radio and TV programmes in individual minority languages are characterised by small output, poor genre structure and low production standards.

Protection of Confidentiality of Information Sources

Indicator 8 – Confidentiality of journalists' sources of information must be respected.

National legislation acknowledges crucial importance which the protection of confidentiality of information sources has for the freedom of media and journalistic profession, above all the dissemination of information to the public about issues of public interest. Court proceedings against journalists for failure to disclose sources of information are exceptionally rare, but one such case was instigated in 2011. There is fear in journalist communities that a provision of the Electronic Communications Act which is related to the laws on the operation of security services and internal affairs organs leaves room for undermining confidentiality of journalists' information sources.

The Public Information Act defends explicitly and clearly the journalist's right to journalistic secret and goes on to specify that "a journalist is not obliged to reveal data related to his/her source of information" (article 32). The Criminal Code also protects the journalist's right not to disclose the identity of the author of the information or source of information in case of a criminal offence perpetrated via media (article 41). Pursuant to universally accepted limitations on freedom of expression, this right is not absolute.

These two laws, however, fail to comply with the Council of Europe Ministerial Committee's recommendation that the limitations be clearly based on legitimate interests corresponding to one of the reasons listed in the European Convention for the Protection of Human Rights (interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, etc.). Both domestic laws restrict the journalist's right to protect his/her source to the information pertaining to criminal offences punishable by less than five years' imprisonment, regardless of the type of criminal offence.

Court proceedings against journalists for failure to disclose their source of information are very rare in Serbia. However, in late 2011, the Prosecutor's Office in Novi Sad brought charges against two journalists of "Nacionalni građanski" daily newspaper, correspondent Jelena Spasić and editor-in-chief Milorad Bojović, for publication of the article entitled "State Organs Are Completely Unprepared for War". The article featured data from the 2010 Ministry of Defence's report on the state of preparations for defence in Serbia. The Ministry's report, classified as "secret", had been sent (by post) to the members of the Serbian National Assembly's Committee on Defence and Security. It revealed that many state organs and state-run public enterprises were ignoring the preparations for the defence of the country as stipulated by law. The journalists were accused of disclosing data designated as state secret and inflicting damage to the security of the state, as well as of concealing the perpetrators of the criminal offence, i.e. the failure to disclose the source which had provided them with the said report.

All professional associations and a large number of journalists, as well as prominent political and public figures, NGOs and international media organisations, stood up for the two journalists, citing the interest of the public to be informed about the state of the country's defence and protesting against the secret trial of journalists. Despite the Serbian state prosecutor's announcement that the charges against the two journalists would be dropped, the Basic Court in Novi Sad undertook to reconsider the charges in late October 2011, being of the opinion that it was necessary to carry out an investigation for the purpose of better and more comprehensive clarification of the circumstances surrounding the case.

Concern of the media community and public that there are no sufficient guarantees for respect for confidentiality of journalist information sources was also caused by the Electronic Communications Act, adopted in 2010. The law allows for violation of the principle of secrecy of communication if necessary for criminal proceedings or the protection of security of the Republic of Serbia, and it also allows for interception of telephone and Internet communications by way of which the content is revealed (recording, copying and wiretapping), without the consent of the user, albeit for a definite time and on the basis of a court decision (article 126). For the same reasons (for the purpose of conducting investigations, crime

detection and criminal proceedings, protection of national security and public safety), this law imposes an obligation upon electronic communication network operators (i.e. Internet service providers – ISPs, landline and cell phone network operators, etc.) to retain for a year specific data on citizens' electronic communications, such as those that pertain to identification of the type of communication, its source and destination, as well as the beginning, duration and the end of a communication, identification of user's terminal equipment and its location (article 129).

The reason for concern, which sparked strong opposition in 2010 to the stipulations from the Electronic Communications Act, are the provisions on civilian and military security agencies specifying that security services and internal affairs organs may gain an insight into the retained data without a court decision authorising them to do so. Under these laws, for the reasons of urgency, director of the Security Information Agency or defence minister, with the endorsement of the National Security Council, may order, instead of a court of law, a departure from the constitutional guarantee of secrecy of communication. Even though the Electronic Communications Act prohibits retention of data by operators which reveal the content of communications, domestic and foreign professional associations were of the opinion that the retained data, revealing who was communicating with whom, when, for how long, via which type of terminal equipment and from which location, constituted a threat to the right of journalists to protect secrecy of their sources but also justified potential sources' fear of communicating with the journalists.

In a parliamentary discussion on the law, an amendment stipulating that the police and the Security Information Agency needed a court decision authorising insight into the data on electronic communications kept by the operator was dismissed. Instead, another amendment stipulating supervision of the law's implementation by the Commissioner for Information of Public Importance was passed.⁵² In September 2010, the Commissioner and the Protector of Citizens (Ombudsman) filed a motion with the Constitutional Court requesting evaluation of constitutionality of the Electronic Communications Act, but the Constitutional Court has not reached a decision on this matter as yet.

Dilemmas over this issue lingered on over the course of 2011, coming to the fore in a public discussion on the Draft Rules on Technical Aspects of Interception and Data Retention Related to Electronic Communications.⁵³ Following fierce criticism⁵⁴ that the draft rules were giving security services even more leeway to access the data on personal communications of citizens at will and without a judicial review, the draft rules were withdrawn and have never been adopted.

In a survey of news media editors, 12 out of 240 respondents (5%) said that pressure was exerted on them in 2011 to reveal their sources of information, while only one of those surveyed mentioned a case of court proceedings instigated against the media in 1999. Pressure on news media editors originated from the police, municipal authorities, political parties' officials and senior managers of public institutions.

Limitation of Exclusive Reporting Rights

Indicator 9 – Exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information.

Ever since 2002, domestic legislation has been approximated to the European Convention on Transfrontier Television, which protects in a particular fashion the right of the citizens to information in cases where a broadcaster (or several broadcasters) have exclusive reporting rights concerning events of great public importance on one's own or a foreign country. The application of the law in this field started as late as 2010 following Serbia's formal ratification of the European Convention on Transfrontier Television in 2009.

In its nature, exclusive coverage (typically commercial in its character) enables the audience of the broadcaster(s) in possession of exclusive rights to receive information, but, at the same time, deprives other parts of the audience of such an opportunity. To avoid the threat of limitations to the right of the public to freely receive information, the European law introduced a special form of its protection. The safeguard relates to the events of public interest and guarantees the right of all the segments of the audience to receive relevant information on these events in unencoded form, either in live coverage or deferred coverage, via any broadcaster, because everyone is allowed to report on the said events, at least briefly.

The Public Broadcasting Act introduced these standards to domestic legislation by way of regulating TV broadcasting rights for the most important events (article 71). The law empowers the Public Broadcasting Agency to compile a list of events which are of interest to all the citizens of the Republic of Serbia and whose exclusive coverage on the part of individual broadcasters shall not undermine the right of the public to be informed about them. The holder of exclusive broadcasting rights for an event from the list compiled by the Public Broadcast Agency is under obligation to enable all other interested broadcasters to film and broadcast short reports on the event whose maximum duration may be 90 seconds and which shall contain authentic picture and sound of the event.

Under the Public Broadcasting Act, a possibility to negotiate exclusive broadcasting rights for an event of general public interest is solely available to broadcasters whose area of coverage encompasses the whole territory of the Republic of Serbia. Such a provision precludes a situation where a part of the citizens of Serbia would be deprived of access to some of the most important events if exclusive broadcasting rights for such an event were held by a broadcaster with local or regional area of coverage.

Given that Serbia ratified the European Convention on Transfrontier Television as late as 2009, the Public Broadcasting Agency compiled its first list of events of interest to all the citizens for the year 2010. The 2011 list was compiled in advance – on the 8th of December 2010. The list features only cultural and sporting events. Music, film, theatre and fine arts events add up to a total of 20 cultural events on the list, whereas sporting events listed are world, regional and domestic competitions in football, basketball, volleyball, handball, waterpolo, tennis, track and field, swimming and cycling.

Proportionality of Privacy Protection and State Secret

Indicator 10 – Privacy and state secrecy laws must not unduly restrict information.

Legal protection of privacy is well balanced against the protection of the right to expression and information. Conversely, there are serious problems in the enforcement of the Data Secrecy Act which imposes restrictions upon the work of the media as well as the right of the public to information about matters of public interest.

Privacy Protection

Serbia is a party to the European Convention on Human Rights and Fundamental Freedoms which, along with the protection of the right to freedom of expression, ensures protection of the right to respect for private and family life. This requires striking a fine balance and measure in case of a conflict between two rights.

Whilst the Criminal Code (2005) primarily protects the right to privacy and specifies circumstances under which a violation of privacy constitutes a criminal offence,⁵⁵ the Public Information Act (2003) sets limits on the right to privacy so that the freedom of expression and the right to information would not be disproportionately restricted. The Public Information Act stipulates that the information from someone's personal life may not be published without the consent of the person concerned if, upon publication, the identity of the person in question may be inferred (article 43). However, the law also features a long list of exemptions from this rule (article 45), among which the most important is that the consent for publication is not required if the information pertains to a person, phenomenon or event of public interest, particularly if it pertains to a political or public office holder performing state-related or political functions, where the publication of such information is important given the fact that the person in question performs such a function.

Under the Public Information Act, a person whose right to privacy has been breached may file a lawsuit against the responsible editor of the media outlet and demand non-publication of the information, erasure of the video and audio recording, destruction of the negative, removal from the publication, etc., as well as compensation of material and non-material damages, and publication of the court ruling. The right to privacy is also protected from abuse for commercial purposes, hence a person whose right has been violated may demand in his/her charges against the founder of the media outlet a part of the profit accrued by publication, commensurate to the degree to which his/her personal record or private data contributed to the generation of profit.

Code of Professional Conduct also stipulates journalists' obligation to respect privacy. The Code of Journalists of Serbia features rules on respect for privacy, dignity and integrity of a person, avoidance of speculations in reporting on accidents and tragedies, reflection of empathy and discretion in situations when private persons have suffered personal pain, and protection of the rights of children. However, according to the journalist associations, the most frequent violations of journalist ethics pertain precisely to infringement of the right to privacy.

Protection of State Secret

Until recently, data secrecy was regulated by a plethora of various and discordant regulations, which, in practice, was conducive to serious legal insecurity and reluctance on the part of journalists to delve into topics pertaining to state or military secret or documents designated as confidential. Some progress was made in 2009 with the passage of the Data Secrecy Act. Regrettably, the law failed to regulate the protection of business secret, hence, this issue has remained completely unregulated. Nevertheless, this piece of legislation has established a uniform system for classification and protection of secret data which are of interest for the national security and public safety, defence, internal and foreign affairs, protection of

foreign classified data, access to classified data and their declassification, powers of competent authorities and supervision of the implementation of this Law, accountability for non-implementation of obligations arising from the Law, as well as other issues of importance for data secrecy protection. The law, on one hand, stipulates a duty of a person in possession of secret data to keep it regardless of the manner in which the person has obtained such data. On the other hand, it is expressly stipulated that the data designated as classified with a view to concealing crime, exceeding authority or abusing office, or with a view to concealing some other illegal act or proceedings of a public authority, shall not be considered classified.

There are, however, serious problems in the implementation of the Data Secrecy Act. Many by-laws which are required for its enforcement have not yet been passed. There are no clear standards in place to regulate the content of various levels of data confidentiality. Supervision of the implementation of the law is not being conducted due to lack of necessary resources on the part of the competent Ministry of Justice. A review of documents formally designated as confidential under the old regulations is also overdue.

Charges brought against Jelena Spasić, a woman journalist, and Milorad Bojović, editor of “Nacionalni građanski” newspaper, for a criminal offence under the Data Secrecy Act testify to what an extent the problem of incomplete regulation of this area may threaten media freedoms. These two journalists were charged in late 2011 with publication of an article citing data from a report of the Ministry of Defence, which was classified as “secret”, on the state of preparations for defence in Serbia in 2010. The article showed that state organs and state-run public enterprises were ignoring the preparations for the defence of the country as stipulated by law. In the opinion of the media community and other human rights stakeholders, the article served in a legitimate manner the justified right of the public to be informed about the state of the country’s defence.

Protection of Journalist Labour and Social Rights

Indicator 11 – Journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence.

There are no official statistical data on the economic and social position of journalists. Based on available (partial and inaccurate) data, a conclusion may be inferred, however, that journalists are the biggest victims of the media system transition in the past decade. They enjoy no economic and social protection which is required so as to perform successfully their important societal role. Journalism today is lowly ranked in terms of prestige, highly stressful, labour-intensive, poorly paid, hardly creative and unpromising profession from which those involved in it would gladly escape if they had any options.

The process of inception and development of media industry in Serbia relies on intensive exploitation of journalists as its most valuable resource. Conditions under which such a process was launched (deliberately fomented chaos, predominance of political influence, decline in educational level of journalists), and then continued unabated (formation of an excessive number of small media outlets, unsuccessful privatisation, lack of investment capital, poor advertising market distorted by various forms of unfair competition, financial imperative of cheap production, overlapping of commercial and political interests, growing ownership concentration, falling behind in terms of technology), pushed the journalists to the brink of exhaustion which, in the midst of the global economic crisis, is now threatening the survival of the journalistic profession itself.

Three quarters (75%) of the surveyed editors from 240 news media believe that the biggest problem of Serbian journalism today is their economic position. At the same time, a half of them (51%) see unfavourable economic conditions as the central problem of their respective media outlets. Journalist associations warn that present-day position of journalists is worse than ever in the past decade as well as that it represents one of the key limitations on media freedoms.

Labour rights of media professionals are not protected beyond the minimum guaranteed by the Labour Act for all the other employed workers.⁵⁶ Somewhat broader rights for journalists had been enforced by the Separate Collective Agreement for Graphics, Publishing, News and Film Industries of Serbia, which expired in 2005. As of May 2011, Serbia has not even had the General Collective Agreement in place, signed in 2008 by employers, trade unions and the Government, which had enforced some additional rights for all the employees.

Given the lack of any protection specific to their profession, journalists find themselves in a generally unfavourable social position shared by all the employees in Serbia. Over the course of the past 10 years, 358,000 people have been made redundant. In late 2011, the unemployment rate was 24%, while the minimal wage was about 17,000 dinars, and the average pay totalled about 38,000 dinars. Out of 215,000 employers, at least 130,000 are not paying social contributions for their employees, thereby violating the rights of around 700,000 out of a total of 1.7 million employees in the country. Employers have most often been in breach of the Labour Act by way of failing to pay out earnings for regular and overtime work but also by unlawful lay-offs.⁵⁷ And yet, the position of journalists is worse than that of other professionals with which it used to be comparable earlier (predominantly the public sector employees – in education, health care and science).

Principal characteristics of the unfavourable position of journalistic profession have been conspicuous for a number of years: job insecurity, small salaries, lack of social protection (76% with permanent employment, 83% with health care and retirement insurance), low standing in the society (ranking above only shopkeepers and farmers), sense of lost credibility, and erosion of self-respect.⁵⁸ According to a 2011 survey conducted by the Faculty of Political Sciences⁵⁹, journalists work hard and earn little; they receive their salaries irregularly and often have no health care insurance; they are forced to seek additional revenues from activities outside journalism; they live under stress and pressure; they are frustrated and

concerned about their future; and they have low level of self-esteem due to their working and living conditions. Journalism today is, typically, more so the preserve of women than of men, just like other poorly paid jobs.

Journalist trade unions estimate that the working conditions for journalists are better in public media enterprises than in privately owned media companies. The workload is smaller, working hours are more flexible and salaries are higher in the former, whereas in the latter media companies the workload is bigger, there are no strict rules and job security is lower. Part-time contributors find themselves in the worst position in both the public media enterprises and private media companies as they do not enjoy even a minimum of protection under the Labour Act, hence they may be dismissed at any given moment, and they are not even entitled to other benefits enjoyed by full-time employees (public transport benefits, meal break and holiday allowances, etc.).

According to the survey mentioned above, almost 60% of journalists fear losing their jobs. Their fear is justified because there are increasingly fewer jobs in the country and the competition on the labour market is getting fiercer. As many as 17,000 candidates applied for 100 vacancies in a public competition announced by RTS which was seeking young experts of different profiles in mid-2011. How many journalists out of about 6,000, as registered in 2002⁶⁰, have become jobless is not known. The estimates are that about 2,000 have been sacked in the past two years only. In early 2011, a lay-off of around 400 employees was expected in the biggest media companies (*Ringier Axel Springer*, TV Pink and RTV B92). According to media reports, in the course of the last year, 31 out of 350 employees of *Politika Newspapers and Magazines* (*Politika novine i magazini*) were additionally sacked; 17 out of 74 employees at Regionalna televizija in Novi Pazar; 5 out of 20 at Radio Požarevac; 5 out of 11 at Radio Pirot; 4 out of remaining 9 (17 before the 2009 privatisation) at RTV Smederevo... According to the employees, ineligible journalists at *Blic* daily and *NIN* weekly were offered a non-existent status of a "journalist associate" and an "assistant photographer" for half the monthly pay or notices of dismissal if they did not accept it, while at TV Pink the data obtained through wiretapping of employees were used as an excuse for redundancies.

In the 2007 survey, only 16% of journalists held the view that they were adequately paid in comparison to other professions. Average journalist salary is low, certainly not above the average monthly pay in the country, and it is for the most part higher in public media enterprises than in privately owned media companies. According to some sources, the average monthly salary is about 30,000 dinars (approx. EUR 300)⁶¹, whereas other sources say that it amounts to about EUR 400 in Belgrade and that it hovers around the minimal salary in local media⁶², which is similar to the situation in some countries in the region.⁶³ Data are not accurate as many media owners officially pay minimal salaries as well as a part of journalists' earnings in cash instead of into banking accounts. According to the survey encompassing 240 (news only) media, the average salary in 72% of the media outlets was up to 30,000 dinars or lower, while the salaries in 3% of the media were on average above 50,000 dinars.⁶⁴ At RTS, a journalist with a university degree outside the news department receives a salary between 40,000 and 50,000 dinars, in Bujanovac and Preševo – 31,000, at Regionalna televizija in Novi Pazar – 25,000, and at Radio Televizija Smederevo – 19,000 dinars.

In many media outlets these low journalist salaries are late. At 36% of the surveyed 240 news media, the salaries were typically overdue, and at 4% they were not being paid out for some time, while at 20% of news media health care and retirement contributions were not regularly or not paid at all. Journalists go on strike only when they reach the existential minimum, but even then these strikes are rarely effective. According to media reports, the employees of Kragujevac-based weekly "Svetlost" went on strike after 12 months without pay and even more than a year without their health care insurance (after a nine-month-long strike, the privatisation contract with the then owner was cancelled). Journalists of Niš-based TV5 had been on strike for two months, without suspending the broadcasting of the programme, until they were promised by the employer that 14 outstanding minimal salaries would be paid out. At Radio Despotovac, the owner owed nine monthly salaries to the employees. It was not until the employees went on strike that the Privatisation Agency terminated the privatisation contract, leaving the bank account blocked due to overdue contributions for the whole of the previous year. TV Avala employees staged a strike in protest over overdue salaries for the past five months and even longer non-payment of health care insurance

contributions. The owners were ignoring strikers for weeks on end only to send a message eventually that there was no money for their salaries and that poor business results were the consequence of their poor quality work. Journalists of Radio Televizija Smederevo were on strike two times within less than a year. The second time the strike was staged in protest over three overdue monthly salaries and several months of non-payment of other allowances. On the eve of the announcement of the third consecutive strike, four employees who had been the most active in organising the previous strike were made redundant. Journalists of public media enterprise Radio Televizija Kragujevac also went on strike over overdue but also low salaries which were below the national average.

Journalist associations were of the opinion that the situation in the media in 2011, from professional and social standpoint, was worse than in the previous year. The current situation is perceived as alarming as it is conducive to poor, frightened, obedient, unmotivated and self-censored journalists, unprepared to stand up for their labour-related and professional rights.

Poor economic position of journalists has another detrimental impact. Preoccupation with economic and social problems is preventing Serbian journalists from rising to new challenges of the ongoing revolution of information and communication technologies. Albeit with a little delay, they are relatively well versed in the new media and “believe that journalism will be based on multimedia platforms, but that it will not substantially change”.⁶⁵

Journalist Freedom of Trade Union Organising

Indicator 12 – Journalists must not be restricted in creating associations such as trade unions for collective bargaining.

Serbia's legal regulations protect the freedom of trade union organising. Trade unions are established without prior approval by way of their entry into the register. The right of journalists to organise freely their professional associations is also acknowledged by the Public Information Act (article 33). However, most journalists are not members of trade unions due to either fear of employers' retribution or distrust of trade unions' effectiveness to protect their rights. Media professionals have no either general or separate collective agreement. There are individual agreements in place (collective agreements with individual employers) in some larger public media outlets.

Official data on journalist trade union organising are not available. The only two representative trade unions in media companies – the Confederation of Autonomous Trade Unions of Serbia (comprising the Autonomous Trade Union of Employees in Graphics, Publishing, News and Film Industries of Serbia) and the United Branch Trade Unions "Independence" (comprising a media branch trade union) – do not go public with the data on their members from the media sector. Efforts to establish a professional journalist trade union has not been particularly successful. The only trade union of this kind – the Journalist Trade Union of Serbia (formed in 2003 under the auspices of the Journalist Association of Serbia) – has failed to achieve representativeness. This trade union claims to have about thirty branches in Serbia and membership in larger media outlets in Belgrade.⁶⁶

The majority of journalists are not trade union members. According to the available data from 2011 surveys, fewer than 10% of journalists have joined trade unions,⁶⁷ while trade union organisations are present in 22% news media outlets.⁶⁸ However, in some media companies, there are several trade union organisations which effectively saps their negotiating power except when they act together.⁶⁹

Trade unions are managing to conclude individual collective agreements only in media outlets fully or partially owned by the state such as Radio Television Serbia (RTS), Radio Television Vojvodina (RTV), Tanjug news agency, "Politika", and "Večernje novosti". In May 2011, the General Collective Agreement (signed in 2008) expired, but the new one has not been concluded as yet.

A separate collective agreement applicable to graphics, publishing, news and film industries of Serbia, signed in 1997, ceased to be in effect in 2005. There is a preliminary draft of the Separate Collective Agreement for Journalists and Other Employees of Media Outlets,⁷⁰ but the negotiations have been stalled for years. Trade unions, in fact, have no one to negotiate with because no media employer association represents a minimum of 10% of employers with at least 15% of all the employees in the media sector, which would make such an employer association both a representative and eligible negotiating party. The only initiative to bring together media sector employers, which was launched in 2006 by the largest employer group – the Media Association (comprising the majority of the biggest media companies like Ringier, Color Press, Novosti, Politika, etc.), at the proposal of the Journalist Trade Union of Serbia, was unsuccessful. Employers are not interested in collective bargaining since, in their view, the existing Labour Act grants too many privileges to employees vis-à-vis employers' obligations, hence they consider the obligations arising from the General Collective Agreement too much of a burden to themselves.⁷¹ Trade unions have been requesting for quite a while that the 10% employer representativeness threshold be lowered in this sector. The state, however, has failed to show any willingness to help unblock the social dialogue in the media sphere.

