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Media Regulation in Montenegro in the EU Association Process

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Abstract: The process of accession of the southeast European countries to the EU is a long and multistage process which includes a series of transitions that this country needs to overcome. The countries of Western Balkan, including Montenegro are facing a series of challenges to be overcome in order to join the family of European countries. While the goal to comply political, legal and economic system with the standards regulated by EU, it is necessary to transform a variety of areas. Legislation is a basis for incorporation of each of them, so the application of European principles is of great importance in the further process of joining, as well as in further path to democratic values and the rule of law.

Some of the most important areas are already considered, next to them besides fighting crime and corruption, faced by all post-communist countries in the region, certainly the struggle for the realization of basic human rights.

The human rights and freedoms include the freedom of expression and media freedom. In this work we will highlight the importance of the media in the process of joining the European Union, which means that we will analyze the media legislation in Montenegro. The main objective is to indicate the main features of legislation in this area through content analysis.

In the introduction, we will present the Montenegrin media system, after what we will take a look at the laws that pre-date and in the end we will talk about the current regulations. We will talk about the laws that are in force, their development and what are their main characteristics. About how they are compliant with European regulations and recommendations and what is the prospect of these laws. In this work we will look at the law makers, then at the regulators and the media, as well as end users. We will also talk about law implementation, importance of their implementation on different levels. We will especially emphasize the importance of these laws to preserve press freedom and contribution to EU accession. We will explore how the Montenegrin media legislation aligned with EU.

Key words: media, regulation, Montenegro, association process

Introduction

Media freedom as an integral part of human rights is extremely important part in the democratization of society. Knowing the fact that Montenegro as a country in transition is in the process of joining the European Union, it is clear that one of the most important suggestions that come from European institutions is freedom of information - control of the media. Montenegro has been through different stages, from communism through its union with Serbia with a range of government, to the return of independence, so it's unnecessary to remind that during this period of time the legal system is often changed. Therefore, the legal framework that regulates the state of the media has changed. In the last two decades, since multiparty politics arrived to this state, we had significant changes in the media. Year 1990/ Statute on Public Information adopted, which was amended in 1991, in 1993 it was replaced by a new Statute¹. So, during 90s of the last century, the state established the first private media organizations, including newspapers, radio and TV stations. In 1998/ The Parliament of Montenegro adopted a new Statute which was the turning point in this area, some of the European standards were accepted for the first time². Because of the social changes and many other factors, this Statute was replaced by a set of media Statutes in 2002.

In 2006, Montenegro regained statehood and became an independent state with many responsibilities. Among other things, in the process of joining the European Union and the freedom of information and media regulation appeared. In 2010, the Statute of Electronic media was adopted with the goal to be the framework that will be respected and applied as it is consistent with many European recommendations. However, because of the nature of the Montenegrin society, and its inability to enforce all regulations in economically developed countries, this Statute lasted for a short time, though the Statute was superior in principle, has become one of those who are not well implemented. So in recent years, we can expect another transformation of media regulation in Montenegro.

In order to analyze the condition of media regulation, we will primarily look at the legislation that preceded a present to indicate the continuity of certain norms. When it comes to current regulations, we will primarily point out the most important norms, followed by the recommendations of the European institutions and compliance with European standards, and then we will analyze its application in practice, and suggest measures that should be considered in future.

Legislative Review from 2002

The turning point in the reform of the Montenegrin media legislation was in 2002 when a set of media laws has been adopted - Media Law, the Law of Broadcasting and the Law of Public Broadcasting Services ``Radio Montenegro`` and ``Television Montenegro``. These laws were adopted after the acceptance of the Charter of Media Freedom adopted in 2000, in Thessaloniki, by which the state authorities of Montenegro pledged to take initiatives within which they will guarantee and promote freedom of the media, support the development of professional journalism and provide comprehensive regulation of electronic media, all in accordance with international standards.

``The media laws, during eleven months of work, are prepared by the Working group composed of representatives of independent and state media, media associations and Montenegro Government. During that period, with the working group actively cooperated Council of Europe, the European Agency for Reconstruction, IREX, Article 19, the European Institute for the Media, as well as other international organizations and institutions that have shown interest in this process`` (Rutovic 2005:5).

