

MEDIA ANNEX

REM and Media Reporting

The majority of electronic media do not comply with the fundamental standard of free and just elections – equal and unbiased treatment of electoral lists and candidates, although these are their legal obligations.

Supervision and punishing of unlawful functioning of electronic media during pre-election campaign have been increasingly inefficient since 2016 due to inadequate work of the Regulatory Body for Electronic Media (REM).

Explanation of the Problem

Electoral and media laws require from media to provide the citizens with true, full and unbiased reporting during pre-election campaign and to treat election participants with no discrimination. Instead of taking care of the needs of the citizens, using analytic and research approach, the media much better serve the needs of election participants by simply broadcasting their election promises and boasting remarks. But even as they perform such reduced role, the media violate their basic legal responsibilities. Instead of the earlier practice of smaller or greater favouring of certain election participants (usually those in power), in the last years the dominant practice is that of blatant media glorification of the ruling parties and their candidates as well as discrimination of the opposition lists and candidates. It is especially characteristic of the television with national coverage, which is the main source of information on elections for most voters.

Supervision of the work of radio and TV stations during pre-election campaign has been, since 2003, performed by independent regulatory organization, earlier by the name of Republic Broadcasting Agency (RRA), and since 2014 by the name of Regulatory Body for Electronic Media (Regulator or REM). The Regulatory Body prescribes special rules of media conduct in the period of elections and finds and punishes their violations either ex officio or on the basis of submitted petitions. After or during the campaign, it publishes the reports on the results of its monitoring of electoral production of the observed media.

The most influential media have never strictly adhered to the obligatory rules of conduct during pre-election campaigns, which did not essentially change from 2003 to 2015. The penalties of the Regulator, however, were few and light. With the increase in the bias of national TV broadcasters, which during the parliamentary elections in 2016 and presidential elections in 2017 increased to become open propagation of ruling parties and candidates as well as discrimination of opposition lists and candidates, REM became increasingly inactive and inefficient and with it increasingly politicized. No gross violation of law was punished in these election campaigns, while REM report on the presence of election participants in the media as a relevant indicator of the regularity of election campaign failed to be published. During the elections in 2016, although supervision was performed, REM did not publish it, and it remained unclear whether the final report actually existed. During the elections in 2017, with no official explanation, REM did not even publish

independent supervision of the work of broadcasters, but only reacted to individual objections and rejected them all.

Passivation of REM work and active politicization of REM functioning make it impossible for citizens to be well informed about election participants from among which they have to make their choice and the passivation and politicization also endanger the democratic legitimacy of elections, as one of important achievements of democracy development in Serbia.

Legislation

The legislation on electoral communication, in which electoral lists and candidates (election participants), citizens as voters and information media participate, is not complete, mutually aligned or precise enough. However, it includes the basic democratic standards of the rights of citizens, the rights of election participants and obligations of the media during pre-election campaign.

Electoral laws (Law on the Election of Members of Parliament from 2000, Law on the Election of the President of the Republic and Law on Local Elections from 2007) observe the right of citizens to be well informed (“in a timely manner”, “truthfully”, “fully”, “objectively”, “equally”, “impartially”) about the programmes and activities of election participants as part of their electoral right. Framework media law, *Law on Public Informing and Media*, defines the truthful, unbiased, timely and full informing of all citizens as the content of public interest in the sphere of public information (Article 15).

The main right of election participants is to “inform the citizens about the programmes and activities, as well as about suggested candidates”, as it is defined under the laws on the election of the members of the Parliament of Serbia (Article 48) and Parliament of Vojvodina (Article 20). The *Law on Public Information and Media* provides the election participants with somewhat shorter time limit than other subjects to exercise their right to response or correction if the information referring to them is untrue, incomplete or incorrectly transmitted (Article 87, 89, 91).

Regarding the obligations of the media, electoral laws recognize the importance of the principle of equal access to the media for election participants and order the media to provide “equality in informing” for all election participants (*Law on the Election of Members of Parliament*, Article 5), i.e. “equality, timeliness, truthfulness, impartiality and completeness in informing” regarding all election participants, as well as regarding “other events significant for elections” (*Law on Local Elections*, Article 4). The *Law on Electronic Media* confirms this principle as a general obligation of all broadcasters to provide all election participants with “presence with no discrimination”, as well as that they should adhere to the prohibition of political advertising outside pre-election campaign (Article 47, paragraph 5).

While the obligations of equal and unbiased treatment apply to all types of media, special additional duties are assigned to public media services. They are required to provide free and equal presentation of all confirmed lists and candidates (*Law on Public Media Services*, Article 7, paragraph 8), which is according to the *Law on the Election of Members of Parliament* realized through specialized shows for

presentation of election participants and through stating and explaining their electoral programmes (Article 49), as well as through shows in which their electoral programmes publicly confront each other (Article 50, paragraph 2).

Since election and media laws establish only the basic principles of the role of media in pre-election campaign, the true key source of the regulation of electronic media work is the bylaw of the regulatory body for electronic media. On the basis of legal competence to “control the work of media service providers and ensure consistent application” of the Law on Electronic Media, as well as to pronounce measures to the media service providers (Article 22, paragraph 8 and 9), Regulator gained the right to issue a special rulebook on the obligations of the media during campaign. Since 2003, Regulator issued 12 such documents under the name of General binding instructions for radio and TV stations (broadcasters) on their activities in pre-election campaign¹, and the last, from 2015, was the Rulebook on the obligations of media service providers during pre-election campaign.

The Rulebook of Regulator distinguishes between three types of media contents during the campaign – regular press reports about the activities of election participants, development and results of elections, free promotion of election participants through programmes of presentation or confrontation and paid advertising. They all stress the principle of non-discrimination in the treatment of all election participants. Public services are obliged to ensure free and equal time for presenting all election participants. Private broadcasters have the right to determine the manner and scope of programmes to be dedicated to pre-election campaign, on the basis of their editorial policy and interests of the public, but if they opt for the possibility of free presentation, it must be under the same conditions for everyone. Paid advertising also must be offered under the same programmatic, technical and financial conditions and clearly marked. Reporting in everyday information shows must not be discriminate, i.e. it must be based upon the principles of objectivity, even-handedness and public interest protection.

The provision for correct daily informing about the campaign based upon the principles of objectivity, even-handedness and public interest protection remained the same until 2015, with no explanation what it actually meant. It was the Rulebook from the year 2015 that brought into this rule the provisions of another bylaw referring to truthful, complete and timely informing, and including the obligation to separate facts from opinions and comments, avoiding manipulation through statements, announcements and photographs, the rule to hear the other side regarding the issue etc. It does not explicitly encompass the usual rules of equality in the presentation of an event of the same importance, approximately equal visual and auditory equipment of feature stories and equally distributed opportunity of party leaders to be heard directly.

¹ Regulatory body issued three binding sets of instructions for presidential elections (2003, 2004 and 2008), two for republic parliamentary elections (2003, 2007), one for local elections (2004), one for the elections for national minority councils (2010) and two for informing hearing-impaired viewers (2012, 2014). Collective binding instructions for local, provincial and republic parliamentary elections were issued in 2008, and in 2012 and 2015 for all types of elections (local, provincial, republic parliamentary, presidential and elections for national minority councils).

The main oversights of the electoral communication legislation, including the REM rulebook about the media work during pre-election campaign are the lack of tries to prevent the winning chances of election participants with more financial power, as well as those in power in comparison with the status of opposition.

Control of the Implementation of the Law

Although they regulate the rights and responsibilities in election communication, the election laws do not determine either the body with the mandate for punishing failure to fulfil media responsibilities or penalties for violating them.²

Law on the Election of Members of Parliament states that general supervision of the actions of election participants and media is performed by Supervisory Board (Article 99) formed by the National Parliament.³ Regarding the media work, Supervisory Board⁴ controls the actions of the media in providing equal conditions for representing election participants, suggests measures for complying with their equality in presentation of their electoral programmes, warns against the actions of parties or media which interfere with election campaign and endanger the equality of rights of all candidates (Article 100). However, the decisions of Supervisory Board are not binding, nor does the Law prescribe penalties to punish the violations established by Supervisory Board.⁵

Supervisory Board for elections has never even been formed after the elections in the year 2000.

Regulatory body for electronic media is practically the only state body which supervises and penalizes the functioning of media during election campaign both for presidential and parliamentary elections on the level of republic, province, local self-governments and for elections for national minority councils.

However, Regulator, which acts in accordance with the Law on Electronic Media from the year 2014, and which substituted earlier Law on Broadcasting, has been,

² The exception is the Law on the Election of Members of Parliament which prescribes a fine for the public broadcasting service and the responsible person if they “enable presentation of candidates and presentation and explanation of the programme of electoral lists submitters in commercial, entertaining or other programme” (Article 110).

³ Supervisory Board has ten members half of which are appointed by the Parliament of the Republic of Serbia at the suggestion of the Government of the Republic of Serbia, and half at the suggestion of MP groups in the Parliament of the Republic of Serbia from among distinguished public figures, provided that they are not members of the organs of political parties which participate in the elections (Article 99).