As a rule, trade union organisations are not being established in private media companies, but they may be found in such entities, albeit rarely, as a legacy of the pre-privatisation period. Trade union leaders⁷² experience suggests that journalists give up the fight for their rights out of fear of retribution at the hands of private media owners. Given the extensive powers bestowed upon employers and stiff competition for

jobs, media owners are in a position which is considerably superior to that of their employees. The owner may change unilaterally the internal Rules of Procedure and reduce salaries, preclude automatic transition after a year-long engagement (fixed-term employment contract) to permanent employment contracts of indefinite duration as well as make journalists redundant. There are media proprietors who make a permanent employment contract conditional upon prior signing of a blank resignation letter.

Private media owners often do not respect trade unionist rights. Moreover, they exert the strongest pressure precisely on trade union members. For example, the owner of Radio Television Smederevo, following the announcement of a third consecutive strike of its employees, where the previous two had failed to result in an improvement of the position of journalists, sacked in August 2011 presidents of two trade unions as well as chairman and a member of the strike committee who had organised previous strikes. Management of Kragujevac-based newspaper "Svetlost" threatened trade union members with redundancies after they had organised a strike in February 2011, which was to last nine months, due to unpaid 12 monthly salaries. Pressure and harassment of trade union members are not a rare occurrence in state-owned media either. In May 2011, the trade union "Independence" of Public Enterprise Radio Television Kragujevac staged a warning strike due to not only irregular payments of small salaries but also harassment of trade union members. Trade unionists at the state-owned public enterprise Radio Požarevac also complained of having been exposed to pressure exerted by the employer on account of their opposition to its abuses of office.

Another reason for poor trade union organising among journalists is their lack of trust in trade unions as an institution of labour rights protection, which is something that journalists have in common with general population. According to 2010 public opinion polls, 19% of citizens trusted the trade unions, whereas 47% had no trust in them at all. Trade unions are often perceived as dependent institutions, linked to the centres of power whose interests they are effectively promoting.⁷³ Citizens who have no trust in trade unions believe that the government is not interested in a social dialogue in the field of labour and that it is reluctant to allow the existence of independent and strong trade unions. In their view, trade unions in state-owned public enterprises are protecting the interests of company management, i.e. the political party wielding the most influence over a given state-run media company, while in privately-owned, particularly small and medium-sized, companies, trade unions protect the interests of owners or personal interests of trade union leaders.

The Public Information System Development Strategy, adopted by the Government of the Republic of Serbia in September 2011, fails to tackle the economic status of journalists as an important problem in the media sector. Improvement of their economic position is only once mentioned in the strategy as an objective which the state will strive to achieve through "advancement of the regulatory framework and various forms of state assistance". A proposal put forth by the Journalist Trade Union of Serbia to introduce in the strategy's action plan a mandatory obligation to form a representative employers' association, establish a social dialogue and conclude as soon as possible a branch collective agreement was not adopted.

Protection of Editorial Policy Independence

Indicator 13 – Media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism.

Editorial independence is a principle which is implied as desirable in the media legislation, but is not protected in any particular way by either general legal norms or statutes of individual media organisations. The media legislation is particularly lacking with regard to its treatment of the professional autonomy of the media enjoying the status of public enterprises and the minority language media whose founders are national minority councils and which are dependent in institutional, financial and personnel-related terms on their founders. In practice, journalists have no specific mechanisms available to protect themselves from owners' interference in daily editorial policy. In private media, such an influence is exerted as the result of a complex interaction of the interests of media newsrooms and the interests of owners.

Legal regulations treat editorial independence as part of the concept of free information dissemination, which is enshrined in both the Constitution and principal media laws. The Public Information Act prohibits any, including indirect, restrictions to the freedom of public information, "particularly by the abuse of state or private authority" (article 2), or the abuse of rights, or in any other manner apt to restrict the free flow of ideas, information and opinions. This law also prohibits "any physical or any other pressure on a public media outlet and its personnel" (ibid.) as well as any influence apt to hinder their work. These provisions, particularly in the part prohibiting restrictions to the freedom of public information by the abuse of rights, would necessarily have to pertain to the abuse of owners' rights. The Public Broadcasting Act incorporates the principle of "freedom, professionalism and independence of public service broadcasters" and the prohibition of "any form of censorship and/or influence on the work of public service broadcasters, whereby their independence, the independence of their newsrooms and journalists is guaranteed" (article 3) – as the fundamental tenet for the regulation of relations in the field of public broadcasting.

However, protected autonomy of journalist newsrooms which the media laws refer to has a very narrow meaning. Journalists are only expressly guaranteed the right, without sanctions (loss of a job, salary cut or demotion), to publish (truthful) assertions and to refuse to obey an instruction which would violate legal and ethical rules of journalistic profession or contravene the editorial concept of a public media outlet (article 31 of the Public Information Act). While in some countries (for example in Croatia) the media laws prescribe an obligation to regulate the relations between the owner and the journalist newsroom by a special legal act (for example the statute), which defines the rights of both parties in the sphere of professional competences, this is not the case in Serbia.

Codes of conduct or mutual contracts which formalise the relationship between the owner and journalists and formulate the content and conditions for fulfilment of an independent editorial policy do not exist in either private or public media outlets, although the need for their existence is undoubtedly felt. Lack of willingness on the part of media owners – be it private proprietors, state owners or, as of recently, national minority councils – to define the area of professional journalist autonomy may be easily explained by motivation to exert influence on the media content. In absence of self-regulation tradition and without clear legal support, journalists do have, however, some power to secure for themselves a space of professional freedom.

The institutional structure of the state's influence on publicly owned media has not changed for decades. In public media enterprises there are two modalities of controlling influence on the content of media production – financial and personnel-related. The state, in its capacity as the owner, behaves towards the media as with any other type of public enterprises over which it has broad powers. Direct financial and personnel-related dependence on the founder places public media enterprises in service of the vested interests of the founder, above all executive organs, i.e. the dominant political parties in these bodies. Public

media enterprises, despite their business operations on the media market, are failing to achieve financial independence, hence they turn to their founders – the state, territorial autonomy and local self-government – for financial assistance in relation to which the founder makes decisions on its own, allocating the funds from the budget. Financial dependence on the budget, i.e. the vested interests of ruling parties, are present with still unprivatised media outlets, those whose privatisation has been annulled and the minority language media. State financiers are entitled to appoint members of public media enterprises' management boards and to control personnel policy, ranging from appointments of general managers through to employment and lay-offs of journalists. General managers wield broad powers in their own right with regard to not only running the business but also in the domain of editorial policy, and these powers become particularly extensive in the event of merging the management function with that of the editor-in-chief, which is something that is allowed.

According to statements from interviews with editors from 12 cities and different types of media outlets,⁷⁴ the pressure exerted by executive organs of power is the strongest in relation to staff recruitment at public enterprises. Therefore, appointed directors "know themselves what they are to do" as they are easily replaceable. Journalists testified to the fact that the employment of new staff in newsrooms was carried out in some cases "by quotas for each political party in the ruling coalition" and that the parties were employing either their deserving members or "their trusted people". Appointments of party members as media managers reduce the need for pressure: "When a ruling party member is a television director, there is no additional pressure because it goes without saying that everything coming from 'the top' must be broadcast, and everyone does his/her job obediently to the best of their abilities." When necessary, business-related "deals are struck in the offices of local public officials", who are then presented to the media as partners in the "necessary team work", or through PR offices ("a smart mayor will not send instructions directly, instead his PR official will do it for him") which pass on suggestions that "the mayor will have something to comment on that matter" going on to say that "it would be nice if this were to be carried in the Saturday's issue" (due to the newspaper's highest circulation on Saturdays). In national media with a share of the state capital, the influence exerted is not direct. Instead, the state organs offer advice regarding to what particular attention should be paid: "No requests are made to publish a lie. The explanation for demands made are superior interests, that it would be good for the state to focus attention on a particular thing." It does occur that editors are sacked "because of the articles which some of those in power labelled as 'wrong' on account of superior interests." Advice offered by the authorities to the local media is also that they "should focus on promotion instead of criticism" because the government is "making efforts to do something under these difficult conditions, while the opposition is only criticising others."

Independence of editorial policy is particularly endangered in minority language public media, which operate under a special regime and have a contradictory legal status (see principle no. 7). Until 2004, in most of these media whose founder and financier was the Autonomous Province of Vojvodina, the Provincial Assembly of Vojvodina and its Executive Council had been appointing and dismissing directors and editors-in-chief. In the meantime, the province transferred the founding rights to national minority councils, but, under the pressure of minority communities, it continued to finance them. Minority media are now exposed to twofold influence – the one exerted by their state financiers and that of the new founders who exercise more than just managing rights. They select members of media's management boards and appoint directors and editors-in-chief, but also attend to the fulfilment of special interests of minority communities. Interpreters of these interests are dominant political forces in the national councils which have gained their legitimacy in the elections organised on the principle of politically formed election lists. The relationship between founders and minority media newsrooms is the closest to the model which had been dominant in Serbia in the times of Socialism, when the founders had been the only champions of public interest and deciding what had been socially justified. Discrepancies between journalists' interpretation and political interpretation of minority communities' interests are settled in a simple manner – by dismissal of key staff members. In 2011, the Hungarian Minority Council dismissed or exerted its influence so as to bring about dismissal of those in charge of the two media outlets that were under its control – daily "Magyar Szó" editor-in-chief and RTV Pannon general manager.

In private media it does happen that owners — particularly of big media outlets — use the media to further their economic or political interests, especially if their economic interests are related to another business activity (“To them, a media outlet is just ‘an accessory’ to a myriad of other businesses that does not do them much harm, but could prove useful at a given moment”⁷⁵). A drastic example of abuse of ownership rights occurred in the summer of 2011 when the owner of Pink International company, Željko Mitrović, announced that he would suspend broadcasting of Croatian music and films, promotion of Croatian investments, as well as ban Croatian ads and cease covering up the incidents experienced by Serbian and other tourists in Croatia, in retaliation for the Croatian state’s intent to auction off his confiscated yacht. Protests of professional organisations against such an obvious abuse of broadcasting frequencies and journalistic work for furthering personal interests of the owner failed to produce results. Mitrović decided not to carry out his intention once the sale of his yacht was prevented by a court’s ruling in Croatia.

However, most journalists working at small and medium-sized media outlets do not point to owners’ interference in the editorial policy as one of their major problems in exercising the freedom of reporting. In the survey of news media editors, only three out of 179 private media editors said that the biggest pressure on media freedoms was coming directly from the proprietors.

In comparison to state media, the risks of a threat to journalistic independence in private media are different. Private owners may also pursue HR policy without any hindrance and thereby influence the editorial policy. Nonetheless, for financial reasons, they rely for the most part on the established credibility of their newsrooms or individual journalists (whom they most often sign up) and their power of attraction of specific audience and advertisers, hence drastic HR interventions in management staff are sporadic. The key source of threat to editorial independence of these media is unfavourable economic framework for media business operation, particularly in the case of local private media, whose impact is reinforced due to the deepening economic crisis.

According to private media editors interviewed for the purpose of this report, the main source of the lack of media outlets’ freedom is their financial dependence. They are not blaming the owners who, more often than not, do not have enough available capital (“we are operating all the time on the very brink of bankruptcy, without any chance of coming up with a serious business plan”), but general economic environment for media operations. Journalists have one goal in common with the proprietors – increase in revenues. To ensure the survival of their media (and their jobs), they are forced to focus on the profitability of their work and yield to interests of external financial forces, sacrificing the rules of the profession to some extent, even without any pressure exerted by the owners. Balancing between professional norms and the need to keep good relations with the sources of financing and the sources of information which are, at the same time, the sources of pressure, journalists resort most often to ‘the do-not-make-waves policy’ and self-censorship (which is more likely if there is a long-term contract in place with the source of financing).

Journalists of private media know very well who their advertisers are. Therefore, by their own admission, they treat advertisers differently than those from whom they “receive no financial gain”. The former get more attention and publicity than they deserve (i.e. than they would get “if the financial situation of the media outlet in question were better”), while the latter are typically ignored or receive little publicity. Journalists are aware that, by buying advertising space or time, certain companies or organisations are effectively paying for positive publicity in their media. Trade in positive publicity is transacted through active participation of both parties: advertisers do not refrain from withdrawing their ads, or even cancelling annual contracts with a media outlet portraying them in negative terms, while journalists take care that “institutions and organisations with which they have good marketing relations be not ignored”. In extreme examples, the owner interferes, and it does happen that news photographers and cameramen are banned from “capturing” in the footage of a current event a logo of an advertiser that is not their client or which has failed to fulfil on time its financial obligations towards the media outlet.

The authorities are buying positive publicity by way of financing from the budget designated for “public information of local importance” (to which they are entitled under the Local Self-Government Act, article 20) special annual contracts with the media, which effectively boil down to regular coverage of the local

governments' activities. Such contracts are signed in large numbers by many municipalities with the majority of local media. Even though these revenues are small, many media outlets accept such a form of "cooperation" because they cannot afford to relinquish them. There are examples that the contract-based payments are effected on a monthly basis, upon the receipt of reports compiled by the media outlet in question specifying everything that has been published or broadcast, which is yet another cause for more self-censorship. Journalists know that the authorities may cancel the contract at any given time if they are not pleased with what has been published. Additional potential sources of pressure on the editorial independence of journalists are instructions to directors of public enterprises not to advertise in specific media outlets, "open indications to local businessmen that their ads are not welcome" as well as stipulation of citizens' obligation to publish certain types of content, as part of an administrative procedure, in specific media outlets.

According to the statements of the interviewed journalists, they see these financial pressures as a significant limitation imposed on their profession ("this is killing journalist's enthusiasm and motivation for work"). Some are accepting them, aware that "thanks to the 'commissioned' content some money will flow in, hence salaries will be paid", but they are also resigned to the fact that the whole media system in Serbia is governed by the "money-equals-media-freedom" principle. A part of the journalists do understand, however, that editorial independence is a professional value which journalists are obliged to cherish, regardless of the fact that it is difficult to achieve in present-day media environment.

Protection of Journalist Safety

Indicator 14 – Journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked.

On average, every month in 2011, a physical attack on journalists would occur and a threat to safety of a journalist, often also targeting his/her family members, would be made. Response of the authorities gives no hope that the conditions for unhindered work of journalists will improve.

Journalists in Serbia are often threatened when doing their work, in spite of legal guarantee of their safety. In the past 17 years, three journalists have been murdered – Dada Vujasinović (Belgrade, 1994), Slavko Ćuruvija (Belgrade, 1999) and Milan Pantić (Jagodina, 2001). All the while the state organs have failed to track down the perpetrators. To date, the 2007 case of a bomb attack on the apartment of journalist Dejan Anastasijević has not been solved. Legal security for journalists improved two years ago. However, penal policy with regard to perpetrators of attacks on journalists has not been consistent. Police provide protection to journalists under serious threat, but are insufficiently effective in tracking down those responsible for threats. Journalists are particularly displeased with the judicial process of meeting out punishments for journalists' attackers, which is slow, inconsistent and lenient.

In addition to the Public Information Act, which qualifies any form of physical or other pressure on journalists as a violation of freedom of public information, to be addressed in a court of law in an urgent procedure (article 2), the Criminal Code also protects journalist safety. Amendments to the Criminal Code in 2009 listed media professionals among representatives of occupations enjoying the status of professions of public importance, such as those in the fields of health care, education, public transport, legal and professional assistance (article 112, para. 32). Given that professions of public importance carry an increased risk for the safety of persons performing such work, physical threats and attacks on them resulting in grave physical injuries are subject to harsher penalties than threats and attacks on representatives of other occupations. By amending appropriate provisions of the Criminal Code, a long-standing demand of journalist associations to enhance legal guarantees for journalists' safety, which had been a serious social problem for years, was acted upon.

The Criminal Code, however, remains inconsistent in penalising threats to journalists. A minimum penalty for a threat to a journalist which has not been carried out is one year's imprisonment (article 138). Attacks on journalists which have been carried out entail milder minimum sentences – 30 days' imprisonment for violent behaviour and six months' imprisonment if the act of violence has been committed by a group, or if a light bodily injury has been inflicted on a journalist (article 344). Journalist protests against such a penal policy may be summed up, in a nutshell, that it is safer to beat up journalists than to threaten them.

Serbian police treat seriously threats to journalists whose lives are in danger. Over the course of the entire 2011, there were at least three journalists under permanent police protection. While the police are efficient in guarding journalists under threat, they have failed to track down the sources of gravest threats. In all three cases, police security has been in place for quite a while, and the threats to journalists' safety have not been stamped out even though these threats have been present for several years.

For example, Vladimir Mitrić, "Večernje novosti" daily correspondent from Loznica, who was attacked for reporting on crime in Loznica and across the Drina River (corruption, drug and cigarette smuggling, and human trafficking), has been under constant police protection for the past six years because the masterminds behind the attack on him have not yet been found. Brankica Stanković, the author of TV B92 "Insider" investigative journalism show delving into various types of crime, has been living under police protection since December 2009.⁷⁶ The third journalist under police protection is RTV B92 editor-in-chief Veran Matić, who has been frequently receiving various threats on account of this media outlet's reporting.

Police ineffectiveness in eliminating the sources of intimidation of Vladimir Mitrić and Brankica Stanković has a malign impact on investigative journalism in Serbia. Their cases show that investigative journalism work on exposing crime (which, at times, is more efficient than the work of state organs responsible for fighting crime) carries grave personal consequences.

In 2011, nine attacks on journalists were registered (Kladovo, Beograd, Bečej, Bujanovac, Kovačica, Tutin, Šabac and Bajmok).⁷⁷ Most journalists were attacked while on assignment. Among the assailants were, in addition to hooligans and bodyguards, a state official, a political party official and a sports official. Following the attack on Nexhat Behluli, Bujanovac-based TV Spektri proprietor and editor, the Journalist Association of Serbia (UNS) warned that this was the sixth consecutive physical assault on this journalist in the past ten years, of which none has been prosecuted. In one instance, three Belgrade police officers were calmly observing an act of violence perpetrated against two journalists only several steps away from them. The police in Bečej filed only a motion to launch misdemeanour proceedings against four youths who had delivered several blows to Csaba Szögi, a journalist of “Magyar Szó” daily, in the Town Theatre, although this incident, given its description, could have qualified as a criminal offence. Thus, the attackers face misdemeanour penalties of maximum 60 days’ imprisonment instead of between 6 months’ to five years’ imprisonment.

At the same time, 18 cases of threats to journalists’ safety were reported in various cities and towns (Lazarevac, Gornji Milanovac, Surdulica, Belgrade, Priboj, Vreoci, Loznica, Bor, Novi Sad, Novi Pazar, Zaječar, Srbobran and Niš). Among them, the most drastic were the case of putting up death certificates featuring RTV B92 logo in Lazarevac (following the broadcast of the “Insider” show on abuses in Kolubara Mining Basin) and a threat to Timočka Radio and TV editor-in-chief by the local police chief in Bor. Party leaders, directors of state-owned public companies and sports officials were also making threats against journalists.

According to NUNS data, fewer than 10% of cases of threats and attacks on journalists have been taken to court in the past four years. For example, the Journalist Association of Serbia (UNS) sent a protest letter to the competent organs on account of their failure to find and prosecute the attackers on a journalist who had been brutally beaten in Novi Pazar in 2007, in front of many witnesses, at a funeral filmed by several police cameras.⁷⁸

Current judicial practice regarding penalising attacks on journalists does not comply with the requirements of the protection of public information dissemination as a profession of public interest and key component of a democratic society. Domestic courts are failing to recognise attacks on journalists as an exceptional threat to the society, hence such cases are not being resolved either adequately or in a timely fashion. Several court proceedings against the assailants on journalists, unfolding in the course of 2011, caused great resentment on the part of media community and public at large due to mild punishments meted out to the attackers.

Trial of the attacker on the aforementioned Loznica-based journalist Vladimir Mitrić (who is still under police protection) lasted six years. The assailant, an ex-police officer, had attacked Mitrić with a baseball bat, causing life-threatening injuries, but was only found guilty of having inflicted serious physical injuries and was twice (in the first-instance proceedings and a retrial) handed down the minimum sentence for this type of criminal offence of six months’ imprisonment. It was not until November 2011 that the Court of Appeal in Belgrade altered the sentence of the Basic Court in Loznica to one year’s imprisonment. The first-instance trial of three attackers on TV B92 cameraman Boško Branković, who had sustained serious physical injuries while on assignment, lasted for almost three years resulting in the pronouncement of a ten months’ house arrest sentence and two suspended sentences in May 2011.⁷⁹ What triggered the attack on Branković was that he had captured the attack on his colleague, a news photographer of “Fonet” news agency. The prosecutor’s office announced an appeal demanding harsher sentences. Two assailants on “Vreme” news magazine journalist, Teofil Pančić, who had followed and then beaten him in a public transport bus, inflicting light injuries, were sentenced twice (in September 2010 and July 2011) to three months’ imprisonment each, which fell short of the legal minimum for such a criminal offence. In a

subsequent ruling of the Court of Appeal in Belgrade, in October 2011, the sentences were increased to twelve months' imprisonment. In 2010, priest Bogdan Simanić, a co-owner of "Glas Podrinja" newspaper from Šabac, threatened Aleksandra Delić, "Večernje novosti" daily journalist, that he would "break all the bones in her body and wipe the floor with her" because she had reported official information on the criminal proceedings launched against him. At the first-instance trial in March 2011, he was sentenced to two years' imprisonment, but the Court of Appeal in Belgrade overturned the judgement and ordered a retrial.

Out of a large group of people who had been throwing around and hitting a plastic doll representing TV B92 journalist Brankica Stanković at a football stadium in December 2009, chanting "You're dangerous like a serpent / You'll end up like Čuruvija", only one person had been punished by July 2011, having been sentenced to six months' imprisonment for violent behaviour, but not for endangerment of the journalist's safety.⁸⁰ Six previously arrested perpetrators were acquitted of all the charges as the court found the public intimidation of the woman journalist not to be a social problem but a personal problem of the journalist experiencing insults in a public venue, which was subject to civil lawsuit instead of *ex-officio* criminal prosecution.

Impartiality and Efficiency of Regulatory Authorities

Indicator 15 – Regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence which goes beyond a mere business or tax registration.

Under the Constitution, public media may be established freely, without anyone's prior permission (article 50). As of relatively recently (2009), they must also be entered into the Register of Public Media, but this legal obligation is controversial since the Constitutional Court declared the manner in which this register is regulated and the sanctions stipulated for non-entry in the register as unconstitutional, whilst the new regulations have not yet been adopted.⁸¹ Immediately upon their establishment as well as business and tax registration, print and online media may start operating, but such a procedure, however, does not apply to radio and television broadcasters. They cannot broadcast without previously having obtained licences from the Public Broadcasting Agency. The obligation to procure a licence applies to terrestrial, cable⁸² and satellite distribution, be it digital or analogue.

