



**ANALYSIS:**  
**MEDIA FREEDOM**  
**AND JOURNALISTS' SAFETY IN SERBIA**  
**THROUGH THE PRISM**  
**OF EXISTING LEGAL SOLUTIONS**  
**– HOW TO REACH BETTER SOLUTIONS?**

Belgrade, 2021



**ANALYSIS:**

**Media freedom and journalists' safety in Serbia  
through the prism of existing legal solutions  
- HOW TO REACH BETTER SOLUTIONS?**

## **IMPRESUM**

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## 1. INTRODUCTION

The project titled Promoting dialogue between journalists' associations and Western Balkan parliaments for stronger civil society sector aims to improve the institutional dialogue between journalists, civil society organizations (CSOs) and national parliaments, to increase understanding of the situation in the region which pertains to freedom of expression and the role of CSOs, as well as to enhance intersectoral collaboration between CSOs active in the areas of rule of law and human rights. The project is carried out in four states by three journalists' associations: The Association of Journalists of Macedonia, Independent Journalists' Association of Serbia (IJAS) and the BH Journalists Association from Bosnia and Herzegovina, as well as by one union – the Trade Union of Media of Montenegro. The lack of cooperation between lawmakers (parliaments) and national journalists' associations, certain legal shortcomings, as well as disregard for existing legal regulations pose a risk to the right to freedom of expression and information.

For many years now, freedom of expression and freedom of media in Serbia has been at a very low level and the situation seems to be getting increasingly difficult year in, year out. Journalists are working in very difficult conditions and under constant pressures, while the economic position of journalists and media outlets is bad. Journalists are exposed to threats and attacks, they do not feel safe and free while doing their job, and the situation deteriorated further in 2020 due to the coronavirus pandemic, the resulting state of emergency and, finally, the protests in July. A rise in the number of online attacks on journalists also causes concern.

In its progress reports for Serbia, the European Commission has long been stressing problems in this area and underlining the lack of progress in freedom of expression. The last report states that Serbia has achieved a certain level of preparedness in relation to freedom of expression, primarily due to the new media strategy it has adopted. However, it also states that "implementation of the new strategy has not yet started and no progress has been made yet on the ground to improve the overall environment for freedom of expression."<sup>1</sup>

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<sup>1</sup> European Commission, Republic of Serbia, 2020 Report, Brussels, 2020, p. 3, [https://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/serbia\\_report\\_2020\\_SR.pdf](https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2020_SR.pdf)

The report particularly focuses on the problems pertaining to journalists' safety, creation of a favorable environment for unobstructed exercise of freedom of expression, institutions' quick response to threats, physical assault, violence, and cases of invasion of privacy. The focus was also placed on strengthening the independence of the Regulatory Authority for Electronic Media, securing transparent and just co-financing of media content in the public interest, and on increased transparency of media ownership and advertising.

Other reports by international organizations also confirm the poor condition of media freedom in Serbia. According to the latest report by Reporters Without Borders, Serbia is ranked 93<sup>rd</sup>, the same as the year before, in the group of "problematic states."<sup>2</sup> The report mentions the case of arrest of journalist Ana Lalic, as well as the overturned verdict in the Slavko Curuvija murder trial, but also, as a positive example, the first-instance verdict in the case of the arson attack on the home of journalist Milan Jovanovic.

In early 2021, the Article 19 organization, in collaboration with other international organizations and with support from IJAS, organized the Media Freedom Rapid Response (MFFR) advocacy mission to Serbia due to the bad situation regarding media freedom and journalists' safety. The mission report points out that the safety of journalists in Serbia is causing growing concern. Some of the mission's key findings refer to concern over cases of police brutality against demonstrators and journalists during the anti-government protests in July 2020, cases in which politicians and state officials openly threaten journalists, targeting them and defining them as "enemies of the state" or "traitors," online harassment and smear campaigns which create deep insecurity and uncertainty among journalists, the more difficult position of journalists in local environments, the low level of trust in the police and prosecution, and others.<sup>3</sup>

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<sup>2</sup> Reporters Without Borders website: <https://rsf.org/en/serbia>

<sup>3</sup> The organization Article 19 and others, Media Freedom and the Safety of Journalists in Serbia, London, 2021, pp. 6 and 7 <https://www.article19.org/wp-content/uploads/2021/04/Medijiske-slobode-i-bezbednost-novinara-u-Srbiji-izvestaj-misije.pdf>



In January 2020, the Government of the Republic of Serbia adopted the Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025 (hereinafter: Media Strategy). The making of the Strategy involved journalists' and media associations,<sup>4</sup> and the Action Plan for the Media Strategy was adopted in December 2020. The Media Strategy maps the problems and envisions certain measures and activities which are to help improve freedom of the media and expression, the safety of journalists, and other areas so as to create a favorable environment in which they can do their job, and where the media can function in a fair and transparent market. The Government of the Republic of Serbia decided to form two working groups: the Working Group for monitoring the implementation of measures from the Media Strategy and the Working Group for Security and Protection of Journalists.

In Serbia, a set of media laws (Law on Public Information and Media, Law on Electronic Media, Law on Public Media Services) was passed in 2014. Most of the laws, both the aforementioned ones and others which we will analyze through the study, are aligned with European standards. What has been highlighted as a problem for many years now is the fact that there is no will to implement those laws in the spirit in which they were enacted, and that they have proved to be susceptible to abuse, and so the Media Strategy proposes a number of amendments that are to help eliminate that abuse. The journalistic community constantly advocates and works on enhancing media policies and analyzing the laws themselves. At the start of creation of the Media Strategy, back in 2017, when there were disagreements and when five media and journalists' associations withdrew from the initial working group, the associations continued to independently work on a document called Contributions to the Development of the Public Information System Strategy by 2023, which contains proposals and recommendations for how to overcome existing problems and improve the media scene. Later, when the new working group was formed, the document was one of

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<sup>4</sup>The process of making the Media Strategy was accompanied by a number of problems, from the formation of the working groups, the representatives of journalists' and media associations in them, to the very text of the Media Strategy. You can read more on page 10 of the Indicators on the Level of Media Freedom and Journalists' Safety for 2018: <https://nuns.rs/media/2021/04/Indikatori-za-nivo-slobode-medija-i-bezbednosti-novinar-a-Srbija-2018.pdf>

the basic documents it used and most of the items contained in it were eventually included in the new media strategy. IJAS also conducted analyses in 2018 and offered concrete proposals for the improvement of laws regarding the Regulatory Authority for Electronic Media, project co-financing of media content of public interest, and journalists' safety.

This study, besides the three main media laws (Law on Public Information and Media, Law on Electronic Media and Law on Public Broadcasting Services), will also include the laws that pertain to security, the Criminal Code and the Criminal Procedure Code. The analysis will also focus on issues related to civil lawsuits in cases where damages are sought for the publication of information in the media, and the criminal offense of Insult. The study also deals with copyright in the part related to freedom of expression. Keeping in mind that the Media Strategy and the Action Plan for its implementation have been adopted in Serbia, we have connected this study with the Strategy and mapped the themes that are on the one hand related to the aforementioned laws, and on the other with the areas and activities envisaged by the Media Strategy.

The goal of the main study is to explore the existing legal provisions pertaining to media freedom and journalists' safety in every country, as well as to identify good and bad practices (obstacles, legal loopholes and positive steps forward) that support or obstruct media freedom and the safety of journalists. The following research methods were used to gather and analyze data:

- researching secondary sources, gathering data and analyzing the existing legal provisions pertaining to media freedom and the safety of journalists in the country;
- detailed interviews with representatives of relevant interested parties who have the expertise and knowledge about legislation regarding media freedom and journalists' safety: decision makers and civil society and media stakeholders.

## **1. ANALYSIS OF RELEVANT LEGISLATION RELATED TO MEDIA FREEDOM AND JOURNALISTS' SAFETY**

The set of media laws passed in 2014, as well as the other laws encompassed by this study, is largely in line with the European legislation, however implementation of said laws is the problem. The laws' vagueness in certain areas would not be a problem if there was a will to apply those laws in the spirit in which they were written. Since that will does not exist and since the laws as such are susceptible to abuse, the Media Strategy itself envisages amendments to most of these laws.

In this analysis, we will look at the most critical points in media and other laws where certain amendments to the laws need to be made so as to help increase media freedom and the safety of journalists, i.e. to help enhance the environment in which journalists would feel freer and safer to do their job.

### **Safety of journalists**

For a long time now, journalists and media professionals have been exposed to serious threats and physical attacks which directly jeopardize their safety, but are also increasingly exposed to various pressures that indirectly endanger their safety. Over the last few years, there have been particularly pronounced cases of public officials targeting certain critical media and journalists. These pressures come from both certain ministers and the prime minister and the president, but the most pronounced are those coming from members of the National Assembly where, when that is on their agenda, one by one they start targeting a particular media outlet or journalist, calling them enemies of the state, foreign mercenaries, criminal organizations, and accusing them of various things, such as, for example, money laundering.<sup>5</sup> The Open Parliament organization has presented the fact that from the beginning of 2021 to March 10, MPs mentioned

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<sup>5</sup> An MP of the ruling Serbian Progressive Party, Aleksandar Martinovic, during a session of the National Assembly made a number of accusations against the staff at KRIK and the CRTA organization. He falsely claimed that the KRIK staff and editor Stevan Dojcinovic were a criminal organization, and accused them of money laundering and tax evasion. <https://www.krik.rs/martinovic-u-skupstini-lazno-optuzio-urednika-krik-a-da-pere-novac/>

certain media outlets and journalists in a negative context in the Parliament 37 times.<sup>6</sup>

The Criminal Code has recognized that the job of a journalist, i.e. as stated in the code itself, jobs of public importance in the area of public information, carries an elevated risk to the safety of the person doing it.<sup>7</sup>

One of the most frequent ways in which the safety of journalists and media professionals is jeopardized are threats, which are sometimes undoubtedly direct and in other cases, especially keeping in mind judicial and prosecutorial practice, not so direct. The Criminal Code stipulates the criminal offense of Endangering Safety,<sup>8</sup> which states that those who endanger a person's safety by threatening to attack the life or body of said person or a person close to them will be penalized. As part of the same criminal offense, the code has added particular incrimination for cases where this criminal offense is committed against a person doing a job of public importance in the area of information, with a stricter penalty envisaged for perpetrators when the offense is committed in relation to the work the person is doing. In this criminal offense, journalists and media professionals have been equated with the president of the Republic, members of parliament, prime minister, members of the Government, Constitutional Court judges, judges in general, public prosecutors and their deputies, lawyers, and police officers. In addition to this criminal offense, those persons are provided with special protection in two other criminal offenses: First-Degree Murder (Article 114, paragraph 1, item 8) and Grievous Bodily Harm (Article 121, paragraph 6). In other criminal offenses committed against journalists, the journalists are entitled to the same legal protection as other citizens.

According to the long-time experience of IJAS, which has been keeping a database of attacks and pressures since 2008, out of the other criminal offenses journalists have encountered in relation to doing their job, the

<sup>6</sup> Cenzolovka, Diary of MPs' Insults: The media are pirates, dilettantes, sniper-journalists, the mafia... and, oh yes, they cooperate with terrorists!, Danijel Apro, March 23, 2021 <https://www.cenzolovka.rs/pritisci-i-napadi/dnevnik-poslanickih-uvreda-mediji-su-pirati-diletanti-snajper-novinari-mafija-i-da-saradjuju-s-teroristima/>

<sup>7</sup> Criminal Code, Article 112, paragraph 1, item 32

<sup>8</sup> Criminal Code, Article 138

most frequent have been: minor bodily injury, violent behavior (Article 344), persecution, violent behavior at a sporting event of public gathering (Article 344a), racial and other discrimination (Article 387), causing national, racial and religious hatred and intolerance (Article 317), causing general danger (Article 278), abuse and torture (Article 137), and others.

According to a research titled Protection of free speech in the Serbian judicial system based on an analysis of active cases processed by prosecutors' offices in the period from 2017 to 2020, the biggest number of active cases (75.8%) revolved around the criminal offense of endangering safety, specifically for the more severe form of this criminal offense which pertains to persons doing a job of public importance.<sup>9</sup> It is exactly the criminal offense of endangering safety that is accompanied by the most dilemmas and misunderstanding.

The existence of this criminal offense requires the presence of both the subjective and the objective element. On one hand, there has to be a threat, which has to be qualified, direct and realizable, while on the other hand there has to be a feeling of endangerment as the subjective element and as a consequence of the threat.<sup>10</sup> For a qualified form of this criminal offense to exist, besides its being committed against a person doing a job of public importance in the area of public information, it has to be related to the work the person does.

There we get to the most frequent problem in practice, and that is the objective element of the criminal offense – the threat. That qualified threat has to be direct and realizable, while judges and prosecutors are prone to narrowly interpret the very term “threat.” We have had cases in practice where a journalist seriously felt that their safety was threatened, and still the judges or prosecutors in those cases did not determine the existence of a threat, explaining that those threats were not serious enough or were not realizable. One of the important

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<sup>9</sup> Slavko Curuvija Foundation, Protection of the Freedom of Speech in the Judicial System of Serbia, Belgrade, 2021, pp. 86 and 87, <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Za%C5%A1tita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

<sup>10</sup> There has to be a cause-effect relationship between the illegal action and the consequence, i.e. between the threat and the feeling of endangerment.

examples that should be pointed out is the case where the Basic Public Prosecutor's Office in Leskovac found that there was no threat of "an attack on the life and body," which the Higher Public Prosecutor's Office in Nis also confirmed, after a journalist of *Juzne Vesti* received a comment on Facebook saying: "Little journalist, I'd put a bullet in your forehead." The prosecutors' offices underlined that the comment had been phrased "in the conditional form," and that, with that in mind, the aforementioned comment could not be considered a qualified threat.<sup>11</sup>

Another example of narrow interpretation is a case where the damaged journalist was sent these threatening words: "If you had published something like that in America, would you have lived to see another day?" The defendant was found guilty in a first-instance proceeding. However, in the opinion of the Court of Cassation, these words could not have caused a feeling of endangerment with the damaged party.<sup>12</sup>

Such a narrow interpretation of threat leads to criminal charges being dismissed or acquittals in many cases, and – as the IJAS case study states – "in practice, threats that are phrased in the conditional form or by using certain words such as 'should' are not seen as a qualified threat, i.e. they do not meet the threat requirement that there will be an attack on the life or body of that person or of a person close to them." It also states that "such practice and interpretation of the courts gives prosecutors a 'strong alibi' to automatically dismiss criminal charges, even in situations where the threat is both objective and realizable and has created a high level of endangerment of the journalist."<sup>13</sup>

The sensibility of prosecutors and judges when these cases are concerned has not been recognized, no attention is paid to the importance of doing the job of a journalist, nor how threats sent to journalists and media outlets affect their work and consequently media freedom, how it affects free reporting and, ultimately, informing the citizens themselves and their freedom.

