LEGAL ASSESSMENT | SERBIA

MEDIA OWNERSHIP MONITOR

Media Ownership Monitor – Serbia

December 2023

Funded by the European Union

BIRN BALKAN INVESTIGATIVE REPORTING NETWORK

GMR GLOBAL MEDIA REGISTRY

MEDIA OWNERSHIP MONITOR

SERBIA

V.1.2 | December 2023

Balkan Investigative Reporting Network - BIRN Serbia mission is to advance the country's political, social and economic transition through the provision of objective and quality information, the training of journalists, and providing assistance for institutional reforms and the public as Serbia moves forward.

BIRN Serbia operates at the forefront of efforts to professionalise the media and civil society, empowering responsible local voices, supporting professional reporting, facilitating dialogue between the most important actors in society, and providing them with the skills needed to foster good governance and public accountability.

BIRN Serbia's primary fields of operation are media development and good governance.

The Global Media Registry (GMR) collects, compiles and provides – either publicly available or self-reported – datasets and contextual information on media outlets around the world.

In doing so, the objective is to enhance transparency, accountability and responsibility in the information space. Thus, the GMR facilitates better choices and decision making, both algorithmic and human, of all stakeholders. These may include every citizen and consumer, regulators and donors, as well as the private sector – for example advertisers and intermediaries (a. k. a. platforms and distributors).

By providing this public service as a social enterprise, the Global Media Registry contributes to the advancement of the freedoms of information and expression at large.

It was founded as a spin-off from the Media Ownership Monitor project, which it now operates as a non-for-profit LLC registered under German law.

CC BY NC ND

Description of the legislation on media concentration and ownership as well as its implementation, monitoring and transparency

I.1. Legislative framework

Which laws are supposed to prevent media concentration and monopolies? On what hierarchy level of law (e.g. constitution, civil code, special laws or decrees; national/regional) is media concentration being addressed?

Constitution:

The Constitution of the Republic of Serbia, as the highest constitutive act in the country, does not directly regulate the issue of concentration and monopoly in the media, but indirectly through the provision of guarantees of freedom of thought and expression, i.e. the freedom to seek, receive and distribute notices and ideas by speech, writing, image or in any other way, which can only be limited by law. This act thus proclaims that everyone is free to establish newspapers and other means of public information without approval, in the manner provided by law. The provisions of the Constitution that provide guarantees that there is no censorship in the Republic of Serbia, i.e. that only the competent court can prevent the spread of information and ideas through the means of public information are especially important, and only if this is necessary in a democratic society in order to prevent calls for the violent overthrow of the order established by the Constitution or violation of the territorial integrity of the Republic of Serbia, prevention of the propagation of war or incitement to direct violence or in order to prevent advocacy of racial, national or religious hatred, which incites discrimination, hostility or violence.[1]

Looking from the point of view of media content users, it is important to mention the provisions by which the constitutive act prescribes that everyone has the right to be truthfully, completely and timely informed about matters of public importance, and the means of public information are obliged to respect that right, as well as to have the right to access to data in the possession of state authorities and organisations entrusted with public authority, in accordance with the law.[2]

Civil Code:

The Republic of Serbia still does not have a codified civil law matter within a single act, contrary to some other countries. Although intensive work has been done on the draft of this act for the last ten years, there is still no official proposal, and the work is in the preliminary draft stage. By the way, the Principality of Serbia had one of the first Civil Codes in Europe, which was adopted in 1844 and remained in force until the Second World War. Today, the regulatory matter dealing with civil law is scattered among tens of other laws. According to an insight into the previous drafts of the expert working group formed for this occasion, media law is not included in the preliminary draft of the Civil Code.

Laws:

The primary lex generalis - a general legal act, which regulates the position of the media in the Republic of Serbia, is the Law on Public Information and Media (hereinafter referred to as LPIM). Among other things, this act prescribes prohibitions on the concentration of ownership in the media, i.e. monopolistic position in the media - through the chapter on the prohibition of jeopardising media pluralism. In order to enable citizens to form their own opinion about phenomena, events and personalities, a variety of sources of information and media content is provided. Thus, in order to protect competition and the diversity of ideas and opinions, any

[1] Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006), Article 50
[2] Ibid Article 51

type of monopoly in the field of public information is prohibited, that is, the Law stipulates that no one can have a monopoly on the publication of information, ideas and opinions in the media, nor on the establishment or distribution of media.[3] In addition, the law in question enables the publication of information about the media, and states that the publication is made possible, among other things, for the protection of media pluralism.[4]

It should be noted that in the period from September 7 to October 7, 2023, a public debate is being held on the draft of the new Law on Public Information and Media, and that it can be expected that the draft in question will soon enter the parliamentary procedure.