These laws introduced innovations in the way of financing, they introduced mandatory subscription fee and tax, then changed the method of electing members of the management organization in which could not be representatives of the parties. Also, an important innovation is establishment of the Agency for Broadcasting as a regulator and Broadcasting Center as a company for the transmission and broadcasting of radio and TV signals, while the state media transformed into public broadcasting service.

Although this set of media laws changed the standard in relation to all existing legal acts, in this area have been certain problems in its use. One of the problems because of which this set of laws is overcome is cancellation of subscription as a way of financing the media. The problem that appeared in practice was also with the managing institution because a large apparatus was created and was financially unsustainable and not functional.

Although it was necessary to change the entire framework, it was decided to define the situation in the national public service. So in 2008/ adopted the Law on Public Broadcasting Services of Montenegro³.

By this act, there was no longer the financing from the part of broadcasting subscription fee or tax for radios in vehicles. Article 16 defines the resources specified:

``From the general revenues of the budget of Montenegro for the basic activity of RTCG (Radio-television of Montenegro) diverted annually in the amount of 1.20% from the current budget of Montenegro, established by the Budget Law for the year.``⁴

Article 17 defines the income of funds for specified purposes:

``By the Budget of Montenegro a part of funding is provided for the implementation of the right of citizens to be informed, in terms of program content, which are important for: development of science and education, cultural development, informing people with hearing and vision disabilities.``⁵

Under this law, authorities of RTCG are Council and General Director, which means that there is no longer Steering Committee.

For the time being, in December 2007 adopted but in 2008 came into force the Law on Ratification of the European Convention on Transboundary Television, which confirms the fifth convention adopted on May 5, 1989, in Strasbourg.

In 2008 - adopted the Statute on Electronic Communications, by its entry into force repealed the Statute on Telecommunications, as well as certain provisions of the Statute on Broadcasting. This Statute provides: performance of electronic communication, competence, status, financing and scope of work of the Agency for Electronic Communications and Postal Services in the field of Electronic communications, procedures for operators and service providers of Electronic communications, resolving disputes among participants in the electronic communications market, then the question of provision of Universal service, the procedures for the efficient use of limited resources, the question of protection of interests of service users, the rights and obligations regarding the confidentiality of electronic communications, field control and other questions related to electronic communications.

In 2008, when these two acts came into force, one part activity of the Agency for broadcasting was eliminated, for example: prescribing the conditions and the procedure for allocation of rights to use radio frequencies to broadcast, distribution of radio or television programs. Changes like these have led to some overlapping and inconsistency of these two laws.

About that in one document, of former Agency for broadcasting among other assess:

``The adoption process and the current implementation of the Statute on Electronic Communications, as well as the process of drafting the new Statute of Electronic Media and the Statute of digitization, suggest that all this is a big question, unfortunately, the entire process of development of this sector slows down, or even goes backwards, with the more difficult working conditions of broadcasters and regulators`` (ARD 2012).

From the analysis we can note that after adoption of media Statutes (in Montenegro, 2002) which brings this area of human rights to European legislation, in practice it is overcome. Change of state government, many social changes, the changes in the media system including the abolition of subscription and non-functioning of the management have made a situation in which came to a legal vacuum. Some Statutes adopted after 2002 were not aligned with these set or with each other. One of the reasons for the bad condition of law enforcement is division of sectors for informing to different ministries - sector for informing, for communications, for telecommunications or electronic communication, and because the top institution to regulate this area is not formed.

Current media regulations

Given that in the first decade the media regulation in Montenegro went through several stages, from transformation to non-implementation and overcome in practice, intervention of the state and other authorities in order to arrive at the most appropriate solutions was necessary. On the other hand, it is important to mention that overcome of legal norms is not the only reason for the enactment of new statutes. One of the main reasons is the obligation of harmonization of Montenegrin legislation with the EU that stems from the Agreement of Stabilisation and Association with the European Union⁶. It is known that the harmonization of national legislation with the EU acquires media is one of the fundamentals in the process of integration, and Montenegro committed itself to ensure the gradual harmonization of legislation with the EU acquires and its effective implementation by this Agreement.