<sup>11</sup> Independent Journalists' Association of Serbia, Protection of Journalists' Safety – An Analysis of Article 138, paragraph 3 of the Criminal Code, Belgrade, p. 5, <https://safejournalists.net/wp-content/uploads/2019/07/Studija-slu%C4%8Daja-Il-Ugro%C5%BEavanje-sigurnosti-novinara-KZ-1383-.pdf>

<sup>12</sup> *Ibid*, p. 5 and 6

<sup>13</sup> *Ibid*, p. 7

In addition to that, another problem is the multitude of cases where journalists' safety is jeopardized in some way, not directly, which remain unpunished because they do not contain one of the elements of a criminal offense. Analyses were carried out for the purpose of qualifying some of those cases as certain criminal offenses, so that the perpetrators may be adequately sanctioned. Some of the proposals refer to changes to the existing criminal offense of Violation of Free Speech and Public Address.<sup>14</sup> There is no recorded decision in practice pertaining to this criminal offense, set up in this way. One of the recommendations in the analysis IJAS conducted in collaboration with legal experts is that the name and legal description of the criminal offense should be harmonized with Article 10 of the European Convention on Human Rights and Fundamental Freedoms, and that the name should be changed to Violation of the Right to Freedom of Thought and Expression.<sup>15</sup>

Those cases that remain unpunished largely have to do with harassment and attacks on mental integrity. They go unpunished because they are not categorized as criminal offenses. A legal expert emphasizes that as an important problem: "In the biggest number of cases, it is about attacks on mental integrity and harassment, and that phrasing exists with in the criminal offense of domestic violence: who endangers peace of mind. We do not have many cases that pertain to attacks on the body and life and property, while the biggest number of cases are the ones where peace of mind and mental integrity are endangered and that somehow remains unprotected, especially if it is not done directly."<sup>16</sup>

There are also certain actions that additionally jeopardize primarily the work, but also the safety of journalists, especially investigative ones. In their work, the communication channels are often targeted, so

<sup>14</sup> Criminal Code, Article 148

<sup>15</sup> Independent Journalists' Association of Serbia, Protection of journalists - recommendations for improving regulations, Belgrade, 2018, p. 9: "The action of restriction should be defined as unlawful prevention of exercising freedom of expression in a concrete situation as freedom of thought and freedom of receipt and transfer of information and ideas, while the action of denial is the complete unlawful prevention of exercising freedom of thought and freedom of receipt and transfer of information and ideas in a concrete situation. The term 'unlawful' would entail that conditions have not been met which pertain to the restriction in Article 10 paragraph 2 of the European Convention on Human Rights and Fundamental Freedoms (restriction stipulated by law, necessary in a democratic society for the protection of the core values of that society)."

<sup>16</sup> Natasa Jovanovic, legal expert, interviewed by Marija Babic.

consideration should be given to supplementing the criminal offenses which may directly affect a journalist's work by adding the qualified form when those offenses are committed against persons doing a job of public importance in the area of public information, in relation to the work they are doing. Some of those offenses are: Violation of Secrecy of Letters and Other Shipments, Unauthorized Wiretapping and Recording, Unauthorized Photographing, Unauthorized Publication and Presentation of Another's Writing, Portrait and Recording, Unauthorized Gathering of Personal Information, and others.

There have been certain initiatives to introduce a new criminal offense, Attacks on Journalists, however, in the opinion of legal experts, that is not a type of practice that exists in developed European states, rather it is tied to some less developed states and is certainly not the sort of practice our state should strive for. As the legal expert says, the problem in those cases would be that the focus in those proceedings would be on whether someone is a journalist: "That would be an important description of the substance of that criminal offense, and in the present day that is problematic from multiple standpoints, primarily because not everyone working in public information is necessarily a member of an association. All international documents and verdicts of the ECHR show that it does not matter whether someone is a full-time employee or if they are blogger, as long as they deal with issues of importance for public information."<sup>17</sup>

One can freely conclude that despite possibilities for enhancing legal regulations, practical application is the biggest problem. As we have pointed out, the narrow interpretation and practice of the prosecutors' offices and courts themselves is also a problem. All that leads to the impunity of criminal offenses committed against journalists, a very small number of convicted perpetrators, a large number of unsolved cases and those placed in the category of offenses committed by unidentified perpetrators, as well as numerous cases of dismissal of criminal charges.

"My opinion is that the laws are not bad, they have been enhanced over the past decades and it is all moving in a direction the European

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<sup>17</sup> *Ibid.*



Union is asking of us. I think that a bigger problem is in the non-implementation of laws, on the one hand, and distrust in public institutions on the other.”<sup>18</sup>

The research Protection of the Freedom of Speech in the Judicial System of Serbia underlines that, according to the records of prosecutors' offices, “just over a half (51.47%) of the cases for the observed period (2017–2020) are filed as completely solved. However, the biggest number of cases were not solved by a decision of a court, but rather by a decision of a prosecutor's office, be it the dismissal of criminal charges, an official note that there is no room for initiating criminal procedure, or application of postponement of criminal prosecution (opportunity).” The research also states that “only one in ten reported cases ends with a final court verdict.” The analysis also highlighted the problem of active cases classified as offenses committed by unknown perpetrators and showed that “out of 99 active cases handled by prosecutors' offices, based on the identification of cases according to the registers of prosecutors' offices, at least 49 cases are kept in the register of unidentified perpetrators of criminal offenses.”<sup>19</sup>

Domestic, but also international organizations, are constantly warning about the problem of impunity, as is the European Commission in its reports. The Action Plan for Chapter 23 covers the area referring to journalists' safety, which envisages certain measures for improving the overall situation in this area. The constant pressure exerted by domestic and international organizations has resulted in the Serbian authorities responding and taking certain steps in this area after all.

In December 2016, journalists' and media associations (Journalists' Association of Serbia, Independent Journalists' Association of Serbia, Independent Journalists' Association of Vojvodina, Media Association, Online Media Association, Association of Independent Electronic Media) signed the Agreement on cooperation and measures for raising the level of journalists' security with the Serbian Public Prosecutor's Office

<sup>18</sup> Natasa Jovanovic, legal expert, interviewed by Marija Babic.

<sup>19</sup> Slavko Curuvija Foundation, Protection of the Freedom of Speech in the Judicial System of Serbia, Belgrade, 2021, pp. 91, 96 and 103 <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Za%C5%A1tita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

and the Ministry of Interior, with the aim of ensuring more effective protection of journalists. A permanent working group comprising authorized representatives of all the signatories was founded on the grounds of the agreement. The permanent working group meets every three months, but can do so more frequently if necessary. A mechanism was established on the grounds of the agreement, contact points and coordinators were appointed in all the associations, as well as at multiple levels in prosecutors' offices and the police, through which cases of threats and attacks on journalists are reported and information on cases is exchanged. A year before the agreement was signed, the Serbian Public Prosecutor's Office issued binding instructions for records on attacks on journalists and urgent procedure, whereas the Ministry of Interior issued similar instructions in 2018. The agreement envisages two subgroups: a subgroup for analyzing criminal legislation and a subgroup for the level of the institutions' openness. As part of its mandate, the subgroup for analyzing the criminal code analyzed what the potential criminal offenses committed against journalists are, and based on that analysis the Republic Public Prosecutor's Office put together new binding instructions in December 2020, which included all of those criminal offenses.

Four years later, in December 2020, the Government of the Republic of Serbia founded a new Working Group for the Security and Protection of Journalists. This working group encompasses a bigger number of representatives than the Standing Working Group and includes representatives of ministries and other institutions on one side, and representatives of associations and unions on the other. The working group meets with the prime minister and the minister of culture and information once a month. The mandate of this working group was not completely clear from the very start, but the associations saw a possibility to use it to affect the overall atmosphere in the society in which journalists work, as well as to find a way to influence public figures, primarily government representatives, to change their rhetoric toward journalists and critically oriented media outlets, who are just doing their job. However, from the very beginning of the group's work, public officials continued with the same rhetoric and practice of targeting journalists and media outlets, which culminated when Pink TV, a broadcaster with nationwide coverage, on March 9 broadcast a

feature presenting a number of pieces of information on the Crime and Corruption Reporting Network (KRIK), that linked KRIK journalists to a criminal gang and thereby seriously threatened their safety (the pro-government tabloids then continued the same campaign). After several associations addressed the Working Group, proposing a discussion and a joint response in this case, and after absolute silence from the representatives of state institutions, followed by stonewalling, five journalists' and media associations decided to leave that working group.<sup>20</sup> Even though most of the associations left the working group, it continued to function. The associations believed that this passive behavior exhibited by government representatives showed that there was no sincere desire and will to face this serious problem, as confirmed by the MPs who even after this event continued to target KRIK journalists. The associations especially kept in mind that since the group's forming constant pressures on journalists by government representatives, especially MPs, had continued, with journalists and certain media outlets being targeted in MPs' speeches. As a reminder, the European Commission has been stressing condemnation of attacks and threats as one of the fundamentals the state of Serbia should meet in addition to other things related to security. There have been examples of public statements from certain institutions and condemnation of certain attacks and pressures, but that is certainly not enough.

Besides these two working groups, in May 2020 journalists' and media associations and unions signed with the ombudsman an Agreement on establishing a platform for registering cases of endangerment of security and pressures on journalists and other media stakeholders. Based on the Agreement, a Working Group was founded which categorized cases of attacks and pressures on journalists and other media professionals. The Agreement states that the platform itself will contribute to a more effective actions by the competent state bodies, wherein the ombudsman will use all the legal powers at his disposal in cases of endangerment of security and pressures on journalists.

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<sup>20</sup> IJAS, Decision on Withdrawal from the Working Group for the Security and Protection of Journalists, March 13, 2021 <https://nuns.rs/odluka-o-izlasku-iz-radne-grupe-za-bezbednost-i-zastitu-novinaru/>

Also, back in 2013, the Government founded a Commission for the Investigation of Murders of Journalists. The Commission's tasks were to make a plan and set the dynamic of gathering facts and determining other circumstances related to the murder investigations, to cooperate with the bodies in charge of leading those investigations, to review the course of the investigations so far based on the information obtained, to offer an opinion on an effective way in which leading an investigation might be improved, and to propose concrete measures that need to be taken.<sup>21</sup> The Serbian government in August 2018 took a decision to expand the Commission's jurisdiction, to include cases of murders and disappearances of journalists in Kosovo and Metohija in the period from 1998 to 2001, and murders of journalists in the conflicts in the SFRY in the period from 1991 to 1995. We do not have a single murder of a journalist solved to date. There was hope that after a long time, justice would somehow be served in the Slavko Curuvija murder case, but the Court of Appeal in Belgrade overturned the first-instance verdict for the murder which had convicted four individuals, and a retrial was ordered.<sup>22</sup> The cases of the murders of Radoslava Dada Vujasinovic and Milan Pantic are still in the preliminary investigation procedure. Even though the Commission underscored that some progress had been made in the case of Pantic's murder, the prosecutor's office has not done anything to this day.

In spite of all the steps taken and the working groups founded, the situation is very bad. Journalists work in very poor conditions and still do not feel safe when doing their job, and that is one of the main prerequisites for them being able to do their job fully and independently, and thereby providing information to the public, for media freedom, freedom of expression, and for democracy itself.

IJAS has been keeping a database of attacks and pressures on journalists and media professionals<sup>23</sup> since 2008. What has been seen as a trend over the past few years is a rise in the total number of incidents and a

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<sup>21</sup> Decision on forming the Commission for the Investigation of Murders of Journalists <http://pravnoinformacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/vlada/odluka/2013/8/7/reg>

<sup>22</sup> Insajder, Court of Appeal Overturns Verdict in Curuvija Murder Trial and Orders Retrial, Sept. 7, 2020 <https://insajder.net/sr/sajt/vazno/20281/>

<sup>23</sup> You can see the database on the website: <http://www.bazenuns.rs/srpski/napadi-na-novinare>

spike in various pressures on journalists and media outlets. It is also very worrying that a drastic increase in physical assaults was registered last year. In 2020, IJAS documented 189 incidents in total, 32 of them physical incidents, 50 verbal threats, 14 attacks on property, 1 threat to property, and 92 pressures. This was influenced by the overall situation with the corona virus, but also the state of emergency, and above all the July demonstrations during which 29 incidents were registered. The trend of a large number of pressures continues in 2021, while the number of physical attacks was low until May. A total of 43 incidents were registered in that period, 10 of them verbal threats, 2 physical attacks, 1 attack on property, and 30 pressures. What is particularly a cause for concern is the fact that the number of attacks on female journalists went up in 2020 and that the number of online attacks and pressures has been continuously growing year in, year out. A survey IJAS conducted in 2020 showed that 36% of female respondents said that they had received threats online or that their security was otherwise jeopardized online over the past five years. Out of that percentage, 42% claimed that the threats had been a consequence of one of their articles, while 27% said that the threats had been made due to their overall work.<sup>24</sup>

Another bad trend that became evident during the July 2020 demonstrations is the high level of ignorance among police officers when journalistic work is concerned, but also among the citizens who threw stones at journalists. In most cases, police officers paid no attention to journalists' IDs and equipment and out of the 29 incidents against journalists registered at the protests, 7 were attacks carried out by the police.

In spite of all that has been done, in its latest Serbia Progress Report the European Commission, apart from pointing out that Serbia has not made any concrete headway in freedom of expression, especially underlines that "cases of threats, intimidation and violence against journalists are still a source of serious concern, especially at local level." Special emphasis is also placed on the fact that the issue of security is one of the main topics our state should focus on in order to ensure "creating an enabling environment in which freedom of

<sup>24</sup> Independent Journalists' Association of Serbia, *Online Attacks on Female Journalists*, Belgrade, 2020, pp. 5 and 38

expression can be exercised without hindrance and ensuring that threats, physical assaults, violence, and cases of invasion of privacy against journalists and bloggers are properly and swiftly followed up by law enforcement and judicial authorities, as well as publicly condemned by government officials.”<sup>25</sup>

So far, there have been no official initiatives for changes of legal regulations. Journalists' associations have for many years been intensively working on this problem, legal regulations have been analyzed and changes have been proposed, however no one has taken those proposals into consideration to date. The Media Strategy itself envisions an analysis of the regulatory framework with the aim of defining potential amendments to the Criminal Code and the laws that regulate criminal procedure. The Action Plan of the Standing Working Group for 2021 foresees an analysis of criminal legislation, and some consultations with experts have been held so far.

### **Co-financing media content of public interest in the area of public information**

The Law on Public Information and Media regulates the co-financing of media content of public interest in the area of public information. Besides being regulated by the Law, this area is regulated in more detail by the Rulebook on Co-Financing Media Content of Public Interest in the Area of Public Information. In the process of adoption of the law, the idea was for the state to abandon media ownership, but it was clear that there has to be a mechanism for achieving the public interest.

Over the years that this type of co-financing has been applied, there have been different opinions, from those who criticized this model from the start to those who pointed out that the model was not bad, that the problem lay in the implementation of the laws themselves.

“The idea of project co-financing is not bad per se, in fact it has numerous advantages. For example, it entails clear goals, transparent criteria for project selection, competition of the best project ideas,

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<sup>25</sup> European Commission, Republic of Serbia, 2020 Report, Brussels, 2020, p. 37 [https://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/serbia\\_report\\_2020\\_SR.pdf](https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2020_SR.pdf)

complete project units that are easily measurable and the results of which can easily be tracked. Besides, projects are regular practice in various social sectors, from business to the nonprofit sector, and have proved to be very successful in many segments.<sup>26</sup>

Since the Law was adopted the model has been applied, but the fact is that the entire procedure is accompanied by a whole host of problems and abuses. Even though this is another area where it is stressed that the biggest problem is the implementation of the laws and bylaws, there is still some vagueness in the regulations which is susceptible to abuse, and so there is certainly room to amend or supplement those provisions.

First, we should primarily look at what the purpose of project co-financing is, and that is the public interest. The law defines the public interest,<sup>27</sup> however, what has turned out to be a problem is the fact that the public interest is not the same in every environment and the local self-governments themselves do not include citizens and other interested parties in the consideration of needs before announcing the competitions. The question is whether the projects chosen in a local self-government unit even suit the needs for meeting the public interest in public information. There have also been instances where funds were awarded even for the content that constitutes a media outlet's regular activity<sup>28</sup> and for reporting on the work of the local self-government. Such problems could be overcome through certain analyses, however, the law itself does not envisage an analysis of needs for particular media content, and so local self-governments do not conduct those analyses either.

Transparency of the process depends on the phase it is in, and so the transparency of local self-governments when it comes to publishing of competitions on websites is high. However, research on the transparency of project co-financing has shown that, when it comes to the work of the commission itself, the process of selecting projects is not transparent enough. What is usually stated on the websites is only the decision on the appointment of the commission and a document on the final

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<sup>26</sup> Tanja Maksic, media expert, interviewed by Marija Babic.

<sup>27</sup> Law on Public Information and Media, Article 15

<sup>28</sup> Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025, p. 33

outcome of the competition (decision on disbursement of money for the projects), while other documents are not available. On the other hand, there is complete non-transparency in the part where the selected, i.e. financed media projects are monitored and checked.<sup>29</sup> Although there are no obstacles to local self-governments making this process more transparent, insufficient, i.e. vague legal regulations are nonetheless pointed out as the problem.