⁴ The competence of Supervisory board also includes pointing to possible irregularities in the actions of political parties, candidates and other participants in the electoral procedure, instituting proceedings before competent state authorities in case that election participants call to violence or use hate speech and addressing the public in order to protect moral integrity of the candidate’s personality (Article 100).

⁵ The exception is the provisions of the Law on the Election of Members of Parliament which prescribes a fine for the public broadcasting service and the responsible person if they “enable presentation of candidates and presentation and explanation of the programme of electoral lists submitters in commercial, entertaining or other programme” (Article 110).

since 2016, intensively trying to renounce its competence regarding the supervision of media work during election campaign. Shortly before the elections in 2016, Regulator asked that the Supervisory Board which would supervise media work be established. Shortly before the elections in 2017, on the site of REM in the form of questions and answers the standpoint of REM was published stating that the Law on Electronic Media “did not regulate special obligations of Regulator during pre-election campaign” for none of its 120 members, although it did “as a principle” establish the obligation of the media to provide the election participants with presence with no discrimination. REM finds legal justification of the absence of special obligations of Regulator in the fact that in the *Law on the Election of Members of Parliament* “this area is fully and precisely regulated” in the way that supervision of the media during election activities and “control of their actions regarding the provision of equal conditions for candidates as well as the procedure of instituting criminal and offence proceedings is performed by the Supervisory Board”. It is further claimed that this is the reason why in the Law on Electronic Media there are no penalty clauses for media which act “contrary to the principle ‘with no discrimination’”.⁶ At the beginning of the year 2019, REM rescinded the Rulebook on media conduct during election campaign, issued in 2015.

REM’s standpoint is completely contrary to the earlier conduct of regulatory body (RRA) and to the usual competence of regulatory bodies for electronic media. When it undertook the first supervision of the media, during parliamentary elections in 2003, Regulator, when issuing General binding instructions for media work, stated that its executive body (Council) bore in mind the fact that Supervisory Board for monitoring media was not formed, but that Regulator would issue instructions even if it was, because “general obligation over the work of broadcasters” arising from the law on electronic media “gives it the right to assess when and in which manner to implement the system of supervision of the broadcasters’ work”. In all published reports with findings of the supervision of media work, the introductory part states “legal basis of supervision” (2003, 2004, 2008) i.e. “legal framework” (2012, 2014) and it is stressed that the “obligation of supervision of broadcasters’ work arose” from the law pertaining to electronic media (2003, 2004, 2008), i.e. that regulatory body performed supervision of broadcasters’ work “in accordance with its legal obligations and competence (2012, 2014). In addition, although it was responsible for many areas, Regulator, by the year 2014, issued the most bylaws with regard to broadcasters’ conduct in election campaign.

REM’s self-exclusion from performing one of the most important roles of the regulatory body represents evading its own responsibility for bad state in audi-visual sector and evading public interest protection in the field of public information. Indications that REM is the weakest link of the media system have been present for a long time and from various sides, but the new REM Council instead of improving things, strengthening its status and more efficient work, opted for even bigger passivization, legalizing the actions of media in the service of the propaganda of the ruling structure and transferring responsibility to the state organ with much less power.

⁶ <http://www.rem.rs/sr/arhiva/arhiva-dokumenata/arkhiva-izbora/izbori/pitanja-i-odgovori>

The activities of Regulator regarding the control of work of electronic media in the interest of the citizens have never been efficient. REM not only failed in preventing the influence of money on media depiction of election participants, or the influence of parties in power on their greater media presence, but also in providing even-handed presentation of everyday activities of election participants, and least of all in enabling citizens to receive from the media genuine presentation of the offered political solutions to social problems and their feasibility instead of electoral promises, boasting of election participants and blaming rivals, even open use of hate speech. This failed to be achieved in the programmes of broadcasters with national coverage, and even less in local media, which are extremely inefficiently supervised by Regulator.

Regulator's inefficiency is expressed directly and visibly as inadequate use of measures for penalizing legal violations of the rules of media work during election campaign, inadequate procedure for reaching decisions on petitions and long process of court disproof of Regulator's decisions.

REM is the only organ which can penalize violation of media obligations during the campaign.⁷ Its authority includes the issuance of admonition (breach of obligation), warning (severe breach of obligation), temporary prohibition of publishing programme contents for up to 30 days (especially severe breach) or the seizure of broadcasting licence (continuation of non-compliance with legal provisions or regulations, non-compliance with the conditions set forth in the licence, failure to comply with measures to eliminate the established violations). The penalized media are obliged to publish in their programmes the measures imposed by Regulator (Article 31) but for this violation the Law does not stipulate any penalties.

Since the beginning of its work, Regulator has very rarely used the measures for penalizing violations. The most drastic measure so far – temporary prohibition of broadcasting – was imposed only once, in the year 2015, for the shortest possible time of one day, due to pornographic content. In the last five years, REM imposed a total of 48 measures, of which 28 admonitions, 19 warnings and this one temporary prohibition.⁸ Using penalties has not proved to be effective in deterring violations of media obligations, as they increase over the years.

The procedures for making decisions on violations of media rules and issuance of REM penalties do not encourage either timely, or objective, or transparent decision-making. The process of making decisions in many cases takes too long to have any real impact on the development of election campaign. The regulations do not specify when the REM Council is obliged to consider the findings of the Expert Service in order to initiate the procedure for pronouncing measures and what are its obligations according to those findings, and also when it can reject a complaint on its own without the findings of the Expert Service. The criteria for making decisions are not clear.

⁷ Violations of rules which Regulator may penalize do not constitute economic offence, which means that they cannot be penalized by the Administration of Justice. REM has the right to institute offence proceedings with the competent court, but not for programme content pertaining to election campaign.

⁸ <http://www.nuns.rs/info/activities/40305/nuns-predlozi-za-unapredjenje-rada-rem-a.html>.

The decisions on complaints are not clearly presented on the REM website. During the elections in 2016, according to the Annual Report REM received 42 complaints, but it does not state how they were resolved. Of 22 complaints published on the website, one ended with the measure of admonition, one with the measure of initiating procedure, for four it was not stated, and 16 were rejected either as being unfounded so that there was no basis for initiating procedure or the broadcaster immediately obeyed Regulator's order. During the elections in 2017, Regulator rejected all 58 complaints submitted against certain broadcasters by physical and legal persons, assessing them in the same manner as in the previous year.⁹ It is not possible to see the arguments for decision-making from published decisions nor from the Minutes of the Council meetings.

The procedures for court control of Regulator's decisions are rare because, although they have the character of urgency, administrative suits last several years, which makes such procedures senseless. In the period from the beginning of 2012 to November 2017, four complaints were lodged against REM decisions and only one of them ended with a sentence.

For the performance of tasks within its competence, Regulator is responsible to the Parliament (Article 5 of the Law on Electronic Media), and it is obliged to submit Annual Report on its work to the Parliament. The Parliament, however, never considered REM annual reports and it did not react when there were no reports on the work of broadcasters during the elections in 2016 and 2017. This leaves Regulator in a control vacuum allowing it inefficiency and arbitrariness in work, to the detriment of the entire media system and citizens.

True State of Affairs

During parliamentary elections in 2016, there was deterioration in the quality of media coverage of the election campaign and gross violation of the obligation of the media to treat election participants in the same manner. Radio and TV programmes were primarily dominated by state officials who promoted their parties, but the activities of the parties of the ruling coalition were also much more visible and more positively treated than main opponents, which were mostly represented in a negative manner in terms of their value. In commercial television, specialized political-propaganda broadcasts in favour of the ruling parties were not marked as paid programmes, while the news programme was in the service of the ruling coalition and contrary to professional standards and rules of the very REM.

According to BIRODI data, during the elections in 2016 the SNS electoral list gained the highest number of minutes in the news pertaining to election participants in "RTS Dnevnik" – 7.6%. The next two most present lists were that of SRS with 7% and SPS-JS with 5.6%. Democratic Party, as the greatest opposition rival, was less present, with 4.8%. The true picture of unequal treatment of election participants is obtained from the fact that 21.8% of the time of political news was dedicated to the activities of Serbian Prime Minister Aleksandar Vucic, who was the SNS list leader, and that the activities of the Government, led by Vucic, were the subject of reporting in another 14.8% of the time. In total, SNS, through its own party marketing with the

⁹ <https://crta.rs/wp-content/uploads/2018/02/CRTA-GNS-Izvestaj-2017-Final.pdf>.

addition of state marketing of its leader, took 56.5% of the minutes of election news. DS (Democratic Party), thanks to the function of Prime Minister of Vojvodina, its leader, gained another 0.4% through state marketing, which means that SNS gained 11 times more time.

Monitoring data of Novi Sad School of Journalism regarding presidential elections in 2017 show that the difference, in the length of live TV conversation, between the presidential candidate Aleksandar Vucic and 8 candidates who were generally treated in the same manner was eight times bigger, and for two candidates even larger than that.