``Application of the Agreement of Stabilization and Association between the EU and Montenegro includes a comprehensive reforms and fundamental adjustment to legal, economic and political standards of EU which enhance the efficiency of one state and help the economic and institutional reforms necessary for Montenegro to become a modern and developed European country`` (MIP 2012a).

Another reason for the adoption of the new Statute is adoption of the Directives on audiovisual media services by Montenegro⁷.

``As a member of the Council of Europe, Montenegro is a party of the European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR). This international contract for Montenegro came into force on June 6, 2006. In accordance with that, Montenegro has an obligation to actively promote the freedom of expression of every person (not just certain political, social and economic interest groups) under its jurisdiction to receive and impart information`` (Basic Hrvatin 2012:2).

In Montenegro today, claiming rights in the field of information is guaranteed with the highest legal act - the Montenegrin Constitution - which guarantees freedom of expression, press freedom and emphasizes the prohibition of censorship, as well as free access to information⁸. Constitutionally guaranteed rights to freedom of expression are regulated with media regulation in which Statutes are the Media Law, Law on Public Broadcasting Services of Montenegro, the Law on Electronic Media, the Law on Ratification of the European Convention on Trans boundary Television. With the adoption of the Law on Electronic Media from 2010, the Law on Broadcasting and certain provisions of the Media Act stopped. But passing new legislation was preceded by public hearings and compliance with the recommendations of the Council of Europe.

First of all, at the request of the competent authorities of Montenegro, the general director for Human Rights and Legal Affairs of the Council of Europe prepared the analysis and comments on the draft of Statute for electronic media in August, 2009. The analysis point out that:

``The Montenegrin authorities should do: 1. implement the provisions of directives about audiovisual media services in an appropriate way; 2. provide all the mechanisms (general normative framework, meeting, composition and operation, financial independence, authorization and responsibility) necessary for independent functioning of the Agency for electronic media; 3. ensure compliance of all the provisions of the Statute of electronic media with the provisions of the Statute for Electronic Communications`` (Basic Hrvatin 2012:1).

After the above obligations of Montenegro to synchronize its legislation with EU legislation and international conventions, Montenegro was synchronize the Law on Electronic media with: Directive 89/552 / ECC of European Parliament and the Council from October 3, 1989. Directive 97/36/ ECC of European Parliament and the Council from June 30, 1997. Directive 2007/65/ ECC of European Parliament and the Council from December 11, 2007, and the Directive 98/84/ EC, while the draft Statute on electronic media is in line with the European Convention on transboundary television. Also, in the draft of statute of electronic media distinguished are: Recommendation (2000) 23, Recommendation (2001) 7, Recommendation (2000) 7, Recommendation (99) 15, Recommendation (99) 14 and Recommendation (99) 1. Also two declarations were adopted: Declaration (2007E) of the Committee of Ministers and Declaration (2008E) of the Committee of Ministers. The comments of the EU Delegation to Montenegro were accepted, the Council of Europe and OSCE. In the screening stage shall take care of accordance between the specific Statutes with the laws of individual EU acquires. Therefore, the National Program for Integration of Montenegro into

the European Union created a plan for coordination of national legislation with the European Union and the Council of Europe recommendations.

``With the adoption of the Law of Ratification of the Convention on Transboundary television, Montenegro has adopted such a legal framework to expand the field of freedom of expression in accordance with Article 10 of the European Convention for the Protection of Human Rights and Freedoms`` (Rutovic 2010:58).

The content of this Statute was sent to ministers after the public hearing that lasted 45 days during 2009, during this time the draft law was published on the website of the Ministry of Culture, Sports and Media in a daily newspaper Pobjeda and delivered to the Council of Europe, OSCE and to the European Commission Delegation in Montenegro. On the same issue, four roundtables were held, two in July and four in September of 2009.

During the public hearing, opinions from experts were received from the European Commission, the Council of Europe, Article 19, while the proposals were received from regulators, the media and media organizations, among them the Agency for Broadcasting, the Agency for Electronic Communications and Postal Services Union local public broadcasting services (ULES), the Association of commercial electronic media (AKEM), the Association of Journalists of Montenegro and others (Rutović, 2020b:5-6).

From the first man for media in Montenegro Ministry of Culture we heard that Statute is harmonized with EU standards.