Under the Public Broadcasting Act, anyone meeting the requirements prescribed by the law may obtain a broadcasting licence under equal conditions in a public procedure. Formally, the procedure of issuing terrestrial broadcasting licences entails a public competition in which a decision is made on the basis of public, non-discriminatory, objective and measurable criteria.

The authority for issuance of licences is the independent regulatory body in the field of public broadcasting – the Serbian Public Broadcasting Agency (RRA), i.e. its Council. This institution was first formally introduced in Serbia by the Public Broadcasting Act. This law defines the Agency as an autonomous legal entity which is functionally independent of any state organ, as well as of any organisation or persons involved in the production and broadcasting of radio and TV programmes (article 6). The Public Broadcasting Agency is also envisaged as an expert body whose members are prominent experts in the fields encompassed by the scope of work of the Agency itself. Organisational independence of the Public Broadcasting Agency is supposed to be ensured by the manner in which its Council members are elected in the national parliament, where neither state and party officials, nor persons with vested interests in the programming production or broadcasting may feature as eligible candidates. A guarantee for its financial independence is its own source of revenue (broadcasting licence fees).

Since the formation of the first Council in 2003 to date (it started operating as late as 2005), the Public Broadcasting Agency has failed to establish itself as an institution of authority and credibility. Just like other regulatory and controlling bodies in the country without a tradition of independent state institutions, the Public Broadcasting Agency was eventually formed with great difficulties. Suspicions of the Public Broadcasting Agency's susceptibility to influences of political actors and other powerful players on the media market have been rife ever since its inception and are still widespread today in the media community and the public at large. A noticeable change for the better in the past years has been higher level of transparency of the Agency's procedures and decision-making process.

Evaluating the work of regulatory bodies (the Public Broadcasting Agency and the Telecommunications Agency) regarding the issuance of broadcasting licences in 2006/2008, almost a half (47%) of the 151 surveyed radio and TV media editors said that these organs' decisions were the result of political and economic influences; almost one in ten respondents (9%) claimed that the members of these bodies were not competent enough to make proper decisions; whilst 23% thought that they did the best they could under the given circumstances⁸³. In editors' evaluation of impartiality and efficiency of public broadcasting regulatory bodies' work in 2011, a negative view is predominant – 47% of radio and TV media editors voiced such an opinion as opposed to 13% who thought that the decisions were impartial and effective (39% did not state their views, whilst 1% did not answer the question).

Since the inception of the Public Broadcasting Agency to date, the contentious issue of its independence has been associated to the manner in which candidates for the Council's membership have been proposed and elected, i.e. the influence of state organs on their election. Whilst preparing the draft Public Broadcasting Bill, the idea of authors from the civil society sector was that as diverse segments of the society as possible nominate candidates for the Council membership. In addition to three state institutions (national and provincial executive organs, the Supreme Court), twelve civil associations and organisations were supposed to exercise that right. However, the Government modified this proposal. The Council's membership was reduced from 15 to 9. The structure of entities entitled to put forth the candidates was changed, thereby boosting the relative influence of members (4 out of 9) who were to be nominated by state organs (the National Assembly's Committee for Culture and Information and the Provincial Assembly of Vojvodina) vis-à-vis the four members to be proposed by the other four entities respectively – universities, non-governmental organisations, professional media associations and religious communities. The newly introduced ninth candidate for the Council membership, living and working on the territory of Kosovo and Metohija, was to be proposed by the already elected Council members.⁸⁴

Many subsequent revisions of the provisions on election and composition of the Public Broadcasting Agency Council (2004, 2005, 2006, 2009), as well as controversial decisions of the National Assembly, were steadily increasing the political influence on the RRA, instead of further reinforcing its independence. Amendments to the Public Broadcasting Act in 2005 stipulated three different lengths of term of office for the Council members on the basis of a political decision instead of by drawing lots, hence the longest tenure (six years) was awarded to the Council members nominated by the Serbian parliament's committee, following political parties' agreement on the matter, whereas the shortest term of office was designated for the Council members nominated by professional media associations and the civil society sector. Amendments passed in 2006 conferred the authority for approving the Public Broadcasting Agency's financial plan on the Government instead of the parliament, and further expanded the scope of the Council's arbitrary decision-making regarding the manner in which broadcasters were to observe the conditions under which they had been issued broadcasting licences. In 2009, the parliament allowed the Council to operate for ten months without all of its members having been appointed, more specifically without the members which were to be nominated by non-governmental organisations and professional media associations.⁸⁵ In early 2010, the Council had only five instead of nine members. Political influence on the appointment to the Council membership became apparent in the most recent episode of the election of a Council member nominated by universities in April 2011. Between a university expert in telecommunications regulations and a legal counsellor, by profession, with work experience in health care system and public administration, who was also a "worthy" member of the ruling Democratic Party, the parliament opted, in a repeated vote, for the latter.

Decisions passed by the Public Broadcasting Agency Council have been mired in controversy from the very beginning. After the crisis over the formation of the first Council,⁸⁶ a highly complex and lengthy procedure of allocation of 467 local, regional and national broadcasting licences in the course of 2006/2008 gave rise to many disputes. For example, modern and well-established TV BK (owned by a controversial businessman, but also, and more to the point, an undesirable political opponent of the then government), German TV RTL and the most popular regional television broadcaster – Niš-based TV5 were all denied broadcasting licences. And yet, three up-to-that-point non-existent televisions, out of which at least two had non-transparent ownership structure (Avala, Happy TV), were granted broadcasting licences.

Criteria for making decisions on broadcasting licences were neither clear enough, nor measurable, i.e. never had their individual "specific weight" been determined, which allowed for arbitrariness in deliberations. Decisions taken by the Public Broadcasting Agency were widely criticised on account of their lack of transparency, irresponsibility with regard to the public interest,⁸⁷ being in service of vested political interests of local ruling parties, and rewarding new media allies of the central government. Many legal actions were brought against the decisions passed by the Council, but the competent courts (first the Supreme Court, and then, after the restructuring of the judicial system, the Administrative Court), as a rule, deliberated only over procedural issues, not the substantive ones, therefore, the Council's decisions were overturned solely for procedural reasons. In repeated proceedings, the Public Broadcasting Agency

Council was passing the same decisions, eliminating in the process formal flaws in the procedure, and even conducted a sort of campaign against the Supreme Court, accusing it of interference in the independent regulation of public broadcasting.

More recent decisions giving a green light for changes to ownership structures of some national broadcasters in 2008 and 2010 raised the odd eyebrow and further fuelled ambiguity about whose interests the Public Broadcasting Agency was promoting and whether its activities were truly designed to prevent unlawful concentration of media ownership. TV Pink owner was allowed to acquire a 5% share in the ownership of TV Avala, but, at the same time, neither his alleged share in the capital of the TV Avala majority owner, the Austrian company *Greenberg Invest*, nor his connection to the ownership structure of TV Happy, was clarified or revealed to the public.⁸⁸ Following the 2009 acquisition of TV Fox by a Greek company, a year later, RTV B92 was also acquired by a new (Greek) owner, despite publicly aired suspicions that the owner was the same.

The Public Broadcasting Agency Council claimed that the criticisms alleging its susceptibility to external political or economic interests were groundless. To corroborate its independence from politics, the Council invoked both the fact that the same members were re-elected to this body during the two different governments' terms of office and the personal integrity of the Council members.⁸⁹ In addition, the Council argued that the procedure for issuing broadcasting licences was successfully completed going on to say that this was further corroborated by "the fact that the Supreme Court / Administrative Court did not pass a single ruling which would eventually reverse any of the Council's decisions".⁹⁰ The Council also claimed that it was acting in accordance with the law when sanctioning the changes to the ownership structure of several national broadcasters given that it was using official documents issued by other competent domestic and foreign bodies, but adding that the Council had neither authority, nor powers to check their veracity.

There is a widespread belief in public that the Public Broadcasting Agency was highly ineffective in exercising its powers to penalise unlawful conduct of broadcasters. At least some 50 odd broadcasters (out of original 180-200) have survived, broadcasting without any licence whatsoever. They charge for advertising at dumping prices, which threatens the business operation and economic position of legal broadcasters, and they also disrupt or diminish the quality of other broadcasters' reception signal, even at great distances.⁹¹ Media have been violating *en masse* the restrictions stipulated by the Advertising Act, which was first highlighted, in case of national TV broadcasters, during the first campaign of monitoring broadcasters' operations as far back as 2006. Subsequent mild response on the part of the Public Broadcasting Agency to these transgressions allowed for a years-long continuation of such a practice. As late as 2010, the first charges for these violations (over 8,000) were filed, and the first court rulings were handed down in mid-2011. Three previous RRA assessments (2008, 2009 and 2010) that RTS had been consistently failing to fulfil the special programming obligations of a public service broadcaster did not bring about any significant changes to the RTS programming. Following the success of the first attempt to banish illicit programming content from airwaves (games of chance, SMS quiz shows, pornography and fortune-telling shows), in the course of 2011, the Public Broadcasting Council was turning a blind eye to a deluge of pornography, violence, swear words, insults and, finally, nationalist remarks in reality shows on commercial televisions, particularly on TV Pink, before it sprang into action under public pressure and passed a decision ordering deferred transmission of such shows. This was followed by a binding RRA instruction that the programmes unsuitable for persons below 18 years of age could only be broadcast after midnight, although such a provision had already been stipulated in the Public Broadcasting Act, but was never applied.

The Public Broadcasting Agency fends off criticism that it has proved to be ineffective in shutting down pirate broadcasters by pointing to a lack of adequate powers and flaws of the legislation itself; when it comes to penalising illicit advertising, the RRA cites excessively slow pace of judicial proceedings; and, as regards the protection of ethics in public discourse, the Council claims that the purpose of its existence is not censorship and punishment, but development of public broadcasting, hence, the proper protection of public from unethical communication should be self-regulation, greater responsibility of media editors and further education of media people.⁹²

In the opinion of the RRA representative, in late 2011, necessary technical, financial and HR resources required for an effective operation of the Public Broadcasting Agency were finally secured. However, the Public Broadcasting Agency is yet to undertake a great leap by overhauling its operation in the context of new technologies. Its regulatory activities pertain only to traditional public broadcasting media, still failing to encompass non-linear services offered by other audio-visual media platforms, which are yet to be regulated by a new law, in accordance with the European Union's Audiovisual Media Services Directive.

Equal Access to Distribution Channels

Indicator 16 – Media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services).

The media's general right to equal access to distribution channels is guaranteed under the Public Information Act. The Electronic Communications Act guarantees this right vis-à-vis the use of radio-frequency spectrum and electronic distribution networks. However, specific rights and obligations of cable and satellite network operators with regard to the distribution of media content have not yet been fully regulated. The Public Information System Development Strategy plans a reform of the regulatory framework whereby the obligations of operators will be specified and the right of citizens to a broad selection of media content via cable and satellite distribution platforms would be guaranteed.

Domestic legal regulations also promote non-discriminatory practice regarding the media content distribution and free competition in the field of distribution. The Public Information Act prohibits abuse of influence or control over the means of distribution, broadcasting equipment and radio frequencies for the purpose of protecting the freedom of public information (article 2). At the same time, another article of the law stipulates that the distribution of media content shall not be denied to a public media outlet without a justified commercial reason, nor that the conditions for distribution contrary to market principles could be imposed; if this does occur, the public media outlet is entitled to seek damages in a court of law (article 16). In this respect, the Electronic Communications Act complies with the principles of European regulations, but its implementation is still in its initial phase.

In practice, however, there have been examples of denying access to distribution of media content via commercial and infrastructure distribution channels.

Press distribution has been for years a weak link of the domestic media system. In the past several years, there have been conflicting interests in this field, but the public has had no insight into the actual developments associated with persons with shady capital and of dubious business morality, nor how real is the danger of this market's monopolisation. Non-transparent privatisations and joint ventures on the press distribution market gave rise to the two biggest players – “Futura plus” and “Štampa sistem”. The former operates over 1,000 kiosks, whilst the latter runs about 550 newspaper stands and a retail chain of about 50 shops. “Futura” is currently undergoing restructuring in order to avoid liquidation due to large debts, whilst its ownership (officially, the proprietor is a Danish company) is associated with businessman Stanko Subotić against whom criminal proceedings are conducted *in absentia* in Serbia on cigarette smuggling charges. “Štampa sistem” changed many owners, including, up until 2008, Darko Šarić⁹³ who was later charged with organising an international drug trafficking ring and consequently had a warrant for his arrest issued. WAZ, a German media group, was also involved in press distribution activity, first as one of the “Futura” owners from which it withdrew in 2008, and then as the owner of “Štampa”, having acquired it from Darko Šarić. A true small war was being waged in 2009 between “Futura” and some media outlets, the members of the Media Association. Publishers were accusing the distributor of owing them money and preventing the sale of newspapers,⁹⁴ whereas the then owner argued that his company was deliberately forced by manipulations into insolvency which had been planned by big businessmen close to the government and their loyal media outlets.⁹⁵ There were indications that the two biggest distributors had the connected owners at the moment when the proprietor of “Štampa” was Darko Šarić, as well as that WAZ was showing interest in the acquisition of “Futura” after gaining ownership of “Štampa”. This provoked a protest of media publishers and fear of press distribution system's monopolisation. In early 2011, WAZ sold “Štampa”, its distribution system, to Centroproizvod, a Belgrade-based food product company.

Regarding cable distribution, radio and television broadcasters are encountering two types of problems. The first is that cable TV operators, without explanation and without prior notice, in violation of the mutual agreement, suspend transmission of the programme, i.e. exclude the channel from their basic programming package on offer. In 2011, this happened to Kanal 9 TV from Novi Sad and TV VK from Kikinda, whose programmes were excluded by cable TV operator SBB (Serbia Broadband) from distribution via its network. Kanal 9 TV filed a complaint. Commercial Court in Novi Sad ordered SBB to resume the transmission of the programme, but the Commercial Court of Appeal in Belgrade overturned the ruling and ordered a retrial.

Another problem that radio and television broadcasters are facing is that the operators set unequal conditions for access to their cable distribution networks. They pay foreign channels for the right to broadcast their programmes, whereas they charge domestic channels, particularly the local ones, for broadcasting. This practice is contrary to the Protection of Competition Act which prohibits contracts that impose unequal conditions for the same services on different players on the markets, thereby placing some players on the market in a less favourable position than their competition. The Commission for Protection of Competition has conducted several proceedings against cable TV operators, but never in relation to the imposition of unequal conditions on different TV broadcasters regarding their access to the cable distribution system.

The abovementioned cases are the consequence of the lack of regulations for cable TV broadcasters and cable TV operators distributing media content. As late as September 2011, the Public Broadcasting Agency began issuing licences to domestic broadcasters for cable (and satellite) broadcasting operations, be it only for cable transmission (65 broadcasters) or for both terrestrial and cable transmission (86 broadcasters). The Serbian Agency for Electronic Communications (RATEL) is in charge of regulating cable TV operators. Until the start of implementation of the Electronic Communications Act, the services of cable distribution of media content had been under the approval regime. The last approval had been granted in August 2010. Since late 2010, the cable distribution of media content has been under the regime of general authorisation, without an obligation to acquire previous licences, but in compliance with the conditions prescribed by RATEL which the operators are obliged to observe.

According to the RATEL report, in 2011, there were 76 operators offering their services via cable distribution networks.⁹⁶ Seven biggest operators (SBB, PTT, Kopernikus Technology, Telekom Srbija, IKOM, DIGI Sat and Radijus vektor) had over 85% share on the market of media content distribution. In terms of the number of subscribers and generated revenue, SBB was leading the pack with over 50% share on the market.

Given that the Electronic Communications Act empowers RATEL to protect competition in the field of electronic communications, this agency is under obligation to conduct an analysis of the situation on the market every three years and take specific measures designed to protect effective market competition. RATEL is entitled to assess if some operator has a significant market power which threatens or may threaten in the future the competition on the relevant market, and if so, the agency may impose upon such operator certain restrictions to its autonomy on the market.

Based on the market analysis, RATEL designated in 2011 (as well as previously in 2007) SBB as the operator with significant market power and imposed upon it an obligation to seek agency's approval for every change of prices (in addition to the obligation of disclosure of data, non-discriminatory conduct and accounting separation) in order to prevent monopolistic behaviour.

The Public Information System Development Strategy envisages legal regulation of cable TV operators. The plan is to introduce an obligation of dominant cable TV operators to distribute certain programmes (in accordance with the "must carry" principle) as well as to prescribe a minimum quota of local and regional programmes that operators must distribute in order to improve local public information dissemination.

Under the Electronic Communications Act, currently in effect, RATEL is already entitled to impose, at the request of the Public Broadcasting Agency (RRA), an obligation on cable TV operators to carry one or more radio or television channels (nationally or locally), if cable transmission is the principal vehicle for delivering media content for a significant number of citizens (article 101), as was the case with the suspended programmes of Kanal 9 TV and TV VK in the SBB network. In practice, however, the mandatory transmission provision is applied only in the case of public service broadcasters.

According to the 2011 data of the Serbian Statistical Office, 99% of households have a TV set and fewer than half of them (44%) are cable TV subscribers.⁹⁷ Number of cable TV distribution network systems' subscribers was increasing by about 20% since 2004, year in, year out, hence from 540,000 in 2005 (7.2% of the population), it reached the figure of 1,247,000 (16.6%) in 2010.⁹⁸ In the overall structure of subscriber base, the subscribers to analogue cable TV systems are predominant (91%).

According to the RATEL report, in Serbia, in 2011, there were only two registered IPTV operators distributing television programmes in digital format via the Internet (Telekom Srbija and Sinet Telekom) and three satellite TV distribution network operators (SBB, DIGI Sat and Polaris Media).

Freedom of Access to the Internet and Foreign Media

Indicator 17 – The state must not restrict access to foreign print media or electronic media, including the Internet.

Serbian citizens' access to the Internet and foreign media is free.

The Public Information Act treats the distribution of domestic and foreign public media equally and guarantees full freedom (article 15). Moreover, this law grants the same rights and obligations to foreign and domestic natural and legal persons in the field of public information (article 6). The only limitation for foreign nationals and companies lies in the domain of electronic media ownership, hence, under the Public Broadcasting Act, they cannot hold an ownership share exceeding 49% of the founding capital of a radio or TV broadcaster (article 41). In practice, foreign ownership is tolerated even when it exceeds 49% limit in cases where foreign proprietors indirectly hold ownership shares in domestic broadcasters via their subsidiary companies established in Serbia.

Having ratified the European Convention on Transfrontier Television in 2009, Serbia assumed an additional obligation to ensure freedom of expression and information pursuant to article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to guarantee freedom of reception and not to restrict the retransmission on their territories of programme services which comply with the terms of this Convention. This is consistently observed in practice, whilst the exceptions to this solely occurred in relation to live broadcasts of sporting events in cases when exclusive live broadcasting rights for Serbia were acquired by domestic television broadcasters.

The Electronic Communications Act expands the freedom of access for the Serbian citizens to all forms of information, applications or services, irrespective of borders or their country of origin. As one of the key principles for regulating relations in the field of electronic communications, the law highlights enabling the end-users of public communications networks and services to have free access to and distribution of information and to use applications and services of their choice, regardless of the origin of such applications and services (article 3).

In practice, there have been no instances of bans on foreign press and rebroadcasts of foreign radio and television programmes or blocking of foreign web sites since 2000. At the time when the 1998 Public Information Act, which was considered to be the most repressive media law in Europe, was in effect, there were strict limitations in place on access to foreign media. This law prohibited retransmission or deferred transmission of radio and television programmes (in Serbian and languages of national minorities) produced by foreign broadcasting organisations whose founders were foreign governments or their organisations, except in case of reciprocity as stipulated in an intergovernmental treaty. The law was abolished following the change of the regime in 2000, which was the new government's first move in the transformation of the media system. With the passage of the 2003 Public Information Act, the 1974 Law on Import and Dissemination of Foreign Mass Communication Media and Foreign Information Activities in Yugoslavia formally ceased to be in force. This 1974 law allowed for the distribution of foreign print publications solely with the permission of the Ministry of Internal Affairs.

According to the 2011 data of the Serbian Statistical Office,⁹⁹ 42% of people in Serbia use (at least once every three months) the Internet (44% – men, and 40% – women). Out of this number, 80%, or around 1,900,000 individuals, use the Internet every day or almost every day (200,000 more than last year). Among the Internet users, 92% of individuals aged between 16 and 24 have a social network account (Facebook, Twitter). In 2010, Serbia ranked 17th in Europe in terms of the total number of Facebook accounts (2.02 million accounts). The majority of users were aged between 18 and 34.

Prevention of Monopolies and Development of Pluralism

Indicator 18 – Media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism.

Free market competition and combating media monopolies are the least regulated aspects of Serbia's media system. They both have detrimental impact on servicing diverse information-related needs of the citizens. Media policy in the past decade allowed state ownership in media to survive and was conducive to setting several powerful market players apart from the pack (of an excessive number of media outlets), thus reducing diversity of the media content on offer. Neither a comprehensive anti-monopoly law in the media field nor adequate regulations on transparency of media ownership have been put in place as yet. In its 2011 strategic planning document, the current government only pledged to start resolving long-lasting accumulated problems, but avoided to admit its responsibility for the failure to legally and systematically regulate this field in a comprehensive fashion, for the fact that ownership structures of a significant number of media are unknown to the public, and for a plausible likelihood that there is in place already illicit media concentration.

At the time of the passage of first media laws in the early 2000s, the issue of media concentration was nowhere near on the horizon as an imminent and real danger to pluralism of the then decentralised and chaotic media scene. Therefore, these laws only laid the foundation for the regulation of market transparency and prevention of monopolies, insisting, above all, on demonopolisation of the state in the media sector. The Public Information Act designated free flow and pluralism of ideas, information and opinions as desirable goals for the regulation of the public information sphere, and expressly prohibited any type of monopoly in the field of public information which would endanger these values (article 7). This law, however, does not feature concepts such as media market, capital and ownership concentration¹⁰⁰. These notions were introduced for the first time into the Serbia's legal system by the Public Broadcasting Act, but only in the field of electronic media. In order to prevent predominant influence on public opinion (dissemination of information by the media belonging to the same or connected owners), this law introduced measures against illicit concentration, which are to be enforced by the Public Broadcasting Agency. The concept of active approach of a regulator to public communication for the purpose of development, protection and promotion of free competition, including prevention, would be incorporated for the first time in the Electronic Communications Act many years later (2010).

The Public Broadcasting Act specifies forms of illicit media concentration on the basis of stake in the founding capital and restricts a broadcaster's share in the founding capital of another broadcaster, newspaper publishing company or news agency, as well as broadcasting of both radio and television programmes in an area if it is the only broadcaster. The restriction imposed is severe. For example, a national broadcaster may have a maximum of 5% ownership stake in another national broadcaster, news agency or media company publishing a newspaper with a circulation of over 30,000 copies. All the broadcasters are prohibited from broadcasting more than one television and one radio programme, whilst local and regional broadcasters are prohibited from acquiring over 30% share in the capital of other local or regional broadcasters in the same area or publishing a local newspaper in the same or adjacent area.