Consequences for the Quality of Election Process

Inefficient control of media coverage during the election campaign for parliamentary elections in 2016, presidential elections in 2017 undermined the legitimacy of electoral process. Judging by the characteristics of electoral communication during these elections, they cannot be characterized as free and fair.

Citizens were not enabled to be truthfully, completely and impartially informed about all election participants and to make a rational choice based upon good knowledge of the results of ruling parties, electoral programmes of all pretenders to power, real chances of their realization and the differences between offered platforms. Passivization and politicization of the Regulatory Body for Electronic Media made the practice of drastically favouring ruling parties and their candidates and open discrimination of opposition lists and candidates seem quite normal. This delegitimized the right to information, as an important component of the electoral right of citizens.

The failure to publish media monitoring report in 2016 opened the space for the media to violate the regulations of electoral reporting with no penalties during the following elections as well (in 2017 and 2018).

The credibility of the Regulatory Body as independent and expert body for supervision of the broadcasters' work was further undermined, as well as its ability and will to enable competition on an equal footing in the electoral cycles to come.

The absence of effective Regulator's activities, but also the lack of reaction on the part of other persons involved, increasingly reinforce the belief among citizens that private broadcasters are entitled to do what they like and that it is not punishable by existing laws.

The practice of media reporting based upon the principles of even-handed and impartial treatment of election participants has become a deviation from the norm. The media public favouring opposition has increasingly considered it inadequate deeming that the media scene needs a balance to be created by turning the media more openly to stronger promotion of political opposition and critics of the government, which would only further polarize the society distancing it from peaceful resolution of the political conflict.

Many citizens are losing faith in the fact that even-handed and impartial presentation of and competition among political ideas is even possible and that free and just elections are achievable, which increases disappointment with politics as public activity, apathy and electoral abstention.

Since free and fair elections were one of the fundamental achievements of the deposition of the regime of Slobodan Milosevic in the 1990s, and now they are questioned, doubts arise as to whether the Serbian society has the capacity to be organized as a democratic system at all.

Measures to Change the State of Affairs

1. Removal of REM Council members from their posts and election of new members known for their advocacy of the freedom of the media

Pursuant to the Law on Electronic Media, Article 16, paragraph 5, which stipulates that Parliament may, at the suggestion of at least 20 members of the Parliament, relieve a Council member of his duty if it is established that he worked unconscientiously and incorrectly, i.e. if there are reasons for reprehensibility and if he neglects and unconscientiously fulfils his duties which may lead to major disruptions in the work of Regulator, it is necessary to initiate the procedure for dismissing all members of REM Council because they failed to provide supervision of media work during the election campaign for parliamentary elections in 2016 and presidential elections in 2017, thus allowing the media coverage to drastically violate the rights of citizens and the rights of election participants.

It is necessary to urgently initiate the procedure for the nomination of new REM members, who will be those publicly known for their advocacy of media freedom and human rights and affirmed experts in the fields significant for the work of Regulator, with significant experience and acknowledged results of their work in those fields, as well as familiar with media politics.

It is desirable that candidates for new members, with their history of advocacy of media freedom and expert knowledge, introduce themselves to the public and express their views of the fundamental media problems in order to ensure their credibility and strengthen their position as experts and persons of integrity.

2. REM issues new Rulebook on media coverage of elections

The new REM Council should organize a public debate in order to formulate the new Rulebook on media coverage of elections.

This debate should ensure that the Rulebook

- prevents the abuse of state functions for promotion of election participants
- gives the opportunity to REM Council to urgently inform the republic public prosecutor if certain medium by its reporting clearly and directly instigates discrimination, hatred or violence on account of personal characteristics, in order for this body to take legal measures against the violator of the ban on hate speech.

- imposes an obligation on REM to supervise the realization of the right to response or correction of participants in the election campaign, and gives the REM Council the opportunity to order the application of the right to response or correction, if the medium does not allow it to the injured party
- prohibits the broadcasting of paid promotional videos in public media services and instead of that provides the election participants with certain number (30, 20, 10) of free time slots of 1 minute, according to the parliamentary and electoral power of election participants
- limits the amount of time that one election participant can hire for broadcasting paid advertisements on commercial broadcasters in order to prevent preferential treatment for financially more powerful election participants
- that the prices of advertising and hiring time slots must be equal to the lowest commercial prices
- to introduce penalties for violating the obligation of electronic media to publish the decisions of REM Council pertaining to their non-compliance with the Rules of media coverage of election campaign
- that press reporting in informative broadcasts should be appropriate to the significance of election participants and the level of voters' support
- that balanced treatment of election participants is expressed in terms of the length of press features and their visual and auditory equipment, as well as in treating the events of equal significance for the public in the same manner
- regulates the rights of the media, such as the right to professional autonomy and the right to analytical reporting on elections
- ensures that free time slots for presenting election participants are distributed according to their parliamentary and electoral power (the number of suggested candidates)
- that time provided for free presentation is divided into blocks of 30 minutes, 10, 5 minutes and one minute.
- that debate programmes are realized as interviews led by two journalists, and in the last week of the campaign as debates among 3 participants who, according to public opinion polls, have the greatest support of voters
- that in their reporting all media are obliged to

3. *In order to increase the credibility, efficiency, transparency and responsibility of REM, it is necessary to require changes in the new REM Statute, which is yet to be adopted*

- specify that during the election campaign Regulator especially takes care of the fact that media service providers comply with obligations related to programme contents during the election campaign and for that purpose conducts planned supervision of the media on a daily basis, publishes periodic reports on the findings of monitoring once a week, the report on the first round of presidential elections one week after the end of campaign at the latest, and final report 30 days after the end of campaign at the latest (some recommendations of ODIHR)

The final report must be available as an open database with the possibility of public inspection

- introduce the obligation that REM before each electoral cycle creates the plan of supervision of the national and local broadcasters, according to the understanding of the pluralistic local media scene. If it does not have enough of its own technical resources for the supervision of local media, REM will engage someone else for that work by means of a contract, as it did earlier.
- introduce urgent deadlines to reach a decision pertaining to complaints – 72 hours at the most, due to the nature and significance of elections (ODIHR recommendation)
- prescribe clear and systematic procedure for handling the complaints, give reasons for rejecting them, for instituting proceedings and failure to do so, which includes the obligation of publishing the explanation of the reached decision, as well as publishing detailed reports from the meetings of REM Council so that the public is acquainted with the facts significant for decision-making and with arguments in the debate before decision-making (CRTA recommendation)
- Apart from the Rulebook on media obligations during election campaign, Regulator should have the opportunity to make recommendations (instead of present questions and answers) in order to standardize and improve the work of media service providers during election campaign

Long-Term Recommendations

Recommendation 4: Change the Law on Electronic Media which would provide greater independence of REM and specify its competence and obligations to regulate and supervise the media in election campaign

- remove the competent committees of the Parliament of Serbia and Parliament of Vojvodina from the list of authorized nominators of candidates for REM Council members (Article 9 of the Law on Electronic Media) in order to protect the procedure for the election of members from political influences (recommendation in the Media Strategy Proposal)
- better definition of the criteria for election of REM Council members (recommendation in the Media Strategy Proposal):
higher education, work experience of at least 10 years in the areas significant for the work of Regulator,
persons who in public life have become distinguished for their advocacy of compliance with democratic principles and the rule of law, human rights and freedoms, especially the protection of the freedom of expression (similar to the Croatian Law on Electronic Media, Article 68)

- enable REM to impose fines for violations of the Rulebook on media work during the campaign and determine the amounts of those fines according to types of violations (suggested as a possibility, to be added to the present measures, in Media Strategy)
Possibility – procedural penalty to be paid for each day of acting contrary to the order of Regulator or failure to comply with the order of Regulator. The fines are paid to the budget, and the collection is performed by the Tax Administration (the decision of the Commission for Protection of Competition)
- terminate REM's dependence on the Serbian Parliament in adopting Statute and financial plan so that they are adopted independently with prior public debate among all interested parties (to be found in the Media Strategy Proposal)
- clearly define the obligation of REM to perform systematic monitoring of media work during election campaigns, to supervise compliance with the Rulebook related to media functioning in the campaign, to react to violations of the Rulebook ex officio and according to complaints, and to publish reports with the findings of monitoring (similar to the Media Strategy Proposal)
- Prior to submitting the annual report on its work, Regulator holds a public debate about its work, as an opportunity for the public to express their interests regarding the work of Regulator. The annual report includes the report on the public debate as well.

RTS and RTV – pluralism in TV news program

Partial, biased and unprofessional TV reporting of public services RTS and RTV about the current events and topics - Violation of the Article 7 (items 1, 4, 7) of the Law on public service media

Explanation of the Problem

According to the available analysis of the RTS and RTV TV programs in the last several years, their news programs do not allow the citizens to freely form opinions on the current events and topics. They are not equally available to all the relevant participants in the public, especially political life. Despite a legal provision stating that a public service may not serve to the interests of certain political parties nor to any particular political stance or interest (Article 7 of the Law on public service media), RTS and RTV have been doing that to the benefit of the ruling parties and their interests, ignoring their role in monitoring the government and neglecting the investigative journalism.