In addition to the above, we can also mention the new Law on Electronic Communications[5] which is relevant in the context of the media in terms of regulating the transmission of media content to end users. In certain provisions, the subject law refers to issues of monopoly position and the issue of concentration. Namely, the law establishes that the operator has the right to demand joint use (including physical collocation) of network elements and associated assets of another operator or a third party, as well as real estate for the use of which another operator or a third party has established the right of easement or real estate that has been acquired in the process of expropriation, i.e. when it is not possible to build or install a new electronic communication network and related assets without harmful consequences for the environment, public safety, the realisation of spatial plans or the preservation of cultural assets.[6] Therefore, in cases where, for objective reasons, it is not possible to provide a new electronic communication network and associated means, the operator is authorised to demand the use of the existing one from another operator/third party.

Also, the Law on Electronic Communications establishes the concept of a business entity with significant market power, and defines that the entity has that status if it alone or together with other business entities has a dominant position, i.e. a position that allows it to act independently to a significant extent of its competitors, its users and consumers. Certain criteria for determining the status of an economic entity with significant market power have also been prescribed.[7] In order to prevent the negative consequences of a possible monopoly position/concentration, it is important to point out that entities with the status of entities with significant market power, when determining the relevant status, may be assigned special obligations, namely:

- publication of certain data;
- obligation of non-discriminatory behaviour;
- accounting separation obligation;
- obligation to access construction infrastructure;
- obligation to access and use network elements and related assets;
- price control and application of cost accounting;
- provision of retail services under certain conditions.[8]

Finally, it should be pointed out that Article 78 of the Law enables the regulator, as a supervisory body, to take measures aimed at protecting competition by determining the separation of a vertically integrated business entity.

The general act that regulates the prohibition of a monopolistic position in a general way and with a wider effect is the Law on the Protection of Competition.[9]

[3] Law on Public Information and Media (Official Gazette of the Republic of Serbia, nos. 83/2014, 58/2015 and 12/2016 - authentic interpretation) Article 6
[4] Law on Public Information and Media (Official Gazette of the Republic of Serbia, no. 83/2014, 58/2015 and 12/2016 - authentic interpretation) Article 7
[5] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023)
[6] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023) Article 55
[7] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023) Article 68
[8] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023) Article 70
[9] Law on Protection of Competition (Official Gazette of the Republic of Serbia, No. 51/2009 and 95/2013)

What types of media are included in or excluded from the regulation? Is there regulation for digital media?

The Law on Public Information and Media regulates in detail what can be considered media and its provisions apply to all media, including digital media. In other words, the term media, as defined in the Law means a means of public information that transmits editorially shaped information, ideas and opinions and other content intended for public distribution and an unspecified number of users in words, images, or sound. In the sense of this Law, the term "media" in particular means daily and periodical newspapers, the service of a news agency, radio and television programs and electronic editions of those media, as well as independent electronic editions (editorially designed Internet pages or Internet portals), which are registered in Media Registry, in accordance with this Law.

In order to narrow the scope for interpretation, the LPIM further specifies that media does not mean: the following: book, film, carrier of audio and audio-visual content, scientific and professional magazine intended primarily for information or education of a certain professional group, other print publications, catalogue containing only notices, advertisements and information intended for the market or newsletter and similar publications intended for internal information , electronic publication of state bodies and organisations, institutions, public companies and business associations, entrepreneurs and their associations, official gazette, printed material such as leaflets, posters and similar means of public information, other publication in terms of regulations governing publishing, as well as internet- search engines and aggregators, platforms, such as Internet forums, social networks and other platforms that enable the free exchange of information, ideas and opinions of its members, nor any other independent electronic publication, such as blogs, web presentations and similar electronic presentations, unless they are registered in the Media Registry, in accordance with this law. Namely, the key criterion for media identification in the law of the Republic of Serbia is whether it is registered in the competent media register or not.[10] As mentioned earlier, the draft of the new Law on Public Information and Media is currently under public debate, which, in addition to the concept of media publisher, introduces the concept of producer of media content and defines it as a legal or physical entity that, as an activity, produces content intended for publication in media, and is not a publisher.[11]

In addition to the LPIM, there are two more Lex Specialis laws, namely the Law on Electronic Media, which complements the LPIM in terms of more closely regulating the rights and obligations of electronic media, i.e. those outlets that provide services by broadcasting on radio and television. As with the Law on Public Information and Media, a public debate on the draft of the new Law on Electronic Media will be held from September 7 to October 7, 2023.