Subsequent many changes to the two laws mentioned above have never dealt with the issue of possible detrimental influences of vested interests of hidden owners on the public interest and the issue of media monopolies. Hence, to date, print media have been left out of any regulation of competition and concentration. Even the print media circulation figures are not made public. These data are collected by an agency (ABC Serbia) for those print media which require them. The Public Broadcasting Act was not harmonised with the Protection of Competition Act, adopted in 2009, but it had neither been harmonised with the previous one from 2005. According to the statement of a representative of the Commission for Protection of Competition,¹⁰¹ the definition of media concentration in the Public Broadcasting Act is

completely different from the definition of concentration in the subsequent competition law, which the Commission is enforcing, hence the Commission has no legal powers to deal with the media concentration in the context of the definition from the Public Broadcasting Act. Other likely phenomena on the media market, such as vertical integration between the media and the players on the advertising market, distribution networks or telecommunications operators, have remained unregulated. The first such case came to the fore in August 2011 when Telekom Srbija, the state-owned telecommunications operator, acquired a majority ownership share in “Arena sport” cable television.¹⁰²

Effective implementation even of such meagre legislation currently in effect has been precluded by inadequate institutional solutions. It was not until after the introduction of the Register of Public Media with the Business Registers Agency in 2009 (it was established by way of a summary procedure in the parliament, without any public discussion, as part of the already contentious Law on Amendments and Addenda to the Public Information Act) that any sort of public insight in the media ownership structure was rendered possible. In 2011, the Register of Public Media was declared unconstitutional, hence the data contained therein have not been updated, but its main flaw is the failure to specify in an adequate manner the types of data required for keeping records on media owners. The data in the Register of Public Media do not indicate actual owners of the founding capital, but only legal persons in their capacity as media founders. The Register of Electronic Media, which the Public Broadcasting Agency is obliged to maintain, featuring data on the owners of broadcasters which have been granted licences, is also flawed because the procedure for data entry into the register has not been prescribed in any document. For the purpose of assessing the level of media concentration, the Public Broadcasting Act considers both the legal person holding a broadcasting licence (the broadcaster) and the natural person – the owner, his/her spouse or next of kin, as the same person, but has not specified the manner in which the verification of data on owners would be carried out. Instead, the Public Broadcasting Agency accepts statements on this matter which are submitted by broadcasters themselves.

Inbuilt flaws of legal and administrative solutions to record-keeping and control of media ownership allow for media owners in Serbia to remain secret for a number of years, for foreign capital to be disguised by domestic front companies, for domestic owners to hide behind foreign companies, for legalisation of shady capital through the media, and for circulation of rumours of similar plausibility in public (given the lack of legal evidence) that the owner of national TV Pink is, in fact, the owner of two, three or even four national TV broadcasters, even though, officially, he has only a 5% share in the ownership of another national TV broadcaster, which is permitted by law. Some of the consequences of this tolerated non-transparency are also scandals caused by revelations that the actual owner of the *Novosti* company, one of the larger newspaper publishers in the country, were not firms from Austria and Cyprus, as filed in the Register, but a leading Serbian businessman Milan Beko, who admitted himself that this was so in an interview in a TV show, as well as that behind-the-scenes deals were struck among the German media group WAZ, Beko and *Novosti* management on the acquisition of the majority stake in *Novosti* by Beko acting as a proxy for the benefit of WAZ. That the chief negotiator in talks with TV Avala employees who were on strike in December 2011 was the registered owner with the smallest share in the founding capital (4.95%) of TV Avala, otherwise the owner of national TV Pink, whilst the formally majority owner (a legal person from Austria) was nowhere to be seen, may be perceived as a piece of evidence corroborating false representation of media owners in official registers. The Anti-Corruption Council’s report for 2011 claimed that the ownership structure of 18 out of 30 most important media in Serbia was not transparent, including nine out of eleven national radio and TV broadcasters. As late as July 2011, the Public Broadcasting Agency posted on its web site a graphical presentation of the national TV broadcasters’ ownership structures, featuring the names of natural persons, which had not been previously made public.

In a survey of 240 editors-in-chief of various news media, 83% of respondents said that the ownership of their respective media outlets was transparent to the public, while 9% more of them said that the employees knew, but not the general public, who the actual owners were.

A working group, formed under the auspices of the Ministry of Culture, drafted so far (in 2008 and 2009) two versions of the draft bill on illegal media ownership concentration. However, both met a stiff resistance

on the part of the most powerful representatives of media industry. Since the state was reluctant to commit itself to legal regulation of this area, the proposals failed to advance beyond the confines of the working group's documents.

Media Pluralism

Due to lack of valid data on media ownership, as well as the lack of up-to-date data in the Register of Public Media and the register of issued broadcasting licences kept by the Public Broadcasting Agency, it is difficult to speak about the pluralism of Serbia's media system. The Register of Public Media features media outlets which ceased to exist (*Borba*, *Glas javnosti*, *Nedeljni telegraf*), which are not operational or are undergoing a liquidation procedure. It does not list any of the programmes of the public service broadcaster RTS, whereas the provincial public service broadcaster RTV has seven registration entries. The Public Broadcasting Agency's register does not show operational broadcasters but those which have been granted licences, although some of them have ceased their operations. With the caveat that the data from the Register of Public Media (April 2011) may not be taken at face value – out of a total of 1,053 media outlets, 56% are print media, 20% - radio programmes, 11% – TV programmes and 10% – Internet media (3% - all the rest). And yet, these data differ from those in possession of the Public Broadcasting Agency – 321 radio and 134 TV broadcasting licences, respectively, have been issued, whereas the Register of Public Media has registration entries for 214 radio and 111 TV programmes, respectively. Overall, the majority of registered media are local, followed by regional ones, whilst national media account for a small portion of the lot.

Bearing in mind the caveat, print media publishers are also an assorted lot. Out of 323 publishers printing 591 publications, the most are limited liability companies (60%). Among them there are many citizen associations and non-governmental organisations (17%), as well as independent entrepreneurs (9%). Eight percent of them are joint-stock companies, and the state is the founder of 4% of publishing houses (in addition to its ownership shares in three large newspaper publishers). National minority councils also act in the capacity of a publisher (2%) as well as the Serbian Radical Party (two print media).

The structure of radio and TV broadcasters is much less diverse, and these media are much more alike in terms of their structure – one fourth are public enterprises (26% of TV and 25% of radio broadcasters), 5%-6% – citizen associations and non-governmental organisations, whilst the majority are private companies (69% of TV and 68% of radio broadcasters), assuming mostly the forms of limited liability companies and rarely those of joint-stock companies or limited partnerships. Civil society media are all local in character, small in terms of production and without much of a reputation.

Despite a large number of media outlets, the audience complain about lack of diversity in terms of content, offering not much of a choice.¹⁰³ Televisions with nationwide coverage appear to be diverse – two public service broadcaster's channels, another two channels in exclusive domestic private ownership (Pink, Happy/Happy K.) and three channels in foreign ownership (Prva, B92 and Avala). However, there is a widespread belief in media community that there is an illicit form of connection between domestic owners of TV Pink and TV Happy, respectively, as well as between the foreign owner of TV Prva and the foreign proprietor of TV B92. Regardless of whether this is true or not, the analytical reviews of national TV broadcasters' programming offer show that there is little to choose amongst them, whilst TV viewers themselves noticed that the shrinkage of diversity coincided with the change of owners at TV Prva and TV B92 in the past two years. According to a survey of diversity of programming genres conducted by the Novi Sad School of Journalism in 2008, there were only small differences among mathematically calculated indexes of diversity by the type of programming on four analysed TV programmes – RTS1, RTS2, B92 and Pink.¹⁰⁴ Three quarters of the total weekly broadcasts consisted of the same five programming genres – news, feature films and series, entertainment, sports and advertising content. The remaining six registered types of programming were either neglected or completely absent from the airwaves. Viewers of a national TV channel are offered daily, on average, six hours of news programmes, three and a half hours of feature films and series, three and a half hours of entertainment shows, two hours of ads, and one hour of sports. Children's shows and programmes featuring culture, art, education, religion and science were crammed into the remaining two hours. The survey demonstrated closeness of RTS' Channel One to a commercial

programme schedule and higher commitment of its less-watched Channel Two to the types of content which were to be expected of a public service broadcaster. In terms of diversity index, the biggest gap was between RTS2 and TV Pink, whilst the least disparity was detected between RTS1 and B92. In the meantime, the 2010 change of TV B92 ownership structure has shifted its programming offer considerably towards a much more pronounced similarity with other commercial broadcasters.

On the market of national daily newspapers, which appears to be diverse in terms of structure, a trend of convergence of editorial policies has been noted. Foreign capital is present in most national dailies, be it on its own (*Blic*, *Alo*, *24 sata*), or in combination with domestic private entrepreneurs (*Press*, *Pregled*) or the state (*Politika*). Some newspapers are exclusively published by domestic publishers (*Kurir*, *Pravda*), and there is also an example (albeit rare) of journalist ownership (*Danas*). On this market, increasingly less critical stance with regard to the authorities has become conspicuous. High-circulation tabloids *Kurir* and *Press*, characterised by the low level of professional ethics, owed their popularity earlier to exclusive reports on actual or “hyped-up” political scandals associated with the government and its officials, as well as to their ideological orientation which was contrary to the official government’s policy. Following the arrest of the *Kurir* owner in 2009 (in relation to earlier financial foul play), the newspaper was taken over by his son after which the hostile attitude towards the official government’s line has vanished. A similar change of heart occurred at the *Press* daily. Word has it that now Dragan Đilas, a senior official of the ruling party, DS, holds sway over this daily through changed ownership structure.¹⁰⁵ Dominant position on the market has been occupied for a while by Swiss-German concern *Ringier Axel Springer*, the publisher of newspapers *Blic*, *Alo* and *24 sata*, distributed free-of-charge, which also publishes many high-circulation weekly magazines. There are suspicions that this publisher is close to or has already achieved the dominant position (40% share) on the daily newspaper market, with an average circulation of about 350,000 copies, on aggregate, of all three of its dailies, out of a total 850,000 daily press copies. In 2011, this publishing company sacked daily *Alo* editor-in-chief following the publication of his article criticising the Serbian president.

At regional and local levels, there is even less pluralism than at the national level. Despite commitment to ensure diversity of broadcasters’ ownership in the process of broadcasting licences allocation, in some communities there are no local broadcasters with non-entertainment programming whatsoever, or there is only one media outlet. In addition, the economic crisis is further threatening the survival of local media.

Media policy has been only partly focusing on active promotion of pluralism and diversity of media content. Its principal mechanism are programmes for co-financing media projects, implemented by the Ministry of Culture, Media and Information Society and the Provincial Secretariat for Information, which are specifically designed to promote public information dissemination for persons with disabilities and national minorities in their mother-tongue and to introduce novel programming content. However, the state policy has not been well thought through, and there have been objections to the transparency of decision-making and the clarity of criteria used for allocation of funds. These sums are small (in 2012, maximum amounts will be about EUR 10,000) and the impact of these measures, although they have been implemented for several years, is not known.

When asked in the survey if the state was advocating and promoting media pluralism through specific positive actions, 58% out of 240 news media editors said ‘no’, whereas 10% said ‘yes’ (the remaining 32% did not answer the question).

Neutrality of State Subsidies

Indicator 19 – If media receive direct or indirect subsidies, states must treat those media fairly and with neutrality.

Consequences of state's financial interventions in the media industry are one of the pressing issues of Serbia's media system. While some segments of the media sector perceive both short- and long-term state financial support as highly detrimental, others see it as not only necessary but also insufficient. National regulations on control of state subsidies are gradually being approximated to the European Union's legislation. Their application so far, however, has not substantially changed the character of state subsidies for media which for the most part have been neither transparent nor neutral.

There are no accurate data on the overall share of state money in the media industry. According to the official data from the Public Information System Development Strategy, projected budgetary assistance to the media in the form of state subsidies amounted in 2011 to 2,513 million dinars (about EUR 25 million): about EUR 5 million was donated from Serbia's budget, another EUR 3.5 million from Vojvodina's budget, and, according to the data from about 90% of municipalities, EUR 16.5 million from local budgets. Last year this sum totalled about EUR 21 million, hence, taking into account the overall estimated advertising revenue of EUR 175 million in 2011, the share of subsidies in the aggregate annual media revenues was 11%. The state's share in the media economy is certainly bigger because the funds which state bodies dispense in the media sector, in one way or another, in addition to sanctioned advertising (i.e. by way of disallowed advertising "and through budget items such as "contracted services" and "specialised services"¹⁰⁶) are not included herein. The Anti-Corruption Council's report estimates that these additional funds (based on the sample of 50 most important state institutions) total at least EUR 15 million and goes on to warn that such subsidies are problematic from the viewpoint of purpose and impact on media reporting.¹⁰⁷ However, the total amount is difficult to determine precisely, and it is even harder to single it out from overall media revenues.

The lion's share of state funds is dispensed in the media sector in the form of direct subsidies to state-owned media outlets due to their status of public enterprises. Thus, instead of making efforts to create non-discriminatory conditions for media industry development, the state is blatantly undermining free market competition. It is effectively using taxpayers' money to finance business operation of public media enterprises, thereby securing a more favourable position for them on the market vis-à-vis their competition, which precludes the establishment of a functional market with level playing field for all the media. At the same time, state funding of media outlets lays a foundation for political interference in editorial policy which media find difficult to resist. However, advocates of state subsidies for public enterprises and institutions are of the opinion that public interest, which is completely neglected by commercial media, is financially bolstered in this way.

In the media industry, there has been an expectation in the past several years that negative consequences of a state intervention in the media market would be avoided, while positive ones would be reinforced through full harmonisation of domestic legislation with the European Union's regulations on allocation of state aid.

As a party to the Stabilisation and Association Agreement (SAA) with the European Union, i.e. the Interim Trade Agreement with the EU as its operating mechanism (2008), Serbia undertook an obligation to approximate its regulations governing the control of state aid to the European Union law on state interventions in economic competition and allocation of state aid to business entities (in subsidies or other forms of allowances). European regulations allow neither central nor local governments, nor any other state institutions (safe for exceptional cases), to allocate budgetary funds to specific companies if it undermines or threatens to undermine market competition. Under the Interim Trade Agreement, after a grace period of three years from the date of its coming into effect (i.e. as of January 2012), Serbia is to apply specific principles to public enterprises, i.e. not to pass new measures, nor keep old ones in force,

which are contrary to the principles of non-discrimination, competition protection and control of state aid.¹⁰⁸

European regulations provide for allocation of state aid solely for the purpose of general interest and those economic activities and services which would not be rendered or not provided in a quality manner without state intervention. Aid is of limited duration; it is allocated as part of established aid schemes or as individual assistance, in a transparent manner, through public competitions for co-financing projects and on the basis of non-discriminatory criteria known in advance.

Having recently adopted the Public Information System Development Strategy (September 2011), the Government of Serbia confirmed its commitment to respect the principles of allocation of state aid for the provision of services of general economic interest, which should render state funding of media – controlled, transparent and neutral. At the very end of 2011, the Government passed the Decree on Amendments and Addenda to the Decree on the Rules for Allocation of State Aid in order to incorporate special provisions on state aid designated for public enterprises. Contrary to the expectations of the opponents to direct budgetary funding of public media outlets, the Decree leaves room for this practice to continue (even beyond the public procurement procedure). Namely, the decree stipulates that the state aid will be allowed under certain conditions and that it will not be under the authority of the Commission for State Aid Control. This is to apply to public enterprises providing services of general economic interest if there is a legal basis for the provision of such services, if the parameters for the calculation of the amount to be granted are clearly and objectively set in advance, and if the allocated sum does not exceed the cost of the provision of service, i.e. if it is not excessive with regard to the operating costs of the same or a similar business entity. Results of the decree's implementation will become apparent in the course of 2012, but, at first glance, the state funding of the media will not become more controlled, more transparent and more neutral than it is now.

Since 2009, national and provincial bodies have been applying the principles of budgetary funds allocation in the field of public information in public competitions for project co-financing. Public competitions are announced in several project areas.¹⁰⁹ In 2011, the Ministry of Culture, Media and Information Society spent 115 million dinars (about EUR 1.1 million) for co-financing media projects in five public competitions (96 million dinars) and for support to individual projects of strategic importance (19 million dinars). The Provincial Secretariat for Information distributed 48 million dinars to successful applicants in three public competitions, excluding the funds earmarked for minority language media outlets. Full compliance with EU regulations is yet to be achieved given that there are neither clearly established criteria and procedures for decision-making in public competitions (for example, decisions are made without any accompanying explanation), nor efficient monitoring of the implementation of state aid or its impact assessment. The state is reproached the most for continuing, in addition to the allocation of state aid modelled after project financing, to directly fund the operations of state-owned media companies. Four state-owned media companies (Tanjug news agency, Radio Yugoslavia, and two publishing companies “Jugoslovenski pregled” and “Panorama”) received 382 million dinars (about EUR 3.8 million) from the state budget in 2011.¹¹⁰ Practically, out of a total of about EUR 5 million in state funds, four millions were used to finance current activities of four media players, while EUR 1 million funded project services for over 200 media outlets (excluding the projects of strategic importance, the funds in five public competitions were granted to 203 applicants). More public money was spent from the Vojvodina's budget on the printing of daily newspaper “Dnevnik” and the business operation of its publisher “Dnevnik Vojvodina Press” (60 millions) than on many applicants in the three public competitions mentioned above (48 millions).

The 2012 state budget envisages a similar disproportion in budget allocation: 368 million dinars are set aside to finance the said four media companies, while the maximum amounts of grants available to successful applicants in public competitions for co-financing of projects of public interest are 600,000, 800,000 and one million dinars, respectively, depending on the given area. In late December 2011, this budget plan sparked a fierce protest by the Coalition of Journalist and Media Associations (NUNS, UNS, NDNV, ANEM and Local Press), which argued that the fundamental principles underlying the recently

adopted media system development strategy and legal acts regulating state aid were thus being trampled as well as that free competition on the media market was being undermined in this way.

In 2011, the first attempt was made to establish project-based financing and principles of transparent and non-discriminatory state aid as a general system for allocation of funds from local budgets, which the municipalities set aside in order to support dissemination of public information relevant locally. Several professional associations (ANEM, NUNS and Local Press) drafted recommendations for state aid allocation to local media (for example, that the funding previously used to finance state-owned companies be made a part of the overall amount earmarked for allocation, that the funds be allocated in public competitions under equal conditions for all the media and in accordance with the decisions made by an independent commission, etc.). Based on these recommendations, two state ministries circulated their recommendations regarding local media funding to the municipalities. However, the ministries' recommendations were not binding and did not apply to the total amount of funds designated for public information in local budgets, which allowed for the continuation of the practice according to which the media were receiving funds regardless of the criteria set in advance and with preferential treatment enjoyed by the state-owned media.

In practice, the municipalities allocated the most of the available funds, just like earlier, to the media outlets owned by the state simply by virtue of their status as public enterprises.¹¹¹ There were individual cases of project-based funds allocation as well as by way of a public competition, but the amounts were small.¹¹² According to the Ministry of Finance's data, out of 174 municipalities in Serbia, only seven announced a public competition for budget funds allocation on their web sites.¹¹³

Harmonisation of national legislation on state aid control with the regulations of the European Union would necessarily have to take into account a European Commission's document ("Communication")¹¹⁴ on the application of state aid rules to public service broadcasting. Under this document, member states are to ensure regular and effective control of the spending of public funding from subscription fees (as they also represent a form of state aid) and to prevent overcompensation and cross-subsidisation of public service broadcasters. The European Commission insists on two types of control. The first is the financial control of the use of public funding, and the second is control over content intended to ensure the fulfilment of public service broadcasters' functions. Both types of efficient control of public service broadcasters in Serbia have been lacking since their inception.

Independence of Public Service Broadcasters

Indicator 20 – Public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations.

Introduction of public service broadcasting was one of the key elements in the reform of state-controlled media system where state media, particularly the state television, were the most important instrument for public opinion control. The process of building new institutions was launched with a considerable delay. It was significantly protracted and disrupted in a variety of ways by the same political forces which had originally lent their support to it. By dividing the former state-run public enterprise Radio Television Serbia in 2006, which had been under tight control of the ruling party, two public service broadcasters emerged – Public Service Broadcasting Institution of Serbia (RTS) and Public Service Broadcasting Institution of Vojvodina (RTV). Principles of their organisation are the same, with the former broadcasting on the whole territory of the country, whereas the latter broadcasts on the territory of Vojvodina and has additional functions serving numerous national minorities. Public information system development strategy envisages introduction of six new regional public service broadcasting institutions in the near future.

No one is controlling current public service broadcasting institutions' independence from political influence. Serbian Public Broadcasting Agency (RRA), as the only official body authorised to supervise the operation of all the broadcasters, has been thus far dealing with assessments of performance of public service broadcasters regarding commercial advertising restrictions, special (vaguely worded) programming obligations and broadcasters' code of conduct (numerous violations have been identified in the programming of RTS public service broadcaster, however, it has not been penalised so far¹¹⁵), but not with assessments or analyses of the public service broadcaster's independence as its essential feature. Media legislation, currently in effect, does not feature mechanisms to hold the media performing public service functions to account for fulfilment of what they have been mandated to achieve, including programming production independent of political influence, as well as for reasonable spending of public money.

Protection of public service broadcasters from political and economic interference is ensured by way of financial independence, independent management and independent editorial policy. However, legal and institutional safeguards for independence of public service broadcasters are ambivalent.

Financial Independence

Public Broadcasting Act stipulates independence of public service broadcasters from the state budget by way of securing other sources of financing – mandatory subscription and commercial advertising.¹¹⁶ However, even when combined, these sources of funding have failed to ensure financial stability of public service broadcasters. Both public service broadcasters have been making losses for years on end, which makes them susceptible to external influences.

Share of two main sources of funding in the overall RTS revenue is unknown because its business operation is not transparent with respect to the public. No data at all from 2009, 2010 and 2011 RTS financial statements are publicly available, although the Public Broadcasting Act stipulates RTS management board's obligation to adopt business and financial reports as well as to inform the public thereof (article 89). The last publicly available document on RTS' financial situation pertains to 2008. Conversely, RTV had been regularly publishing its annual financial reports on its web site, and as of 2011 also quarterly financial reports featuring detailed information on all streams of revenues and expenses, salaries of employees, etc.