``After adoption of this Statute is rated that the act was done in close cooperation with representatives of the EC and SE, highly compliant with international directives (primarily services the AVM)`` (Rutović, 2010:58).

In Article 1 states: ``This Law shall govern rights, obligations, and responsibilities of legal and physical entities performing the activity of production and providing of audiovisual media services (AVM), services of electronic publications via electronic communication competence, status and sources of funding of the Agency for Electronic Media prevention of illegal media concentration, encouraging media pluralism and other questions relevant to the field of AVM services, in accordance with international conventions and standards``. In the second Article, paragraph 2, states that the law must be interpreted in accordance with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, using practice of case law of the European Court of Human Rights. The main principles on which the law is based are stated in Article 3: freedom, professionalism and independence of electronic media; prohibition of all forms of censorship; balanced development of public and commercial electronic media, free and equal access of citizens to all AVM services; development of competition and pluralism, application of the international standards, objectivity, non-discrimination and transparency⁹.

The innovation introduced by this law is to, instead of Agency for Broadcasting, establish an Agency for electronic media, which should operate by similar criteria as the previous one. After the basic provisions that characterize and define the law in the second chapter from 10. to 45. members dedicated to the regulatory authorities.

Special innovation regulated by this law refers to European audiovisual works. Article 60 specifies on which acts it applies, while Article 61 states that a broadcaster is obliged to ensure that the European audiovisual works comprise at least 51% of its annual broadcasting time.

The innovation introduced by this law in the area of electronic media is division into commercial, nonprofit and public broadcasters. In accordance with Article 70, by obtaining permission to broadcast, a legal or individual person acquires the status of broadcasters who may perform the production and broadcasting of radio and/or television programs. Commercial broadcasters may be national, regional and local.

Since they are mentioned for the first time in the Montenegrin regulation, particularly are interesting broadcasters that are considered as the Non-profit¹⁰. Their founders can only be institutions, religious, student and non-governmental organizations. Non-profit broadcasters have an obligation to publish daily at least 50% of its own production of informational, cultural, educational and entertainment services, while at least 25% of the daily production must serve to informational, educational, scientific, technical, artistic, cultural and other needs of the public.

Public broadcasters are for many reasons of a great importance for analysis. One of them is that the legislators predicted that the former public service have to transform into public broadcasters. It was the third wave of transformation for this type of media since 1998. These media have a special place in the media system of Montenegro for several reasons. They cover all municipalities, have always been governed by legislation, controlled by the founders and the public, and have a procedure for the selection of the management and financing.

In accordance with Article 73, the Public broadcasters may be national, regional and local. Public broadcasters are obligated to produce and broadcast radio and/or television programs with news, cultural, artistic, educational, scientific, children, entertainment, sports and other program contents, to ensure the realization of the rights and interests of citizens and other stakeholders in the field of informing. In order to achieve the public interest in the field of informing, public broadcasters are obliged to independently and self-contained produce, edit and broadcast programs that are not in the service of political, economic or other centers of power; during the election campaign, according to special rules, provide equal representation of political parties, coalitions and candidates that have

accepted appointments and election lists¹¹. Public broadcasters are established by law for the territory of Montenegro (national public broadcaster or by the local government)¹².

The innovation that this law predicted for public broadcasters is the way of funding. Since the subscription fee and taxes are abolished, and knowing that the founders less and less frequently allocated resources for the media, it was necessary to create a model that will preserve pluralism in Montenegro. Therefore, Article 76 prescribes the way of gaining funds from the part of general budget of Montenegro – from the local governments and other sources in accordance with law. The second paragraph of the article states that budget provides a part of funding for the implementation of constitutionally and legally guaranteed rights of citizens to information, without discrimination, on the basis of programs that are important in certain areas.

Particular difference in regard to the previous law are the governing authorities of the public broadcasters consisted of the Council and Director.¹³ The large apparatus consisted of two authorities has stopped to exist, but all obligations of the Steering Committee are passed to the Council. Council by open competition appoints assembly and later Council select the director out of candidates who apply for the vacancy.