As for information obtained on the grounds of a request for access to information of public importance, there are different practices, but the predominant standpoint is that the institutions do not provide sufficient information.

The work and composition of the expert commissions that evaluate projects needs to be pinpointed as a particular problem. The Law and the Rulebook state that an expert commission consists of three or five members, that they are appointed by the head of the body that has organized a competition, specifically from the ranks of independent media experts and media professionals who are not in a conflict of interest and do not perform a public office. According to regulations, the majority of members are nominated by journalists' and media associations (based on the nominations for commission members received from journalists' and media associations, the head of the body that has organized the competition selects two, i.e. three members of the commission).

The problems regarding expert commissions are primarily noticeable in the competitions organized by local self-governments, however that has also become the practice of the competition organized at state level. In the last state competition, media experts were appointed as commission members according to unknown criteria, which is why the Coalition for Media Freedom also expressed its concern.<sup>30</sup> Proposals from relevant journalists' and media associations are often, primarily

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<sup>29</sup> BIRN, IJAS and Slavko Curuvija Foundation, Transparency of Project Co-Financing of Media Content, Belgrade, pp. 9 and 10 <https://kazitrazi.rs/wp-content/uploads/2018/03/Transparentnost-projekt-nog-sufinansiranja-medijskih-sadr%C5%BEaja.pdf>

<sup>30</sup> IJAS, Coalition for Media Freedom: Publicize Criteria for Selection of Independent Media Experts, April 2, 2021 <https://nuns.rs/koalicija-za-slobodu-medija-objaviti-kriterijume-za-izbor-nezavisnih-medijskih-strucnjaka/>



at the local level, ignored, and independent media experts unknown to the general public are appointed as members of commissions. The term media expert is not sufficiently clearly and precisely defined in the Law and the Rulebook, and that can contribute to abuse in practice. Experts say that “the criteria can be made stricter, some criteria can be added, but there will always be room for manipulation if that is the intent. The criteria need to be intensified, there should be insistence on making things public, the only thing that cannot be public according to the Law on Administrative Procedure is deliberation and voting, but the rest of the process can be public.”<sup>31</sup>

The Coalition for Media Freedom found interesting data when it analyzed the work of commissions tasked with awarding funds in competitions organized by the Ministry of Culture and Information, in the competition for 2021, and determined that the entire process was deeply flawed. The analysis stresses the fact that the standards were not complied with, i.e. that the practice of the Ministry of Culture and Information was not equal when it comes to rules for the conflict of interest of commission members, while the worst segment of the process are the independent media experts, due to the non-existence of formal criteria, uniform CV forms, and score lists which would provide measurable and objective indicators for the selection of commission members, which paved the way for selective decision-making, concealed conflict of interest, and violation of the principle of fair competition.<sup>32</sup>

BIRN, IJAS and the Slavko Curuvija Foundation reached similar conclusions in their research titled Improving the Work of Commissions in Competitions for Co-Financing the Public Interest: the absence of a defined criterion for the selection of commission members, the absence of criteria and qualifications for the selection of independent media experts, the non-existence of a uniform application form that would allow for the measurability of qualifications of nominated

<sup>31</sup> Anonymous, media expert, interviewed by Marija Babić.

<sup>32</sup> Coalition for Media Freedom, Monitoring the Work of Commissions in Competitions for Co-Financing of Public Interest in the Media 2021, Belgrade, 2021, pp. 10 and 11 [https://www.canva.com/design/DAEeiwX1TI4/2tzX4FPngx9p6uL1em8DfQ/view?utm\\_content=DAEeiwX1TI4&utm\\_campaign=designshare&utm\\_medium=link&utm\\_source=viewer#2](https://www.canva.com/design/DAEeiwX1TI4/2tzX4FPngx9p6uL1em8DfQ/view?utm_content=DAEeiwX1TI4&utm_campaign=designshare&utm_medium=link&utm_source=viewer#2)

representatives of associations, the lack of a more specific definition of the conflict of interest and mechanisms for preventing and sanctioning potential conflicts of interest.<sup>33</sup>

The law stipulates that a decision on the disbursement of funds is made by the head of the body that has organized the competition on the grounds of the commission's proposal, and it does not state what happens in cases where the head of the body has found that the commission has presented a proposal that is not in line with the law and the rulebook.

The rulebook clearly defines the criteria for project evaluation,<sup>34</sup> but despite that funds are sometimes allocated independently of those criteria, and that primarily pertains to the measures issued by state bodies, regulatory authorities or self-regulatory bodies over the past year, due to the violation of professional and ethical standards. We have many examples where funds were awarded to media outlets which largely violate the Code of Ethics.

Research conducted by the Press Council has confirmed that the media outlets which violated the code have been granted funds in competitions. Out of the 86 competitions analyzed, the media outlets Afera, Alo, ePancevo, Glas Zapadne Srbije, Informer, Kurir, Ozonpress, Republika.rs, Srbija Danas and Vecernje Novosti got 56 projects in total, 30 projects were rejected for various reasons, while only in three cases was there a clear explanation that the projects were rejected because of the measures issued by the Council. The research divided the media outlets that were granted funds in the competitions into two groups, one with a smaller number of code violations per competition (Ozonpress, Alo, Vecernje Novosti and Srbija Danas), which accept the Council's authority and which have published decisions on code violations, with the exception of the media outlet Alo which has published just one of the six decisions. The other group includes media outlets with a bigger number of code violations per competition (Afera, Kurir, Informer,

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<sup>33</sup> BIRN, IJAS and Slavko Curuvija Foundation, *Improving the Work of Commissions in Competitions for Co-Financing the Public Interest in the Media*, Belgrade, 2020, p. 5 <https://kazitrazi.rs/wp-content/uploads/2020/01/Unapredjenje-rada-konkursnih-komisija.pdf>

<sup>34</sup> Rulebook on Co-Financing Projects of Public Interest in the Area of Public Information, Article 18

ePancevo, Glas Zapadne Srbije and Republika.rs), which largely have not accepted the Council's authority, with the exception of Kurir, and are not obliged to publish its decisions. The research lists some of the sums allocated to media outlets, e.g. Alo applied for two competitions and received 5,900,000 RSD, Informer carried out 11 projects with a total sum of 5,500,000 RSD, while portal ePancevo received by far the biggest amount of funds in 6 competitions – 8,660,000 RSD.<sup>35</sup>

One of the latest examples of disbursement of funds to media outlets which violate the code is a competition organized by the city of Novi Pazar, which split the funds between 19 media projects, including one by the Alo Media System, daily Alo's publisher, and daily Kurir's publisher Adria Media Group, which are some of the tabloids with the most violations of the Code of Ethics.<sup>36</sup>

The long-time practice, monitoring and various analyses have shown that there is no adequate mechanism of evaluation, oversight and sanctions. The law states that narrative and financial reports on the project activities carried out and evidence of project realization are submitted. These reports are not enough to determine whether the public interest has been achieved, and so it is necessary to analyze the achievement of public interest goals. Also, the oversight itself is not sufficiently precisely and clearly stipulated by the law, and that especially poses a problem at the local level, bearing in mind that practice shows a constant shifting of responsibility between the Ministry of Culture and Information and the Ministry of Public Administration and Local Self-Government where local self-governments' competitions are concerned. One of the experts points out that "there is the option of sending administrative or state inspectors in some cases, which has never happened, as far as I know," and adds that it is "necessary for the ministry which is implementing the law to be given an adequate legal mechanism which will ensure its

<sup>35</sup> Press Council, Co-Financing of Media Outlets Which Violate Ethical Standards, Belgrade, 2020, p. 13 and 17 <https://savetzastampu.rs/publikacije/izvestaj-sufinansiranje-medija-koji-krse-eticke-standarde-pdf/>

<sup>36</sup> J. Pestic, Rewards for Code Violators in Novi Pazar, Journalists' Associations of Serbia, February 8, 2021 <https://www.uns.org.rs/sr/desk/UNS-news/111871/u-novom-pazaru-nagrade-za-krsiocje-kodeksa.html>

implementation.<sup>37</sup> They also say that the State Audit Institution's role would be important: „The SAI can conduct not only a financial audit of the efficiency of spent funds, rather it can also conduct evaluation of purposefulness according to the law, they have been avoiding that responsibility for a long time.”<sup>38</sup>

Project evaluation needs to be carried out as a regular part of the project cycle because, as the experts put it, “since it is regularly absent in project co-financing, then the interested or general public is left without a report on the concrete results of a project. Furthermore, misspending of funds or other corruptive actions can also be hidden in that way.”<sup>39</sup>

Non-compliance with legal regulations, finding loopholes in laws and bylaws, as well as the vagueness of certain regulations have resulted in this whole process completely losing its purpose of preserving the public interest, rather it is used to reward obedient media and to use funds to finance media outlets' regular activities. All that has led to the progress report underlining that Serbia should especially focus on “ensuring suitable funding of public broadcasting services, transparent and equitable co-funding for media content serving the public interest.”<sup>40</sup>

From the very start of implementation of this model of co-financing in the public interest, associations feared how it would function, and so first the Media Coalition, which includes Journalists' Association of Serbia, Independent Journalists' Association of Serbia, Independent Journalists' Association of Vojvodina, Association of Independent Electronic Media, and BA Local Press, and later the Coalition of Journalists' and Media Associations (Journalists' Association of Serbia, IJAS, IJAV and Local Press) from the very beginning conducted comprehensive monitoring of the implementation of media laws and the work of independent commissions for co-financing media projects in line with the public interest. The associations have been pointing out deficiencies and irregularities from the very start of organizing

<sup>37</sup> Anonymous, media expert, interviewed by Marija Babic.

<sup>38</sup> Anonymous, media expert, interviewed by Marija Babic.

<sup>39</sup> Tanja Maksic, media expert, interviewed by researcher Marija Babic.

<sup>40</sup> European Commission, Republic of Serbia, 2020 Report, Brussels, 2020, p. 77

competitions and have been notifying the organizing body of them. The associations are also actively involved in sending their candidates to expert commissions, however those candidates are chosen for a very small number of commissions.

After constant highlighting of the problems in this process by the media community, at one point the Ministry of Culture and Information back in 2018 launched an initiative to amend the Rulebook on Co-Financing Media Content of Public Interest in the Area of Public Information, so as to help improve the entire process. A proposal was put together, and journalists' and media associations gave their contribution, i.e. written and oral suggestions as to how the process should be enhanced, but no changes have been made to date.

There have been no other initiatives and proposals for amendments and supplements to laws and bylaws. The Media Strategy itself envisages changes to regulations in this area, while the Action Plan foresees that being done by the end of 2021.

### **Regulatory Authority for Electronic Media (REM)**

The Regulatory Authority for Electronic Media (REM) has for years been one of the biggest problems in the media sphere and is considered by many the main culprit for the bad state of electronic media. REM is not doing its job independently and transparently and one gets the impression that it is under the influence of various power centers. A member of the REM Council stresses a lack of readiness to resist pressure from various particular interests, not only from the executive authority, as REM's biggest problem. She also says that the legal regulations are not bad, but that there is always room for improvement:

“Legal regulations, if actually applied without creative interpretations, give REM enough capacity to protect the interest of the public in the area of electronic media and to protect the users of electronic media services, which does not mean they should not be amended, clarified and enhanced.”<sup>41</sup>

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<sup>41</sup> Judita Popovic, REM Council member, interviewed by Marija Babic.

The Regulatory Authority for Electronic Media, according to the law, is an independent regulatory organization with the capacity of a legal entity, which implements the defined policy in the area of provision of media services, enhancing the quality and diversity of electronic media services, contribution to the preservation, protection and development of freedom of thought and expression for the purpose of protecting the public interest in the area of electronic media.<sup>42</sup>

The first thing that can potentially affect REM's independence is the fact that some of the affairs this body carries out are "entrusted affairs" which, according to the Law on Public Administration, can be revoked by the line ministry.<sup>43</sup> Some of those affairs are extremely important in the work of the Regulator (enactment of general bylaws envisaged by the law, issuing but also closer regulation of procedures, conditions and criteria for issuing a license for providing media services, handing down measures to media service providers, and others). The Regulator is also, where certain regulations are concerned, obliged to obtain an opinion on whether they are constitutional and legal and to publish them in the Official Gazette of the Republic of Serbia, which is another form of influence.<sup>44</sup>

The body that does the most important work in the Regulator is the Council. This body comprises of nine members. Another possibility of influence on the Regulator's independence stems from the authorized nominators of Council members. As many as four out of the nine members are nominated by "political bodies," and so there is a possibility of political influence, even though the law itself stipulates that they do not represent the opinions of the nominators, but rather must perform their duty independently. Two members are nominated by the competent Culture and Information Committee of the National Assembly, one by the competent committee of the Assembly of the

<sup>42</sup> Law on Electronic Media, Article 5

<sup>43</sup> Law on State Administration, Article 56

<sup>44</sup> Law on Electronic Media, Article 22: The Regulator shall obtain an opinion for the following: enacting general bylaws envisaged by the law, closer regulation of the procedure, conditions and criteria for issuing licenses in accordance with the provisions of this law and prescribing the form and content of that license; prescribing rules which are binding for media service providers, especially those that ensure the implementation of the Strategy; determining the logical numeration of channels and closer rules pertaining to program content, in relation to the protection of personal dignity and other personal rights, protection of the rights of minors, prohibition of hate speech, etc.

Autonomous Province of Vojvodina, and one is jointly nominated by the national councils of national minorities. The Council members are elected by the National Assembly, by a majority of the total number of MPs.<sup>45</sup> What was also a problem in the past is that REM for several years worked without the full number of members, while most of the Council at the time consisted of members nominated by the authorities.<sup>46</sup>

The law stipulates that Council members are chosen from the ranks of renowned experts in the areas that are of importance for doing the work under the jurisdiction of the Regulator and lists examples such as media experts, economists, jurists, telecommunications engineers etc.<sup>47</sup> Also, membership of the Council is incompatible with holding a public position, i.e. a position in a political party in the sense of the regulations which regulate the rules regarding prevention of conflict of interest in performing public office.<sup>48</sup> The law does not contain clear criteria for the election of Council members because the “renowned expert” criterion itself, as stated in the law, is not clear and specific enough and leaves plenty of room for manipulation.

Also, an important matter is the Regulator’s financial independence. The law states that the National Assembly gives its consent to the financial plan,<sup>49</sup> which the National Assembly itself did not respect and was late in making a decision. The first time it gave consent on time was no earlier than in December 2018. The law also stipulated that the National Assembly gives its consent to REM’s Articles of Association,<sup>50</sup> whereas the Government gives its consent to the other bylaws that more closely regulate the amount, changing of the amount and method of calculation of the media services provision fee.<sup>51</sup> This is another way how the legislative and the executive branches of government can potentially affect the Regulator’s independence.