Reporting in the regular news programs is partial, biased and unprofessional. In the news programs, by choosing the events, topics and persons who are talking in live broadcasts, an advantage is given to the activities of government and the ruling parties and to the judgments and opinions of their officials, while the judgments and opinions of those who criticise the public policies and activities of the authorities are obviously lacking or are being marginalised.

News TV programs of RTS and RTV do not reflect the existing pluralism of political ideas, and they do not respect a professional obligation to treat different political ideas indiscriminately, that is, equally and unbiasedly, nor they respect a legal obligation to intice the pluralism of political ideas. In these programs the political ideas of state structures and ruling parties have an immense and positive publicity, while the political ideas of oposition have a negligent and almost exclusively a negative publicity.

TV debate programs of RTS and RTV do not respect a legal obligation of an impartial processing of the relevant social problems by equally confronting the different stances. In those programs, only a limited number of topics is being debated, and they rarely coincide with the topics that mostly interest and worry the citizens according to the public opinion polls, with a lack of highly relevant commentators and without presenting the problem from different perspectives.

Legislation

Law on public service media (2014) defines enabling the achievement of public interest in a public information area (Article 2) as a basic mission of the public service media (Član 2), and the Article 7 specifies that a public interest encompasses

1) truthful, timely, complete, unbiased and professional informing of the citizens and enabling an independent opinion formation and expression of the listeners and viewers on the territory of the Republic of Serbia, its autonomous provinces and municipal (local) self-governments;

4) respecting and encouraging a pluralism of political, religious and other ideas and enabling the public to be acquainted with those ideas, without serving to the interests of certain political parties and religious communities, nor to any other particular political, economic, religious or similar stance or interest;

7) unbiased processing of the political, historical, economical, social, medical, cultural, educational, scientific, ecological or other questions, and enabling an equal confrontation of different opinions.

REM – Ordinance on the protection of human rights in the area of providing media services

in a detailed way specifies the media obligations in the process of achieving a truthful, complete and timely informing

Monitoring the implementation of law

Regulatory Body for Electronic Media (REM) is in charge of the oversight of a legal obligation fulfillment by the public service.

REM, even though since 2010 it conducts a very thorough annual analysis of the entire broadcasted TV programs of RTS and RTV, has never before specifically analysed their news programs nor the way how they, as public service media, respect their legal obligations to secure a public interest.

According to the REM's report for 2018, a news program comprised 34% of total broadcasting time of the RTS1 TV program, 34% of RTV1 and 15% of RTS2.

Speaking of the RTS TV debate shows, i.e. „the auteur and investigative shows“, *The question mark* comprised 0,83% of total broadcasting time, while the show *Yes Maybe Not* 0,51%.¹⁰

The best known TV debate shows on RTV, *The Confrontation* and *The Right Angle* are represented with respectively 2,93% and 2,62% of total broadcasting time.¹¹

The analyses of the RTS program by its management bodies (Board of directors, Program council, RTS's center for a public opinion, program and auditorium research) are not publicly available.

¹⁰ Report on fulfillment of legal and program requirements of Radio-Television of Serbia for 2018, page 55. <http://rem.rs/uploads/files/RDUS-i-RDUV/2018/RTS%20%20godni%20izve%C5%A1taj%202018.pdf>.

¹¹ Report on fulfillment of legal and program requirements of Radio-Television of Vojvodina for 2018, page 30. <http://rem.rs/uploads/files/RDUS-i-RDUV/2018/RTV%20-%20izvestaj%20za%202018.pdf>.

Status review through the investigative data or reports

Many independent organisation reports on the public service news programs point that their main characteristics are poor thematic diversity, low pluralism of ideas and bias towards government.

The research of Novi Sad Journalism School from 2016 established that these are the features of main radio and TV shows of both RTS and RTV.¹² A comparative analysis of these shows during a 24-week period (until the end of June 2016) had shown that out of five shows, in every single one of them prevailed the same five topics: internal politics, economy and sport, international events and Serbia's relations with the world (around 60% of the content, 71% of *Dnevnik 2*), while except the economy, none of the topics were of primary interest for the audience.

Speaking of subjects whom the news shows are talking about, the most favoured of 37 subject groups (citizens, experts, economic subjects, subjects from sport, culture etc.) were the representatives of the central executive power. They were the topic in 19-27% of cases, while the political parties were represented in around 12%, the economic subjects in 5-6%, citizens in 6-8% but only in irrelevant topics.

An absolutely prevailing journalistic approach to the reporting – even up to 90% – was a factographic one, without explaining the context of the events and with no interpretations from different point of views. It caused that in all the shows prevailed a positive speech, represented in RTS *Dnevnik* in 58% of cases (a negative one in 22%).

Recent analyses of RTS *Dnevnik* have shown that a pluralism of content on the national public service have diminished even more in the meantime. Data from BIRODI's research on national televisions from 13th september to 15th december had shown that RTS has a different strategy of representing the opposing political opinions compared to TV Pink and TV N1. TV Pink attaches a great importance to the opposition, but only as the subjects that should be contested. To N1 the opposition was important as well, and it has been shown both positively and negatively. To RTS the opposition has been irrelevant, whether as a source of criticism, a subject of criticism, an agent of activities or political suggestions. In the last three months of 2018 on RTS *Dnevnik 2*, 37 TV reports were presented regarding the opposition political parties and movements, their leaders and the opposition as a whole. In the same period, in the central news program of TV N1 almost four times as many TV reports were presented (142), and on TV Pink almost five times as many (176), and the rest between 10 and 23 TV reports. On TV Pink, labeling the opposition and criticising the opposition represented altogether 63% of all mentioned topics regarding the opposition subjects. On RTS and N1 that was the case with 9% of all topics.

N1 TV reports mentioned 30 times the protests or some other activities of the opposition subjects, RTS 12 times, and Pink 4 times. Topic that was not present on

¹² The analysis included RTS *Dnevnik 2*, *Novosti dana* of Radio Beograd, RTV TV *Dnevnik*, *Vojvođanski dnevnik* and RTV radio show *Novosti* (<http://www.novinarska-skola.org.rs/sr/publication/ostvarivanje-javnog-interesa-u-javnim-medijskim-servisima-u-srbiji/>)

RTS was the opposition's opinion about a certain question, TV Pink mentioned it two times and TV N1 18 times. The most frequent topic in this kind of reports on RTS was the conflict between the government and the opposition – mentioned 10 times, on Pink 9 times, and on N1 26 times.

Consequences on the election process quality

Partial, biased and unprofessional TV reporting of RTS and RTV public services regarding the current events in the regular news program, combined with an inadequate representation of the political idea pluralism and a lack of equal confrontation of different opinions in the debate TV shows differs from the media work standard which is determined by a democratic character of an election process . Such reporting causes that electoral participants in the moment of an election campaign announcement already have unequal chances to gain the voters' support. It damages a democratic legitimacy of the elections. The elections cannot be free and fair if the rules of equal treatment of all the election participants are applied only during a short period of campaigning, while not being respected for months and years before that.

According to the media theory and researches, a context for an electoral dilemma is formed by a regular news reporting long before the elections campaign. News programs have the biggest influence on voters because they enjoy the biggest trust of the audience, as they are the least susceptible to the journalists' biased opinions. Regular news shows which, by nature of a journalist work, report about some events and occurrences while the others are being omitted or marginalised, create a worldview where some topics, and opinions and interpretations of the events have a bigger importance than the others. In such a worldview the activities of election participants and their messages do not have equal chances to be meaningful and acceptable to the voters.

A political subject who, due to an impartial treatment before the elections, gains more time and more positive treatment has an advantage over the other election contenders, because he/she already secured a prominence, recognisability and a positive image, and by that a bigger chance for the electoral win. RTS and RTV with their news programs are securing this kind of advantage to the authorities, that is, to the ruling political parties.

If the regular news shows constantly disseminate information and opinions that confirm the policy correctness of the ruling political parties and affirm the solutions that are compatible with their political ideas, if the ruling parties' ideas and activities are not being questioned and opposed with other interpretations and arguments, that are being marginalised, and if only those questions that the government considers important are being discussed– on aggregate, if the media versions of everyday life coincide with a vision of social events of the most important state authorities and the ruling party's bodies – the ruling parties enter the electoral competition with a vast advantage, that the other electoral contenders cannot overcome during a short campaign duration.

Free and fair elections imply that the regular news programs, by respecting the standards of correctness and objectivity, offer a diversity of opinions and the

impartial analyses about main social controversies, so the audience could be aware of different reality interpretations and the voters could form their opinions based on the knowledge of all relevant aspects of social problems and perceived differences in offered solutions to those problems.