Another media law - the Law on Public Media Services, regulates in detail the Public Media Services in the Republic of Serbia - namely Radio Television of Serbia and Radio Television of Vojvodina.

It should be noted that no law regulates internet portals as a special form of media, but general legal provisions are applied analogously to internet media.

On the other hand, electronic communications, i.e. the method of distribution of audio, visual and telecommunication content, are regulated by the Law on Electronic Communications, which in a broader sense can also be called the media law.

According to the LPIM, the term media also covers news agencies, which deal with the collection, processing and distribution of news/information to the media, which further process and transmit the information to end users, i.e. to a wider public. Currently, there are a large number of news agencies operating in the territory of the Republic of Serbia. Some of the more famous news agencies are Tanjug, Beta, Fonet, RINA, Jugpress.

[10] Law on Public Information and Media (Official Gazette of the Republic of Serbia, nos. 83/2014, 58/2015 and 12/2016 - authentic interpretation) Articles 29 - 30

[11] Draft of the new Law on Public Information and Media, Article 41, Paragraph 1.

Among the listed news agencies, Tanjug is specific, since it is a news agency established by the state, by a special law, while the LPIM applies to the others. However, in the transitional and final provisions of the Law on Public Information and Media, namely Article 146, it is stipulated that the Law on Public Enterprise, the news agency Tanjug, ceases to be valid on the date of signing the purchase agreement, i.e. no later than October 31, 2015, so the Government of the Republic of Serbia passed decision on the termination of the existence of the news agency in question and it was deleted from the register of the Business Registers Agency, whereby the deletion was made on 09.03.2021. However, it should be noted that previously the Government of the Republic of Serbia made a conclusion by which it gave its consent to the contract by which the company "Tačno" doo Beograd-Stari grad acquired the right to use the property rights that previously belonged to the news agency Tanjug in the following period of time, and that the aforementioned company currently operates under the Tanjug brand and has registered 6 news services based on the services of the former Tanjug, which have since been deleted from the Media Register, so it can be said that the Tanjug news agency is still operating, with the fact that it is now in question privately owned news agency.

Furthermore, within the Beta and Fonet news agencies, several special media services are registered. 8 different media or services are registered by the Beta press doo news agency, while 6 special media services or media are owned by the Fonet newspaper publishing company. As for other news agencies, they are smaller news agencies, so for example news agencies RINA and Jugpress each have 1 media or service in their ownership.

If no – or not sufficient – legislation exists: is there legislation in the making? What is the status quo of the political process?

The Republic of Serbia started the reform of media laws several years ago, i.e. in 2014, when the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasting. In addition, in 2023, the new Law on Electronic Communications entered into force.

At the time of writing this analysis, there are currently two proposals for amending the lawa concerning the media in the parliamentary procedure, whereby one referring to amendments to the Law on Public Information and Media was submitted on September 15, 2022, while the other refers to amendments to the Law on Electronic Media, and has been in the procedure since September 27, 2022. However, the proposed amendments are not of importance for the monopoly position in the media nor the provisions pertaining to concentration and ownership of the media.

Finally, it should be noted that the Strategy of Development of of the System of Public Information in the Republic of Serbia for the period 2020-2025 is also in force, which was adopted by the Government of the Republic of Serbia at the beginning of 2020, all based on the Law on the Planning System of the Republic of Serbia (Official Gazette of the Republic of Serbia, number 30/18), and which partially addresses the situation regarding media concentration.

Please, describe how the law defines media concentration (e.g. cross-ownership; audience share, circulation, turnover/revenue, the share capital or voting rights). Are family members included in the conflict of interest rules? How is their affiliation considered in the definition of ownership?

The LPIM regulates horizontal media concentration through restrictions on ownership and management rights, and according to the criteria of print circulation and viewership in electronic media.