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<sup>45</sup> *Ibid*, Article 9

<sup>46</sup> Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025, p. 24

<sup>47</sup> Law on Electronic Media, Article 7

<sup>48</sup> *Ibid*, Article 12

<sup>49</sup> *Ibid*, Article 34

<sup>50</sup> *Ibid*, Article 33

<sup>51</sup> *Ibid*, Article 36, paragraphs 3 and 4

The public nature of REM's work is guaranteed by law and REM is obliged to make enacted acts and other complete and updated data and information within its purview publicly available on its website.<sup>52</sup> The Analysis of Effects of the Work of the Regulatory Authority for Electronic Media highlights certain omissions that have to do with the public nature of the body's work. The document says that "the web presentation of the Regulator is comprehensive when it comes to legal regulations, strategies, bylaws, analyses, work reports, decisions of the Regulator and courts, registers and record." However, it points out that even though all of the Regulator's decisions concerning reports by individuals and legal entities must be publicly available, nonetheless "not all decisions on reports by individuals and legal entities are available on the Regulator's website, but rather just about 18% of these decisions."<sup>53</sup>

The Law on Electronic Media stipulates that REM monitors the work of media service providers and that it ensures that the provisions of this law are consistently implemented.<sup>54</sup> The Articles of Association also state that the Regulator supervises broadcasters' work.<sup>55</sup>

The law more thoroughly regulates the control by the Regulator and stipulates the Regulator's obligation to take special care while conducting control of media service providers to ensure that media service providers respect the obligations pertaining to program content envisaged by the law and the conditions under which they were granted a license, as well as that it can initiate proceedings before a court or other state body against a media service provider or responsible person if that media service provider's conduct (action or inaction) bears the marks of an offense punishable by law.<sup>56</sup>

The research conducted by the Slavko Curuvija Foundation states that the Annual Report on the fulfillment of legal and programming obligations by media service providers for 2019 shows that none of the

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<sup>52</sup> *Ibid*, Article 38

<sup>53</sup> Slavko Curuvija Foundation, Analysis of Effects of REM's Work 2017–2020, Belgrade, 2020, pp. 61 to 63 <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2020/10/Analiza-efekata-rada-REM-a-2017-2020-Slavko-%C4%86uruvija-fondacija.pdf>

<sup>54</sup> Law on Electronic Media, Article 22, paragraph 1, item 8

<sup>55</sup> Articles of Association of the Serbian Broadcasting Agency, Article 5, paragraph 1, item 6

<sup>56</sup> Law on Electronic Media, Article 24



four commercial televisions with nationwide coverage broadcast all five mandatory program genres (news, children's, science and education, documentary, and culture and art), as stipulated by the Rulebook.<sup>57</sup>

Here the problem is primarily the fact that the provision from the Broadcasting Law, which states that televisions must work in line with the study based on which they were granted a license, has been removed from the new Law on Electronic Media.

The Regulator initiates certain procedures against media service providers. In 2019, REM filed 39 requests for initiating misdemeanor proceedings to the competent court (11,054 misdemeanors).<sup>58</sup> Here the question of effectiveness of launching these proceedings is raised, as the Legal Analysis of the Regulator's Work,<sup>59</sup> carried out in 2018, states that out of the 1,020 misdemeanor charges filed, the court reached a verdict in 491, out of which 310 were cases in which proceedings were suspended due to the statute of limitations.

The law also stipulates that individuals and legal entities, including media services providers, if they believe some program content has jeopardized their personal or general interest, are entitled to file reports to the Regulator within 30 days of the date of the premiere or rerun of the controversial content. In those situations, REM can hand down a preliminary warning or a warning to the media service provider, a temporary ban on the airing of the program content, but also to revoke its license.<sup>60</sup>

For a while now it has been pointed out that REM is not using the measures at its disposal to a sufficient extent. There is also a glaring difference between the number of reports filed and measures handed down. According to the report on REM's work in 2019, 437 reports were

<sup>57</sup> Slavko Curuvija Foundation, Analysis of Effects of REM's Work 2017–2020, Belgrade, 2020, p. 13

<sup>58</sup> Regulatory Authority for Electronic Media, Work Report for 2019, Belgrade, 2019, p. 22 <http://www.rem.rs/uploads/files/izvestaj%20o%20radu/Izvestaj%20o%20radu%20REM%202019.pdf>

<sup>59</sup> Independent Journalists' Association of Serbia, Legal Analysis of the position of Regulatory Authority for Electronic Media in Serbia, Belgrade, 2018, p.16. <https://nuns.rs/media/2021/06/PRAVNA-ANALIZA-POLOZAJA-NEZAVISNOG-REGULATORNOG-TELA-U-OBLASTI-ELEKTRONSKIH-MEDIJA-U-SRBII.pdf>

<sup>60</sup> Law on Electronic Media, Articles 26 and 28

filed, most of them by citizens (409), and the reports most often had to do with reality shows (190) and false content – hate speech (153). On the other hand, in 2019 the REM Council handed down only 7 measures: 3 preliminary warnings and 4 warnings.<sup>61</sup> In 2020, the Council handed down 11 measures in total, 2 of them preliminary warnings, 6 warnings, and as many as 3 temporary bans on the airing of program content.<sup>62</sup>

Despite the measures at REM's disposal, it has turned out that the two most frequently issued measures, preliminary warning and warning, are fairly ineffective, while in some opinions the other two measures are pretty restrictive for media freedom. The members of the Regulator's Council themselves can often be heard saying that, and that is used to justify the fact that no measures are handed down to broadcasters. Some analyses proposed new measures to be introduced, with financial implications for the Regulatory Authority for Electronic Media,<sup>63</sup> as did the Media Strategy itself, which proposes the option of handing down financial sanctions.<sup>64</sup> On the other hand, some believe that the measures at the Regulator's disposal are more than enough: "The four measures they have at their disposal are quite sufficient, along with the option of going for the financial fulfillment of a non-financial sanction in administrative procedure, under the Law on Administrative Procedure, if someone does not comply with the Regulator's orders, even that financial element can be compensated for indirectly. In my opinion, in REM's work as it is, the fact that it cannot hand down fines does not change anything. One day a normal regulatory body should have it, it is a useful measure that can help, but the lack of fines is not something that prevents REM from doing its job."<sup>65</sup> The REM Council member underlines that "new financial measures could help to put order into the electronic media sphere if they were truly implemented according to legal criteria, rather than for censoring the 'misfits'."<sup>66</sup>

<sup>61</sup> Regulatory Authority for Electronic Media, Work Report for 2019, Belgrade, 2019, pp. 15 and 21

<sup>62</sup> Regulatory Authority for Electronic Media website: <http://www.rem.rs/sr/odluke/izrecene-mere>

<sup>63</sup> Independent Journalists' Association of Serbia, Legal Analysis of the position of Regulatory Authority for Electronic Media in Serbia, Belgrade, 2018, p. 22 i 23. <https://safejournalists.net/wp-content/uploads/2019/01/Predlozi-NUNS-a-za-unapredjenje-rada-REM-3.pdf>

<sup>64</sup> Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025, p. 60 [https://www.media.srbija.gov.rs/medsrp/dokumenti/medijska\\_strategija210\\_cyr.pdf](https://www.media.srbija.gov.rs/medsrp/dokumenti/medijska_strategija210_cyr.pdf)

<sup>65</sup> Anonymous, media expert, interviewed by Marija Babic.

<sup>66</sup> Judita Popovic, REM Council member, interviewed by Marija Babic.

REM's duty to monitor and supervise the work of media service providers applies to both the period when there is no election campaign and during an election campaign. The Law on Electronic Media stipulates that media service providers are obliged to ensure that during an election campaign registered political parties, coalitions and candidates are represented without discrimination, while in the period when there is no election campaign they are obliged to abide by the ban on political advertising. However, there we come to one of the major problems, and that is the body's decision not to monitor the 2017 presidential election campaign and to react only in cases of reports filed by citizens or other stakeholders. Nevertheless, under various pressures and due to the alleged desire to establish better conditions for election campaigns, the Regulator changed its decision in 2020 and started monitoring the campaign again, but new problems occurred.

Another controversial action by the Regulator is the enactment of the Rulebook on Obligations of Media Service Providers During Election Campaigns, whereas for commercial broadcasters it enacted only Recommendations for commercial media service providers on ensuring representation without discrimination of registered political parties, coalitions and candidates during election campaigns, in February 2020. The previous Rulebook on Obligations of Media Service Providers During Election Campaigns, which applied to all media service providers, became invalid in February 2019. The irregularities were highlighted by the associations both in the public hearing and in writing, and they primarily pertained to the fact that the obligations of media service providers during election campaigns must apply to all media service providers, rather than just to public media services. The Ministry of Culture and Information stressed that, among other things. Prior to the adoption of the rulebook, the Ministry sent its comments and presented its opinion, as proposed by the Regulator.<sup>67</sup> However, the Rulebook was adopted, while the comments of neither the Ministry nor the associations were accepted.

Then followed the campaign for the general election held in June 2020, which was monitored, by numerous NGOs, and by the Regulator itself. Over the last few years, NGOs' reports have shown that political parties and candidates did not have equal and fair access to the media during election campaigns, and that happened in last year's general election,

<sup>67</sup> Information obtained from the Ministry of Culture and Information by request for access to information of public importance.

too. The CRTA observation mission was among those who conducted the monitoring. CRTA conducted the monitoring for the period before the election campaign and during the election campaign, from October 14, 2019 to July 12, 2020. The monitoring revealed that in the first part of the election campaign as of the calling of the election, which was interrupted by the COVID-19 crisis (which led to the declaration of a state of emergency, as well as during the state of emergency itself), televisions with nationwide coverage were dominated by representatives of the ruling parties with 91% of representation in the total time dedicated to political stakeholders, whereas the opposition parties, regardless of whether they took part in or boycotted the general election, had 9% of representation. In the second part of the campaign, after the lifting of the state of emergency, from May 12 to June 21, there was a noticeable trend of more equal representation of political stakeholders, with 60% of the total time meant for representatives of the ruling parties, 33% for the opposition that participated in the election, and 7% for the opposition that boycotted the election.<sup>68</sup>

The report of the Regulatory Authority for Electronic Media is special from several aspects, primarily because besides the public broadcasting services (RTS 1, RTS 2, Radio Belgrade 1, RTV 1, RTV 2, and Radio Novi Sad 1), four media service providers with nationwide coverage (RTV Pink, Happy TV, B92 TV, and Prva TV), two cable televisions – N1 and Nova S – were also included in the monitoring. On the other hand, the body's review of the total election campaign time also included appearances by the Alliance for Serbia, which boycotted the election, analysts and, as the report states, other campaign participants, such as: the Republic Electoral Commission, REM, Center for Free Elections and Democracy – CeSID, Center for Investigative Journalism of Serbia – CINS, Independent Journalists' Association of Serbia – IJAS, Journalists' Association of Serbia – JAS, Center for Research, Transparency and Accountability – CRTA, Balkan Investigative Reporting Network – BIRN, and others.<sup>69</sup>

<sup>68</sup> CRTA, Elections 2020: Summary and Recommendations – Final Report, Belgrade, 2020, p. 66. [https://crt.rs/wp-content/uploads/2020/10/Parlamentarni-izbori-2020\\_Crta\\_Zavrsni-izvestaj.pdf](https://crt.rs/wp-content/uploads/2020/10/Parlamentarni-izbori-2020_Crta_Zavrsni-izvestaj.pdf)

<sup>69</sup> REM, Elections 2020, Final Report – Oversight and analysis of media service providers' programs during the campaign for the general, provincial and local elections, Belgrade, 2020. p. 13 <http://www.rem.rs/uploads/files/Izbori%202020/Izbori%202020%20-%20zavrsni%20izvestaj.pdf>

With all of the above in mind, REM reached certain conclusions, and some of them are that out of the total observed time that all media service providers, 12 of them, devoted to certain election campaign participants, first on the list was the ALEKSANDAR VUCIC – FOR OUR CHILDREN ticket, with representation of 10.60%, followed by the Alliance for Serbia with 8.12%.<sup>70</sup> The same report says that N1 TV aired the most election campaign content and thereby the total election campaign time accounted for the highest percentage of the total programming broadcast (17.51%).<sup>71</sup> N1 TV is a cable television and broadcasts solely news programs.

The REM report was met with a great deal of criticism, while the Center for Investigative Journalism of Serbia (CINS) found through its analysis that the difference between the authorities and the opposition had been reduced because the regulatory body had changed the method of data presentation. They say that for the first time since monitoring was conducted, the total election campaign time included analysts' appearances in the media, but also the appearances of representatives of institutions such as the Republic Electoral Commission, investigative media, NGOs and others whom REM labeled as "other campaign participants." They further note that the time of cable channels N1 (a news channel) and Nova S was also included in the total. The analysis states that the result would have been different if, like in previous years, only national broadcasters and public broadcasting services (RTS and RTV) had been included and if the time of analysts and other campaign participants was not added. With that calculation, the Serbian Progressive Party's share in the election campaign programming was 25.59% (more than 51 hours), while the share of the Alliance for Serbia was 2.34% (just under five hours).<sup>72</sup>

REM's multiannual work, all of the above listed problems, disregard for legal regulations and legal deficiencies have led to the last progress report again stating that another priority the state of Serbia should

<sup>70</sup> *Ibid*, p. 274

<sup>71</sup> *Ibid*, p. 273

<sup>72</sup> Vladimir Kostic and Jovana Tomic, REM Report Creates Misleading Image of Progressives' and Opposition's Media Presence in Election Campaign, CINS, November 4, 2020 <https://www.cins.rs/izvestaj-rem-a-stvorio-pogresnu-sliku-o-medijskom-prisustvu-sns-a-i-opozicije-u-izbornoj-kampanji/>

focus on is strengthening the independence of the Regulatory Authority for Electronic Media and increasing its capacity for proactive work. The report pays special attention to the campaign and underscores that REM should clarify certain matters related to the monitoring methodology. It says that hate speech and a discriminatory vocabulary were often used and tolerated in the media, while the regulatory bodies or prosecutors seldom dealt with them. The report also notes that verbal attacks and smear campaigns against journalists intensified in the period ahead of the election.<sup>73</sup>

Journalists' media associations have been pointing this problem out for years, the devastated condition of media outlets with nationwide coverage which is a consequence of, among other things, a lack of reaction from the Regulator in situations where it should react and the non-use of its powers. Various analyses of the Regulator's work have been conducted and amendments to legal provisions proposed.

So far, there have been no initiatives for amending the law, however, there have been proposals for amending the bylaws, for example the previously mentioned Rulebook on the Obligations of Public Broadcasting Services During Election Campaigns and the recommendations for commercial broadcasters, while the rulebook that applied to all broadcasters was rendered invalid, which can be described as a step backward. The Media Strategy envisages changes to the Law on Electronic Media, while the Action Plan foresees the implementation of those changes by mid-2022.

### **Public broadcasting services**

Public broadcasting services have one of the most important roles in providing information to citizens. They must be in the service of the citizens, report on matters of public interest, accurately, timely, completely, impartially and professionally. To achieve their main goal, public services must secure their editorial independence, independence from various pressures, and financial independence. However, it has been underlined for a while now that the public services are not fulfilling their basic role and their independence is being called into question.

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<sup>73</sup> European Commission, Republic of Serbia, 2020 Report, Brussels, 2020, pp. 37 and 39

The Law on Public Broadcasting Services clearly defines a public broadcasting service as an independent legal entity which enables the achievement of the public interest in the area of public information. It also states that public broadcasting services provide general and comprehensive media services which entail news, educational, cultural and entertainment content meant for all segments of society. The law says that the core activity of a public broadcasting service is achievement of the public interest<sup>74</sup> and specifies what the public interest which a public broadcasting service achieves through its program content is.<sup>75</sup>

It has been stressed for many years now that the public broadcasting services do not sufficiently serve the citizens and that primarily refers to news programs, while reporting is reduced to conveying information without a critical review of certain topics. Unlike with news programs, the situation is considerably better when it comes to other, above all cultural, children's and educational content, whereas some experts believe that children's and educational programs should be improved. The problem of RTS' ignoring the legal obligation of broadcasting content in the languages of national minorities has long been emphasized in particular.