Measures for changing the situation

- Launch a legal procedure for dismissal of the REM Council members who did not secure a public media service monitoring and failed to sanction their breach of the Article 7 (items 1, 4, 7) of the Law on public service media.
- After electing a new REM Council, in the remaining period to the elections, REM should publish once in three months a report regarding the results of a detailed quantitative and qualitative analysis of the relevant sample of RTS and RTV news programs, especially related to the securing of a public interest and an independent editorial policy (respecting the Article 7 of the Law on public service media).
- Public service program councils in the open sessions are analysing REM reports and bring recommendations for improving the news program according to the report findings
- Based on the *Law on public service media* and the REM *Ordinance on standards in news programs*, RTS and RTV are adopting a self-regulatory Act: *Guidelines for reporting*, with clear instruction how to carry out legal obligations of a complete, unbiased and professional informing, maintaining the existing pluralism of political ideas and confronting the opposing stances, especially during the election period.
- It is recommended for RTS and RTV, following the practices of the public services in Europe, to introduce new debate programs regarding the questions which mostly worry the citizens, according to the relevant opinion polls. These shows should host respected academics, experts from state institutions and professionals from the civil sector who are dealing with the subject in question, and who will be chosen based on the criteria of professionalism by the RTS editorial staff in order to secure the confrontation of different stances.
- RTS and RTV should introduce the Ombudsman as a mediator between the journalists/editors and the audience, who shall publish the complaints of the audience and answer to them, and who shall have a possibility to request from the author of a disputed media content to respond to a person who filed a complaint or a request for publishing a correction.

Negative media campaigns

The influential commercial media have been running intensive negative campaigns against those who are criticising the government, and whose right to the freedom of expression is not efficiently protected.

Explanation of the Problem:

In the public sphere for years have been dominating an intolerant political discourse aimed towards the criticsers of government's public policies and activities. Government criticsers have been labelled as the enemies of state an nation, foreign agents, carriers of the subversive plans and activities, creators of a disorder and a source of violence, accompanied by the humiliation with an offensive speech.

Besides politicians, sources of disqualifying communication are media, especially those that are close to the government, and particularly tabloid daily newspapers and highly commercialised TVs with national frequency. After the first organised and coordinated negative media campaign against BIRN during 2015, initiated by then-Prime Minister Aleksandar Vučić because of a single critical investigative text, media were conducting countless smear campaigns and humiliation of other media and journalists, civil society organisations and activists, potential and active political opponents to the government. Media persecution of the people who disagree with the government is being intensified during election campaigns.

The aim of negative media campaigns is criminalising and discrediting, damaging the credibility and integrity of persons with a critical relation towards the government and those with unwelcome political attitudes. Precursor to almost every physical attack to the government criticsers was their negative exposure in those media close to the government, which was also the case with the murder of Oliver Ivanović, a poltician from Kosovska Mitrovica who was exposed to a long-lasting, continuous negative campaign.

Negative media campaigns are the main reservoir of fake news. Most frequently those campaigns are using direct lies, uncorroborated accusations, manipulation with facts and unverifiable rumours. Their content directly breaches all the journalistic professional norms, such as differentiating facts from opinions, respecting the presumption of innocence, prohibition of inciting discrimination, hatred and violence, using threats, etc.

Media campaigns of defaming and humiliating the criticsers of government and their political opponents is violating the basic human rights and freedoms guaranteed by the Constitution and Serbia's legislation. It is in direct contradiction to the achievement of public interest in the area of public information. When the media during a negative campaign are using the information which access is limited to the competent state institutions only, where such information unauthorisedly leaked from, they are legitimitising the abuse of information in order to achieve a particular political interest.

Against the media and journalists who are, using the journalistic means, persecuting the criticsers of public policies and the government's activities, no efficient legal proceedings are conducted, even though those are enabled by many laws. Competent state organs are being insufficiently active in penilising media persecution and passive in their prevention. Therefore they are contributing to the delegitimisation of critical thinking and are hindering the development of conditions for creating a political alternative.

Legislation

Several laws and by-laws are covering the areas where the problem of conducting the media campaigns of defamation and humiliation has been manifested. All these laws are proclaiming a freedom of expression as a basic human right. At the same time, they honor a constitutional norm which states that the freedom of expression may be limited in order to protect the human rights and reputation of others and to prevent the forms of expression that spread, intice, promote or justify a hatred based on the intolerance and discrimination of any personal trait, such as a political or any other conviction or affiliation to the political or other organisations.

The Criminal Code of the Republic of Serbia forbids depriving or limiting the rights of a human and a citizen defined by the Constitution, laws and other regulations, on the grounds of differences regarding a political or any other conviction (Article 128, Paragraph 1), forbids the spreading of ideas or theories that advocate hatred, discrimination or violence based on some personal feature, including the political or any other conviction (Article 387, Paragraph 4).

Further on, *The Criminal Code* deems punishable a public insult, i.e. an attack on human honor which expresses contempt, disrespect or humiliation of an other person, by press, radio, television or by similar means (Article 170, Paragraph 1), and the Article 174 a public exposure to a defamation of person or a group for any personal trait. An insult is exempted from a criminal liability if it is done "during an official duty, journalistic calling...if it is obvious from the manner of speaking that it was not intended to be a deliberate humiliation" (Article 170, Paragraph 4).

Law on prohibition of discrimination prescribes that it is forbidden to "express the ideas, information and opinions which intice a discrimination, hatred or violence" against the persons for their personal traits in the media (Article 11), and it forbids as well „a harassment and humiliating conduct that aims to or represents a violation of dignity“ of a person based on the personal traits, especially „if it creates fear or a hostile, humiliating or an offensive environment“ (Article 12). Prohibition of

discrimination exists as well for the political convictions i.e. (non)belonging to a political party, “excluding the advocacy and performance of the fascist, nazi or racist activities“ (Article 25).

Law on obligations proclaims that a harm to honour, reputation, freedom or rights of personality represent a type of an immaterial damage and it deserves a financial compensation (Article 200).

Law on public information and media defines the obligation of the holders of public and political functions to endure the expression of critical opinions (Article 8),¹³ but at the same time forbids a breach of presumption of innocence in the media before the enforceable court ruling in order to protect a human dignity (Article 73) and media publishing of ideas, opinions or information that incite discrimination, hatred or violence based on the personal traits (Article 75). Article 79 forbids publishing of information that are harming one’s „honour, reputation or piety“ to whom the information refers to, i.e. presenting a person in a false light by attributing traits that one does not have or by negating the traits that one does have, „especially if that does not contribute to the public debate about a phenomenon, event or personality that the information refers to“.

This Law guarantees the right to respond and the right to correction for the persons to whom the information refers to (Articles 83-100). The Law also requests a professional attention appropriate to the circumstances in checking the origin, authenticity and completeness of the information prior to publishing (Article 9), and to the persons to whom the information that causes damage refers to provide a right to recover damages, material and immaterial (Article 112).

Law on electronic media prescribes to the electronic media to respect human rights in their program contents, especially a dignity of person (Article 50) and forbids the use of hate speech on the grounds of any real or imaginary personal trait (Article 51).

Ordinance of the Regulatory body for electronic media on human rights protection in the area of media service provision requests an objectivity in informing, which includes a separation of factual informing from the opinions or comments, prevention of a discriminatory influence of the editor’s or reporter’s personal belief to the choice of subject and the manner of its presentation, non-publishing the comments of a derogatory nature, restrain from manipulation in declarations, statements, photographs aiming to alter its basic sense (Article 7), as well as respecting a rule to hear the other side (Article 8). The Ordinance forbids to the media to let the reporters to use their role for promoting their personal beliefs in a way that harms the objective informing, even though the reporters have the right to state their personal opinion on a topic in the actuality program (Article 9) and requires that during dissemination of the public announcements that are reaction to a statement, event or a phenomenon should previously clearly state a content of that announcement or a description of an event or a phenomenon (Article 10).

¹³ This provision is in accordance with the practice of the European Court for Human Rights which protects the freedom of expression even when it exaggerates, insults, shocks or disturbs.

Controlling the exercise of the law

Besides the existence of a proper legal framework, the competent institutions are not efficient in suppressing the media campaigns of disqualification and defamation.

Negative media campaigns are so intensive and dishonourable that are making it useless to use the right to respond and the right to correction. Additionally, these rights are not respected by the media, and their legal enforceability lasts too long which makes it ineffective.

Legal punishment of media in a democratic society is not welcome, because the freedom of expression has a priority over its limitations. Judicial bodies have a hard task to establish a boundary between the freedom of expression use and abuse, so the suits and complaints against the media for violating one's private rights are often rejected. Domestic judicial practice shows that the protection against the media who conduct the negative campaigns is inefficient primarily because of the legal system's ineffectiveness. Against such media it is possible to initiate a civil proceeding, misdemeanour proceeding or a criminal proceeding. However, all judicial proceedings against the offenders last too long, even when some laws are prescribing the urgency of the proceeding. In misdemeanour proceedings invoking the statute of limitations is often. Because of the inefficient work of the courts, the court rulings mostly fail to recover damages caused by the negative media campaigns. A problem is also an uneven judicial practice, which is causing different court decisions in the same or similar legal situations. An additional problem represents an uneven action of public prosecutors regarding the filed criminal suits for similar deeds (some of the filed suits are being further processed, while the others are rejected).