RTV ended the year 2010 in the red having sustained losses of 549 million dinars (approx. EUR 5.5 million). In the first half of 2011, RTV incurred losses to the tune of 54 million dinars which was attributed to a "drastic slump in the subscription collection rate" (58%).¹¹⁷ In 2010, RTV's subscription collection to commercial revenue ratio was 94% : 6%. RTS financial statement for 2008 contained data pointing to an

annual loss of 1,941 million dinars (approx. EUR 19 million) as well as the assessment of an independent auditor that financial indicators might “give rise to suspicion of the ability of RTS public broadcasting institution to carry on its business in accordance with the principle of stability of its business operation”.¹¹⁸ Judging by the statements of RTS general manager, the only one speaking about this public service broadcaster’s performance in public, a conclusion may be inferred that RTS was also in the red in 2011 (RTS “needs annually about EUR 100 million to break even, but its total revenue amounts to EUR 75 million”).¹¹⁹

Failure to stabilise sources of financing is a chronic problem plaguing public service broadcasters. Commercialisation of programming (at the expense of the public service broadcaster’s programming obligations), which is a tendency particularly conspicuous in RTS TV programmes, has failed to yield financial stability of this institution and, instead, brought about dependence on economic factors. Moreover, RTV subscription fee collection has been insufficiently successful for years. The RTV subscription collection procedure does not specify effective and applicable sanctions for non-paying viewers. Owners of radio and/or TV sets are under obligation to pay the subscription fee. Thus far the subscription fee has not been collected for the use of radio sets in motor vehicles, although the Public Broadcasting Act requires it. Public enterprise “Elektro distribucija” (the Serbian electrical power supply company) is collecting subscription fees from households as a supplement to electricity bills. RTV is not participating in this procedure and has no influence on it whatsoever, but it does receive 70% of the subscription collected in Vojvodina from RTS.¹²⁰ As the general economic situation was deteriorating, the subscription collection rate dropped considerably. In late 2011, out of 2.5 million subscribers, 41% were paying subscription fees or, according to other sources, only 37%,¹²¹ whereas for the normal functioning of the public service broadcaster, according to some estimates, the subscription collection rate of 75% is required. After many years without any sanctions against the non-paying viewers, as late as 2009, RTS launched a massive campaign to collect outstanding debts, but there is no agreement among experts on the interpretation of legal justification for this move.¹²²

Low productivity (roughly 4,000-strong work force of RTS and another 1,198 employees of RTV) and wasteful spending of available funds are also a burden to the business operation of public service broadcasters. The 2011 Anti-Corruption Council’s report cites a series of indicators of abuses in public funds spending at RTS, but this public service broadcaster refuses to make its documentation available for inspection, notwithstanding the binding order of the Commissioner for Information of Public Importance.¹²³ In addition, during the 1999 NATO bombing campaign, Radio Television Vojvodina suffered extensive material damage from which it has not fully recovered to date.

As the economic crisis was deepening, the expectation was that both RTS and RTV would be increasingly turning to the state as a source of funding, exposing themselves to a danger of becoming more susceptible to growing political influence. The state intervened several times to improve the financial situation of public service broadcasting institutions by way of either writing off the debt (in the case of RTS in 2007) or granting subsidies (purchase of equipment for RTS in 2007 and funding of a redundancy programme at RTV in 2010). RTV received 87.6 million dinars in 2010 in the form of state subsidies, which is only slightly below its revenue generated through TV advertising (89.5 million dinars).¹²⁴ In November 2011, RTS requested that its debt in fees for use of radio frequencies be written off. Media associations protested against it, pointing out that this would be contrary to legal regulations on state aid. Over the course of 2011, RTS general manager pointed the finger of blame on several occasions at the state as a culprit for RTS’ financial instability, insisting on a more efficient collection of subscription fees and cuts in taxes levied by the state (contributions, VAT and other taxes) or “a different mechanism for funding RTS”.¹²⁵ RTV has been seeking for years from the state financial and technical assistance so as to recover from the devastation of 1999 (destroyed transmitter network, demolished building, etc.).

Failure to achieve financial stability and independence of the existing public service broadcasters casts doubt on the rationality of government’s commitment to establish another six regional public service broadcasters in the near future.

The Public Broadcasting Act stipulates two-tier protection of public service broadcasters' management structure from political influence. General manager, a person in charge of the public service broadcasting institution's organisation and management, is to be appointed among qualifying applicants in a public competition by the nine-member management board on which no state or party officials may serve (article 87), whilst the management board members are to be appointed by the nine-member council of the Public Broadcasting Agency, the independent body tasked with regulation of the entire public broadcasting sector, on which state or party officials may not serve either (article 25). Ban on membership in these organs for government officials and holders of political office is coupled with insistence on appointment of expert and reputable figures to these two bodies (media experts, advertising experts, legal experts, economists, telecommunications engineers, i.e. journalists and experts in media, management, law and finances). At the same time, the responsibility for appointments of other managers to public service broadcasting institutions is shared between the general manager (who puts forth the proposals) and the management board (which makes the appointments).

The crucial element of the intention to move away the appointment of the management structure from the authority of the executive branch of power is aimed at ensuring the independence of the Public Broadcasting Agency Council. Whilst the Public Broadcasting Bill was being drafted in 2002, the mechanism for selection of the Public Broadcasting Agency Council members was designed so as to serve as an important safeguard for independence of public service broadcasting institutions. They are to be elected by the parliament but in a way which would ensure representation of all the different parts of the society, hence the right to field candidates for council membership (two candidates out of whom one is to be elected) has been conferred on various civil society stakeholders – universities, professional associations (associations of media outlets, film-makers and performing artists, composers) and citizen associations dealing with human rights and religious communities, in addition to several state organs. However, already the first changes to the Public Broadcasting Bill (2002), and subsequent numerous amendments to the provisions on the election and composition of the Public Broadcasting Agency Council (2004, 2005, 2006 and 2009), as well as controversial decisions of the parliament, which were all reinforcing the potential for political influence on this body (see principle no. 15) severely dented the credibility of the council as a politically independent organ. Such a development raised doubts about the impartiality of its decisions pertaining to the appointment of public service broadcasters' management board members.

Public service broadcasters' management boards have thus far not proved themselves to be the autonomous bodies which have the final word in managing the public service broadcasting institutions where they should be protecting public interest. There are no examples known to the public of important autonomous either business-related or programming decisions taken by the public service broadcasting institutions' management boards. Their essential role comes down to appointments of general managers as well as senior management and editorial teams of public service broadcasters, whereas their main activity boils down to providing support to these organs' decisions. In this respect, the only precedent was the decision of Radio Television Vojvodina management board in April 2011 to dismiss the then RTV management team, which the management board itself had appointed in 2008, having previously sacked the then RTV general manager. The explanation (in very few words) for the latter decision, just like for the former, was the failure of the management to increase the quality of the programming and attract larger audiences. However, it was unusual that the management board decided all of a sudden to serve notice of dismissal, which was its last decision given that the new election of two thirds of RTV management board members was underway at the time. At RTS there have also been examples of clientelist relationship between some former members of the RTS management board and its management team.¹²⁶

New RTS management board, appointed in April 2011, introduced some novelties in the work of this body such as regular publishing of reports from meetings, but they were equally inconclusive regarding the business operation and decision-making at RTS as the previous ones. For example, the report on the management board meeting held on 1 July 2011 cited only one sentence under the heading "General Manager's Report on RTS Performance in the Previous Period": "RTS general manager Aleksandar Tijanić said that everything was all right at RTS."¹²⁷

The role of public service broadcasters' management boards has not even been acknowledged thus far as an issue deserving of a discussion and more adequate solutions with regard to the nature of their mandates, the manner in which civil society is represented, necessary competencies of their members and the manner of their communication with the public.

Due to inadequate institutional solutions to the management of public service broadcasting institutions, the main role in the enforcement of management independence is performed by their general managers vested with exceptionally broad management powers. Up until 2011, no person with reputation for independence and successful resistance to political interference had been appointed to the position of general manager at either RTS or RTV.

Protection of Public Service Broadcasters' Editorial Autonomy

Indicator 21 – Public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides.

Pursuant to the recommendation of the Council of Europe Ministerial Committee, national legislation underlines editorial independence of public service broadcasting institutions as a key element for the successful fulfilment of their mandate. The ways in which editorial independence is to be exercised have not, however, been specified by either law or internal documents of Radio Television Serbia (RTS) and Radio Television Vojvodina (RTV), hence there are no guarantees for pursuit of independent editorial policy in their everyday broadcasting operations. Provisions contained in the National Minority Councils Act, which grant an important role to these para-state and politically organised bodies in the human resources policy affecting the programming in minority languages, constitute a significant threat to the independence of the provincial public service broadcaster, RTV, which airs programmes in 10 different languages of national minorities.

The public service broadcasting institution was first introduced by the Public Broadcasting Act (2002). One whole chapter out of nine in this law was dedicated to public service broadcasting. In addition to explicitly designating public service broadcasters – RTS and RTV, the law specifies in detail the manner of funding and managing these institutions as well as their obligations with regard to fulfilment of public interest. As a special obligation, the law prescribes the duty of public service broadcasting institutions to ensure that the programmes which are produced and broadcast, particularly the news programming content, be protected from any influence that may be exerted by the authorities, political organisations or economic centres of power (article 78). In addition, whilst producing and broadcasting news programming content, public service broadcasting institutions shall conform to the principles of impartiality and objectivity in the coverage of various political interests and various entities as well as uphold freedom and pluralism of public expression of opinions (article 79).

However, the manner in which public broadcasting service providers are to ensure editorial independence and protection from political influence is not stipulated. The Public Broadcasting Act has passed this duty onto the public broadcasting service institutions themselves. They are to regulate through statutes their internal organisation, the mode of operation, the manner in which to fulfil public interest in the field of broadcasting as well as the rights and obligations of journalists while performing tasks in the field of public information (article 93). Public service broadcasters' statutes are to be adopted by their respective management boards and approved by the Public Broadcasting Agency.

As already explained in the chapter on financial and managerial independence of public service broadcasters (principle no. 20), there are neither legal nor institutional guarantees of public service broadcasters' editorial autonomy. At present, it is not financially viable, whilst the procedure prescribed for the formation of management organs and enormous powers in the hands of a single person (general manager) render it extremely vulnerable to political influence.

It is, therefore, not unusual that neither the statute nor any other documents designated in the statutes as general by-laws governing the broadcasting operations of RTS and RTV contain any rules on the manner in which to achieve editorial independence from political influence. The two respective statutes are almost identical and for the most part stipulate obligations already specified in the Public Information Act.

For example, the RTS Statute declares RTS to be autonomous in its work (article 5), i.e. that it independently carries out its activities, plans and produces programming, compiles programme schedules, edits its news and other programmes. Such an autonomy applies to its internal organisation and mode of operation, in accordance with the provisions contained in the Public Broadcasting Act and the powers of its organs, as well as to the matters of employment of workers and their rights and obligations.¹²⁸

As regards the rights and obligations of journalists, the RTS Statute solely cites the rights of journalists as stipulated in the Public Information Act (the right of a journalist to impart information and opinions, the right to refuse to carry out an instruction and the right not to disclose his/her source of information), whilst the RTV Statute makes no mention of the journalist rights at all.

According to RTV general manager, in the pursuit of its editorial independence from political influence, this public service broadcaster relies on the editors' compliance with the general code of professional conduct as well as their professional experience and reputation in implementation of the editorial policy whose programming standards have been laid out by the Public Broadcasting Act.¹²⁹

In the absence of documents regulating the manner in which editorial independence from political influence is to be achieved, the media community sees the National Minority Councils Act's provisions on powers granted to the minority councils in relation to the minority-language programmes as a serious new threat to the independence of RTV, the provincial public service broadcaster.¹³⁰ Except for specific rights granted to national minority councils with regard to both the state and provincial public service broadcasters (the right to give an opinion on candidates for appointment to management boards, programming boards and general manager positions), the law confers a very important role in the HR policy for RTV's minority-language programmes on the minority councils. RTV is broadcasting radio and TV programmes in a total of 11 languages (out of which 10 are minority languages¹³¹). National minority councils, which are actually para-state, politically organised institutions, may set the criteria for selection of responsible editors of minority-language programmes, and effectively choose (i.e. put forth a proposal to the management board for appointment) responsible editors for programmes in languages of national minorities among the candidates who meet the criteria specified by the councils themselves. In October 2011, when the harmonisation of the RTV Statute with the National Minority Councils Act was planned – despite its infringement of the Public Broadcasting Act – the (newly appointed) chair of the management board of Public Service Broadcasting Institution of Vojvodina (RUV) RTV, Boris Labudović, submitted his resignation as he considered the planned amendment to the Statute unacceptable. In his view, if the national minority councils were to select 16 out of 21 responsible editors of RTV, this would have a detrimental impact on the editorial criteria on three out of five RTV channels.¹³²

Regarding political interference with public service broadcasters' news programmes, where the impact is the most visible, there are diverse opinions.

Independent surveys into RTS and RTV programmes suggest that public service broadcasters' reporting is politically biased. Namely, government representatives enjoy a preferential treatment (they receive more conspicuous and more positive publicity), more so than other social actors; vocal opposition discourse may rarely be heard, and the most pressing social problems are reported on outside the context of government accountability.¹³³ In 2011, the supporters of the biggest opposition party staged protests on several occasions against RTS and RTV coverage of political events, insisting that both public service broadcasters were biased, favouring the ruling parliamentary majority.

A similar view is shared by most journalists. Almost three quarters (72%) of news media editors, out of 240 of those surveyed in late 2011, believe that the existing public service broadcasters are not protected from political influence in their everyday work, whilst two thirds (66%) are of the opinion that the principle according to which persons with clear political affiliations could not be appointed to senior management positions is disregarded in practice.

Nevertheless, despite a large assortment of news content on offer, the majority of media audience chooses to follow the news presented by the state public service broadcaster – RTS. According to RTS own data, over the course of 2011, RTS was the most watched national television for 310 days. According to AGB Nielsen data, on average, 36% of TV viewing audience watched every day RTS' central news show "Dnevnik 2", which was twice as much as the viewing figure for the second most popular news show of another national broadcaster.

Undesirability of Hidden State Ownership in Media

Indicator 22 – “Private” media should not be run or held by the state or state-controlled companies.

The issue of state's and state companies' stake in media ownership in Serbia exceeds by far the proportions of the problem of concealment of their potential clout in the media with either private majority or private minority ownership. In Serbia, the state owns and runs a considerable number of media outlets. Moreover, the survival of state ownership is both legitimate and illegitimate; privatisation is desirable, but it is effectively obstructed, producing negative results; the state ownership provides for direct interference in editorial competences of public media and undermining of the private media's market position; in addition, state capital is joining forces with private capital in the field of print media where such joint ventures are absolutely disallowed. With regard to state ownership in media, Serbia has reached a sort of an impasse. For almost a decade, the media policy has been looking for a solution to the dilemma whether state or private ownership would better protect the public interest in the field of public information. Finding an adequate solution has been hampered by a relatively successful experience with the socially-owned media, the tradition of equating the state ownership with the state's right to manage media, the lack of economic development of most private media, their dependence on state funds and poorly developed watchdog role with respect to the government. Instead of developing mechanisms for regulation and control, which would encourage media to perform responsibly their social roles in relation to the citizens and the government regardless of the type of ownership, the media policy has created confusion and two estranged camps of staunch supporters and fierce opponents, respectively, of the state ownership in the media.

Data on the total number of media outlets, partly or entirely owned by the state, out of slightly over 1,000 operational media outlets,¹³⁴ are not publicly available. According to a statement of the chairwoman of the Serbian parliamentary Committee for Culture and Information, there are 137 media owned by the state.¹³⁵ The Public Information System Development Strategy mentions (indirectly) 86 radio and TV stations with the status of public service broadcasters, i.e. public enterprises, which make up 19% of the total number of electronic media holding broadcasting licences. According to the data from the Register of Public Media, which are neither accurate nor up-to-date, in April 2011, eighty-two broadcasters, out of which 29 were TV stations (26% of the total number of registered TV broadcasters) and 53 – radio stations (25% of the registered radio broadcasters), as well as 13 newspaper publishers printing several dozen periodical publications, had the status of public enterprises or institutions.

The problem with state media is that they are predominantly financed from public funds, but they are also present on the market, thereby undermining free competition. Their management structures are directly appointed by the executive branch of power, and the journalists have no mechanisms of protection from its influence. The state has pledged to relinquish its position of media owner by late March 2015 at the latest.¹³⁶

The process of liberating the media from state control through change of ownership has been unfolding for over 20 years, but it has not yet been completed. Mandatory privatisation, stipulated by law in 2002 for broadcasters and in 2003 for print media, was suspended by subsequently adopted laws which contradict it, while the privatisation of the majority of state companies has been frozen since 2007. Having adopted the Public Information System Development Strategy in September 2011, the Serbian Government extended (again) the final deadline for media ownership transformation for another three and a half years, clearly demonstrating persistent lack of political will to change the media system in the direction which the state committed itself to 10 years ago.

State monopoly in the media sphere was formally abolished in 1990, when 1,500 print media, 58 radio stations and 5 TV broadcasters were registered, all socially owned.¹³⁷ What followed was a “media boom” instigated by the local private initiative. As early as 1994, thirty-two out of 45 local TV stations were privately owned.¹³⁸ At the beginning of the new decade (2002), the estimate was that about two thirds out

of 757 registered radio and TV stations were privately owned (504 radio and 253 TV stations, along with an unknown number of active broadcasters without licences), as well as the majority of 640 print media.¹³⁹ In scores of media outlets, whose large numbers were the fallout from the regulatory chaos and not the reflection of actual media sector development, the state ownership persisted. In 2005, municipal authorities and city councils owned 113 local electronic media.¹⁴⁰

After the change of the regime in 2000, the plan for media system transformation, as part of the society's democratisation, entailed the regulation of inherited media chaos and the state's relinquishment of media ownership. First the Privatisation Act (2001), and then the Public Broadcasting Act (2002) and the Public Information Act (2003), stipulated privatisation of all the remaining media whose founders were state organs, except for *Tanjug* news agency and public broadcasting institutions (RTS and RTV). However, no government in Serbia undergoing transition was willing to bring this process quickly and successfully to its conclusion. From the very beginning, the privatisation was unfolding in a haphazard, inconsistent and non-transparent way, with many delays, grinding against silent but persistent resistance. There was no a thought-through model of privatisation which would distinguish the sale of media companies from the sale of other public enterprises and stimulate the strengthening of media potential for both business and professional development. Administrative procedures were long-drawn-out and deadlines for the completion of privatisation were extended three times¹⁴¹ until they were finally set for late 2007. On the eve of the deadline expiration, the Capital City Act and the Local Self-Government Act were adopted, effectively putting a stop to further media ownership transformation. These laws, which were in direct contravention to the media legislation, allowed the Belgrade City Council to remain the founder and proprietor of the media outlets intended for Belgraders as well as the other local self-governments to have the same right in relation to the media featuring content in minority languages. New controversial regulations interrupted already launched privatisation procedures for 38 media companies and prompted other media outlets to hastily introduce programmes in minority languages so as to avoid the change of their owners, i.e. financiers.

Not only was the media privatisation incomplete in late 2011, but the rift within the society over whether the abolishment of state ownership was advancing the media system and serving the public interest or not was deepening. Recently adopted government's strategy for media system development reaffirmed the commitment to the already started privatisation process, but also stipulated two significant exceptions. Drawing on the model of two existing public service broadcasting institutions (national and provincial one), which had been exempted from privatisation as far back as 2002, the Strategy envisaged the formation of, so far non-existent, six regional public service broadcasters. Some local self-governments and unprivatised radio and TV broadcasters have been advocating this idea for several years, claiming that the sale of established media to people with shady money, shady motives, goals and political ambitions, might only be detrimental to public information intended for citizens in their local communities. Another exception are minority language media (see principle no. 7).

Advocates of full privatisation of the media sector believe that the absence of state ownership in the media is one of the key elements of a democratic society and that this would abolish the main lever of state control over media. Their view is that the state-owned media inevitably function as a mouthpiece for the authorities, and that the government is reluctant to give up such political allies which is why it is deliberately holding back their privatisation process. The reason for suspending privatisation in 2007 was indeed political since this allowed the ruling elite to maintain its sway over the media during the 2008 presidential and general elections campaigns, in a situation marked by deep political divisions in the society. Prevention of any changes on the media scene ahead of the 2012 elections may also be interpreted as a goal intended to be achieved by repeated extensions of deadline for the completion of privatisation. The fact that the state has been reluctant to relinquish its ownership stake in three large media companies (*Politika novine i magazini* – 50%, *Kompanija Novosti* – 29.51% and *Dnevnik Vojvodina Press* – 45%) – contrary to all the laws currently in force – is indeed a proof that the ruling political parties are not willing to deprive themselves of formal channels of influence through their representatives sitting on the management boards of these companies, and that they also gladly seize opportunities to even further enhance their clout.¹⁴²

Another strong reason for support to the privatisation is the undermining of free competition due to great inequalities on the market between state and private media outlets. Those media whose production is financed from central or local budgets are competing with private ones on the same market, hence they have the upper hand not only because of the funds received from the state but also due to many other allowances, such as non-payment of broadcasting licence fees, preferential treatment by other public enterprises in their capacity as advertisers, possibility that their debts be repaid through the intervention of their founder, etc. Privately owned news agencies *Beta* and *Fonet*, for example, have been complaining to the state for years about their unequal position with regard to the competition – state-run *Tanjug* news agency. In 2010, *Tanjug* and *Beta* news agencies were comparable in terms of production and overall business revenues excluding donations (120 million dinars in the case of *Tanjug* and 100 million dinars at *Beta*). However, *Tanjug* received 216.7 million dinars in subsidies from the state budget, which was why its net profit at the end of the year was 90 times bigger (12 million dinars) than that of *Beta* (132,000 dinars), although *Tanjug* had twice as many employees.¹⁴³

Opponents to privatisation cite poor experiences of already privatised media. Although no systematic privatisation impact analysis has been conducted, most of the known consequences are negative. According to the data of the Privatisation Agency, from 2003 until late 2011, all of the 58 media outlets were privatised by auction except for one (*NIN*). Almost one half (25) of privatisations were not successful, even in the case of previously well-developed quality media outlets (*Ibarske novosti*, RTV Valjevo, Radio Sombor, etc.). The media whose privatisation was reversed were placed under the authority of the Privatisation Agency, but in 40% of cases (10 out of 25), they were so exhausted financially that they ended up in bankruptcy.¹⁴⁴ Privatisation contracts were cancelled for four equally frequent reasons: failure to pay the selling price, failure to maintain continuity of business operation, failure to invest and failure to implement social programmes.

No considerable funds, which would ensure relevant modernisation and development, have been invested in the media. An average sale price was about 16 million dinars, but the sums varied widely – from several dozen million to several dozen thousand dinars. Out of 56 media, ten were sold for 35 million dinars or more each, but four were sold for less than 85,000 dinars (around or less than EUR 1,000).¹⁴⁵ Media companies were most often purchased by natural persons (52%) and groups of natural persons (29%), rarely legal persons (12%), and the least often – foreign buyers (7%). According to the 2009 data, when 48 media outlets were privatised, 56% of buyers had no experience whatsoever in media business, but were instead involved in a different type of economic activity.¹⁴⁶

Where successful, instead of improved business results, enhanced independence and more diverse and higher-quality media content, the privatisation often had adverse impact. A considerable number of new owners purchased (with the money of unknown origin) media companies because of valuable properties in their possession, to which they moved their core businesses¹⁴⁷ or which they mortgaged to obtain loans,¹⁴⁸ while the accounts of media companies were often blocked. No one knows how many journalists lost their jobs. Some were laid off, some left of their own accord due to poor working conditions. Salaries were irregular and shrinking; their rights were trampled; they were forced to do tasks prohibited by the Journalist Code of Conduct,¹⁴⁹ while the owners were employing new non-professional people.