The Law<sup>76</sup> and articles of association<sup>77</sup> guarantee the institutional autonomy and editorial independence of public services. The Law also states that the Republic of Serbia secures stable and sufficient financing of the main activity of public services, but also that the method of and conditions for securing the funds must not affect the editorial independence and institutional autonomy of a public media service.<sup>78</sup>

However, the predominant opinion is that the independence does not actually exist and media experts agree with that. They say that the legal guarantees exist only on paper and that "if laws were respected, public media services would be able to work in line with the principles of autonomy and

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<sup>74</sup> Law on Public Broadcasting Services, Articles 2 and 3

<sup>75</sup> *Ibid*, Article 7

<sup>76</sup> Law on Public Broadcasting Services, Article 5

<sup>77</sup> RTS Articles of Association, Article 7

RTV Articles of Association, Article 12

<sup>78</sup> Law on Public Broadcasting Services, Article 35

independence. However, obviously the public broadcasting services in Serbia do not have editorial independence, as can be seen daily if one analyzes the news programs of these media outlets, as well as the programming which has for years had a noticeable lack of programs they are legally obliged to produce, especially debate shows on which different opinions, views, political programs and ideas are presented and confronted.”<sup>79</sup>

For public services to fulfill their role and to ensure that they can function independently, editorial and financial independence needs to be secured and that poses two key problems. An analysis of the content of the public services' selected news programs has underlined that those problems have “seriously grown compared to previous monitoring, with the loss of editorial and journalistic independence being especially increasingly obvious.”<sup>80</sup>

The public services are subjected to pressures that are not direct, and it is often pointed out that no pressure is put on the public services' journalists, rather they themselves already know what topics to deal with and how they can process certain topics, and what is off limits. The aforementioned analysis also underlines pressures as the first and significant problem and states that “permanent pressure from political power centers on editorial policy limits the independence of public services.” It further states that those pressures are primarily reflected in the choice of events that are reported on (first and foremost those organized by the authorities, with the focus on the activities of the Serbian Progressive Party). There is also a noticeable absence of reports from important events, primarily those that do not suit the ruling political power centers. The analysis concludes, “Thus, the public services increasingly look like a service of the authorities and less like a service of the citizens, who founded them and who, among others, finance them.”<sup>81</sup>

It has been pointed out for a while now that this type of financing of public services cannot secure independent and stable functioning. That is confirmed by the aforementioned analysis, which states that the

<sup>79</sup> Maja Divac, media expert, interviewed by Marija Babic.

<sup>80</sup> Novi Sad School of Journalism, Analysis of the Content of Selected News Shows of the Public Services in Serbia, Novi Sad, 2019, p. 73 [NNS monitoring javn\\_serv.pdf](#)

<sup>81</sup> *Ibid.*



subscription is not enough and that “the lack of funds for the realization of extremely complex programming that is required of public services directly affects their (non-)independence.”<sup>82</sup> Legal experts stress non-independence on budget funding as the main prerequisite for the editorial independence of a public service: “It can be said that first by abolishing the subscription, and then by forming a subscription sum which cannot secure the functioning of public media services, the Government has practically made the two public services, RTS and RTV, dependent on the state budget, which it has also used to inappropriately influence these two media companies.”<sup>83</sup>

The Law on Public Broadcasting Services stipulates that the services are funded by a public broadcasting service fee, the state budget, net gain from the commercial exploitation of content produced within the core activity, commercial revenue and other revenues. The same law stipulates that for certain projects a portion of the funds for financing the core activity of the public broadcasting services may be secured from the budget of the Republic of Serbia and the budget of the Autonomous Province of Vojvodina.<sup>84</sup> Problems appeared with the enactment of the Law on temporary regulation of the method of collecting the public service fee, which stated that from January 1, 2016 to December 31, 2021 the public broadcasting services would partly be funded by the public broadcasting service fee and partly by the budget of the Republic of Serbia.<sup>85</sup> That enabled the funding of the entire activity, rather than only certain projects, as set forth by the Law on Public Broadcasting Services. That law sets the fee at 299.00 RSD, while the Law on Public Broadcasting Services established that it could not amount to more than 500.00 RSD. This method of funding the public broadcasting services cannot secure their independence. A sustainable funding method must be established, which would consequently result in greater independence of the public broadcasting services, and that must start with the cessation of budget funding. An important issue that is underlined, and which may also affect independence, is the method of fee collection. For the public services to function independently,

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<sup>82</sup> *Ibid.*

<sup>83</sup> Maja Divac, media expert, interviewed by Marija Babić.

<sup>84</sup> *Ibid.*, p. 43

<sup>85</sup> Law on temporary regulation of the method of collecting the public service fee, Articles 2 and 9

an adequate collection method must be secured because as long as collection depends on the Electric Power Industry of Serbia, i.e. the government, there is no independence.

The election of members of the public services' bodies can also have a significant impact, primarily on the independence of the bodies themselves and also on the entire work of the public services. The election of members of the bodies is directly and indirectly linked to the Regulatory Authority for Electronic Media, which is a problem given the issues we have listed in the work of the Regulator itself, as well as given the fact that the Regulator is not sufficiently independent and that the REM Council members are elected by the National Assembly.

The Managing Board is a management body with 9 members. With the managing board we have a direct influence on the election of members by the Council of the Regulator, which appoints and dismisses them by a two-third majority of the total number of members. The members are selected from the ranks of respectable experts in the fields of importance for conducting the affairs of public broadcasting service institutions (experts in the areas of the media, culture, management, law, and finance), they cannot perform a public office or hold positions in political parties, be employed by a media service provider, nor can they be individuals whose membership in the Managing Board could lead to a conflict of interest.<sup>86</sup> The latest events regarding the election of RTS Managing Board members reflects REM's attitude toward the public services. Over the past month, the REM Council has attempted to elect members of the managing board three times, but failed.<sup>87</sup>

With the other two bodies, we have REM's indirect influence. The decision on appointing the general manager is made by the Managing Board, by a two-third majority of votes of the total number of members, while the board, as we previously said, is elected by the REM Council. In this case, too, the Law stipulates certain conditions for appointment,

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<sup>86</sup> Law on Public Broadcasting Services, Article 17

<sup>87</sup> Ivana Predic, When Will It, No One Knows: REM Council's Third Attempt at Electing New Members of RTS and RTV Managing Boards Fails, Cenzolovka, May 14, 2021 <https://www.cenzolovka.rs/drzava-i-mediji/kad-ce-ne-zna-se-savet-rem-a-ni-iz-treceg-pokusaja-nije-uspeo-da-izabere-nove-clanove-upravnih-odbor-a-rtv-a/>

including the one that a person from the ranks of renowned experts in areas of importance for conducting the affairs of a public broadcasting service institution may be appointed as director. A person who performs a public office or holds a position in a political party, or a person whose membership in the Managing Board could lead to a conflict of interest, may not be appointed as director.<sup>88</sup>

The Program Council is an advisory body with 15 members elected by the Managing Board from the ranks of media experts and professionals, scientists, cultural creatives, and representatives of associations whose goal is the protection of human rights and democracy, and they cannot hold a public office or political position.<sup>89</sup>

This body is important because it represents a link between the public services and the citizens, because it looks after the interests of listeners and viewers and oversees programming content. Its role is important because it reviews the quality of programming content and provides recommendations and proposals to the general manager and the Managing Board accordingly, and also monitors the implementation of programming principles and obligations set out by the law. However, in the event that they are disrespected, the only instrument the body has at its disposal is to inform the Managing Board, general manager and the responsible editors in written form.<sup>90</sup> An additional problem is that little is known about the work of this body, it is invisible to the public,<sup>91</sup> whereas it should be the main link between the public services and the citizens. It is important to establish the best possible communication with the citizens and enhance the procedure of public hearings.

The criteria set for the election of members of the public services' bodies are not clear and specific enough, and the media expert pointed out that they are set up in a very general way and need to be specified: "It is very important that the candidates, in addition to the required professional qualifications and knowledge, also have personal integrity."

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<sup>88</sup> Law on Public Broadcasting Services, Articles 24 and 25

<sup>89</sup> *Ibid*, p. 28

<sup>90</sup> *Ibid*, p. 30

<sup>91</sup> Independent Journalists' Association of Serbia, SERBIA – Indicators on the Level of Media Freedom and Journalists' Safety for 2019, Belgrade, 2020, p. 12 <https://safejournalists.net/wp-content/uploads/2020/12/SRP-SRP-2019.pdf>

She added that a big problem was that “incompetent people without integrity, susceptible to outside influence, are elected to these bodies, which is why none of the aforementioned bodies achieve good results in their work, and often even directly harm the functioning of the public broadcasting services and REM.”<sup>92</sup>

All that results in the public broadcasting services' not fulfilling their main role and their activity in the service of the citizens and not reporting enough on matters of public interest. The media expert underscored that the state public service was in no way carrying out its main activity and said that “when the way in which it realizes its news program is analyzed, it can be said that it has placed itself in the service of the incumbent government. RTS has long neglected its obligation of ‘achieving the public interest in the area of public information’ and instead of providing quality, accurate and diverse information to the citizens of Serbia, RTS is predominantly guided by the interests of the ruling establishment.”<sup>93</sup>

All of the above, and first and foremost editorial and financial independence, affect the work of the public services and thereby the content released. It also results in the public media services' not following the public interest or the principles of the Code of Ethics, as shown by the Analysis of News Shows. The three-month monitoring of the news content of RTV (news broadcasts at 5 p.m. and 10 p.m., as well as the morning show in Serbia and the main news show and political magazine in Hungarian language) and RTS (the 7:30 p.m. main news broadcast and the morning show) showed that in the observed period and with the sampled shows, in 2019, both public services failed to consistently follow the public interest and the principles of the professional code of ethics. Over the last few years, monitoring has revealed a clear upward trend in unprofessionalism, concealed advertising and violations of ethical professional norms.<sup>94</sup>

The bad state of affairs is also visible during election campaigns. According to CRTA's monitoring, in the first part of the election

<sup>92</sup> Maja Divac, media expert, interviewed by Marija Babic.

<sup>93</sup> *bid.*

<sup>94</sup> Novi Sad School of Journalism, Analysis of the Content of Selected News Shows of the Public Services in Serbia, Novi Sad, 2019, p. 73

campaign, from the calling of the election to the end of the state of emergency, representatives of the authorities, the opposition that participated in the election and the opposition that boycotted it had the same representation trend. The organization says that representatives of the ruling parties were dominant with representation of 91–96% in the total time, while all the opposition representatives combined had cumulative representation of between 4% and 9%. The situation was better in the second part of the campaign, after the lifting of the state of emergency, from May 12 to June 21, with a conspicuous trend of equal representation. Representation of the ruling parties' representatives was at 49%, of representatives of the opposition that took part in the election – 47%, while representation of the opposition that boycotted the election was at 4%.<sup>95</sup>

The media community has for years been highlighting the problem of public services and the neglecting of their core function and work in the interest of the citizens. There have been no initiatives for amendments to the law by the institutions in this area, while the Media Strategy identified the problems and foresaw certain changes to legal regulations, and so amendments to the law by the third quarter of 2022 are envisaged.

### **Compensation for material and non-material damages**

Defamation has been decriminalized in Serbia, and so the only option left to persons who believe that the publishing of a piece of information has violated one of their rights is to protect that right through civil proceedings for compensation for material and non-material damages. Journalists' associations had insisted on the decriminalization of defamation, and the result is that journalists cannot be prosecuted for defamation. However, that has certainly led to a rise in the number of lawsuits in civil proceedings for the compensation for material and non-material damages, due to the violation of honor and reputation stemming from the presentation of inaccurate and incomplete information. The number of lawsuits has been constantly high for years, and in the first 10 months of 2020 the total number of lawsuits filed was 325.

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<sup>95</sup> CRTA, Elections 2020: Summary and Recommendations – Final Report, Belgrade, 2020, p. 71

The Law on Public Information and Media envisages that the person to whom the information the publication of which has been prohibited refers and if they suffer damage as a result, that person is entitled to compensation for material and non-material damages. It is particularly stated that this right is also available to the person whose reply, correction or other information the publication of which had been ordered by the competent court, was not publicized, and that person suffers damage due to non-publication.<sup>96</sup> The lawsuit is filed within 6 months as of the moment of publication of the information.

The Law of Contract and Torts regulates the general compensation for non-material damages and states that the court, if it finds that the circumstances of the case, especially the intensity of the pain and fear and their duration justify it, shall hand down just financial compensation for the physical pain suffered, for the emotional pain suffered due to the reduction in life activity, violation of reputation, honor, freedom or rights of the person, death of a loved one, and for fear.<sup>97</sup>

The Higher Court in Belgrade is envisaged as the competent court for these cases. There is no specialist court or specialist judges, but rather the Law on Organization of Courts stipulates that the Higher Court in Belgrade also handles civil disputes related to compensation for damages in relation to the publication of a piece of information.<sup>98</sup>

The Law on Public Information and Media stipulates certain provisions that apply to proceedings, whereas the Law on Civil Procedure is applied to matters not regulated by this law. The Law on Public Information and Media envisages solidary accountability for the journalist, responsible editor and publisher of the media outlet for the damage incurred, and while the journalist, i.e. the responsible editor is called to account if it is proved that the damage was caused through their fault, the publisher is called to account regardless of culpability.<sup>99</sup>

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<sup>96</sup> Law on Public Information and Media, Article 112

<sup>97</sup> Law on Obligations, Article 200, paragraph 1

<sup>98</sup> Law on Organization of Courts, Article 23, paragraph 1, item 7

<sup>99</sup> Law on Public Information and Media, Articles 113 to 115

In these cases, the burden of proof lies on the prosecutor, urgent procedure is envisaged and no preparatory hearing is scheduled. The period for responding to the lawsuit is 8 days, while the first term for the main hearing is scheduled within 15 days of the date of receipt of the response to the lawsuit. The periods for legal remedies are also shorter, a period of 8 days as of the date of receipt of transcript of the judgement is envisaged for an appeal, whereas the period for an extraordinary legal remedy, the revision of the second-instance verdict, is 15 days as of the date of its delivery.<sup>100</sup>

Although the procedure is urgent and the deadlines are shorter, nonetheless the length of proceedings is pinpointed as one of the biggest problems here. A legal expert underline that practice itself has shown that: “Even though the procedure for damage compensation is urgent, it can last several years. The reason for that state of affairs can be attributed to the fact that the Higher Court in Belgrade is the only competent [court] for trials in media disputes, while that is not its sole jurisdiction. In that regard, an increase in the number of judges and employees of other services could help to solve that problem.”<sup>101</sup>

Research conducted by the Slavko Curuvija Foundation has reached certain conclusions. First, it points out that the court was not found to have unequally met deadlines relative to different categories of plaintiffs and defendants. Second, they noticed in certain cases that politicians (who are also the plaintiffs) were the most absent ones from hearings, held primarily for the questioning of the parties, using official obligations as justification for their absence. The research concludes that judges exhibit considerable tolerance of the absence of properly invited plaintiffs. It also points out that the large number of unheld trials leads to the unreasonably long duration of proceedings and that in the vast number of cases proceedings last longer than a year, which contributes to the loss of the effect of protection of the plaintiff's or the defendant's rights.<sup>102</sup>

The general opinion is that the legal regulations in this area are not bad, that they are in line with European standards, however the practice is not uniform. In their rulings, judges cite decisions of the

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<sup>100</sup> *Ibid.*

<sup>101</sup> Krana Savovic, legal expert, interviewed by Marija Babic.

<sup>102</sup> *Ibid.*, p. 50

European Court of Human Rights, but not to a sufficient extent. The Slavko Curuvija Foundation's research showed that in 2017, in the 101 decisions reviewed, in the verdicts the court cited provisions of international instruments in 22 cases. In 2018, in the 97 first-instance and second-instance decisions analyzed, the courts applied the European Convention on Human Rights in 22 verdicts, while in four they cited provisions of the International Pact on Civil and Political Rights. In 2019, out of the 98 decisions analyzed, the court applied provisions of the ECHR in 24 verdicts.<sup>103</sup>

The legal expert points out that “the legislation itself does not seem problematic. There is certainly room for improvement, however there are no visible major deficiencies which would paralyze the functioning of the system of exercising the right to compensation for damages.”