On the last day of 2017, before the Higher Court in Belgrade, 921 cases against the media remained unresolved, where immaterial damages for inflicted pain and suffering, harm to reputation and honour or the violation of the right to privacy were claimed.¹⁴ Among them five unresolved cases date back from 2010-2012, 17 from 2013, 39 from 2014, 78 from 2015, 245 from 2016 and 537 from 2017. Out of 460 cases solved in 2017, almost half of them was either revoked or rejected, 39% was partially sustained, while 15% were resolved in a different manner .

However, the most problematic aspect of the judicial protection from smear campaigns and defamation aimed at the government criticsers is the lack of effort from the authorities to suppress and prevent them. Even though no publicly accessible data exist on judicial proceeding against the media, meagre insights in the judicial proceedings show that state authorities that are allowed to initiate the adequate procedures *ex officio* regarding the violations in the negative media campaigns, thus protecting the public interest, are doing that very rarely. Protection of the right to the freedom of expression and realisation of a public interest in the area of public information is left upon the victims of the media persecution.

¹⁴ <http://www.uns.org.rs/novinari-na-sudu/statistika/57585/za-dve-godine-1143-tuzbi-protiv-novinara-i-medija.html>.

According to data by Yucom, during 2015, 2016 and 2017 in Basic Courts in Belgrade, Novi Sad, Niš and Kragujevac not a single criminal proceeding was conducted against the media due to some form of discrimination nor prevention of publishing a response or a correction.¹⁵ Legal cases mostly referred to the crime of insult. In the largest number of closed cases, the proceedings ended with an acquittal, while the least number of cases ended with a conviction.

A specialised state authority dealing with prevention of discrimination and hate speech is The Commissioner for protection of equality, an independent body. The Commissioner may act independently or based on a complaint. He/she may give an opinion or a recommendation for rectifying a violation of a right, initiate a civil proceeding, file a minor offence suit or bring criminal charges, as well as warn the public to the most frequent, typical and cases of hard violation of the equality. When it comes to the measures at his/her disposal, The Commissioner, during 2018, brought three criminal charges, one request for initiating a misdemeanor proceeding, one complaint for the protection against a discrimination, none of which referred to the media campaigns of defamation. Other measures included 300 suggestions, 88 mediation processes, 17 public warnings and 24 press releases. One of the public warnings referred to the phenomenon of hate speech on social networks.

In relation to the public speech during 2018, which had discriminative contents and offended a reputation and dignity of certain persons, The Commissioner reacted with one press release which condemned the stances that incite discrimination, animosity and violence against the Prime Minister Ana Brnabić, one press release regarding the verbal assaults on the President of the Parliament Maja Gojković, and one release which condemned „writings and articles in local media related to the MP Marinika Tepić and the vice-president of DS (Democratic Party) Dragana Rakić“.¹⁶

The possibility to initiate an independent reaction to the violation of law have as well the Ministry of Culture and Information which conducts monitoring over the exercise of Law on public information and media, as well as the Regulatory authority for electronic media in the exercise of the Law on electronic media.

Ministry of Culture and Information has at its disposal a right to file a request for initiating the misdemeanor proceeding against the media that violate the Law on public information and media. During 2018, the Ministry filed against the responsible editors of print media 21 requests, mostly for publishing the pornographic contents on the front pages,¹⁷ and several times verbally condemned the „phenomenon of intolerance and exclusivity“ in the public space.¹⁸

¹⁵ <http://www.yucom.org.rs/wp-content/uploads/2018/01/NOVINARI-I-MEDIJI-NA-SUDU-2015-2017-fin.pdf>.

¹⁶ <http://ravnopravnost.gov.rs/rs/izvestaji/>, Regular annual report of the Commissioner for the protection of equality for 2018, page 132.

¹⁷According to an Internet search, Ministry of Culture did once file a request for initiating the misdemeanor proceeding for hate speech and call to lynching, against the newspapers Pravda in 2009, which attacked the Minister of Economy Mlađan Dinkić.

¹⁸ At the end of 2018. godine, when the magazine *Ilustrovana Politika* was attacking independent media and members of the Commission for investigating the murders of journalists, the Ministry only expressed its regrets for this media reporting that is not „by the standards of good taste“.

Regulatory authority for electronic media can only impose measures for violation of the Law on electronic media or file a request for initiating a misdemeanor proceeding or bring the criminal charges. In the period between 2015 and 2016, REM filed to the Misdemeanor Courts in Belgrade, Novi Sad, Niš and Kragujevac 84 requests for initiating a misdemeanor proceeding, and none of them was related to the hate speech prohibition, and also discretionary imposed three measures for violating the presumption of innocence.¹⁹ Since January until the end of May 2019, REM had punished, upon a complaint, one media (TV Pančevo) for the „unilateral attacks and continuous campaign“ that was lead against one speaker at the anti-government rally in Pančevo, for violating the legal obligation to respect the human dignity and the articles of the *REM Ordinance on human rights protection* regarding the objectivity of informing.²⁰ To that media a measure of warning was imposed, followed by an obligation to publish the foregoing.

Procedures before the REM are quick, and the sanctions are mild, which is also the case with the Press Council, a self-regulatory body. This body monitors the Journalist Code of Ethics in print and online media, and to the violators of the mentioned Code the Council imposes a public warning followed by an obligation to publish it in its media. Application of the imposed measures is exercised on a voluntary basis and depends entirely on the goodwill of the media in question.

According to a research of the Press Council, there has been a drastic increase in violation of the Journalist Code of Ethics in the last couple of years. In September 2018, number of violations was twice as high than in September 2015. The most frequent violations were not respecting the presumption of innocence and presenting the assumptions and guessing as facts. Journalist Tamara Skrozza, who monitors the violations of the Code, thinks that the Journalist Code should be supplemented with the principles regarding the media persecutions. Even though the negative media campaigns media are violating almost every professional obligation, she thinks that this phenomenon, which had not existed in time of the Code's adoption, should be highlighted as particularly unethical and in contrast with the professional ethics.²¹

Status review

Even though all the relevant laws promote the principles of tolerance, and prohibit the discrimination based on personal traits and hate speech, there is no consensus in the society about what constitutes the lower limit of intolerance towards the other and a different one. Rise to power of the Serbian Progressive Party, which established a typical populist regime, significantly changed the general social and political culture that had just started to get use to the pluralism. A populist regime needs „the dangerous Other“, who jeopardises a national unity, as a key engine of

¹⁹ <http://www.yucom.org.rs/wp-content/uploads/2018/01/NOVINARI-I-MEDIJI-NA-SUDU-2015-2017-fin.pdf>.

²⁰ TV Pančevo has published 16 times during four days against the speaker at the rally, Nenad Živković, journalist reports where Živković is qualified as the „enemy of Serbia“, „collaborator of the spy“, „Ustaša's proxy“, „representative of the hated DOS regime“, „a separatist“, „propagator of the Republic of Vojvodina“ „a proven instigator of violence“, „false fighter for peace and a promoter of violence“, „classic liar“, „stink“, „local tavern idle man“, „hypocrite“, „false journalist“, etc.

²¹ http://www.savetzastampu.rs/latinica/izvestaji/111/2015/05/12/672/rezultati-rada-komisije-za-zalbe-saveta-za-stampu-u-periodu-februar--april-2015_-godine.html.

homogenisation around the power and the leader. The Party have normalised hate speech towards the others, initially in the public political speech, and later on it legitimised it in the form of ever-present offensive, discriminatory and provoking speech in the government-inclined media. It often relies on the information that are „leaking“ from the authorised state institutions and are not available to the other media nor to the public.

Targets of derogatory speech are different and have been changing according to the government's current needs, but in most cases those are the criticisers of policies and activities of the authorities.

In the European Commission Report for 2018 concerning the progress of Serbia towards the EU enlargement, it is stated that no progress is made speaking of the freedom of expression and that the environment is not convenient for the achievement of this right. According to the European Commission, “hate speech and derogatory terminology are often tolerated in media and the regulatory authorities and prosecutors rarely react to such cases”.²²

According to the Press Council's report, violation of the Journalist Code of Ethics in daily press is a massive and regular phenomenon. During eight months in 2017, it is concluded that the professional rules had been violated in 5.292 articles in the eight daily newspapers. The largest number of violations was involving the breach of the presumption of innocence. Compared to an earlier period, the following phenomena particularly gained prominence: media political bias, believing to the statements of sources who follow their interest, as well as omitting the information that could have an important influence to the readers' attitudes.²³

Consequences to the election process quality

Government-inclined media that are launching campaigns of defamation and humiliation function not only as the government platform for attacking the political opponents, but also as an instrument of delegitimising the political alternative.