Thus, the LPIM prescribes the following:

> *In order to prevent the emergence or strengthening of the dominant influence in the field of public information, which significantly limits media pluralism, merging is not allowed:*

- *founding or management rights in two or more publishers of daily newspapers that publish information from all areas of social life, whose total annual circulation exceeds 50% of the sold or otherwise realised circulation of daily newspapers on the territory of the Republic of Serbia, in the calendar year preceding the merger;*
- *founding or management rights in two or more publishers that provide audio or audio-visual media services, whose combined share in listening or viewing exceeds 35% of the total listening or viewing in the coverage area, in the calendar year preceding the merger.*

Consolidation of founding, i.e. management rights implies the possibility of decisive influence on the conduct of business in two or more publishers, especially in the capacity of controlling (parent) company, i.e. controlling member or shareholder, on the basis of ownership or other property rights on property or part of property, on the basis of rights from contracts, agreements or securities, on the basis of claims or means for securing claims or on the basis of business practice conditions.

Paragraphs 1 and 2 of this Article do not call into question the application of the provisions of the law regulating the protection of competition.

Nevertheless, the draft of the new Law on Public Information and Media should also be noted here, which is modified to a certain extent by the previously cited Article, so the draft in question, namely item 2, paragraph 1 of the Article in question, proposes the following amendment:

- founding, i.e. management rights in two or more print media publishers that publish information from all areas of social life, regardless of the publication dynamics, whose total annual circulation exceeds 50% of the sold or otherwise realised circulation of the respective print media at the relevant national, regional or local market in the calendar year preceding the merger.

Also, new paragraphs 2 and 3 of the same article were proposed, which read:

"A relevant market in the sense of this law is considered to be the territory where publishers publish print media that publish information from all areas of social life, or provide audio, i.e. audio-visual media services, and where the same or similar conditions of competition exist, which significantly differ from the conditions of competition in neighboyring territories.

When determining the relevant market, the criteria for determining the relevant geographic market prescribed in accordance with the law regulating the protection of competition are taken into account."

Therefore, an important change in the subject draft is the introduction of the concept of the relevant market, which expands the application of the subject provision in the sense that the relevant territory for observing the prohibition of media pluralism is no longer only the entire territory of the Republic of Serbia, but can also be a narrower territory within the state.

In the Republic of Serbia, there is also the Law on Protection of Competition (LPC),[12] which regulates this area in detail, and it applies to all legal and natural entities in the Republic of Serbia, including media owners.

The concept and types of related parties are also regulated by the Companies Act[13] (CA).

LPIM calls for the parallel application of the provisions of the Law the Protection of Competition when related parties are concerned, while the LPC points to the parallel application of the provisions on related parties of the CA, if they are not in conflict.[14]

[12] Law on Protection of Competition,https://www.paragraf.rs/propisi/zakon_o_zastiti_konkurencije.html (official Gazette 51/2009, 95/2013)
[13] Companies Act http://www.paragraf.rs/propisi/zakon_o_privrednim_drustvima.html (Official Gazette 36/2011, 99/2011, 83/2014 - other law and 5/2015)
[14] Law on Protection of Competition http://www.paragraf.rs/propisi/zakon_o_zastiti_konkunercije.html (Official Gazette 51/2009 and 95/2013)

As the LPIM does not regulate related natural entities, such as family members, the provisions of the CA are applied accordingly, where it is exhaustively listed who is to be considered a related person in relation to a natural entity:

1. his/her blood relative in the direct line, blood relative in the collateral line including the third degree of kinship, spouse and common-law partner of these persons;
2. his/her spouse and common-law partner and their blood relatives including the first degree of kinship;
3. his/her adoptive parent or adoptee, as well as the adoptee's descendants;
4. other persons who live with that person in a joint household.

Does legislation take into account vertical integration (i.e. control by a single person, company or group of some of the key elements of the value chain, i. e. production, aggregation, distribution and related industries such as advertisement or telecommunications)? How?

The LPIM forbids the same legal entity to engage in publishing and distribution, but conditions the performance of other activities through a related legal entity.

Related legal entities according to the LPIM, are considered to be persons that are connected in such a way that one or more of them has the possibility of decisive influence on the management of the affairs of another or other legal entities, and in particular the influence resulting from:

1. properties of the controlling (parent) company, i.e. the controlling member or shareholder, acting independently or jointly, according to the rules on related companies in the sense of the law regulating the position of companies;
2. ownership or other rights on the property or part of the property of another legal entity;
3. contracts, agreements or ownership rights on securities;
4. liabilities, means of security or conditions of business practice owned by the holder, i.e. determined by the controlling entity.