Practice has revealed another matter with unequal interpretation, and that is the interpretation of the very term “media outlet,” when it is not registered in the Media Register with the Business Registers Agency. The Law itself does not state that the media must be registered within the Media Register, but the consequence of not registering is the impossibility of that media to apply for co-financing of a project of public importance or in any other way to be granted state aid<sup>104</sup>. The legal expert says: “If a case, due to the ‘flexibility’ of interpretation, is forwarded to a basic court, it is treated as an ‘ordinary lawsuit’, which is why it lasts longer, keeping in mind that such proceedings are not considered urgent. Also, in the aforementioned case the Law of Contract and Torts is applicable, meaning that different rules on the burden of proof apply.”<sup>105</sup>

As for the practice of sums awarded as damages, they are fairly uniform. That was also shown by the research done by the Slavko Curuvija Foundation, but it also pointed out that out of the 294 cases analyzed, in 66 the plaintiffs had filed a lawsuit in which the claim amounted to 1,000,000 RSD or more, while the highest chosen claim was made

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<sup>103</sup> *Ibid*, p. 71

<sup>104</sup> Law on Public Information and Media, Article

<sup>105</sup> Krna Savovic, legal expert, interviewed by Marija Babic.



by a minister in 2017, in the amount of 27,000,000 RSD.<sup>106</sup> That is particularly problematic because we know that the law stipulates that state officials must bear a higher degree of criticism.<sup>107</sup>

The filing of these lawsuits should be observed from another angle, influence on media freedom. A specific type of pressure that is in this way put on the media and journalists has been predominant in Serbia lately, and that practice is not unfamiliar to our media public. In the 1990s, one of the tactics of smothering independent, professional media outlets was precisely the filing of lawsuits against those media outlets and in the process demanding high damages which are aimed at the economic destruction of the media outlets. These are so-called SLAPP<sup>108</sup> lawsuits, intended to snuff out free speech and restrict public criticism and are not unknown even to more developed European countries. Very high compensation amounts are set, which puts pressure on the media from multiple aspects, primarily through the exhaustion of human resources, because time needs to be set aside to prepare a defense, and that especially bearing in mind small and local media offices which are certainly short on staff, and then financially as well, because fees for responding to the lawsuit and lawyers' fees are determined based on the value of the dispute. Given that most local media outlets are barely surviving, this financial exhaustion of the media can seriously jeopardize their survival and thereby their freedom, too.

In the period from 2018 to 2020, 16 lawsuits were filed against the Zig Info website by Dragoljub Simonovic for compensation for damages incurred by the violation of reputation and honor. That all happened after the house of a Zig Info journalist had been burned down and after proceedings had been launched against then already former chief of the municipality of Grocka, Dragoljub Simonovic.

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<sup>106</sup> Slavko Curuvija Foundation, Protection of Free Speech in the Serbian Judicial System, Belgrade, 2021, p. 70

<sup>107</sup> Law on Public Information and Media, Article 8: An elected, i.e. appointed holder of a public and political position shall tolerate the presentation of critical opinions referring to the results of their work, i.e. the policy they implement, and is in relation to the performance of their office regardless of whether they feel personally offended by the presentation of those opinions.

<sup>108</sup> Strategic Lawsuit Against Public Participation

Among the last in a series of cases are the 11 lawsuits the Millennium Team company has filed against several media outlets, for articles in which those media outlets conveyed the words of third persons from a press conference. The words were conveyed in a credible manner and the articles clearly show that those are quotes, rather than the views and comments of the journalists. In the lawsuits, the plaintiff demands compensation for material damages in the amount of 100,000 euros because, according to the lawsuit, “the trademark of this company is continuously losing value on the market and every article additionally diminishes its value by the sum defined by this claim.” It is important to point out that the plaintiffs have not requested the publishing of a denial in any of the cases.

The associations have for a while now been warning about the SLAPP trend and the influence of these lawsuits on media outlets, and they are helping journalists and media outlets, providing expert and legal aid, monitoring and documenting these cases and keeping the public informed. There have been no initiatives for legal amendments.

### **Insult**

Unlike defamation, which has been decriminalized, insult is still a criminal offense according to the Criminal Code. Insult is in the group of criminal offenses against honor and reputation. The law states that the person who insults another will be penalized and foresees a fine for this criminal offense. The law also envisages a bigger fine if this offense has been committed via press, radio, television and similar media outlets, or at a public gathering.

If the insulted party responded with an insult, the court may punish or acquit one or both parties, while the perpetrator will not be fined if the presentation was given, among other things, as part of the journalistic profession and if it is evident from the manner of expression or other circumstances that they did not do so with the intent to belittle.<sup>109</sup>

A proceeding for this criminal offense is initiated by a private lawsuit.<sup>110</sup>

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<sup>109</sup> Criminal Code, Article 170

<sup>110</sup> *Ibid*, Article 177, paragraph 1

It is filed to the competent court within 3 months as of the date when the injured party learned about the criminal offense and about the suspect.<sup>111</sup>

In the case of this criminal offense, we encounter problems pertaining to the proceedings themselves. The Criminal Procedure Code stipulates what criminal charges need to contain.<sup>112</sup> In line with the law, upon receipt of a private lawsuit, a judge checks whether it was properly composed, and if they find that it was not, they give the plaintiff three days to correct the deficiencies (they can extend that period for justified reasons). If the private plaintiff misses the deadline, it will be concluded that they have abandoned prosecution and the private lawsuit will be dismissed.<sup>113</sup> It has happened in practice that an insult is sent via social networks, and so the perpetrator is not personally known to the plaintiff or goes under a false name or pseudonym on the social network, and the plaintiff cannot list all the legally required data in the lawsuit, which results in the dismissal of the lawsuit for procedural reasons, leaving the injured party without the possibility of exercising their rights.

What has become common practice over the last few years is that journalists themselves are the targets of various insults, even the most heinous ones, and so lately journalists have been filing these lawsuits, even against other journalists.

There are cases where journalists are sued for insult, however there are nevertheless more lawsuits for compensation for damages.

### **Relationship between copyright and right to freedom of expression**

We will observe the part pertaining to copyright in the context of protection of this right and of exercising the right to freedom of expression.

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<sup>111</sup> Criminal Procedure Code, Article 65

<sup>112</sup> A private lawsuit contains the following: 1) first and last name of the defendant with personal information, if it is known; 2) a brief description of the offense; 3) legal term used for the criminal offense; 4) stating the court before which the trial shall be held; 5) proposal for what evidence should be presented at the trial, specifying the facts that shall be proved and by which of the proposed pieces of evidence; 6) proposal of the type and measure of criminal sanction and the measure the issue whereof is requested.

<sup>113</sup> *Ibid*, Article 501

The Law on Copyright and Related Rights defines the term “original work of authorship.” It states that an original work of authorship is an original spiritual creation of its author, expressed in a certain form, regardless of its artistic, scientific or other value, its purpose, size, content and manner of manifestation, as well as permissibility of public presentation of its content. The law also stipulates that, among other things, written works (books, brochures, articles, translations etc.) are particularly considered original works of authorship.<sup>114</sup>

An author is a individual who has created an original work of authorship and is the copyright owner, and according to the law the author is entitled to moral and property rights. The author has the exclusive right to be acknowledged authorship of their work, has the exclusive right to have their name, pseudonym or sign specified on every copy of the work, has the exclusive right to publicize their work and to determine the way in which it will be publicized, and has the exclusive right to protect the integrity of their work, to oppose changes to their work by unauthorized persons, to oppose the publication of their work in an altered or incomplete form, and to give permission for the processing of their work. The author also has the exclusive right to oppose the exploitation of their work in a way that endangers or could endanger their honor or reputation.<sup>115</sup> These rights belong to the author and cannot be denied in any way.

Property rights entitle the author to the economic exploitation of their work, while for every exploitation of the work by another person the author is entitled to a fee (unless otherwise stipulated by the law or a contract). That includes: the right to reproduction, placing copies of the work on the market, leasing out copies of the work, the right to

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<sup>114</sup> Law on Copyright and Related Rights, Article 2

They are: 1) written works (books, brochures, articles, translations, computer programs with accompanying technical and user documents in any form of expression thereof, including preparatory material for the making thereof etc.); 2) spoken works (lectures, speeches, orations etc.); 3) dramatic, dramatic musical, choreographic and pantomimical works, as well as works originating in folklore; 4) musical works, with or without words; 5) cinematic works (works of cinema and television); 6) works of visual art (paintings, drawings, sketches, graphics, sculptures etc.); 7) works of architecture, applied art and industrial modeling; 8) cartographic works (geographic and topographic maps); 9) plans, drafts, mock ups and photographs; 10) theater directing.

<sup>115</sup> *Ibid*, Articles 14–18

broadcasting, rebroadcasting and other rights.<sup>116</sup> Moral rights are not transferable and are the sole property of the author, whereas property rights are transferable.

Some of the provisions of this law may be of importance for doing a journalist's job. The law envisages cases of copyright restriction and only the author's property rights, not moral rights, may be suspended. Even in cases of restriction, the author's name and the source from which the work was taken must be stated (the publisher of the work, year and place of publishing, magazine, newspaper, television or radio station where the work, i.e. an excerpt of the work was originally published or aired or directly taken etc.).

Copyright suspension in reporting to the public via press, radio, television and other media on current events is possible only in certain cases without the author's permission and fee, and only to the extent that suits the purpose and manner of report on a current event. Those cases are: 1) reproduction of copies of published works which appear as an integral part of the current event being reported on to the public; 2) preparation and reproduction of short excerpts or summaries from newspaper and other similar articles in press reviews; 3) reproduction of political, religious and other speeches given at public gatherings, in public bodies, religious institutions or at state or religious ceremonies and 4) free use of daily information and news which have the characteristics of a journalistic report.<sup>117</sup>

However, experts say that there is no clear line between the content subject to suspension and the one subject to copyright protection. In his analysis titled *Trends and Case Law in the Field of Copyright in Journalism*, lawyer Dragan Milic points out that it is assessed in each specific case whether a text may by its content be categorized as one of the aforementioned exceptions. He says that works such as interviews, columns, reports and articles which entail a longer analysis and research are original works of authorship and do not have the characteristics of current reporting, but also that it is important to assess the public interest for publicizing such content, that it is

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<sup>116</sup> *Ibid*, Articles 19–33

<sup>117</sup> *Ibid*, Article 43

measured in each individual case whether the author's private interest or the public interest will prevail.<sup>118</sup>

What is also important for the journalistic profession in the situation where an author has created a work during their employment, by fulfilling their work obligations, is that the employer is authorized to publish that work and is the owner of exclusive property rights to its use within their private activity for a period of five years as of the completion of the work. Apart from the aforementioned, the author reserves the other rights.

An author or copyright owner can exercise their rights collectively, via organizations for collective protection of rights, or individually, by filing lawsuits to the competent court. If their right has been infringed or there is a serious threat that it will be infringed, the law stipulates what may be requested in a lawsuit, such as violations of a right or serious threats that the right will be violated, prohibition of actions which violate the right or seriously threaten it and the prohibition of their repetition, compensation for material and non-material damages etc.<sup>119</sup>

The author or copyright holder is entitled to compensation for material damages in the event of loss of property, as well as compensation for non-material damages due to emotional pain suffered as a result of violation of moral rights.<sup>120</sup>

When copyright protection is mentioned, what is primarily considered is high compensation for damages, material and non-material, in cases of unpermitted publishing of photographs. Those are the most frequently filed lawsuits, while on the other hand journalists very rarely reach for this right when it comes to journalistic articles and rarely file lawsuits, and the vast majority of them are not even sufficiently familiar with the rights at their disposal.

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<sup>118</sup> Independent Journalists' Association of Serbia, Trends and Case Law in the Field of Copyright in Journalism, Belgrade, 2020, p. 26. <https://safejournalists.net/wp-content/uploads/2021/04/NUNS-analiza-Final-za-WEB0709.pdf>

<sup>119</sup> Law on Copyright and Related Rights, Article 204a

<sup>120</sup> The injured party must prove that they have suffered damage, that it is reflected in emotional pain, and to prove the cause-effect relationship between the violation of the moral right and emotional pain.

Lawyer Dragan Milic says in the aforementioned analysis that, where photographs are concerned, the amount of property damages due to the infringement of property copyright (which is largely based on the ULUPUDS artists' association) ranges from 5,000 to 25,000 RSD, whereas the amount of non-material damages due to emotional pain suffered as a result of violation of moral rights in certain cases reaches up to 50,000 RSD per violation.<sup>121</sup>

The analysis also states that there are not many disputes over the exercise of subjective rights in the case of written works of authorship, however regulations are not to blame for that, rather several factors are behind it: a lack of awareness among journalists of what content meets the requirement to be considered an original work of authorship; a lack of will to exercise these rights and consequently insufficient judicial practice; it also states that judges do not have sufficient knowledge and experience to assess whether particular content is a current event or contains a certain measure of originality; it also stresses unestablished parameters for calculating compensation for property damages.<sup>122</sup>

Large sums for damages in disputes and the perception of insufficient copyright protection of original works of authorship of journalists and media were also highlighted in the Media Strategy, which mentions another problem – inadequate establishing of a collective protection system, which was considerably criticized in the strategy itself.<sup>123</sup>

The last amendments and supplements to the Law on Copyright and Related Rights were made in 2019, and they primarily referred to the enhancement of the collective exercise of copyright and related rights, extension of the duration of copyright protection of performers and phonogram producers, as well as to the strengthening of civil protection of copyright and related rights in general.<sup>124</sup>

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<sup>121</sup> Independent Journalists' Association of Serbia, Trends and Case Law in the Field of Copyright in Journalism, Belgrade, 2020, p. 28

<sup>122</sup> *Ibid*, pP. 33 and 34

<sup>123</sup> Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025

<sup>124</sup> Independent Journalists' Association of Serbia, Trends and Case Law in the Field of Copyright in Journalism, Belgrade, 2020, p. 9

The amendments and supplements were made first and foremost for reasons of harmonizing our legislation with European standards. According to the analysis, those amendments only partially fulfilled Serbia's obligation to harmonize its regulations with European ones. However, it points out that not all of the amendments were made for the purpose of harmonization with European standards, but rather a certain number of provisions pertain to the suspension of copyright, the rights of performers and collective exercise, and are not a direct result of harmonization with EU law. The analysis adds that, as far as the collective exercise of rights is concerned, the last amendments did not carry out harmonization with the Directive on the Collective Management of Copyright.<sup>125</sup>

The EU Directive on Copyright and Related Rights in the Digital Single Market is an important regulation in the area of copyright and related rights. Technological development has led to great changes and a need to additionally regulate this area at the level of the European Union. This directive will also be important for journalists themselves. Some of the main goals listed in the directive itself are that it regulates the relations between holders of copyright and related rights and the users of their works, ensures that there is broad access to content, that it is to secure a just fee for authors, that its provisions respect the public's right to be informed, but also recognize the organizational and financial contribution of publishers to the production of news, etc.

One of the important articles of the Directive, highlighted in lawyer Milić's aforementioned analysis, which is a result of the need to secure the sustainability of this profession and the production of reliable information, pertains to the right of publishers to explicitly prohibit or permit the reproduction and placement at the public's disposal of their web publication as regards online use by information society service providers, but is at the same time limited by the right of the publication's author, who according to the Directive is entitled to a share of the profit the publisher earns on the grounds of that right. Another important matter refers to online content sharing service providers, i.e. platforms such as Facebook and YouTube, which collect copyrighted

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<sup>125</sup> *Ibid*, p. 9



content and which the users of those platforms may later share. The directive imposes the obligation on the platform to obtain adequate permission for the action of sharing from the author, and if it does not, it is responsible for any unauthorized publication of that work.<sup>126</sup>

### **3. EXAMPLES OF GOOD PRACTICE AND POSITIVE SHIFTS RELATED TO MEDIA FREEDOM AND JOURNALISTS' SAFETY**

#### **Safety of journalists**

Over the last few years, where journalists' safety is concerned, there have been multiple initiatives aimed at establishing a dialogue with journalists' and media associations and making journalists feel safer when doing their job. However, the question is whether those efforts were made for the purpose of improving the overall situation or if they merely served the purpose of meeting the requirements the European Union insists on in the process of our country's accession to the Union.

The problem of journalists' and media professionals' safety was also recognized in the Media Strategy adopted by the Government of the Republic of Serbia, certain measures and activities are proposed for improvement, as well as the Government's support to the established communication channels, their institutional empowerment relative to cases of murder, assault, intimidation and threats to journalists and media professionals.<sup>127</sup> It seems like the Government attempted to carry out one of the activities from the Media Strategy by forming the Working Group for the Security and Protection of Journalists.