Their immediate goal is the intimidation of public criticisers of the government but the consequences are much wider and long-lasting. They are strongly compromising the right to free expression as an attainment of civilisation and democracy, spreading the culture of tolerated violence and inspiring new conflicts in the society.

Negative campaigns are narrowing the space for accepting diversity, exercising rights to a critical opinion and the respect of it, as well as for the civic activism inclined towards the development of pluralism and social solidarity. They consider every publicly stated critical opinion on the public policies or public agency, which is the essence of a plural political life, as a reason for political conflict similar to the war, where only one opinion/stance should prevail at any price.

²³ <http://www.savetzastampu.rs/doc/monitoring-2017/izvestaj-o-monitoringu-postovanja-kodeksa-novinara-srbije-u-dnevnim-stampanim-medijima-mart-novembarr-2017.pdf>

Labelling the critical opinion as a hostile to the state and nation serves to a further solidification of the populist government system that is essentially non-plural, illiberal and represents a defect of a democratic political system.

The outspread of a discrimination and hate speech in the public sphere and its inefficient containment are creating an ambient for a further hatred empowerment and the establishment of violence as a dominant social relation. By that, a general sense of fear and insecurity is being produced, which leads to a further polarisation of an already polarised society. While a part of the society accepts the normalisation of public defamation of different opinions and critical political stances and has actively been involving in it, part is being radicalised towards the rebellion against such a condition, and part is being passivised and prone to self-censorship, avoiding any kind of civil activism.

In such an environment a support to the radical political solutions is gaining prominence, whether in forms of securing the privileged position for the governing structure by passing more rigid laws and by tighter repression over the labeled enemies, or in the form of toppling such a regime, even by illegal means. The result is a conflicted society without a place for pluralism and solidarity with the "otherness", nor for the free and fair electoral competition of the political ideas and platforms.

Measures for changing the situation

- Demand a resignation of the Minister of culture and information and the state secretary for avoiding the responsibility, non-exercising the responsibility of monitoring and non-conducting the available measures regarding the massive defamation and humiliation campaigns against the government criticsers and political opponents in the most influential print media, that are against the public interest in the area of public information
- Initiate a procedure for the replacement of REM Council members given their negligent work in monitoring and sanctioning the massive defamation and humiliation campaigns against the government criticsers and political opponents in the most influential broadcasters, thus violating the provisions of the Law on electronic media
- Demand from the competent judicial bodies to initiate measures for harmonising the practices of prosecutors and courts in processing the legal violations that are happening in the media campaigns of defamation and humiliation, especially when they include a breach of the hate speech prohibition
- Start an initiative aiming that the Ministry of culture and information should prevent those media that are frequently violating the Journalist Code from

participating in the contests for co-financing the projects of exercising public interest in the area of public information and to also prevent them from making the commercial deals with the public enterprises and institutions that are using public funds

- On behalf of the protest „1 of 5 milion“ inform the biggest foreign advertisers on the commercial TV stations with a national coverage that with their advertisements in these media they are financing the violation of basic journalistic standards and also the exercising of smear campaigns against investigative journalists, civil activists and legitimate political subjects
- Request from the Ministry of culture and information, REM, State public prosecutor's office, The Commissioner for the protection of equality, Parliament's Board for culture and information, to create plans for its activities in order to normalise media communication for the sake of public interest and to contain defamation and humiliation campaigns in the media
- Start a campaign for gaining the citizen's support for a media communication normalisation, condemning the disqualification campaigns, delegitimising media that are conducting the above-mentioned, in cooperation with the political parties, civil society organisations and professional journalist organisations, in order to prove that the negative media campaigns are lead exclusively against the government criticisers; that they are punishable because some of the complaints against the media are ending successfully and that the lack of fines is the result of the state authorities' obstruction (ignoring the problems, not exercising the jurisdiction, denying complaints without explanation or an adeqaute explanation, stalling)
- Advise all the political leaders to use all the available resources in oder to contain false information in the media that are referring to them – right to a response and correction, reportinig to REM, complaints to the Press Council, as well as initiating legal proceedings demanding the financial compensation
- Each person or group of persons who are subjects of the media disqualification campaign for participating in the “1 of 5 milion” protest should file a complaint against the media conducting that campaign, with provided legal help in formulating such a complaint. Funds for providing legal help should be collected as a voluntary contribution from the citizens participating in the protests

Public officials' campaign

Public officials during the election campaign are massively abusing their official position in order to promote the interests of their party, thus putting the election contenders in an unequal position to address the voters

Explanation of the Problem

Public officials who are at the same time the candidates of their parties during an election campaign are conducting two types of activities: regular state activities and promotional party activities. Merging these two activities into one person enables the public officials to use their function, and public finances and public resources attached thereto, for the sake of promotion of a separate political subject. These practices are putting the ruling and the opposition parties into an unequal position: ruling parties are using the public funds for its promotion, while attracting, at the same time, a wider media and voters attention.

Public officials' activities in the election period, that are being treated as their "regular work", but essentially make part of the political promotion, are called the "Public officials' campaign". In political theory, it signifies the use of state marketing (activities aimed at creating the positive image of a state) as partisan marketing (activities aimed at creating the positive image of a party).

Repertoire of the Public officials' activities during campaigns, which are aimed at the partisan promotion is inexhaustible – "visits to the companies, schools, hospitals, courts, factory openings, construction sites, fairs, signing contracts and investments, construction and scholarships memorandums, presentations of construction plans, scholarship awards ceremonies, presenting aid and gifts, talking with citizens, „workers", foreign visits, meetings with national and foreign officials, athletes and similar, meetings with various subjects, participation in public manifestations, rallies, etc."²⁴

Media aspect of the Public official's campaign is expressed through the unequal treatment of election contenders. Media ordinarily report about the Public officials' activities in the "regular" part of the news, not in the part which is reserved for the presentation of the electoral lists' activities. Even with respect of the parity in electoral list presentation, the ruling party through the "non-election" news is gaining big, multy-layered privilege: longer time, "festive" (non-analytical) treatment of it's candidates' activities, priority in the news sequence, the audience's habit to accept the Public officials' activities more objectively compared to the ones in the election marketing.

Abusing the Public officials' status for partisan ends during an election campaign had characterised all the election in Serbia since the introduction of political pluralism in 1990. It has gained the most drastic proportions than ever in the practice of Serbian Progressive Party and its leader Aleksandar Vučić. Rule of this party draws heavily on the permanent state marketing as a main strategy in creating the positive government's image. It intensifies during the election periods on such a scale that a difference between the ruling and opposition parties in the possibilities of getting to the voters jeopardises the fair character of the elections.

Legislation

²⁴ http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/funkcionerska-kampanja-policy-paper-final.pdf.

Only Law that regulates some aspects of the Public officials' campaign is the *Law on the Anti-Corruption Agency* (2008). This institution conducts activities according to the law which defines the financing of political subjects, runs the register of Public officials, as well as their property and incomes and resolves the questions of conflict of interest (Article 5).

The Law allows to a Public official²⁵ to conduct a function in the political party and to participate in its activities only if that does not jeopardise the exercising of public function and if it is not forbidden by some other law. But, at the same time a question of clear demarcation arises: „A Public official cannot use the public resources and rallies where participates, and the meetings in the Public official's capacity, for the promotion of political parties, i.e. political subjects“ (Article 29).²⁶

Further on, the Law states that the Public official is „obliged to, at any time, unambiguously, present to the interlocutors and to the public whether he/she is presenting the opinion of the authority where he/she exercises a public function, or the opinion of the political party, i.e. political subject“.²⁷

None of the media regulations does not cover the media reporting on the Public officials' activities during an election campaign, even though the ruling's party media advantages due to an (increased) activity of its candidates on the public functions were shown already during the first multi-party election campaign in 1990, due to the activities of then-president of Serbia. He remained the greatest source of an unequal treatment of the election participants in the following parliamentary and presidential elections.

Only one effort of reducing the „statesman“ influence on a partisan promotion was made, with the first by-law of the first regulatory authority for electronic media, RRA. Its General binding guideline for the conduct of media for the parliamentary elections in 2003, requested that the reports of the Public officials' activities and holders of power at all levels should be published „to the extent of the event's importance and cannot be used in the promotional purposes“. Yet, the following guideline, for the presidential elections in 2004, had not comprised this item, neither had any following guideline to the last one from 2015. Furthermore, the leading people from the RRA were later on consistently stating that the public function abuse in the promotional partisan purposes is impossible to prevent, so there is no point in inserting any kind of provision into an ordinance on media obligations.

Controlling the exercise of law

²⁵According to the law, "an official" is each elected, appointed or named person to the bodies of the Republic of Serbia, autonomous province, unit of the local self-government and bodies of public enterprises and public companies, institutions and other organisations whose founder, i.e. member is the Republic of Serbia, autonomous province, unit of the local self-government and other person elected by the National Parliament (Article 2).