Neither has private ownership proved itself to be a good barrier against political influence on the editorial policy. Some owners are using their media as a means to curry favour with the authorities and ensure preferential treatment of their core business activity, hence their media coverage is adjusted to the expectations of the authorities. There were even cases of drastic changes to the previous editorial policy in order to accommodate to a specific political orientation of the owner.¹⁵⁰

There is no a common stance with regard to the continuation of media privatisation among those at the helm of news media. Out of 240 surveyed editors, 71% believe that the state should not own media companies. Opposite view is held by 14% (among them, 60% come from the state media and 40% are from private media outlets), while another 14% cannot make up their mind on the matter. Out of four surveyed presidents of media and journalist associations (ANEM, Local Press, NDNV and NUNS), all of them are of the opinion that the greatest achievement of the 2011 media strategy was the state's commitment to relinquish its position of a media owner.

Incompatibility between Public Office-Holding and Pursuit of Professional Media Activities

Indicator 23 – Members of government should not pursue professional media activities while in office.

In practice, there are no examples of government members pursuing or having pursued professional media activities while in office. Several laws preclude this, not only for members of the Serbian Government but also for all the persons who have been elected or appointed to the organs of the Republic of Serbia, autonomous provinces or local self-government units. The ban also applies to officials of public enterprises, companies, institutions and other organisations whose founder (or a founding member) is the Republic of Serbia, an autonomous province or a local self-government as well as any other persons elected by the National Assembly.

Incompatibility between the status of a public official and pursuit of professional media activities is an integral part of the rules on conflict of interest prevention while performing public functions. These rules are defined in the Anti-Corruption Agency Act (2008). The law stipulates that an official may hold only one public office at a time¹⁵¹ as well as that he/she may not pursue another occupation or pursue another activity requiring full-time work, i.e. full-time employment. Exceptions to the rule are possible in the fields of scientific research, education, art and culture, humanitarian work or sports activities. Exceptions are also possible for other types of activities, but solely with prior approval of the Anti-Corruption Agency, i.e. if by doing so he/she does not compromise impartial performance or dignity of public function.

In addition, the rules on conflict of interest prevention do not allow a public official whose public function requires full-time engagement to establish a commercial company in any commercial sector, including the media sector. Such a public official is neither allowed to perform functions of management, supervision or representation of the interests of private capital in a commercial company, privately-owned institutions or another private legal person.

The Government Act (2005) stipulates that members of the central government may not hold another public office and goes on to specify that they are under obligation to comply fully with the legislation regulating conflict of interest while in office (article 11).

The Public Information Act also bans, albeit indirectly, members of government from holding a post of responsible editor in a media outlet. Under this law, a person enjoying immunity from responsibility may not be appointed as a responsible editor (article 30).

Openness of Authorities to All Media

Indicator 24 – Government, parliament and the courts must be open to the media in a fair and equal way.

Legal regulations stipulate state organs' openness to the public as well as fair and equal treatment of media and journalists. However, differences in attitudes to the public at large do exist. The most open are legislative organs, whereas the organs of the executive branch of power are the most closed to the public, whilst the work of courts due to involvement of private persons in court proceedings is subject to photography and filming restrictions. However, sanctions against state organs for failure to respect their obligations to the public do not apply unless information is sought from them as part of a special procedure for access to information of public importance. Media or individual journalists suffer from discrimination against them, above all, at the hands of local authorities.

The central concept of domestic media legislation is the right to be informed about matters of public importance. Several laws stipulate the obligation of state organs and other bodies of public administration, as the primary sources of information of interest to the citizens, to make the information about their work accessible to the public. The Public Information Act, for example, prescribes this duty for state organs and organisations, organs of territorial autonomy and local self-government, public services and public enterprises, as well as MPs and deputies (article 10). This duty must be discharged under the same conditions for all journalists and all media outlets.

The Free Access to Information of Public Importance Act extends the obligation to provide information to any information – when requested by way of a special procedure – which the source has in its possession and which pertains to what the public is justifiably interested in knowing. The obligation applies to all the organs of public administration, including organisations vested with public authority and legal persons founded or funded by the state organs (article 3). This law expands to the maximum the list of entities entitled to seek information from the abovementioned sources. These are not only journalists, but all members of the public under the same conditions and without discrimination on any grounds. The law particularly emphasises the obligation of equal treatment in case when several journalists or media outlets have requested access to information of public importance. No one is to receive preferential treatment by way of granting access to only one journalist or only one media outlet, or to one journalist or media outlet rather than others (article 7).

The most open to the public is the National Assembly of the Republic of Serbia. Its plenary sessions are public as well as meetings of its working organs. The National Assembly Act and the Rules of Procedure of the National Assembly stipulate various forms of dissemination of information to the public about the parliamentary proceedings such as live TV broadcasts or live netcasts of parliamentary sessions and press conferences, press releases, etc. Accredited journalists are allowed to follow the proceedings of the parliament and its working bodies as well as to gain insight into proposals of bills and other legal acts, stenographic notes from meetings and archive. In exceptional cases parliamentary proceedings may be closed to the public, but this may occur solely at the thoroughly substantiated proposal of the government, parliamentary committee or at least 20 MPs to do so.

There is no a dedicated “parliamentary TV channel” in Serbia. Instead, public service broadcaster RTS is broadcasting live parliament's sessions on its Channel 2 under the contract concluded between two institutions in July 2011, as the result of a long-lasting dispute in public over the need for live TV broadcasts and suitability of the public service broadcaster for this role.¹⁵²

The most closed institution to public scrutiny is the Government of the Republic of Serbia. It is communicating with public at large exclusively via intermediaries. Under the Rules of Procedure of the Government, neither journalists nor other representatives of the public are allowed to attend cabinet meetings. Moreover, the presentations of cabinet members and other participants in the meetings are

highly classified (unless Prime Minister decides otherwise). True enough, the Government Act (2005) designates the work of the Government as being open to the public and stipulates that it should provide insight to the public into its proceedings under the Free Access to Information of Public Importance Act. The Government presents its activities, decisions, conclusions, decrees and draft bills at press conferences, on its own web site and web pages of ministries as well as via press releases. A special Office for Media Relations was formed to deal with the public aspects of the work of the Government and public administration organs.

In 2011, the Government adopted a measure which additionally restricted public insight into its activities. In order to obtain information from the Government, other than the officially communicated information, journalists had been using or referring to anonymous sources from the Government. To prevent information “leaks”, use and abuse of anonymous sources, as well as to restore its credibility undermined by internal conflicts, following the Government reshuffle in March 2011, the Rules of Procedure were amended whereby all the members of the Government and its organs and state secretaries were obliged to express and advocate the Government’s views in their public statements. According to the statement of the head of Government’s Office for Media Relations, all the media outlets receive equal treatment in communication with the Government and ministries, and thus far never has it happened that journalists have been denied the information requested related to the work of the Government.¹⁵³

Openness of courts to public scrutiny is subject to special rules given that court proceedings involve private persons finding themselves in a particular and vulnerable position. As a rule, court proceedings are open to the public, but the public may be excluded from trials for the purpose of protection of interests of national security, public order and morality as well the protection of interests of juveniles or privacy of the parties involved in the proceedings. For example, the Juvenile Criminal Offenders Act prohibits reporting on either the course of criminal proceedings or the judgement pronounced without prior permission of the court. The Court Rules of Procedure stipulate the obligation of judicial organs to provide necessary conditions for media access to current information and trials conducted in a given court, for example, a room accommodating a large number of persons if there is a considerable interest of the public in the trials in question. Since the court administration has the duty to attend to the interests of the trial and the privacy and safety of the parties involved, filming of court hearings is possible solely with prior consent of the trial chamber presiding judge, the judge conducting the proceedings as well as prior consent in writing of the parties involved and participants in the proceedings to be filmed. Due to such stringent conditions, video footage from courtrooms is exceptionally rare.

Media coverage of court proceedings is further impeded by the Serbian Criminal Code, which introduced in 2009 unauthorised comments on judicial proceedings as a new criminal offence into the legal system. The amendment to the Criminal Code prescribes imprisonment and fine for a public statement in the media intended to violate presumption of innocence or independence of court for the duration of the court proceedings and before the pronouncement of a legally binding judgement (article 336a). The said provision is considered to be disputable with regard to media freedoms as it is not clear how the existence of intent to violate presumption of innocence or independence of court will be assessed, as well as due to the introduction of stricter restrictions to comments on the proceedings before a legally binding judgement than those applicable after such a legally binding ruling is passed. As court proceedings are complicated and sensitive to the interests of parties involved, and given that they require expert legal knowledge, information for media about the court proceedings and individual cases are provided by the president of the court in question, a spokesperson or a special information service. Courts as the level of the republic, courts of appeal and courts with special departments or a large number of judges have spokespersons. The Court Rules of Procedure stipulate a duty of the president of each court to ensure equal representation of different media outlets.

The Free Access to Information of Public Importance Act prescribes a special procedure when an organ of public administration from which information has been requested fails to fulfil its obligation within 15 days at the latest from the date of receipt of an application, as well as a penalty if it fails to do so at the intervention of the Commissioner, i.e. at his specific request. Penalties are also prescribed for

discrimination against applicants, i.e. journalists or media outlets. The Public Information Act, however, does not feature penal provisions applicable to state organs and institutions failing to make information about their work available to the public or treating unequally journalists or media outlets while fulfilling their obligation.

In practice, journalists often come across obstacles placed in their path by the sources of information, and more often than not the sources discriminate against journalists. In 2011, media reported six drastic cases of individual journalists having been prevented from attending or filming sessions of municipal assemblies (in Kula – twice, in Aleksandrovac – twice, and in Vranje and Pirot – once each). Bans on journalists' attendance were imposed by leading state officials in these municipalities, in most cases on account of their dissatisfaction with earlier reporting of these journalists. Four cases of unequal treatment of media at the hands of the sources of information, out of which three were government organs, were also registered. For example, Serbian President's press office permitted only state-run news agency *Tanjug* to report on the President's visit to "Zastava" car plant in Kragujevac. Niš mayor allowed only a cameraman of news agency *Infobiro* to be present at the ceremony of signing a commercial contract related to (the only) operating cinema in the city. President of Belgrade municipality of Zvezdara refused to give information to daily *Pravda* woman journalist explaining that he was reluctant to communicate with the journalists of that newspaper.

Out of 188 news media (of the total of 240 participating in the survey) which experienced some form of violation of media freedom in their everyday work in 2011, about one third (30%) said that they were unequally treated with respect to other media outlets by the source of information, which, in most cases, were organs of public administration.

Preference for Media Self-Regulation

Indicator 25 – There should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts.

Self-regulation of journalistic profession in Serbia is far below the international standards of protection of media freedoms and journalist rights. Self-regulatory mechanisms are few and far between, and they are only beginning to be established. The only self-regulatory body, the Press Council, was launched as late as 2011 and brings together only print media. The right of reply and correction is still a part of legal instead of autonomous professional regulations. Self-regulatory practice is lagging behind technological developments in the media.

In present-day Serbia, there is neither tradition nor experience of self-regulation of professional work, although awareness of its necessity and advantages has been around for a long time. In addition to a plethora of unfavourable conditions for media development and generally low level of democratic political culture, development of self-regulation has been further held back by two large rifts within the journalist community in the past two decades. These concerned the central issues of the journalist profession – its societal role and fundamental principles of free and responsible journalism. The first split occurred in the 1990s (journalists vs. “propagandists”)¹⁵⁴, and the second came to pass in the last decade, particularly with the expansion of tabloid press and highly commercialised TV media (journalists vs. “sensationalists”). Differences between advocates of conflicting perceptions of social responsibility of journalism have not yet been bridged, and yet, in the past years, journalists have been joining forces increasingly effectively for the purpose of defending common interests and raising the level of professionalism.

The first result of the collective effort aimed at self-regulation was the adoption of a common code of professional conduct in 2006, as an instrument for defining the field of autonomy within which editorial freedom and acceptance of responsibility for the quality of public discourse may find their expression. It was conducive to the formation of the first, and, for the time being, the only self-regulatory body, the Press Council, designed to supervise compliance with the Code of Conduct of Serbian Journalists in print media as well as to penalise its violations.

Institution of a media ombudsman, as an intermediary between journalists and the public, is unknown to domestic media community. No newsroom has a person entrusted with the task of dealing with complaints submitted by readers, viewers or listeners.

In late 2009, the Press Council, as a voluntary association of press publishers and journalists, was founded by two business associations – the Media Association and the Association of Independent Local Media *Local Press* – and two journalist associations – the Association of Serbian Journalists (UNS) and the Independent Association of Serbian Journalists (NUNS). It was modelled after its Norwegian counterpart. Funding for the Press Council’s operation was supposed to be provided by the founders, the industry itself, above all. Given that the founders lacked necessary funds, the Press Council started operating as late as September 2011 when it received a donation from Norway covering its operating costs for one year. Instability of Press Council’s funding is its greatest weakness.

Complaints filed by individuals or institutions considering themselves to have been injured by the published content which they deem to be unprofessional, inaccurate or unethical are settled by the Press Council. The Council is vested with the authority to determine if such a published content has violated the Code of Conduct of Serbian Journalists or not. Another objective of the Press Council is to mediate between injured parties and media editorial boards in order to avoid settlements of disputes in a court of law. Sanctions intended for those in breach of the Code of Conduct are only moral: a media outlet which has published the disputed content is under obligation to publish the Council’s decision stating that a violation

of the Code of Conduct has occurred. The Complaints Commission deliberates over violations and it consists of representatives of founders (four members from media industry and another four from journalist associations) and three public figures as civil society representatives. Experienced and respectable journalists from various segments of the media industry and prominent public figures are appointed as Commission members, which lays the foundation for its representativeness and credibility.

As the Council is a voluntary association, only complaints concerning articles published by media outlets which are Council members may be submitted. By late 2011, its authority had been acknowledged by 66 print media – 10 national dailies, 22 magazines and 34 local newspapers – by way of indicating their respective readiness to recognise a professional mistake made. This figure makes up only 10% of all the registered print media, but these are the highest-circulation media outlets in the country (publications of companies such as *Ringier*, *Color Press*, *Novosti*, *Politika Newspapers and Magazines*, *Adria Media Group*, *Ekonomist Media Group*, etc.). There is fear that media outlets which believe that they would often receive Council's warnings might not join the Council.

In 2011 the Complaints Commission made its first three decisions on complaints submitted to it. In the first case, a violation of the Code of Conduct pertaining to protection of a citizen's privacy in daily *Press* was established. In the second case a complaint filed by health minister Tomica Milosavljević about an article in weekly *NIN* was rejected, and in the third case another complaint lodged by a Belgrade health institution about articles in *Blic*, *Politika* and *Večernje novosti* on dismissal of its director was also rejected. Daily *Press* was dragging its feet for one and a half months over the publication of the Council's decision on the violation of the Code of Conduct, but its eventual publication did help the Council establish its initial credibility.¹⁵⁵

Courts are not bound by the Press Council's decisions. The purpose of the Council is to reduce the number of court proceedings and to become an alternative to settlement of disputes between journalists and members of public in courts. Parallel to the process of informing journalist community and public at large, the activities intended to acquaint prosecutors and judges about the goals and method of decision-making process at the Press Council are underway. In practice, however, it may well happen that the Council find no violation of the Code of Conduct of Serbian Journalists, but that a court pass a ruling that a disputed article has inflicted damage to the plaintiff or violated law in another way.

In societies with developed media, it is considered that legal imposition of the right of reply and correction is unnecessary and impractical (because "judges should not be entitled to determine when this rule should be practised"¹⁵⁶). In Serbia, however, respect for the right of reply and correction is not a part of self-regulatory mechanisms but an obligation established by law, and is even mentioned in the Constitution. Such an incongruity is yet another indicator of considerable discrepancies in journalism development in Serbia and in the developed world.

The right of reply to the published information and correction of untrue, incomplete or inaccurately carried information is a more recent institution of journalistic practice dating from the period after the year 2000. It had not been observed either in the Socialist regime or the regime of Slobodan Milošević, although it had even formally been a part of the notorious (for repression) 1998 Public Information Act (four articles of the law cited this right). Clear procedures for enforcement of the right of reply and correction were set by the 2003 Public Information Act which dedicated as many as 24 articles to this right. This law's provisions are for the most part observed today. As a rule, competent editors, possibly in consultations with lawyers, make decisions on the publication of replies.

The Public Information Act recognises the right of reply for legal and physical persons whose right or interest has been breached. The obligation to publish a reply always applies except in clearly specified cases.¹⁵⁷ If the reply is not published without delay or in an adequate manner, the injured party may take legal action requesting the publication of the reply. A person whose right or interest has been infringed by untrue, incomplete or inaccurate information in an article may bring charges demanding that a court order the responsible editor to publish without compensation the correction of the information previously

carried. A reply or a correction is to be published in the same part of the newspaper, in the same edition, in the same section, on the same page, without any changes. The reply or correction may not be commented upon in the same issue of the newspaper or programme in question where it is being published.

That the right of reply and correction is mostly respected is further illustrated by the statistics according to which out of 242 court proceedings launched in 2011 before the Higher Court in Belgrade in only 7% of all these cases the plaintiffs requested the publication of reply or correction (3% in 2010).

Considerable weakness of self-regulatory practice in Serbia is its failure to catch up with technological innovations in public communication. As a legal framework, self-regulation requires adjustment to new forms of media and journalism, which is yet to be achieved.

Compliance with Journalist Code of Conduct

Indicator 26 – Journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism.

Professional journalist culture embracing ethical conduct as a norm has a long-standing tradition, at least in a part of the media in Serbia. However, the whole journalist community has only recently formally established widely accepted professional standards. The Code of Professional Conduct of Serbian Journalists, as a self-regulatory instrument of responsible journalism, promotes universal ethical principles of journalistic work. In practice, the Code of Conduct provisions on the rights of children, privacy protection, respect for other opinions and yielding to pressure are most often violated.

It was not until 2006 that the journalists managed to come together over a common code of professional conduct, the Code of Conduct of Serbian Journalists. Many were the reasons preventing the journalists from organising themselves, including deep rifts among them with regard to the perception of the societal role of journalism, need for professional autonomy and the way in which to fulfil it.

The code of conduct was jointly adopted by the two biggest journalist associations – the Association of Serbian Journalists (UNS) and the Independent Association of Serbian Journalists (NUNS), and was subsequently embraced by other professional associations and media newsrooms.

The Code of Conduct of Serbian Journalists establishes ethical dimension of the profession by way of directions as to how professional work should be carried out in the best possible manner. Journalists observe the code of conduct voluntarily as their own instrument for strengthening the credibility of the profession and responsibility to the public, independently of legal obligations. The Code of Conduct requires of journalists to cherish and defend their autonomy by opposing the pressure which would violate it.

The need for the establishment of a common code of professional conduct emerged as a response to a long-lasting trend of deprofessionalisation in the context of a chaotic media deregulation. Belgrade Media Centre set up in 2005 a monitoring team, consisting of experienced and prominent journalists, which was analysing on a monthly basis compliance with the rules of the NUNS journalist code of conduct in daily and weekly newspapers. This team's reports indicated mass violations of journalist ethics, particularly in tabloid press.

The Code of Conduct of Serbian Journalists defines the rights and obligations of journalists in their everyday work. It features professional principles which are an integral part of similar codes of conduct in most other countries: the principles of veracity of reporting (separation of facts from opinions, obligation to cite the source of information, respect for pluralism of opinions); independence; responsibility (respect for presumption of innocence principle and the right to reply and correction, clear designation of commercial advertising and political propaganda); use of honourable means in their work; respect for privacy, dignity and integrity of persons that journalists report about; respect for authorship, etc.

The Code of Conduct of Serbian Journalists does not expressly stipulate the obligation of a journalist to clearly designate for the benefit of the public if he/she has had political or financial support or cooperation with state organs while reporting or preparing the material for reporting. However, such an obligation is mentioned in an indirect manner in several provisions. For example, the Code obliges the journalist not to report on issues in which he/she has personal interest or on issues where a conflict of interest may occur; it underlines, above all, journalist's responsibility towards the public as well as that this responsibility "shall not be subordinated to the interests of others, particularly the interests of publishers, government and other state organs", and that "the failure to disclose the facts which may significantly influence the public opinion about an event is equivalent to their deliberate distortion or telling lies".¹⁵⁸

Adoption of internal codes of professional conduct, which would suit specific needs of journalists in individual media outlets, has not yet become the practice of domestic media. The only known internal code are the Rules for Election Campaign Coverage, adopted by public service broadcaster RTS as a set of programming principles related to special obligations of the public service broadcaster in the election process. It is neither common that journalists undertake to respect the code of professional conduct when signing employment contracts. Such an obligation is applicable to journalists joining professional associations.

Business association ANEM (Association of Independent Electronic Media) formulated in 2002 a special Ethical Code of Conduct for Broadcasters in whose drafting a large number of journalists, above all, those from ANEM member stations, participated. Compliance with the principles enshrined in the Ethical Code of Conduct for Broadcasters is still a prerequisite for full membership in this association which brings together over 100 electronic media outlets throughout the country. It is not binding on the journalists employed with other broadcasters. The Broadcasters Code of Conduct, adopted in 2007 by the Serbian Public Broadcasting Agency, is, however, binding on all the electronic media. This code comprises general binding instructions regulating the issues pertaining to the programming content. Failure to comply with the Broadcasters Code of Conduct entails pronouncement of measures which the Agency may resort to under the Public Broadcasting Act – reprimands, public warnings, temporary and permanent revocation of broadcasting licences. Individual provisions of the Broadcasters Code of Conduct encroach upon the traditional preserve of self-regulation as they address ethical and professional standards. Media community fiercely opposed such a move, clearly insisting that professionalism and ethics of the media depend more on voluntary acceptance of self-regulated rules than the regulations imposed by state institutions (albeit formally independent). Despite these protests, including the motion for assessment of constitutionality of the Broadcasters Code of Conduct individual provisions, this code of conduct, unchanged, remains in effect to date.

Professional culture embracing ethical conduct as a norm is still not the dominant feature of Serbian journalism. In practice, the journalist code of conduct is often breached. According to those at the helm of professional associations, the most frequent violations relate to the rights of children and juveniles, privacy protection, respect for other opinions and yielding to pressure, even though these issues are clearly regulated in the Code of Conduct.

Daily activities of NUNS and UNS associations entail addressing drastic violations of the Code of Conduct which undermine moral integrity of the profession. Given their focus on unfavourable legal, economic and political climate in which the media operate today, professional organisations are not managing to include among their priorities the issues of wider significance related to the Code of Professional Conduct, such as the reasons for non-compliance with the professional standards, measures for developing professionalism further, education of journalists and students of journalism on journalist ethics, etc.

Parliament's Care for Media Freedom Development

Indicator 27 – National parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.

National Assembly of the Republic Serbia, in its current composition (formed following the May 2008 general election) has never analysed media freedoms in Serbia. At times, this issue would be the subject of discussion as part of regular parliamentary activities – passage of bills, adoption of reports of independent state institutions (such as the Commissioner for Information of Public Importance and Personal Data Protection and the Protector of Citizens), voting on candidates for Public Broadcasting Agency Council members, etc.