Today, many examples can prove to us that this law is not well applied. There are ongoing debates about its amendment and adoption of the new law. Some of the reasons why this law is not applied in complete are connected to public broadcasters and their founders. Local governments did not clarify even the previous law, so the new one came as another problem. One of the problems is that law is differently interpreted by all individuals, but in the meantime there is a change of government and changes of personnel which makes inadequate use of law. So, in making decisions about local public broadcasters and accomplishment with the law are responsible individual secretariats with mainly administrative workers who do not understand this area. Therefore, the big problem is a lack of an institution which would create this part of the media. Regardless to aspirations of the relevant ministries and Agencies for the Electronic Media, it was impossible to influence the founders to pass the acts on time and to harmonize the way of the establishment and funding of local public broadcaster. In this regard the recommendation is "statute of Electronic media should offer appropriate solutions to ensure the financial and editorial independence of the local public broadcasters (local public services)" (Basic Hrvatin 2012:25).

Finally, in 2011 - adopted the Statute of Digital broadcasting, it also adopted the requirements for the transition from analog to digital television. Implementation of this law has to make efficient use of the radio frequency spectrum as a limited natural resource. Law is harmonized with the EU legislation and other sources of international law, such as Recommendation (99)14 member states of the Council of Ministers from September 9, 1999 and the Recommendation (99)1 of the Council of Ministers of the Member States from January 19, 1999.

This law, among other things, specifies that broadcasters are obliged to provide telecommunication equipment in order to comply with the new terms of technology use of this law. Parallel use of digital and analog technologies must start no later than on July the 1st, 2012, and by the end of the year all broadcasters must change to digital system. However, in practice this does not happen within the plan, because of a problem with incorporation with authorities, the lack of funds by broadcasters, and also the state to implement the complete digitalization.

In addition to many problems that arise in non-compliance, Montenegro has started a new stage in the process of accession to the European Union by the opening of negotiations on June 29, 2012.

"On November 15, 2012, the Government of Montenegro adopted decision about education of Working Group for the preparation for negotiations on the accession of the European Union, for the area of the acquires related to negotiation of Chapter 10, the Information Society and Media" (MID 2012).

Working Group, which consists of 37 members, was formed in accordance with the requirements of this stage of association to EU, consisting of representatives of the Ministry for Information Society and Telecommunications, the Ministry of Culture, Ministry of Foreign Affairs and European Integration, Ministry of Education and Sports, the Ministry of Internal Affairs, the Ministry of Health (Health Fund), the Parliament of Montenegro, Institute for Intellectual Property, University of Montenegro, University "Mediterranean", the Agency for Electronic Communications and Postal Services, the Agency for electronic media, the Agency for the Protection of Personal Data and Information, Broadcasting Centre, RTCG and NGOs.

Chapter 10 is specific because it covers a wide range of issues, defined through three areas: electronic communications, information society services and audiovisual policy. The acquires of the EU, according to the above areas, include specific provisions on electronic communications, services of informational society, as well as regulations from audiovisual policy.

On December 7 of 2012 in Brussels, two-day meeting ended between Montenegro and the European Commission where presented acquires of the European Union for Chapter 10 - The Information Society and Media.

"Members of the working group had the opportunity to meet up with the legal order of the EU in this field, and to obtain the necessary information and guidance towards further harmonization and implementation of European legislation. During the two-day meeting, the representatives of European Commission presented the detailed regulations and practices from this area, through directives, regulations, decisions, recommendations and common instruments related to electronic communications policy, services of informational society and audiovisual policy" (MIP 2012b).

On that meeting in introductory remarks negotiator prof. Anđelko Lojpur among other things said that ``Creation of efficient public administration, involving all citizens in the organization of public life, with high quality and in line with the expectations of citizens functioning of the media, is of a great importance`` (Lojpur 2012).

On January 22, 2013, in Brussels ended the second meeting of the bilateral screening of the Chapter 10, the Montenegrin legislation in this area is presented. The meeting was closed by the chief of the Working Group, Ruzica Miskovic from the Ministry of Telecommunications and Information Society, with confirmation of Montenegro's commitment to European integration and the definition of further steps in the field of informational society and media. She pointed to the importance of development in this area through further strengthening of the administrative capacity and the full implementation of the activities in progress, according to the adopted strategies of development, with accent on the legal framework in order to fully comply with EU legislation. Through 22 presentations, members of the working group presented Montenegrin regulations covering the field of electronic communications, informational society services and audiovisual policy.