²⁶ The exception are public resources for protecting the personal security.

²⁷ Exception here are the Public officials elected directly by the citizens.

Given that the *Anti-Corruption Agency Law* is the only legal document that deals with an important aspect of the Public officials' campaign, the only body that deals with the monitoring and exercising of that part of the Law on prohibition of the use of public resources for the political subjects' promotion is the Anti-Corruption Agency. The Agency does that within the control of financing the electoral political activities. There has been a lot of criticism stating that this is neither legally nor operationally a good solution, given that the Agency must monitor many other areas with an outspread corruption, where it has not shown great results yet.

The most important Agency's activity in this area is to control the accuracy of the election participants' reports regarding the costs of the election campaign, in order to prevent the corruptive practices in its financing. Monitoring the exercise of the Article 29 of the Law is its secondary task. In order to monitor the party's costs in an elections, the Agency since 2012 has been employing a team of observers that exercises the election campaign monitoring „on the field”. Task of the observers is to collect the information on spot about the promotional material that the election contenders are using (leaflets, brochures, posters), party rallies that are organising (duration, number of the officials, non-local supporters, means of transportation that is being used), paid advertising in the media (billboards, TV ads, rented TV time) and other types of costs (Ordinance on the election campaign observers, Article 10).

Even though the Agency is the only state authority competent to monitor and sanction the abuses of public resources and rallies for the partisan promotion, the above-mentioned is not very active thereto, even less efficient.

In the report regarding the costs of the presidential campaign in 2017, the Agency had stated, based on the field observers reports, that the presidential candidates were using a number of activities that cannot be regarded as classical election activities, such as organising free medical examinations, donating help to those living in poor material condition, organising free excursion for retirees etc. However, this report did not state that those are the violations of legal provisions, nor indicated that public resources were spent in those activities, even less who was spending it.²⁸ In the report about the campaign in 2016, this practice was described slightly more detailed, and with some indications of the subjects involved, but also without emphasising its illegal nature.²⁹ Given that the *Law on financing the political activities* does not define clearly what are the campaign activities, but only states that an election campaign “is a group of political subject's activities from the day when elections are announced to the day of declaring the final election results.” (Article 2), this loophole provides an alibi for the Agency not to perceive some activities of the electoral list leaders as an abuse of public resources for promoting the partisan subjects.

²⁸ <http://www.acas.rs/wp-content/uploads/2011/05/Izvestaj-kampanja-2017.pdf?pismo=lat>, str. 11.

²⁹ “Organising the medical examination, providing legal counsels, preparing pupils for taking the high-school entry exams, conversations of leaders and citizens etc. have been noted more than 499 times. Prominent in organising these activities are: SNS, SPS, DS and DSS-Dveri. SNS most frequently organised oftalmological examinations and blood-pressure and blood-sugar level measurements (17), while SPS organised examinations twice”, <http://www.acas.rs/wp-content/uploads/2011/05/Izvestaj-IK-2016-2712016.pdf?pismo=lat>.

As a possible violation of the Law, the Agency only states the use of facilities in the elementary and high-schools for the political purposes, given that political organising is prohibited in schools. In a report from 2016, these kind of cases are represented as “suspicious” and it specified that 16 of them were registered, and that “the SNS can be related to 15 of them, while the SPS with one such event”.

Inefficiency of the Agency manifests as well in using less and less observers. The first observation team from 2012 counted 165 people, 2016 134, and 2017 only 44. The Agency had not timely requested funds within the budget plan for 2017 for the presidential elections observation, so the low number of observers is used as an excuse for this omission, even though the presidential elections were regular, meaning that they were expected and foreseeable.

Unjustified media advantage which ruling parties are gaining through the state marketing is beyond control and sanctioning. The Anti-Corruption Agency does not consider it as its own task, and the same thing is with the Regulatory body for the electronic media (REM), that rejects, as a rule, all the complaints received for the media favouritism of certain election participants as unfounded.

Status review

The Public officials' campaign, as a problematic aspect of the election process is pointed out by a large number of election observers. OEBS/KDILJP indicates that in 2016, the SNS representatives, and to a lesser degree SPS, had increased their participation in the official events during the election campaign, with an unclear demarcation of state and partisan activities, which is contrary to the OEBS guidelines and Council of Europe's standards (Final report on the snap parliamentary elections in Serbia in 2016, page 1). In the presidential campaign in 2017, the ruling coalition candidate dominated, at the same time the Prime Minister, who profited from the unclear demarcation between the activities conducted as part of the election campaign and those activities that he conducted as Prime Minister (Final report on the presidential elections in 2017, page 1).

The CRTA's mission *Citizens on guard* in its reports notes the examples of using the public resources such as cars, facilities, equipment by the ruling party's officials, cases of the abuse of public institution employees who attend the partisan events by duty and during working hours. Public officials sometimes during working hours promote a new state project (factory, hospital and similar), and right after working hours, at the same place, they are holding a pre-election rally (CRTA Presidential rally – final report 2017, page 39).

According to data of Transparency Serbia, the most active users of their state status for the partisan promotion in 2016 were the Mayor of Belgrade Siniša Mali and the City Manager Goran Vesić with almost 50 promotional events in the campaign, respectively. Activities of 28 public officials during campaign (factory openings, cornerstones, visiting schools etc) which Transparency followed had risen on average 2,5 times as many as in the same period last year.³⁰

³⁰ <https://www.istinomer.rs/clanak/1555/lzbori-2016:-Kampanja-samo-jednog-coveka>.

Abuse of the state functions in the promotional partisan purposes is smoothly transferred to the media. According to the media monitoring findings of the Bureau for social researches (BIRODI), positive reporting about the Public officials during the parliamentary elections campaign in the central TV news shows with nationwide coverage was augmented from the average 69% in 2012 to 82% in 2016. In the campaign in 2012 the most represented election subjects were Boris Tadić (DS, President of Serbia), Dragan Đilas (DS, Mayor of Belgrade) and Ivica Dačić (SPS, Minister of the Interior), represented in the state capacity. In the campaign, only one subject, Aleksandar Vučić, the Prime Minister and the President of SNS, obtained 25% more TV time than the three above-mentioned candidates combined four years earlier.

On the presidential elections in 2017, candidate Aleksandar Vučić in the active function of the Prime Minister, on TVs with national frequency had three and a half times as many minutes (91% of that with positive connotation) as the presidential candidate Boris Tadić in 2012 acting in the function of the President of Serbia (85% of that with positive connotation).

Unbothered merge of state and partisan marketing has been securing the SNS domination for years in the TV news contents in all the most influential media.

Consequences on the election process

Abuse of the state marketing in the purpose of partisan promotion represents a type of discrimination of the opposition electoral contenders. From the one side, because of no limitation to the function of the Public officials, and from the other side, because of the inefficient control of the use of public money and public funds, the ruling party has the opportunities to make its chances for addressing the voters more numerous, and those chances are more diverse, luxurious and for the voters more materially beneficial.

That advantage is being additionally strengthened by the media, and its consequences to the ruling party's benefit are multiple and long-lasting.

Journalist reporting that blurs the difference between the state and partisan role of an electoral subject provides that the image of a state organ as a public service which serves to the common good merge with a partisan image which represents the interests of all citizens. Thus the ruling party in citizens' consciousness becomes a natural part of the state structure, and not its political part, a temporary one, and changeable.

If the usual media favouritism of Public officials as the most frequent subjects of political speech is combined with marginalising or ignoring the government criticisers, it creates with the audience a foundation for an identification with the state policy, and also with the ruling party which is unified with it, both personally and by the program. This symbolic transfer from the state support to the support of the party is deeply rooted in the voters' political culture, expressed through the popular answer of a Serbian farmer to a opposition leader from the 90s: *I will wote for you when you come to power.*

Measures for changing the situation

- Forming the Supervisory Board, as a non-administrative body for the supervision of all the electoral subjects' conduct, pursuant to the Law on the election of the Members of Parliament, that would be indicating and warning on the abuse of public functions for the partisan promotion, using the means at its disposal in monitoring the irregularities in the political parties' conduct that jeopardise the equality of all candidates' rights
- Anti-Corruption Agency adopts a by-law which precisely defines what are the public resources, rallies and gatherings that a Public official cannot use for the promotion of political subjects
- Agency reacts to the breach of the Article 29, immediately upon establishes it, launches the proceeding ex officio and imposes a warning as soon as possible
- Anti-Corruption Agency publishes public reports on the field monitoring of an election campaign once in two weeks during the campaign
- REM adopts a new Ordinance on media conduct during the election campaign which clearly regulates the models of preventing the abuses of public funds and malfeasance for the purposes of partisan promotion in the media reporting ("technical level" of reporting, classifying the news in the "election" rather than the "regular" block, possibility of response from the opposition) and limiting the appearance of Public officials in the special shows or programs
- Public services adopt Guidelines for reporting, with a separate part on the standards of equal and unbiased treatment of the electoral participants including the Public officials