The same legal provision stipulates that it is not allowed to acquire a share of more than 50% in the founding capital between a publisher of a daily newspaper, which publishes information from all areas of social life, with an average daily realised circulation of more than 50,000 copies per year, and a publisher that provides audio and audio-visual media services. The draft of the new Law on Public Information in the Media added another paragraph which establishes that it is not allowed to acquire a share of more than 50% in the founding capital between publishers of print media that publish information from all areas of social life, regardless of the dynamics of publication, and publishers that provide audio and audiovisual media services in the same relevant market narrower than national.

Media laws introduced the monitoring of media pluralism through listenership, viewership and media circulation (depending on the type of media), which proved to be an insufficient and inadequate parameter for evaluating media pluralism. The laws do not clearly define the method of determining and measuring these shares, as well as the methods of verifying data on the preferences of the media audience. Data on the preferences of media consumers in the process of determining media concentration are obtained through the statements of media publishers, without further checking the accuracy of these data. In addition, the law does not clearly define the procedure of the Regulatory Authority for Electronic Media (REM) in the process of determining whether in a specific case there has been unification of ownership or management, nor have the legal consequences been established if, after the approved unification, the threshold established by law is exceeded. The concept of media pluralism cannot be equated with the concept of ownership pluralism in the media, because, in the case of the media, pluralism also refers to the variety of sources of information and media content. It is precisely the variety of sources of information that allows the audience to create their

own opinion, freed from the influence of the dominant source. Limiting associating related to ownership is not the only way to ensure media pluralism. There are no adequate criteria for measuring media pluralism in terms of content, especially when it comes to news programs, and the uniformity of media content (especially news programs) represents a trend that is dangerous for media pluralism. High thresholds regarding the share in viewership, listenership or sold circulation, as well as the abolition of restrictions on the networking of media services, and enabling operators to provide media services with minimal regulatory requirements, led to consolidation on the media scene for economic reasons, but at the same time increased the risk to the pluralism of media content.

The rules on media concentration do not sufficiently elaborate the criteria for evaluating the simultaneous ownership of media in different sectors. Also, there are no rules on platform neutrality that would measure the pluralism of media content on the Internet, cable and other forms of distribution, OTT platforms, etc.[15]

Have there been changes in the legislation on media concentration issues over the past 5 years? Have there been any major new market entrants or mergers & acquisitions (M&As)? How have these cases been handled? Have there been any important conflicts?

At the time of writing this report, the Law on Public Information and Media, which regulates issues of concentration, passed in 2014, is still in force. With the adoption of the LPIM, the previous Law on Public Information, which also regulated this area, ceased to be valid.

However, in 2018, the Law on the Central Register of Beneficial Owners was adopted[16] which stipulated the obligation to register, which regulates the establishment, content, basis of recording and the manner of keeping the Central Register of Beneficial Owners of Legal Entities and other entities registered in the Republic of Serbia, and which law is applied and on publishers and media owners.

The aforementioned law provided for mandatory records of the so-called beneficial owners for all legal entities, cooperatives, foundations, associations, etc., and the beneficial owner is defined by the law as the following persons:

- natural entity controlling, either directly or indirectly 25% or bigger stake, shares, voting rights or other rights based on which it has a stake in the management of the registered entity, namely it has a stake in the capital of the registered entity of 25% or more;
- Natural entity that, either directly or indirectly has a prevailing influence on operations and decisions
- natural entity that indirectly provides or is providing funds to the registered entity and, based on that, has a significant influence on the decisions of the managing body as regards funding and operations;
- Natural entity that is the founder, administrator, protector, beneficiary, if determined, as well as the person that has a dominant position in the management of trust, namely another entity envisaged by foreign law;
- Natural entity registered to represent cooperatives, associations, foundations, endowments and institutions, if the person authorised to represent the company has not reported another natural entity as beneficial owner.

At the same time as recording, data is published on the website (portal) of the Agency.

The Law on the Central Register of Beneficial Owners, Article 13, prescribes criminal liability for a person who, with the intention of concealing the real owner of a Registered Entity, does not enter information about the real owner of a Registered Entity in the Central Records, writes false information about the real owner of a Registered Entity as true, changes or deletes true information about the real owner of the Registered Entity, and the criminal offence in question is punishable by imprisonment from three months to five years.