In addition to the existing capacity for effective implementation of regulations in these areas, plans for further harmonization with EU legislation and standards in this chapter were presented.

``Representatives of the European Commission welcomed the willingness of the Montenegrin side in terms of overall quality and presentation, as well as a productive collaboration, communication and sharing of relevant information and documents in preparation and during the bilateral meeting`` (MIP 2013).

Conclusion

In the last two decades Montenegro had several changes of media regulation but it still can not be said that adequate solution to this issue is found. Given that this is a very important process in which equally participate media, legislators and regulators, there are several reasons that can be extracted. Some are clearly visible, frequent changes in state organization and therefore changes of the legal documents. One of the reasons is inadequate understanding and often non-compliance by the media and their founders. Another reason for poor implementation and overcome of the law in practice is the mismatch between the statutes which from the different aspects regulates the electronic communications sector. Therefore, the conclusion are justified that ``In order to have effective regulation it is necessary to harmonize the Law on Electronic Media Act, the Electronic Communications Act, and digital broadcasting`` (Basic Hrvatin 2012:26).

Another reason why after few years we approach to Law draft is the necessary compliance with European standards. When the European regulatory application applies to the condition of South East Europe countries, it often comes to collision. So it is necessary to find adequate solutions in the future for the Montenegrin media system which will be in line with European guidelines.

In the future period, it is important to pay more attention to strengthen the freedom and independence of the media, improving the quality of legislation and strengthening the position of regulatory authorities because the regulation of media is significant for further democratization of society. It is on the government authorities to provide a legal framework. In this way, the state was given the goal to find political and legislative measures to ensure the independence and freedom of the media.

Some of the measures that could be applied are to establish an institution or ministry responsible for the media, not to be a part of one of the ministries, even to be divided into several areas in several ministries. It is necessary to move the responsibilities of electronic broadcasters to a single agency that will also monitor their work, apply program monitoring and transfer frequencies, and also incorporate a company for transmission in that institution. With the goal to ensure the independence of such an institution it must be financially independent, as it should be the case with public broadcasting. It is necessary to standardize the principles at the state level, provide sources of funding from taxes collected from subscriptions of mobile or cable operators.

The positive side of that the media legislation of Montenegro is the greater acceptance of European standards to be adopted and will be accepted in the future with respect to obligations arising in the process.

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¹ Public Information Law from 1986, 1990, 1991, 1993

² Public Information Law from 1998

³ Law on Media from 2002

⁴ *ibid.*

⁵ *ibid.*

⁶ Montenegro on 15 October 2007. in Luxembourg signed the Stabilization and Association Agreement with the European Union, which came into force after ratification by all 27 EU member states and the EU Parliament first May 2010.

⁷ Directives adopted by the European Parliament and of the Council 11 December 2007. - The Directive 2007/65/EC amending Directive 89/552/EEC and amending the Television Without Frontiers Directive, which regulates the addition of audiovisual media services, television or television programs as linear audiovisual media services and audiovisual media services and on-demand as a non-linear audiovisual media a. In addition, the Directive regulates audiovisual commercial communication, placement of products, audio-visual program, the editorial responsibility etc.

⁸ Montenegrin Constitution Article 47, 49, 50, 51.

⁹ Law on Electronic Media Article 1, 2, 3.

¹⁰ *ibid.* Article 72

¹¹ *ibid.* Article 74

¹² *ibid.* Article 75

¹³ *ibid.* Article 77

Biography

Dragic Rabrenovic (25 March 1979) was born in Podgorica lives in Bijelo Polje, where he completed his elementary and high school. PhD student at the Faculty of Political Science, University of Belgrade, working on a dissertation on the impact of PR on Montenegrin daily newspaper. At the same university degree in journalism and a master's degree majoring in communication studies, thesis "Radio as a tool of political propaganda".

Director of the local public broadcaster Radio Bijelo Polje from 2008; The Chairman of the Board of the Union of Local Public Broadcasters of Montenegro (ULES CG) since 2010, a member of the of association of Montenegrin journalists, editorial secretary of the International Scientific Journals „Media Dialogues,, 2011/2012.

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