In the past three and a half years, the ruling majority in the parliament has not consistently displayed commitment to the protection of freedom of expression and media freedoms as crucial to the Serbian society. While some laws favouring further development of public information freedom were passed (ratification of the European Convention on Transfrontier Television, amendments to the Criminal Code granting journalism the status of an activity of public importance), in three significant instances the parliament proved itself unwilling to protect media freedom from interference on the part of the ruling parties, intended to satisfy their short-term needs, and to free the media sphere from control exercised by the state and the political parties. The first such case was the passage of the Bill on Amendments and Addenda to the Public Information Act in 2009, which was effected in an urgent summary procedure, without public discussion, despite many objections to the new legal provisions imposing restrictions to freedom of expression and threatening the survival of media outlets fined under the amended legal regime (see principle no. 1). One year later, these legal changes were revoked as they were contrary to the Constitution. It has come to light recently that the adoption of restrictive changes to the Public Information Act was insisted upon by G17 Plus political party as a prerequisite for remaining a part of the ruling coalition. Apparently, this political party saw the restrictions to media freedom as the only effective way to bring to a halt long-standing disparaging coverage of the party and its leader by tabloid newspaper “Kurir”.

The second case was the passage of the National Minority Councils Act (adopted on the same day as the aforementioned law), whose segments directly contradicted the Public Information Act and introduced additional legal insecurity with regard to the role of the state in the media sphere. In addition, thanks to this law, minority-language media outlets were made to fall prey to political deals and horse-trading. The third case was the rejection of an amendment (2010) to a controversial provision contained in the Electronic Communications Act allowing security services and internal affairs organs to gain insight into electronic communications without a court decision authorising them to do so and undermining the right of a journalist to protect the secrecy of his/her sources (see principle no. 8).

Parliament's rejection of the proposal put forth by domestic institutions (2010) to delete the article from its Rules of Procedure granting it the authority to dismiss the Commissioner for Information of Public Importance and the Protector of Citizens (Ombudsman), in case of its dissatisfaction with their reports on the work of public administration, could also rank among the National Assembly's controversial decisions affecting the freedom of media. However, in early 2011, the parliament finally deleted this provision from its Rules of Procedure in response to the criticism coming from the European Union.

Serbian parliament's Culture and Information Committee is particularly focusing on media-related issues. According to the Rules of Procedure, this parliamentary committee is to consider issues in eight individual areas, including public information (where other areas are: development of culture and artistic creativity; protection of cultural monuments and cultural heritage; librarianship, publishing, cinematography, music and theatre; endowments, foundations and funds; etc.). Since its inception in mid-2008, the committee had had 38 meetings by late 2011. The committee is also mandated to consider bills and proposals of other general acts, to monitor the implementation of government's policy and enforcement of laws and other legal acts,

as well as to launch initiatives and submits proposals to the National Assembly, to consider other initiatives, petitions, submissions and proposals within its scope of work.

Since 2008 to date, the committee has never initiated of its own accord a debate on any issue related to media freedoms, nor has it ever instigated any actions to advance media freedoms. The only more recent activity of the committee was the participation of its chair Jelena Trivan, as a member of the working group, in the drafting of the Public Information System Development Strategy, adopted by the government in 2011.

Sources and notes

¹ Data from the survey conducted in late 2011 for the purpose of compiling this report.

² According to the survey conducted by the Institute of Social Sciences, only one out of 210 respondents estimated that media freedoms and journalist rights were fully exercised in practice, whilst 58% thought that there were serious obstacles, and another 6% were of the opinion that, in practice, there were no conditions in place at all for their enforcement (<http://www.osce.org/serbia/75445>).

³ The survey of the Institute of Social Sciences “Freedom of Media in Serbia in 2008” (<http://www.osce.org/sr/serbia/37379>).

⁴ Persons whose right to freedom of expression has been violated in Serbia may, having exhausted all available legal remedies in the country, apply to the European Court of Human Rights to protect this right.

⁵ Amendments to the law were passed in the Serbian National Assembly by narrow majority. Judging by the reports in domestic media, disagreements over the changes to the law undermined the stability of the government, while the documents published on the WikiLeaks web site in 2011 showed that the G17 Plus party threatened to walk out of the ruling coalition if the amendments were not adopted.

⁶ <http://www.vk.sud.rs/filipovic-protiv-srbije-predstavka-br.-2793505.html>, <http://www.vk.sud.rs/lepojic-protiv-srbije-predstavka-br.-1390905.html>, <http://www.vk.sud.rs/bodrozic-protiv-srbije-3255005.html>, <http://www.vk.sud.rs/bodrozic-i-vujin-protiv-srbije-3843505.html>.

⁷ See NUNS round table “Guilty Verdict for a Satirical Piece” on the conviction of *Čačanske novine* editor-in-chief Stojan Marković for defamation in a satirical piece in which politician Velimir Ilić recognised himself (<http://www.nuns.rs/dosije/specijal7/01.jsp>).

⁸ An excerpt from the interview of a local private newspaper editor-in-chief, “We have been sued exclusively by the holders of political office. No one has requested the publication of a rebuttal, therefore it is obvious that their objective is not to inform the public about whether the published information about them was true or not, and to defend their reputation and honour, but to make money. No one has demanded that the court order a publication of a correction of the disputed information or the judgement itself.”

⁹ The source of data on court proceedings was the analysis of court proceedings against media and journalists compiled by the Živković–Samardžić Law Office from Belgrade. Publicly available data on court proceedings on the Portal of Serbian Courts were analysed (http://tpson.portal.sud.rs/libra_portal_full/default.cfm).

¹⁰ Dušan Marić, an MP from the ranks of the Serbian Radical Party (SRS), filed two charges against daily *Kurir* seeking 110 million dinars in damages. Businessman Filip Cepter also sued daily *Kurir* for 100 million dinars, whilst damages charges against daily *Blic* were worth 20 million and 10 million dinars, respectively, and against *Politika* – 16 million dinars.

¹¹ An excerpt from the interview with a local private newspaper editor-in-chief, “Large damages claims constitute an initial stage of financial pressure exerted on our newspaper. The amount of court taxes to be paid for a reply to the charges depends on the size of the damages claim. For local media, taxes worth a couple of thousand dinars and fines to the tune of a couple of hundred thousand dinars literally mean the blocking of our account, thus preventing us to pay out the salaries and cover operating expenses, i.e. this would certainly mean a suspension of the newsroom operation. The next stage in applying pressure is the obligation to appear at court hearings. Trials tend to be drawn-out. All the while we have to appear in court, and all this costs money.”

¹² In the 2008-2010 period, public administration organs were annually receiving between 45,000 and 55,000 requests for free access to information. In 2010, the Commissioner dealt with 1,466 complaints about denial of access to information, and by late 2011 – 1,248 complaints. In 2011, the most complaints were filed against state administrative organs, local self-government organs, judiciary and public enterprises.

¹³ Threats of physical attacks were cited by 18% of the respondents; 16% were denied already granted state financing; 14% experienced meddling in HR policy; frequent inspection controls – 11%; disruption of broadcasting signal or distribution – 10%; bringing groundless charges against the media – 10%; violations of labour rights – 9%; 8% were denied attendance of public events; etc.

¹⁴ The data were obtained by aggregating information published on the web sites of UNS, NUNS, Media Centre (“Media on Media” service), “14 Days in Media” bulletin and ANEM’s media monitoring report.

¹⁵ According to NUNS records, in 2008, there were 143 registered cases of assaults and threats. This figure dropped in the following year to 37 and in 2010 – to 19.

¹⁶ In an interview for German newspaper *Frankfurter Allgemeine Zeitung*, Serbian president said that daily newspaper *Alo* was “the champion of anti-European sentiments in Serbia”, which was described by professional associations as a pressure on this newspaper’s editorial policy. The office of the president allowed only the state news agency *Tanjug*, out of all the media interested, to film the visit of the president and prime minister to *Fiat* car plant in Kragujevac, thereby violating the principle of equal treatment of media.

¹⁷ The first case (“Lepojić v. Serbia”, Application no. 13909/05) is related to the rulings of two domestic courts finding the applicant, Zoran Lepojić, guilty of criminal defamation of the then Babušnica mayor in an article published in “*Narodne lužničke novine*” newspaper, alleging mayor’s “near-insane spending of the money belonging to the citizens of the municipality” on sponsorships and gala luncheons. Another case (“Filipović v. Serbia”, Application no. 27935/05) was related to the rulings of domestic courts finding the applicant, Zoran Filipović, guilty of criminal defamation of the Babušnica mayor, having alleged that the mayor “might have been involved in embezzlement and tax evasion” (http://www.zastupnik.gov.rs/dokumenti/presude/lepojic_p_13909-05_ser.pdf and http://www.zastupnik.gov.rs/dokumenti/presude/filipovic_p_27935-05_ser.pdf).

¹⁸ http://www.zastupnik.mpravde.gov.rs/images/lepojic_filipovic_r_ser_eng.pdf.

- ¹⁹ Data originate from the analysis of court proceedings against media outlets and journalists of the Živković Samardžić law office in Belgrade. Publicly available data on court proceedings at the Serbian Courts Portal were analysed (http://tpson.portal.sud.rs/libra_portal_full/default.cfm).
- ²⁰ The source of data is the analysis of legal cases against the Local Press Association members compiled by Dragan Lazarević law office from Kragujevac.
- ²¹ In its decision, the Press Council's Complaints Commission invoked the Public Information Act, the Serbian Journalist Code of Conduct and the judgements of the European Court of Human Rights, stating that "the rights of politicians in the domain of public information are limited, proportionately to the justified interest of the public to know how the entrusted functions of public office are performed", going on to say that this "is particularly relevant to a government minister" (http://www.savetzastampu.rs/latinica/zalbeni_postupci/odluka_tomica_milosavljevic/).
- ²² <http://www.blic.rs/Vesti/Hronika/266808/Homen-Uvreda-i-kleveta-uskoro-nece-biti-krivicna-dela>.
- ²³ <http://www.anem.rs/sr/aktivnostiAnema/monitoring/story/12698/PETA+MONITORING+PUBLIKACIJA+ANEMA.html>.
- ²⁴ Translations of forty-two judgements of the European Court of Human Rights against Serbia and another forty-four judgements against other countries are available on the Supreme Court of Cassation's web site. However, a large number of judgements considered to be crucial for the case law of the European Court of Human Rights in its application of article 10 of the Convention are lacking (<http://www.anem.rs/sr/aktivnostiAnema/monitoring/story/12698/PETA+MONITORING+PUBLIKACIJA+ANEMA.html>).
- ²⁵ Milenković, Dejan (2006) "Uklopivost domaćeg prava i prakse u oblasti slobode izražavanja u Evropsku konvenciju za zaštitu ljudskih prava i sloboda" (*Compliance of Domestic Law and Practice in the Area of Freedom of Expression with the European Convention for the Protection of Human Rights and Freedoms*) (www.helsinki.org.yu/hrlawyers/files/sem4_pred_dejan.doc).
- ²⁶ According to the report of the Protector of Citizens (Ombudsman), the period preceding the 2010 Pride Parade had been characterised by "clear and unambiguous public hate speech" in the form of street graffiti, live TV shows, public statements of political and religious leaders and media articles (www.zastitnik.rs/attachments/Izvestaj%20LGBT.doc).
- ²⁷ Radojković, Miroljub and Stojković, Branimir (2003) "Journalists as a Professional Group" („Novinari kao profesionalna grupa"), *Sociological Review (Sociološki pregled)*, vol. XXXVII, nos. 3–4, p. 241–254.
- ²⁸ <http://www.scribd.com/doc/7032462/Novinari-o-Novinarstvu>.
- ²⁹ www.novinari.rs.
- ³⁰ Matić, Jovanka; Ignjatović, Suzana; Pavlović, Zoran; Pantić, Dragomir; Milošević, Mirjana (2007) *Journalism Studies (Studije novinarstva)*, Belgrade, Centre for Media Professionalisation and Social Sciences Institute.
- ³¹ Group of authors (2006) *Education for Media (Obrazovanje za medije)*, Belgrade, Centre for Professionalisation and Social Sciences Institute.
- ³² An initiative to introduce licensing for journalist profession in Serbia was launched by representatives of the Independent Journalist Association of Serbia (NUNS) and the Independent Journalist Association of Vojvodina (NDNV) in 2005 (<http://www.ndnv.org/?p=517>).
- ³³ http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=06&dd=18&nav_id=366680.
- ³⁴ The data originate from an anonymous survey of 40 senior political party officials conducted in 10 cities (Belgrade, Novi Sad, Niš, Kragujevac, Čačak, Jagodina, Bujanovac, Preševo, Novi Pazar and Prijepolje) for the purpose of this report in late 2011. Respondents were chairs and members of executive boards of political parties, chairs and members of main boards, spokespersons, general secretaries and officers of political parties' information services.
- ³⁵ Unpublished OSCE survey "Media Pluralism in Serbia" featuring an analysis of coverage of daily newspapers *Politika*, *Blic*, *Večernje novosti*, *Press* and *Kurir* and news shows of RTS and TV Studio B.
- ³⁶ Matić, Jovanka (2007) *Television vs. Voters (Televizija protiv birača)*, Dobar naslov, Belgrade.
- ³⁷ Presidential election in Serbia in 2008 – Media Monitoring, Final Report (http://www.mc.rs/upload/documents/istrazivanje/Finalni_Monitoring_predizbornog_izvestavanja_Parlamentarni_izbori_2008.pdf).
- ³⁸ The Deputies Election Act stipulates fines for a failure to present election participants on the programme of public service broadcasters as well as for the publication of estimated election results during the election blackout.
- ³⁹ The Public Broadcasting Agency (RRA) issued two warnings to private broadcasters due to unequal treatment of election participants in the 2004 presidential election campaign (TV BK) and the 2008 general election campaign (TV Palma plus), respectively, as well as another warning for the violation of the rule prohibiting broadcasts of paid election promotions by public service broadcasters (TV Studio B) during the 2009 local election in the Belgrade municipality of Voždovac.
- ⁴⁰ Thus far the Public Broadcasting Agency has issued seven general binding instructions for presidential elections in 2003, 2004 and 2008, general elections in 2003, 2007 and 2008, and local elections in 2004.
- ⁴¹ <http://www.rra.org.rs/cirilica/izvestaji-o-nadzoru-emitera>.
- ⁴² For example, the news TV programme in Hungarian language allotted 35% of total air time dedicated to elections to the Hungarian coalition and another 26% to another election participant, whilst all the others were given about 5% of air time or less. TV programme in Romany language reported on only three Roma parties, completely ignoring other election participants, but at that – favouring one of these three (Matić, Jovanka (2009) "RTV Coverage during the 2008 Election Campaign" („Izveštavanje javnog servisa Vojvodine tokom izborne kampanje 2008. godine"), Dubravka Valić Nedeljković (ed.) *Media Scanner (Medijski skener)*, Novi Sad Journalist School (Novosadska novinarska škola), Novi Sad).
- ⁴³ Instructions for accreditation of foreign media representatives (<http://www.kultura.gov.rs/lat/akreditacija>).
- ⁴⁴ According to the 2002 population census, there were 293,000 Hungarians living in Serbia, 292,000 Bosniaks/Muslims, 108,000 Roma, 70,000 Croats, 69,000 Montenegrins, 62,000 Albanians, 59,000 Slovaks, etc.
- ⁴⁵ http://www.ombudsmanapv.org/omb/images/stories/dokumenti/istrazivanja_publikacije/manjinski_mediji_u_vojvodini.pdf.
- ⁴⁶ Serbia ratified two Council of Europe's documents – the Framework Convention for the Protection of National Minorities (1998) and the European Charter for Regional and Minority Languages (2005).

⁴⁷ Members of Hungarian, Roma, Croatian, Albanian, Slovak, Romanian, Ruthenian, Bulgarian and Macedonian national minorities participated in the survey. Respondents were members of national councils' executive boards, members of public information boards or other boards, members of media management boards and journalists of minority media.

⁴⁸ Serenčes, Žužana (2011) "National Minorities in Media Future of Serbia („Nacionalne manjine u medijskoj budućnosti Srbije“), *Journal of European Integration (Izazovi evropskih integracija)*, no. 17, Official Gazette (Službeni glasnik), Belgrade.

⁴⁹ At the time of transfer of founding rights to national minority councils, Vojvodina's parliament guaranteed that the future funding of minority media would be at least at the same level as at that point.

⁵⁰ "At the last moment, the decision on the transfer of founding rights to minority councils was removed from the agenda of deputies in the Vojvodina's parliament which was why the deputies of the Alliance of Vojvodina's Hungarians walked out of the parliamentary session in protest, expressing their indignation and reproaching the coalition partners, above all, the Vojvodina's League of Social Democrats, for their reservations about such a solution." After interparty negotiations, the decision was eventually passed. (http://www.slobodnavojvodina.org/index.php?option=com_content&view=article&id=101:informisanje-na-jezicima-nacionalnih-manjina-u-vojvodinideetazicija&catid=36:drustvo&Itemid=56).

⁵¹ Valić Nedeljko, Dubravka (2008) "National Minority Media in Vojvodina/Serbia – Privatisation" („Mediji nacionalnih manjina u Vojvodini/Srbiji – privatizacija") (<http://www.novinarska-skola.org.rs/NNS3/documents/sr/11/sr.pdf>).

⁵² Commissioner Rodoljub Šabić himself described such a solution as a small change for the better going on to qualify it as inefficient in the prevention of security services' supervision of personal communications of citizens and journalists authorised by the Security Information Agency director's signature instead of a court decision (<http://www.media.ba/mcsonline/bs/tekst/konadzire-nadziraca>).

⁵³ A Draft Proposal of the Rules on Technical Requirements for Devices and Software Support for Legal Interception of Electronic Communications and Retention of Data on Electronic Communications was formulated by the Serbian Agency for Electronic Communications (RATEL).

⁵⁴ <http://blog.b92.net/text/18387/VRUĆA LETNJA TEMA - ELEKTRONSKE KOMUNIKACIJE/>.

⁵⁵ Article 144 of the Criminal Code of the Republic of Serbia stipulates fine or imprisonment for unauthorised recording of a person which significantly infringes upon his/her personal life and for the presentation of the recording to a third person as well as for the publication or presentation of documents, photographs, films or audio recordings of personal character, without his/her consent, thereby significantly infringing upon personal life of that person. Article 172 stipulates fine or imprisonment for media dissemination of information about anyone's personal or family life that may harm his/her honour or reputation. A journalist shall not, however, be held responsible for dissemination of information about personal or family life if he/she proves the veracity of the allegations or if he/she had reasonable grounds for belief that the allegations he/she related or disseminated were true.

⁵⁶ Under the Labour Act, the employment relationship is to be established through a contract on employment between an employer and an employee, but the law goes on to specify that such a contract may not reduce the scope of rights prescribed in the same law (such as the right to adequate remuneration, health care protection, protection of personal integrity in the event of illness or impairment of work ability or old age, temporary unemployment benefits, special protection for women during pregnancy, delivery and child care, protection of persons with disabilities, etc.). A broader spectrum of labour rights may be determined by either a general collective agreement, applicable to the whole territory of the country, or a special collective agreement, applicable to a branch of the economy or a part of the country's territory.

⁵⁷ The presented data are derived from a selection of economic news posted on the following web site: http://www.sindikatsrvesti_najave.htm.

⁵⁸ These characteristics were researched as part of the 2007 survey conducted by the Strategic Marketing and the Independent Journalist Association of Serbia (NUNS) "Journalists and Journalism in the Eyes of Serbian Citizens and Journalists" („Novinari i novinarstvo u očima građana i novinara Srbije" - <http://www.nuns.rs/download/MCnovinari.pdf>) and the 2003 survey conducted by the Media Centre "Profession – Journalist" („Profesija – novinar" - <http://www.mc.rs/code/navigate.aspx?ld=64>).

⁵⁹ These are the results of the survey conducted by the Centre for Media and Media Research with the Belgrade University Faculty of Political Sciences "Profession at the Crossroads – Journalism on the Threshold of Information Society" („Profesija na raskršću – novinarstvo na pragu informacionog društva" - <http://www.fpn.bg.ac.rs/2011/06/24/profesija-na-raskrscu-novinarstvo-na-pragu-informacionog-drustva/>).

⁶⁰ The 2002 population census registered 6,148 "journalists and other press agents", out of whom 21% were involved in the activities other than typical journalism (<http://www.nuns.rs/download/MCnovinari.pdf>).

⁶¹ According to the data of the United Branch Trade Unions "Independence", an average monthly pay of this trade union's members in 2011 was 27,000 dinars, "following an ascending curve as you go from the south of Serbia towards the north" (interview with a representative of the United Branch Trade Unions "Independence", December 2011).

⁶² Data of Journalist Trade Union of Serbia (http://www.politika.rs/vesti/najnovije-vesti/Sindikatsrvesti_novinar-situacija-u-medijskim-dramaticna.lt.html).

⁶³ According to the 2008 data, an average monthly journalist salary in Serbia was about EUR 400–450, in Macedonia - EUR 320–350, in Albania - EUR 400–500, in Bulgaria - approx. EUR 600, in Slovenia - EUR 1,000 for novices and up to EUR 3,000 for experienced journalists with at least 5-year-long length of service, and the lowest was in Montenegro (<http://www.capital.ba/novinari-medu-najslabije-placenim-radnicima>). A search of sources available online showed that the average journalist salary in 2011 totalled about EUR 200–300 in Macedonia, around EUR 350 in Bosnia-Herzegovina, and about EUR 750 in Croatia.

⁶⁴ In 87% of the surveyed media outlets, an average journalist salary amounted to 40,000 dinars – or less (below 20,000 dinars in 22% of the media, between 21,000 and 30,000 dinars in 15% of the media, 41,000 – 50,000 dinars in 6% of the media, 51,000 – 60,000 dinars in 2% of the media and over 60,000 dinars in 1% of the surveyed media).

⁶⁵ Milivojević, Snježana (2011) "Low Salaries and High Technology – Journalists and Journalism in Serbia" („Niske plate i visoka tehnologija – Novinari i novinarstvo u Srbiji"), *Kultura*, no. 132 (<http://scindeks.nb.rs/article.aspx?artid=0023-5164113201IM&redirect=ft>).

⁶⁶ <http://www.sinos.rs/o-nama>.

⁶⁷ These are the results of the survey entitled "Journalists and Journalism in Serbia", conducted by the Bureau for Social Research and Online survey service "Tvoj stav" ("Your Attitude") on a sample of 261 journalists (<http://www.tvojstav.com/results/EeqEAKWRjhmLrVW6nvxn/novinari-i-novinarstvo-u-srbiji>).

⁶⁸ The result of a survey conducted by ANEM, NUNS, NDNV and Local Press with 240 editors of news media in late 2011 for the purpose of this report.

⁶⁹ E.g. in "Politika Newspapers and Magazines" (*Politika novine i magazini* - PNM) company, there are Trade Union Organisation of PNM, Independent Trade Union of PNM, New Trade Union of PNM and Politika Journalist Trade union.

⁷⁰ <http://www.sinos.rs/images/articles/files/poseban-kolektivni-ugovor-28-april-2009-prednacr.doc>.