Despite several working groups formed to deal with this subject, the situation concerning journalists' safety has not improved. There is some progress, but that only seems to be in particular cases. We could single out as a positive example the signing of an agreement on cooperation and measures for raising the level of journalists' safety, which journalists' and media associations signed with the Republic Public Prosecutor's

<sup>126</sup> Independent Journalists' Association of Serbia, *Trends and Case Law in the Field of Copyright in Journalism*, Belgrade, 2020, pp. 17 and 18

<sup>127</sup> Strategy of Public Information System Development in the Republic of Serbia for the Period 2020–2025, pp. 47 and 48

Office and the Ministry of Interior. The Republic Public Prosecutor's Office even before the signing of the agreement, since December 2015, started registering attacks and envisaged urgent procedure in those cases, based on the enacted Instructions for keeping records of criminal offenses against journalists. The keeping of records, which should certainly be improved, is a good example. During the work of the Subgroup for Criminal Code Analysis, criminal offenses potentially committed against journalists were registered (besides the aforementioned three which already particularly incriminate the following: endangering security, first-degree murder and grievous bodily harm) and the Republic Public Prosecutor's Office included those offenses in the new binding instructions it issued in December 2020. The Ministry of Interior also issued instructions in 2018, which envision urgent procedure carried out by police officers in cases of assault on journalists. The handing of updated records to the associations, with information on the course of each registered case by the Republic Public Prosecutor's Office, is positive practice.

A mechanism of reporting cases and exchange of information via points of contact in the associations, prosecutors' offices and police directorates was established. The entire mechanism encountered difficulties in the beginning, however after conducted training and familiarizing, the very passage of time made that mechanism function much better. Since the start of the implementation of the agreement, the number of points of contact has increased in both prosecutors' offices and police stations, and that network has expanded in prosecutors' offices from the appellate public prosecutors' offices to points of contact in all basic and higher public prosecutors' offices. To date, that total number of points of contact has gone up to 193. We have individual positive examples, cases where the response of competent institutions was swift and effective, especially when they go through the aforementioned mechanism and through the Standing Working Group.<sup>128</sup> However, it seems that those are merely individual cases which are not enough to say that journalists' safety has been raised to a higher level.

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<sup>128</sup> Dasko Milinovic was physically assaulted on April 16, 2021, first with pepper spray, and then the assailants attempted to hit him in the head with a metal bar. However, the journalist managed to cover his face with his arm and thereby mitigate the outcome of this attack. The two attackers were arrested that same day and just two days after the attack, the person suspected of instigating it was also arrested and proceedings were launched against them before the prosecutor's office.

A legal expert and Standing Working Group member pointed out that it was good that this topic was being discussed more, just like attacks on female journalists were being discussed. She underlined as a positive thing the fact that information was exchanged within the Standing Working Group, however, that it was still not effective enough. She also said that the new instructions of the Republic Public Prosecutor's Office had resulted in progress in the Standing Working Group's registering of attacks. In her words, there are examples of good practice in institutions in individual cases, such as the case of the torching of journalist Milan Jovanovic's house, where despite the defense attorneys' obstructions, the individual judge still kept matters under control, as did the acting prosecutor.<sup>129</sup>

There have also been cases where the institutions spoke out on the occasion of threats and pressures directed at journalists,<sup>130</sup> however, that is still not enough, especially bearing in mind that in cases where the safety of certain journalists is jeopardized, such as the aforementioned case involving KRIK,<sup>131</sup> there has been no reaction either publicly or even in internal correspondence with the associations.

The Association of Independent Electronic Media, with support from the Working Group for the Security and Protection of Journalists, in March 2021 opened an SOS hotline which journalists and media professionals can call and report cases where they believe their safety is endangered. Jurists experienced in working on cases of violence against media professionals are to answer the calls and provide information on the competent contacts in the police and prosecutor's office, and if the offenses in question are prosecuted through private lawsuits, journalists will be informed about how to write a complaint or will be instructed to use the associations' legal aid. The website safe journalists launched in April 2021, will contain all the data on points of contact for reporting the endangerment of safety of journalists and media professionals, in prosecutors' offices and police directorates.

<sup>129</sup> Natasa Jovanovic, legal expert, interviewed by Marija Babic.

<sup>130</sup> Ministry of Culture and Information, Ministry of Culture and Information Condemns Frequent Attacks on Journalists and Media Outlets, January 22, 2021 <https://www.kultura.gov.rs/vesti/sr/6029/ministarstvo-kulture-i-informisanja-osudjuje-ucestale-napade-na-novinare-i-medije.php>

<sup>131</sup> Vanja Djuric, Propaganda Machinery Targeting KRIK, Revenge for "Uncomfortable" Topics and Questions, N1, March 10, 2021 <https://rs.n1info.com/vesti/propagandna-masinerija-crta-metu-krik-u-osveta-zbog-nezgodnih-tema-i-pitanja/>

One of the positive things that have been done is the categorization of attacks and pressures on journalists and media stakeholders, carried out as part of the Agreement on establishing a platform for registering cases of safety endangerment and pressures on journalists and other media stakeholders, concluded with the ombudsman. However, the whole affair is unfolding pretty slowly, it is not completely clear how the system will function, what the purpose of the potential database will be and what the ombudsman will do regarding concrete cases of endangerment and pressures on journalists. What causes concern is the fact that the ombudsman, when the aforementioned case involving KRIK happened, said that he had not spoken out regarding the attack on KRIK because he believed he was not even supposed to do that, since press releases did not contribute to a reduction in the number of attacks on journalists. When asked why he did not support KRIK when the tabloids had falsely accused them of collaborating with a criminal gang, the ombudsman replied that if the matter was a criminal offense, did not fall under the jurisdiction of the ombudsman, but rather under the jurisdiction of the prosecutor's office, and if it comes down to smear, than it was a matter for the court.<sup>132</sup>

The civil sector and journalists' and media associations invest a lot of resources in this subject, they have been alarming domestic and international institutions and organizations about the situation in Serbia and about individual cases for years. Numerous analyses and studies have been conducted, while two journalists' associations – the JAS (internal database) and the IJAS (publicly available database) – keep records of attacks on journalists and other media professionals, and there is also a regional, publicly available database at safeJournalists.net. The associations are actively involved in the work of the Standing Working Group, they have representatives and points of contact for reports and exchange of information, they are always ready for dialogue and cooperation, which they have demonstrated by participating in various working groups devoted to this subject. In addition to registering cases, the associations conduct analyses which they use as grounds for changing the regulations relevant for improving the position

<sup>132</sup> KRIK, Pasalic Believes He Does Not Need to React to Attacks on KRIK, March 16, 2021 <https://www.krik.rs/pasalic-smatra-da-ne-treba-da-se-oglasiti-povodom-napada-na-krik/>

of journalists and other media professionals and the environment they work in. The associations also provide concrete legal and psychological support to their endangered colleagues.

IJAS is a part of the SafeJournalists regional network, which responds to the most serious threats and attacks on journalists, alarms the international and domestic public, and keeps a database of attacks on the regional level. In 2018, IJAS conducted an analysis together with legal experts specializing in this field and put together concrete proposals for amendments and supplements to the legislation in this field.

### **Co-financing media content of public interest in the area of public information**

As we have pointed out, the process of project co-financing is accompanied by a whole host of problems from the very announcement of a competition to the end of the process. One of the good things is that the Media Strategy, which was adopted by the Government of the Republic of Serbia and the making of which involved the Ministry of Culture and Information, identified numerous problems in this area and envisaged a number of activities and measures for overcoming those problems. The biggest problem remains – to subsequently implement everything and to establish the designed model, i.e. to co-finance media content for the purpose of achieving the public interest.

Some experts believe that the whole process now, when compared to the start of implementation, has seen some progress, because in the beginning the decisions on the distribution of funds did not even contain an explanation: “The process has been considerably pushed into the legal flows, it has been structured, it is not structured poorly, it has deficiencies and if there was a will to implement it, those deficiencies really would not be a problem. There is a way to dispute the decisions, its effectiveness can be called into question, but it does exist. Transparency is much improved because there was none [before], now we can get to those decisions after all, to see the content that has been supported and based on that we can criticize or praise them and say that there is room for progress.”<sup>133</sup>

<sup>133</sup> Anonymous, media expert, interviewed by Marija Babic.

Aside from that, there is no particular positive headway in practice. There are potentially examples of positive practice in some competitions, like in the case of the City of Kraljevo, which in the justification of the decision to deny funding stated that the project would be realized via the Informer media outlet, whom the Press Council had handed down public warnings over the past year. Vrbas and Pirot offered similar explanations, too.<sup>134</sup>

Numerous analyses and reports on this subject have been made. Since the very beginning of implementation of this co-financing model, the Media Coalition has been monitoring the situation, constantly pointing out problems and deficiencies of competitions to local self-governments. Together with BIRN and the Slavko Curuvija Foundation, IJAS has in collaboration with the experts made recommendations for improving this area, along with concrete proposals for legal amendments. Based on the monitoring, IJAS has issued annual reports and is constantly involved in nominating candidates for expert commissions.

### **Regulatory Authority for Electronic Media**

As we have already said, for many years now the Regulator has been one of the biggest problems in the media sphere. However, the Regulator's expert services themselves are not doing a bad job. The biggest problem is the Council, which also has the biggest authority.

In some cases, when the public and the expert community thought positive progress would happen in the Regulator's work, when steps were taken it turned to be the opposite. After a three-year break, REM monitored the campaign for the June 2020 general election. However, the way in which the monitoring was carried out was criticized a great deal and encompassed a multitude of actors, and when they are compared one does not get a realistic image of the representation of parties in the election campaign, as we have already said in the report.

We also had several examples in the past where the Regulator's Council itself initiated proceedings for handing down measures to certain

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<sup>134</sup> Press Council, Co-Financing of Media Outlets Which Violate Ethical Standards, Belgrade, 2020, pp. 19 and 20

broadcasters in cases of violation of legal provisions. Thus, the REM Council on June 13, 2020 initiated two procedures for issuing measures against Pink TV, one for scenes of violence on the show Zadruga (Co-op) and the other because the Ami G Show included erotic content broadcast at an unpermitted time, as well as content showing an inappropriate performance of the national anthem.<sup>135</sup> That same year, in October, the Council initiated a procedure against Happy TV because the television's editor-in-chief had voiced a number of insults against Faculty of Philosophy professor Danijel Sinani on the television's morning show.<sup>136</sup> In July 2020, it launched a procedure against Pink TV for revealing the identity of a 14-year-old minor on the show Hit Tvit (Hit Tweet).<sup>137</sup>

These cases are sporadic and not enough, especially bearing in mind the fact that after several positive examples, the Regulator decided to suspend procedure in a case where direct threats were made. It suspended the procedure against Pink TV for murder threats made live on the show Zadruga. On the show, participant Kristijan Golubovic said: "I will kill Stanija Dobrojevic myself or through my people, unless she sincerely apologizes to me for having insulted my children. And I will kill anyone who ever mentions my child." The competent prosecutor's office dismissed the charges pressed by the injured party, Stanija Dobrojevic, for the threats, because that is not an offense prosecuted ex officio but rather through a private lawsuit, and so the majority of the REM Council joined that position and a decision was made to suspend the procedure.<sup>138</sup>

After pressure from several sides, the Regulator decided to elect the missing members of the Council in December 2019, when Judita Popovic, Zoran Simjanovic and Aleksandar Vitkovic were elected. Just

<sup>135</sup> FoNet/N1, REM Launches Two Procedures Against Pink for Violence, Pornography and Anthem, June 14, 2019 <https://rs-8nqof7qzeod2et99kimwqegbnmsmjnbv.n1info.com/vesti/a491813-postupak-rem-a-protiv-pinka/>

<sup>136</sup> Insajder, REM Launches Procedure Against Happy TV for Insulting Professor Sinani; Prosecutor's Office: We Will Act Within Our Authority, October 3, 2019 <https://insajder.net/sr/sajt/vazno/15709/>

<sup>137</sup> RTV, REM Launches Procedure Against Pink for Revealing Identity of Minor, July 27, 2020 [http://rtv.rs/sr\\_lat/drustvo/rem-pokrenuo-postupak-protiv-pinka-zbog-otkrivanja-identiteta-maloletnika\\_1148236.html](http://rtv.rs/sr_lat/drustvo/rem-pokrenuo-postupak-protiv-pinka-zbog-otkrivanja-identiteta-maloletnika_1148236.html)

<sup>138</sup> J. Pestic, REM Suspends Procedure Against Pink for Death Threats on Reality Show, JAS, February 24, 2021 <https://www.uns.org.rs/sr/desk/UNS-news/113082/rem-obustavio-postupak-protiv-pinka-zbog-pretnje-smrcu-u-rijalitiju.html>

a month later, Council members Djordje Vozarević and Goran Pekovic resigned, and soon afterward Slobodan Cvejic and Visnja Arandjelovic were elected as their replacements. In December 2020, Slobodan Cvejic resigned due to, as he put it, the way in which the REM Council chairwoman had been elected, i.e. due to the violation of democratic procedures in the Council.<sup>139</sup>

Again, a positive thing is that the Media Strategy highlights problems in this area, especially the importance of independence of the Regulator and its importance for effectiveness. Certain measures and activities are proposed, primarily those that pertain to legislative amendments. The media expert points out that it is especially good that the way in which the law should be changed was very carefully, possibly even to excess, added to the Strategy and Action Plan, which is justified due to concerns that those measures might not be added to the text in the right way. They also say that “it is particularly good that an asymmetrical term of office has been reintroduced and that, after the law has been amended, the complete election of a new Council is envisaged; a lot will depend on what the lawmaking parliament’s structure will be, but we cannot get a more monolithic Council than this one.”<sup>140</sup>

Journalists’ and media associations have long been pointing out the problem of the Regulator’s work and independence. Various analyses have been conducted and proposals for legal amendments made. In 2018, the IJAS together with legal experts conducted an analysis and offered proposals for concrete amendments to the Law on Electronic Media. The NGO sector got particularly engaged in the matter over the last few years during election campaign monitoring, especially in the period when REM itself did not monitor the campaigns, and actively filed reports both in that period and beyond election campaigns. Journalists’ and media associations actively participated in the debate when the Regulator decided to issue a new Rulebook on the Obligations of Public Broadcasting Services During Election Campaigns, and only recommendations for the broadcasters. IJAS offered its objections and

<sup>139</sup> N1 Belgrade, Slobodan Cvejic Resigns from REM: Brutal Violation of Democratic Procedures, December 22, 2020 <https://rs.n1info.com/vesti/a686297-slobodan-cvejic-podneo-ostavku-namesto-clana-saveta-rem-a/>

<sup>140</sup> Anonymous, media expert, interviewed by Marija Babic.



proposals, but they were not accepted. Civil society organizations are primarily involved in election campaign monitoring, but also monitor concrete legal amendments, for which the CRTA organization provided proposals, along with a draft text of the Rulebook on the Obligations of Media Service Providers During Election Campaigns.

### **Public broadcasting services**

The public broadcasting services face a number of problems, which calls into question their fundamental role, which should be to inform the citizens. A positive fact is that the Media Strategy identified the problems, a special emphasis was placed on editorial and financial independence, securing channels of communication with the audience, election of managing board members etc. The strategy itself foresees a number of activities aimed at improving this area, and the most important ones are amendments to legal regulations.

Media experts believe that it is difficult to highlight positive steps forward in this field. One of the few things that can be stressed as good where the public services are concerned is cultural, educational and children's programming. However, the key issue are news programs which do not reflect the social reality and pose the biggest problem. The experts say that the public services have a well-developed network of correspondents which has been greatly neglected and, if it was legally strengthened, that function of covering regional information at the level of RTS could solve the lack of local and regional information which is currently noticeable in the entire country.<sup>141</sup>

### **Compensation for material and non-material damages, insult and copyright protection**

Good practices and trends over the past few years, related to damages lawsuits, are primarily reflected in the fact that in their verdicts judges have begun to cite ECHR rulings, but as we have already seen that does not occur to a sufficient extent. There is also the fact that the courts award similar amounts of damages.

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<sup>141</sup> Anonymous, media expert, interviewed by Marija Babic.

Given that, as we have already pointed out, legal regulations are not the problem in this area, journalists' associations have first and foremost focused on providing legal aid and representing journalists in court. The associations are constantly stressing the SLAPP problem, high claims for damages requested by public officials and the pressure that is thereby put on journalists and media outlets.