⁷¹ <https://sites.google.com/site/dosijenuns/Dosije-33/Pregovaraci>.

⁷² Interview with a representative of the Media Branch Trade Union "Independence", December 2011.

⁷³ These are the results of a survey conducted by the Social Sciences Institute in 2010 as part of an international research project "Democracy in Unstable Social Spaces: Serbia".

⁷⁴ For the purpose of this report, in late 2011, in-depth interviews were conducted with 12 editors from media outlets which were exposed to great pressures.

⁷⁵ From the statement of an interviewed editor on the types of restrictions to the freedom of media, November 2011.

⁷⁶ Police protection for this woman journalist was introduced in response to the threats sent to her via Internet and graffiti following the broadcasting of the "Insider" show on criminal charges brought against leaders of several football clubs' fans groups of whom the majority have never actually been prosecuted. Even though the police identified seven authors of threats via Internet, her safety was further endangered following the broadcast of the "Insider" show on abuses in the Kolubara Mining Basin in 2011.

⁷⁷ Data on threats and attacks on journalists were gathered by aggregating information on these cases published on the web sites of the Journalist Association of Serbia (UNS), the Independent Journalist Association of Serbia (NUNS), the Media Centre ("Media on Media" service), in "A Fortnight in the Media" newsletter and ANEM report on media monitoring.

⁷⁸ <http://www.uns.org.rs/sr-Latn-CS/content/reagovanja/11512/otkriti-kona%C4%8Dno-napada%C4%8De-na-%C5%A1aponji%C4%87a.xhtml>.

⁷⁹ Branković was filming demonstrations against the arrest of The Hague indictee Radovan Karadžić. Branković himself had filmed one of the attackers immediately before he sustained a shoulder injury and a broken leg. The First Basic Court in Belgrade sentenced this attacker to house arrest, whilst his accomplices received suspended sentences of six and four months' imprisonment, respectively.

⁸⁰ Out of 11 persons arrested in the aftermath of this event, charges were brought against six of them. In April 2010, the First Basic Court in Belgrade acquitted them of charges for threatening the journalist with violence. Criminal proceedings were conducted only against one person involved – a Partizan fans group leader. In August 2010, he was sentenced to 16 months' imprisonment. In July 2011, the Court of Appeal in Belgrade upheld a part of the judgement pertaining to violent behaviour (six months' imprisonment), but overturned a part of the judgement pertaining to the endangerment of the journalist's safety and ordered a retrial.

⁸¹ The Register of Public Media was established by the amendments to the Public Information Act in 2009. Suspension of a public media outlet's operation was introduced as a penalty for non-entry in the Register of Public Media, thereby rendering the entry of a media outlet in the register a prerequisite for its operation. In 2010, the Constitutional Court declared this legal provision as unconstitutional.

⁸² Cable television licences had not been issued up until 2011, hence all the then existing cable TV channels had been broadcast without a licence.

⁸³ Editors of RTV broadcasters (151) made up a part of the sample of 240 news media editors who were interviewed for the purpose of this report, encompassing also print and Internet media on which the decisions of regulatory bodies did not have a direct impact. Opinions of all the respondents in this respect were similar to the opinions voiced by the surveyed radio and television media editors.

⁸⁴ Under the law currently in force, the Conference the Universities of Serbia; the associations of public broadcasters, journalists, film and performing artists and composers; non-governmental associations dealing primarily with the protection of freedom of speech, national and ethnic minority rights and the rights of the children; and, finally, traditional churches and religious communities – each propose one member of the Council. The ninth Council member is to be proposed by the eight previously elected Council members.

⁸⁵ The problem with the appointment of Council members arose because both the non-governmental organisations and the professional media associations fielded more than two candidates each, exceeding the legal limitation. The Serbian National Assembly first passed an amendment bestowing on its parliamentary body the right to select two out of several nominated candidates, without any criteria, but then failed to secure voting majority while deliberating over two candidates of the professional media associations.

⁸⁶ In the course of formation of the first Public Broadcasting Agency Council, the procedure for nominating two state bodies' candidates and the criteria for the election of a Council member from Kosovo were not observed. Three Council members resigned in protest against the undermining of the Council's legality and credibility, hence the first Council did not even get off the ground. See *Television in Europe: Serbia (Televizija u Evropi: Srbija)*, <http://www.anem.rs/sr/medijskaScena/istrazivanja/story/7394/Televizija+u+Evropi%3A+regulativa,+politika+i+nezavisnost.html>.

⁸⁷ Many broadcasters which were denied licences claimed that the Public Broadcasting Agency failed to comply with its legal obligation, when choosing among several prospective applicants, to give precedence to the applicant "offering stronger guarantees that it would contribute to higher quality and more diverse programming" as well as to the applicant which had given greater contribution to the "implementation of principles regulating relations in the field of public broadcasting" in the previous period (article 53 of the Public Broadcasting Act).

- ⁸⁸ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf>.
- ⁸⁹ <http://www.rra.org.rs/uploads/useruploads/PDF/Pismo-Vladi.pdf>.
- ⁹⁰ Interview with a representative of the Public Broadcasting Agency, December 2011.
- ⁹¹ Failure to clean up the public broadcasting sector and crack down on illegal broadcasters is due to inadequate regulations (insufficient powers of the regulatory authorities and complicated procedures), mild punishments for perpetrators, but also slow and meek response and uncoordinated (disjointed and incomprehensive) reactions on the part of the regulatory authorities.
- ⁹² <http://www.naslovi.net/2011-04-09/b92/porfirije-za-ostrije-mere-rra/2462218>, <http://www.blic.rs/Vesti/Drustvo/246737/Potreban-novi-Zakon-o-radiodifuziji-i-regionalna-regulativa>.
- ⁹³ <https://sites.google.com/site/dosijenuns/Dosije-33/Stampa>.
- ⁹⁴ <http://www.novosti.rs/vesti/naslovn/aktuelno.290.html:241873-Futura-grubo-krsi-zakone>.
- ⁹⁵ <http://www.e-novine.com/srbija/srbija-tema/49850-Otimaina-pod-kiobranom-politikog-steaja.html>.
- ⁹⁶ http://www.ratel.rs/upload/Trziste_8_Distribucija%20medijskih%20sadrzaja.pdf.
- ⁹⁷ <http://webzrs.stat.gov.rs/WebSite/repository/documents/00/00/43/63/PressICT2011.pdf>.
- ⁹⁸ http://www.ratel.rs/upload/documents/Pregled_trzista/Ratel%20Pregled%20trzista%202010.pdf.
- ⁹⁹ <http://webzrs.stat.gov.rs/WebSite/repository/documents/00/00/43/63/PressICT2011.pdf>.
- ¹⁰⁰ The Public Information Act uses only once the term “free competition” in article 7 which stipulates “the protection of the principles of free competition” as an objective of the prohibition of any form of monopoly.
- ¹⁰¹ Interview with the Commission representative, conducted for the purpose of this report in December 2011.
- ¹⁰² Telekom Srbija is not only a fixed-line and cell phone operator but also a distributor of TV programmes via IPTV platform.
- ¹⁰³ This is the finding of years-long qualitative studies of media audience conducted by the Institute of Social Sciences in Belgrade.
- ¹⁰⁴ On a scale from 0 to 2, indexes were as follows: RTS2 – 0.834, RTS1 – 0.824, B92 – 0.787, Pink – 0.778. See Matić, Jovanka (2009) “Diversity of TV Programming in Serbia” (“Raznovrsnost TV programa u Srbiji”), in *Media Scanner (Medijski skener)*, ed. Dubravka Valić Nedeljković, Novi Sad Journalist School, Novi Sad, p. 24–69.
- ¹⁰⁵ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf> and <http://www.mc.rs/ko-su-vlasnici-stampanih-medija.6.html?eventId=57122>.
- ¹⁰⁶ <http://www.skockajtebudzet.rs/rs/clanak/ekskluzivno-ministarstva-potrosila-milione-za-medijske-usluge>.
- ¹⁰⁷ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf>.
- ¹⁰⁸ Article 39 of the Interim Trade Agreement invokes article 86 of the Treaty Establishing the European Community (now article 106 of the Treaty on the Functioning of the European Union), which stipulates limitations on the said measures with regard to public enterprises.
- ¹⁰⁹ The Ministry of Culture, Media and Information Society announces public competitions in the field of general public information, for electronic media based in Kosovo and Metohija, for public information dissemination for persons with disabilities, for dissemination of information to Serb populations in the countries in the region and for dissemination of information in national minority languages. In 2011, the Vojvodina’s Secretariat for Information conducted public competitions in the fields of acquisition of technical equipment for media, new programming content and development of professional public information standards.
- ¹¹⁰ The state budget designated 220 million for Tanjug news agency, 122 million for Radio Yugoslavia, 29 million for public media enterprise “Panorama” in Priština and 11 million for publishing house “Jugoslovenski pregled” (<http://www.kultura.gov.rs/sites/default/files/attachment/informator-2011.pdf>).
- ¹¹¹ According to media reports, in Niš, the city council awarded 40 million dinars in 2010 to the city television broadcaster, and another 17.7 million dinars to all the other media outlets, while in 2011 the financial assistance earmarked for NTV was 44 million dinars, whereas all the other media outlets received 16 million dinars in total. The municipality of Valjevo allocated four million dinars to state-owned Radio Valjevo, and put up another four million dinars for a public competition in which five radio stations were awarded sums between 200,000 and 800,000 dinars, while a TV broadcaster received 1.4 million dinars. The municipality of Loznica also funded first the media owned by the municipality and then announced a public competition for allocation of 200,000 to 600,000 dinars in individual grants, in aggregate amounting to 2.5 million dinars. In 2010, in Smederevo, two thirds of the public information budget was granted to the city public broadcaster (about 19 million dinars), while the rest was spread among nine other media outlets.
- ¹¹² In Požarevac, the Environmental Protection Fund announced a public competition for reporting and educational media coverage of environmental issues and communal waste management, and three million dinars were distributed to 12 media outlets irrespective of their ownership status.
- ¹¹³ <http://www.media.ba/mcsonline/bs/tekst/dr-avna-pomo-medijima-optimizam-i-sumnje>.
- ¹¹⁴ Communication from the European Commission, dated 2 July 2009, on the application of state aid rules to public service broadcasting (http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf).
- ¹¹⁵ The Public Broadcasting Agency had been reporting RTS’ violations of restrictions on advertising in its TV programming for years only to file 2,475 charges for these violations as late as 2010. The proceedings are still underway (<http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/881386/Medijska+radijacija+opasnija+od+Fuku%C5%A1ime.html>). According to 2008 and 2009 supervision reports, which are not publicly available, RTS was not fulfilling its programming duties as a public service broadcaster. A very detailed 2010 report of the Public Broadcasting Agency, based on the year-long monitoring of two RTS channels’ programming, cited 1,541 violations of the Broadcaster Code of Conduct as well as failure to fulfil the mandatory 10% quota of independently produced programmes broadcast on its channels. Due to “huge disproportion” among television programming genres (i.e. disregard for types of programming which distinguish a public service broadcaster from commercial ones), the Public Broadcasting Agency “called upon RTS to fulfil its programming obligations” (http://www.rra.org.rs/uploads/useruploads/PDF/2787-Godisnji_Izvestaj_RTS-2010_finalno.pdf).

¹¹⁶ Public service broadcasters are also entitled to other sources of revenue such as production and sales of specialised radio and TV programmes, audio-visual content, audio-video material, sound and picture carriers, programming services, organisation and filming of public events and concerts, etc.

¹¹⁷ <http://static.rtv.rs/pdf/2011/11/07/izvestaj-o-finansijskom-poslovanju-za-period-jan-jun-2011.pdf>.

¹¹⁸ The 2007 auditor's report contains the same statement ([http://www.rts.rs/page/rtv/sr/javniservis/ story/287/Finansijski+izve%C5%A1taji/67333/Finansijski+izve%C5%A1taji.html](http://www.rts.rs/page/rtv/sr/javniservis/story/287/Finansijski+izve%C5%A1taji/67333/Finansijski+izve%C5%A1taji.html)).

¹¹⁹ <http://www.vesti-online.com/Vesti/Srbija/176784/Tijanic-Skeptican-sam-da-li-ce-se-RTS-odrzati/print>.

¹²⁰ According to RTV general manager, RTV is "in a less favourable position than twenty years ago when it was collecting subscription fees on its own from the citizens of Vojvodina, achieving a high collection rate (93-98%), and when it built its primary and secondary transmitter network using these funds as well as extensive production facilities sprawling over 20,000 m² and featuring three TV studios (interview, November 2011).

¹²¹ According to the data originating from unknown sources within RTS, the subscription collection rate in South Serbia hovers around 15%, whereas in Belgrade it amounts to about 66% (<http://rs.seebiz.eu/tuzbe-rtv-a-zbog-tv-pretplate/ar-23315/>). Recently, at a public event, RTS general manager said that the average collection rate was 37% (<http://www.blic.rs/m/Vesti/Drustvo/287418/Tijanic-Opstanak-RTS-doveden-u-pitanje>).

¹²² By late 2011, RTS had sent 390,500 warning letters before filing charges and final warnings before lawsuits against those who had not been paying subscription fee regularly. The next step is to take legal action seeking debt enforcement by way of a motion to approve enforcement, which is to be decided upon in a court of law. Some lawyers argue that debts older than one year have already passed beyond the statute of limitations, whilst others claim that the obligation to pay subscription fee may solely originate from individual contracts between RTS and physical persons which, however, are non-existent (<http://www.mc.rs/nakon-sudske-presude-plenidba-imovine.6.html?eventId=58593>).

¹²³ The Anti-Corruption Council's report cites examples of "abuses of public office, corruption, conflict of interest, HR mismanagement, embezzlement and violations of the Labour Act and the Public Procurement Act". According to the report, from 2008 until 2010, RTS had failed to act upon eight orders issued by the Commissioner for Information of Public Importance to deliver the data to those who had sought the information (<http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf>).

¹²⁴ <http://static.rtv.rs/pdf/2011/09/12/izvestaj-nezavisnog-revizora-za-2010.pdf>.

¹²⁵ http://www.b92.net/biz/vesti/srbija.php?yyyy=2012&mm=01&dd=01&nav_id=570509.

¹²⁶ <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA,%20PRECISCENA%20VERZIJA.pdf>.

¹²⁷ <http://oldwww.rts.rs/upload/storyBoxFileData/2009/06/12/1793932/Zapisnik%20III.pdf>.

¹²⁸ <http://www.rts.rs/page/rtv/sr/javniservis/story/285/Pravni+akti/67331/Pravni+akti.html>, <http://static.rtv.rs/files/20091024/Statut-RUV.pdf>.

¹²⁹ Interview with RTV general manager, November 2011.

¹³⁰ National minority councils are entitled to exercise their powers if a public service broadcaster is airing programmes in minority languages, which is something that RTS is not doing.

¹³¹ RTV has radio channels in Serbian and Hungarian languages, respectively, as well as another one broadcasting in eight minority languages, whilst TV Vojvodina broadcasts programmes in nine minority languages on its 2nd TV channel.

¹³² http://www.rtv.rs/sr_ci/vojvodina/ostavka-labudovica-nova-predsednica-uo-ruv-vanja-barisic-jokovic_276789.html.

¹³³ These are the conclusions of one of the rare reviews of RTS news programming from December 2010. (http://www.danas.rs/danasrs/drustvo/gradjani_ponovo_na_poslednjem_mestu_55.html?news_id=218403). The Monitoring Team of Novi Sad Journalist School was analysing RTV news programmes in Serbian and minority languages in the 2006-2008 period and reached similar conclusions (Valić Nedeljković, Dubravka (2008) "Media on Everyday Life" ("Mediji o svakodnevnici"), Novi Sad: Novi Sad Journalist School).

¹³⁴ Data on the total number of media outlets are inaccurate. Neither the Business Registers Agency, nor the Public Broadcasting Agency deletes from the list the entries of media outlets which have ceased operating after their registration. For the purpose of this report and on the basis of available data from accessible registers (April 2011) and publicly available data on termination of media outlets' operation, it was estimated that in September 2011 there were about 1,020 operational media outlets.

¹³⁵ <http://www.mc.rs/medijski-ambijent.2871.html>.

¹³⁶ According to the Strategy's Action Plan, the state ownership in the media should be relinquished two years at the latest after the change of laws, which are to be amended and mutually harmonised by late March 2013.

¹³⁷ Bjelica, Mihailo (1997) *Media and Political Power (Mediji i politička moć)*, Institute for Political Studies, *Radnička štampa*, p. 94.

¹³⁸ In addition to TV stations, there were about 100 radio stations in operation, but only a half of these media had broadcasting licences (Local Television, *Journalism*, nos. 2–3, Institute for Journalism, Belgrade, 1994). Chaos in public broadcasting, which was fomented for political reasons, resulted in the existence of between 900 and 1,200 broadcasters in the late 1990s.

¹³⁹ According to the Association for Development of Private Broadcasting, in the year 2000, there were about 300 private and 180 municipal broadcasters in operation (<http://www.nuns.rs/dosije/01/09.jsp>). The figure of 758 broadcasters came from the statements of the public information secretary of the Federal Republic of Yugoslavia, Slobodan Orlić, in 2002 (<http://arhiva.glas-javnosti.rs/arhiva/2002/03/02/srpski/RG02030105.shtml>).

¹⁴⁰ http://www.paragraf.rs/propisi/strategija_razvoja_radiodifuzne_u_republici_srbiji_do_2013_godine.html

¹⁴¹ In early 2005 (where April 2005 was the deadline for the privatisation of print media and July 2006 – the deadline for the privatisation of radio and TV stations), in 100 out of 161 municipalities in Serbia, 85% of local TV stations, 86% of radio stations and 78% of publishing houses did not even launch the privatisation process (<http://www.nuns.rs/dosije/15/11.jsp>).

¹⁴² In July 2011, following the Securities Commission's decision to limit managing rights of up-to-then majority owner of *Novosti* publishing company, the Republic of Serbia was granted six instead of two places on the company's management board and it immediately appointed its representatives to this body.

¹⁴³ Data from annual financial statements of both news agencies on the web site of the Business Registers Agency.

¹⁴⁴ TV *Valjevo* was forced into bankruptcy over a year after it was sold for the second consecutive time. Instead of investing 1.37 million dinars, the buyer of this media company, involved in the businesses of electrical installations, manufacturing of cots and cleaning, was incurring a debt eventually totalling 3.5 million dinars, while the journalists were not receiving their salaries for months on end. Hence, they were seizing TV equipment on their own to compensate for their outstanding earnings.

¹⁴⁵ The most expensive were the following media companies: publishers of newspapers *Pančevac* (181 million dinars — the contract was subsequently terminated), *NIN* (76.5 million), *Subotičke novine* (72 million), *Ibarske novosti* (70 — the contract was cancelled), *Glas Podrinja* (59), *Zrenjanin* (54); and public broadcasting companies RTV Podrinje in Loznica (53) and RTV M in Sremska Mitrovica (51 million — the contract was cancelled). The publisher of *Zlatarske novosti* (16,000 dinars), the public broadcasting companies of Radio Ljubovija (19,000) and Radio Despotovac (39,000), and the publisher of *Polimlje* in Prijepolje (81,000) had the lowest prices at privatisation auctions.

¹⁴⁶ <http://www.cins.org.rs/?p=740>.

¹⁴⁷ New owners of Užice-based *Vesti* made three times more money by selling 10% of the company's equity (business offices in Užice and Požega, and the plot of land where transmitters were erected) than they had paid for the whole company (<http://www.cins.org.rs/?p=406>).

¹⁴⁸ Criminal charges for mismanagement and incurred debts, including the mortgage on this media company's office building for the benefit of other companies, were brought against the first buyers of *Subotičke novine*, among whom there was an owner of a timber yard "who had allegedly acquired his capital while serving in the Foreign Legion" (<http://www.ndnv.org/wp-content/uploads/2011/07/KnjigaVojvodjanskiMediji.pdf>).

¹⁴⁹ New owners of Šabac-based *Glas Podrinja* reduced journalists' salary coefficients and obliged them to engage in bringing advertisers to the newspaper.

¹⁵⁰ This was the case with the purchase of a string of eight local and regional newspapers in bigger Vojvodina's cities by *Vojvodina Info* consortium, whose individual members were close to the DSS political party (<http://www.ndnv.org/wp-content/uploads/2011/07/KnjigaVojvodjanskiMediji.pdf>).

¹⁵¹ The law stipulates exceptions to this rule in case another law or regulation obliges a public official to perform several public functions, or in some other cases requiring prior approval of the Anti-Corruption Agency.

¹⁵² Live TV broadcasts of parliamentary sessions have been a long-standing tradition of RTS. However, RTS has often complained about detrimental impact in technical, commercial and programming terms of such live broadcasts on the national public service broadcaster. On several occasions, RTS interrupted live broadcasts from the parliament (for technical reasons, due to its exclusive rights to live broadcasts of sporting events, etc.), but the opposition argued that the reasons for such a move were politically motivated, demanding that live parliamentary broadcasts be resumed and refusing to attend the sessions of the parliament several times without live TV transmission of parliamentary proceedings. In 2008, the Public Broadcasting Agency passed a binding instruction related to RTS live broadcasts of parliamentary sessions, but withdrew it soon after as there were no legal grounds for such a regulation. In early 2011, the National Assembly put out live TV broadcasts from the parliament to tender, but no television broadcaster holding a national broadcasting licence applied. The contract with RTS was signed as a result of direct bargaining with the public service broadcaster since negotiations with other broadcasters had failed. The National Assembly is to pay 80 million dinars (EUR 747,000) for live broadcasts of parliamentary sessions.

¹⁵³ Interview with the director of the Office for Media Relations, December 2011.

¹⁵⁴ The rift occurred under the circumstances of disintegration of the federal multiethnic state and emergence of a homogenised national state, wars, international isolation and political dispute over further development of the country. Divided into two estranged camps (one - state-controlled and the other - independent from the government), journalists were adhering to conflicting professional values. The existing Association of Serbian Journalists opted for "patriotic journalism" requiring of journalists to defend national interests and ensure survival of the regime as their best protector. Hence, a new Independent Association of Serbian Journalists was formed on the basis of opposition to instrumentalisation of the profession for the sake of national interests, on one hand, and commitment to change the regime as the main cause of social problems, on the other. The same happened to the Association of Journalists of Vojvodina what, in effect, led to formation of the Independent Association of Journalists of Vojvodina.

¹⁵⁵ Interview with a Press Council representative, December 2011.

¹⁵⁶ Guide for Media Self-Regulation, <http://www.osce.org/me/fom/31502>.

¹⁵⁷ Some of the reasons for non-publication are, for example, that the reply pertains to an opinion instead of statement of facts, that the reply does not dispute truthfulness, completeness or accuracy of the information carried, that the published information could not infringe the right or interest of a person, that the reply is inappropriately longer than the information published, that the reply is obscure, unintelligible or meaningless, or that, due to the content of the reply, its publication might result in a ban to be imposed on the publication, criminal or civil liability with regard to third parties, etc.

¹⁵⁸ <http://www.nuns.rs/dokumenti/index.jsp>.