In the area of copyright protection, much has been done to harmonize the law with European standards. The last amendments and supplements, made in 2019, did a great deal and that partially fulfilled our state's obligation to harmonize its law with European standards. The legal provisions have been harmonized with numerous directives,<sup>142</sup> however, as we have already stated, not all amendments have been made for the purpose of alignment with European standards. One should also keep in mind that the last amendments and supplements did not harmonize the collective exercise of rights with the Directive on the Collective Management of Copyright, which has yet to happen.

Through the legal aid it has been providing for many years now, IJAS has registered an upward trend in issues related to this field and the existence of a need to deal with this topic, primarily because journalists and media professionals are not sufficiently familiar with the rights and obligations stemming from this law. IJAS conducted the aforementioned analysis, *Trends and Case Law in the Field of Copyright in Journalism*, which highlighted the provisions that may be of use for doing a journalist's job, as well as trends applied in practice. Workshops have also been held on this subject, with the primary aim of raising awareness of what the rights of journalists and media professionals are and how they can protect those rights.

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<sup>142</sup> Independent Journalists' Association of Serbia, *Trends and Case Law in the Field of Copyright in Journalism*, Belgrade, 2020, p. 9

#### 4. CONCLUSIONS

The main conclusions of the analysis are that the laws in the aforementioned areas are in line with the European standards and that their practical implementation is the biggest problem. It states that certain deficiencies or vagueness of the legislation would not play any part if there was a will to implement and respect those laws.

The legal regulations pertaining to the safety of journalists and legal protection of journalists, such as they are, are grounds enough to provide adequate protection to journalists and to ensure that they are safe. Certain proposals have been made to improve certain parts and additionally secure the safety of journalists during their work. The proposals primarily refer to solving the problems of cases journalists are most often exposed to, which have to do with harassment and attacks on mental integrity, and which are not included in existing criminal offenses.

The biggest problem here is the lack of efficiency of the competent bodies in cases of assault on and threats to journalists and media outlets, a large number of cases filed as committed by unidentified perpetrators, a large number of dismissals of criminal charges which also carries the problem of narrow interpretation of certain criminal offenses by the prosecutors' offices and judges, and finally a very small number of court epilogues in those cases and penalized perpetrators of criminal offenses committed against journalists.

Project co-financing of production of media content of public interest in the area of public information had problems from the very beginning of the process to its end. Some believe that those problems are a result of legal vagueness, while the predominant opinion is that the problem lies in the implementation of the laws. The analysis has shown that the problem is that the needs regarding media content in local environments are not analyzed and that there is not enough transparency of certain parts of the process, primarily in the part of monitoring and checking the approved projects. Another major problem is the work and makeup of expert commissions for the selection of projects, abuse in the election of commission members and insufficiently specific election criteria.

There is also disregard for criteria for project evaluation, especially in the part pertaining to the disbursement of funds to the media outlets that systematically violate the Code of Ethics.

The lack of an adequate oversight and evaluation mechanism, as well as the non-existence of sanctions, is a big problem too. The institutions that could carry out oversight do not do so, while the others shift responsibility between each other, and so an adequate legal mechanism needs to be established, which will be respected and which will take care of the law's implementation and thereby of respect for the entire project co-financing process.

The Regulatory Authority for Electronic Media does not adequately do its job and does not sufficiently utilize the powers and measures at its disposal, and the biggest problem is the body doing the most important work – the Council. Again, the predominant opinion is that the legal instruments and powers REM has at its disposal are enough for it to fulfill its purpose, however, insufficient independence and pressures lead to situations where certain legal provisions are abused.

Several factors influence its independence, primarily the fact that it carries out certain important affairs as “entrusted affairs,” which the line ministry can take away at any moment. Another problem is that four Council members are nominated by political bodies and elected by the National Assembly. The criteria for the election of Council members are not specific and clear enough, and for the Regulator to function independently, it needs to have financial independence.

All that results in the Regulator's not performing one of its main functions, i.e. overseeing the work of media service providers. Although according to the analysis of the Regulator the broadcasters do not fulfill their obligations and do not broadcast the mandatory programming content, there are no particular sanctions. There is also a big difference between the number of reports against broadcasters referring to programming content and the smaller number of measures handed down, which the Regulator does not use to a sufficient extent. Some experts believe that the fines which are highlighted as a way to solve this problem are not really necessary, i.e. that the Regulator has sufficient

measures at its disposal to be able to do its job. Another considerable problem is the Regulator's passive behavior when it comes to election campaign monitoring, and ultimately the monitoring conducted in 2020, with unclear criteria.

The public broadcasting services are not fulfilling their main role, and that is reporting on events and topics of public interest in the service of the citizens. Again, the legal implementation of the law is a bigger problem than the regulations themselves. Even though the law stipulates editorial independence and institutional autonomy, that independence does not exist in practice. Two of the biggest problems are precisely the lack of editorial independence and the lack of financial independence. The existing method of funding public services cannot ensure that they function independently, and neither can the current fee collection mechanism.

Another thing affecting the independence is the method of election of the body that is directly or indirectly dependent on the Regulator, especially keeping all of the above in mind where the work and independence of the Regulator itself is concerned. Clearer and more specific criteria also need to be made for the election of members of public services' bodies. The program council as the body that represents a link between the public services and the citizens is barely visible and is not efficient enough. The result of all that is that the public services do not perform their main activity, they do not inform citizens about events of public interest, there is no critical review of certain topics, there is no room for debates and exchange of opinions.

From the moment defamation was decriminalized, we have constantly had a large number of proceedings for damages related to the publication of information. Legal regulations are not the problem in this part either, there is room for improvement, but that certainly does not affect the functioning of these proceedings. The problem are primarily other proceedings, an insufficient number of judges dealing with these disputes because only the Higher Court in Belgrade is competent for the matter. There is room for improvement when it comes to judges' citing ECHR rulings, which is still not at a satisfactory level. Case law has also identified the problem of definition of the very term "media outlet not

registered with the Media Register” and that creates new problems, the competence of another court – a basic one, longer proceedings and the burden of proof which is on the defendant.

The increasingly frequent SLAPP as pressure on certain media outlets is also a problem. Claims are filed for high damages, which consequently means higher court and legal representation costs, which has a discouraging effect on the media, affects their work and survival and thereby media freedom.

There are some proceedings on private lawsuits filed for insult, but nevertheless there are more civil proceedings for damages related to the publication of information. Lately we have seen cases of private lawsuits filed for the criminal offense of insult, which are filed by journalists themselves against other journalists.

Copyright protection is largely aligned with European standards and directives. What is mentioned as the biggest problem are high claims for compensation for material and non-material damages in cases of unpermitted publishing of photographs, which often has a negative impact on media outlets, especially small local ones. On the other hand, it is pointed out that authors rarely file lawsuits to protect their rights where journalists' articles are concerned, however, that is not a consequence of an uneven level of protection, but rather of insufficient familiarity with the law, and other factors such as a lack of will to exercise one's rights, insufficient court practice, insufficient knowledge and experience of the judges themselves, and unestablished parameters for the calculation of damages.

Another significant problem is the collective exercise of copyright. The last legal amendments, made in 2019, pertained to the enhancement of this area, but the collective exercise of rights was not fully harmonized with the Directive on Collective Management of Copyright, which is expected to be harmonized sometime in the future.

Besides all of these deficiencies, there is very little progress. There are certain initiatives on the part of the authorities, especially where journalists' safety is concerned. The question is whether they have

been launched for the purpose of improving the safety of journalists and media outlets or for the purpose of meeting certain requirements set before our country on the road to European integration. Positive steps have been taken within the Standing Working Group for the Safety of Journalists: better communication, a system of reporting and exchanging information, keeping records and urgent action in cases of attacks on journalists. The ombudsman has also launched an initiative in relation to categorizing attacks and pressures on journalists.

In other fields, there are no particular initiatives by the institutions for overcoming the problem, rather only rare and individual cases which do not help to improve the entire system, such as an increase in transparency when it comes to processes for project co-financing of media content of public interest, the Regulator's launching of procedures against broadcasters in cases of violation of the law, a better situation concerning educational, cultural and children's programs as opposed to the news programs of the public broadcasting services, above all RTS.

There is also noticeable progress in the decisions of judges regarding proceedings for damages for the publication of information, who cite ECHR rulings to an extent, similar amounts of damages handed down, as well as harmonization with European standards in the area of copyright and related rights.

Primarily journalists' and media associations, but also other civil society organizations, are the ones who are constantly working on improving the situation regarding media freedom and journalists' safety, all the while influencing all the stakeholders and overseeing all the processes. The associations also contribute their professional knowledge, research and concrete proposals for legal amendments.

However, the problem lies in the passivity of the institutions and the lack of will to implement existing laws. That is why we have numerous attacks and pressures on journalists, a large number of unsolved cases of attacks and threats to journalists, constant pressures and targeting of journalists by public officials, journalists who do not feel safe while doing their job. We have co-financing for achieving the public interest

which has turned into the rewarding of certain media outlets, we have the Regulator which, instead of supervising broadcasters, is in the service of commercial broadcasters, as well as public media services which neglect their core function, and that is to report in the interest of the citizens and in the public interest. We have pressures on and exhaustion of media outlets and journalists by officials, even by legal entities through SLAPP, smear campaigns which lead to a large number of journalists' lawsuits against other media outlets – tabloids, and the filing of private lawsuits for insult by journalists themselves.

## **5. RECOMMENDATIONS:**

Ensure that the Action Plan for the implementation of the Strategy of Public Information System Development for the Period 2021–2025 is consistently applied, and that there is inclusive and transparent work on amendments and supplements to the relevant laws related to media freedom, and include representatives of relevant journalists' and media associations and civil society representatives in the process.

1. Increasing the level of safety of journalists and media stakeholders:
  - enhancement of existing mechanisms of cooperation between the institutions and journalists' and media associations, primarily through the Standing Working Group for the Safety of Journalists, founded as part of the agreement on cooperation and measures for raising the level of journalists' safety;
  - urgent action by the competent bodies, prosecutors' offices and the police, in all cases in accordance with the binding instructions they have enacted;
  - specify the method of operation and term of office of the Working Group founded on the grounds of an agreement signed with the ombudsman – the Agreement on establishing a platform for registering cases of endangerment of safety and pressures on journalists and other media stakeholders. Also specify the way in which records of attacks and pressures will be kept and what the ombudsman's role will be;
  - analysis of the regulatory framework, primarily the Criminal Code and the Criminal Procedure Code, for the purpose of



- improving the legal protection of journalists. Consideration of amending the criminal offense of Violation of Free Speech and Public Address in: Violation of the Right to Freedom of Thought and Expression; amendments and supplements for the purpose of incriminating cases pertaining to harassment and attacks on mental integrity; separate incrimination of certain criminal offenses pertaining to communication, when they are committed against journalists;
- reviewing the current practice of interpreting the criminal offense of Endangering Security in terms of giving preference to the subjective element of feeling threatened as predominant in relation to the objective element and changing the interpretation of the objective element not only in terms of a direct threat to attack the life and body, but also threats expressed in other ways that as a cause have a feeling of threat;
  - representatives of state institutions should in a clear and unambiguous way condemn threats and attacks on journalists and media stakeholders;
  - public officials should refrain from targeting and labeling journalists and media outlets, especially when that can lead to the endangerment of journalists' safety;
  - achieve continuity in training members of the police and prosecutors' offices aimed at ensuring that they better understand the problems and act more efficiently in cases of endangerment of journalists' safety, as well as in training journalists as regards the right to legal protection and obligations regarding criminal procedure;
  - judges' representatives need to be involved in the problems of journalists' safety and the consequences caused by attacks and threats and in relation to case law;
  - ensure that journalists and media outlets can move and work freely during emergency circumstances.
2. Enhance the system of project co-financing of media content of public interest in the area of public information, primarily by respecting the existing legal provisions and showing a greater will to carry out this process in the public interest, but also

- through amendments to laws and bylaws so that the regulations are improved:
- envisage the obligation of organizing a competition and sanctions in cases when competitions are not organized, as well as the obligation for all providers of funding to organize competitions at the start of the year;
  - introduce the analysis of needs for particular media content, so as to determine the needs of a specific local community and thereby the content that needs to be co-financed;
  - secure the transparency of every part of the process and improve the procedure for requests for providing information of public importance;
  - enhance the work of competition commissions, primarily for the election of commission members; specify and make stricter the criteria for the selection of media experts, introduce CV forms and score lists, as well as clear criteria for the conflict of interest and the solving thereof; secure greater transparency in the work of the commissions themselves and of the projects; provide training to certain individuals who can be commission members;
  - especially additionally set the obligation of commissions to take into account the decisions of the Regulator and the Press Council when deciding on the disbursement of funds;
  - ensure that there is an adequate system of evaluation of implemented projects and an external financial audit;
  - ensure that there is an adequate control mechanism, an adequate legal mechanism that will take care of its implementation and the implementation of legal regulations;
  - envisage adequate and effective sanctions for disregarding obligations in this field and clearly determine which state body is competent for the legality of carrying out competition co-financing at the local level.
3. Improve the work of the Regulatory Authority for Electronic Media, so that it uses the existing mechanisms and measures at its disposal in overseeing media service providers, and additionally improve legal regulations:

- ensure that REM has more independence, primarily by making sure that REM does not perform some of the most important affairs as entrusted affairs, by changing the authorized nominators of REM Council members;
  - rule out the possibility of governing bodies consenting to REM's bylaws, abolish the possibility of the parliament consenting to the Financial Plan and Articles of Association;
  - define clear criteria for the election of REM Council members, specify the term "media expert;"
  - ensure that there is adequate accountability of REM Council members as regards identified omissions in the implementation of regulations;
  - ensure that there is more effective accountability of REM in cases of disregard for studies based on which media outlets were given licenses and in cases where broadcasters do not broadcast all the required program genres; consider restoring the provision that was part of the Broadcasting Law, which refers to the fact that televisions should broadcast programs in line with the study based on which they were granted licenses;
  - the Regulator should more effectively use the measures at its disposal in cases of violation of laws and bylaws; legally specify that the procedure for handing down measures can be launched both on reports and ex officio; expansion of powers and the possibility for the Regulator to hand down fines;
  - precisely define the Regulator's obligation to monitor election campaigns;
  - make amendments to the Rulebook on the Obligations of Public Broadcasting Services During Election Campaigns in such a way that they refer to all media service providers, rather than only to the public broadcasting services;
  - ensure that there is greater transparency and better communication with the citizens.
4. Secure the independent functioning of the public media services, their editorial and financial independence and performance of their activity in the interest of the citizens:
- secure the public services' financial independence by changing

- the current method of financing and the method of fee collection;
- secure greater independence of members of the public services' bodies, primarily by stating clear criteria for their election, and more clearly define the term "media expert;" besides professional experience and knowledge in this area, the members must also have personal integrity;
  - strengthen the role of the Program Council by defining its authority, so as to ensure that the public broadcasting services are overseen in a more efficient way;
  - secure greater transparency, communication with the public, enhance the procedure of public hearings.
5. Lawsuits for compensation for material and non-material damages:
- harmonize court practice with the rulings of the European Court of Human Rights and adequately implement international standards in proceedings for damages due to the publication of information;
  - establish the practice of holding proceedings for compensation for material and non-material damages before the Higher Court in Belgrade, which is competent for disputes related to the publication of information, regardless of whether a media outlet is registered in the Media Register with the Business Registers Agency;
  - raise awareness of the fact that public and political officials, in line with the Law on Public Information and Media, must tolerate a higher level of critical thinking.
6. Copyright protection:
- improve education and raise journalists' awareness when it comes to the copyright protection of their articles, what their rights are and how they can protect them, as well as in what cases legal restrictions are possible;
  - provide training/consultations of judges when it comes to determining whether a particular article represents reporting on a current event or a work that falls under copyright protection,

- and make sure that judges use the defined parameters when calculating compensation for material damages, such as the pricelist made by the IJAS;
- complete harmonization with the Directive on Collective Management of Copyright, especially in the part referring to the collective exercise of rights, but also with the Directive on Copyright and Related Rights in the Digital Single Market;
  - harmonize legal regulations with the Directive on Copyright and Related Rights in the Digital Single Market.

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