[15] Strategy of Development of of the System of Public Information in the Republic of Serbia
[16] Law on the Central Register of Beneficial Owners (Official Gazette of the Republic of Serbia, no. 41/2018)

In addition to criminal liability, Article 14 of the law prescribes misdemeanour liability, and determines that a fine of RSD 500,000 to 2,000,000 will be imposed on the Registered Subject - legal entity in the following cases:

- if it does not record data on the real owner of the Registered Entity in the Central Registry within 15 days from the day of establishment of the Registered Entity
- if it does not record data on the real owner of the Registered Entity in the Central Registry within 15 days from the date of the change in the ownership structure and members of the bodies of the Registered Entity, as well as other changes on the basis of which the fulfilment of the conditions for acquiring the title of the real owner of the Registered Entity can be assessed;
- if it does not register the correct data from Article 5, Paragraph 2 of this Law in the Central Records;
- if the Registered Entity - legal entity does not have, or does not keep, appropriate, accurate and up-to-date data and documents on the basis of which it registered the real owner of the Registered Entity (Article 10, paragraph 2);
- if it did not record data on the real owner of the Registered Entity in the Central Registry by January 31, 2020.

In addition to misdemeanour liability for the Registered Entity - legal entity itself, the law also prescribes misdemeanour liability for the responsible person in the specific Registered Entity - legal entity, in the form of a fine in the amount of RSD 50,000 to 150,000.

Whether there is a monopolistic position in the media was determined on the basis of the Law on Protection of Competition.

In terms of examples of concentration in the media, one can cite the example of United Group, which broadcasts channels owned by it regionally throughout the former Yugoslavia. Namely, television N1 comes into focus at the moment when United Group takes over the leading Serbian cable operator SBB, which has a market share of about 50%. In this way, N1 Television found itself in a privileged position, because already in March 2017, SBB changed the channel numbering, without the consent of the Regulator, and placed N1 Television in first place. Although a report was submitted to the Regulatory Authority for Electronic Media (Regulator) and asked to state whether SBB has the right to independently change the channel numbering and react, SBB did not change its decision and N1 is at the top of the channel list.[17] Also, United Group has meanwhile become the owner of several other media in the Republic of Serbia. First of all, with the purchase of the publisher DAN GRAF, the daily newspaper "Danas" is under the control of the aforementioned media company. In addition, television and newspaper Nova S were founded, also owned by United Group, and in terms of regional media, it should be noted that Montenegrin Vijesti newspaper is also under the control of the same entity.

Taking into account the provisions of the LPIM on vertical concentration, N1, as well as the other mentioned media, on the one hand, and SBB, on the other hand, do not formally violate the law because they act as two separate legal entities.

Although in accordance with the law, such concentrated media and distributors of media content call into question the market and the issue of freedom of competitive position, through favouring broadcasters or content that are within the same grouping.

Is media concentration currently on the agenda on legislators and policy makers? What are the blind spots on media concentration legislation?

Formally, the competent authorities (the Ministry and the Regulator) take care of the concentration of the monopolistic position in the media, and there is a lot of talk about this in the public.

[17] https://sbb.rs/eon-tv/programska-sema

However, looking at the structure of the media in Serbia, the current limit of 35% share in viewership, or 50% in readership, is practically impossible to exceed, so this type of monitoring is mostly without significance and concrete effects.

At the same time, such a high limit is also the biggest weakness of the current media regulation in Serbia, when it comes to concentration.

The new Strategy for the Development of the Public Information System in the Republic of Serbia, based on the Law on the Planning System of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 30/18), foresees the necessity of implementing measures in order to improve regulations governing concentration issues, which include the following activities:

- determine the functionality, conditions and state of competition in the media and related markets (media content distribution market, advertising market, etc.), especially with regard to determining the danger of illegal media concentration, the danger of media pluralism, and whether there are structural and economic pressures on the media that threaten their integrity and independence;
- provide quality and verified data on the preferences of the media audience through support for projects to improve existing measurement systems;
- determination of measurable criteria for measuring media concentration thresholds;
- by amending the regulations, clearly establish the powers of the Regulatory Authority for Electronic Media when determining whether there has been an unreported unification of ownership, i.e. management, as well as appropriate ex post protection mechanisms that would be activated in cases where thresholds established by law were subsequently exceeded;
- determining the criteria and monitoring dynamics of various elements of the diversity of media content (especially when it comes to informational programs and pre-election reporting);
- make an analysis of the relevant media market at the national, regional and local level[18]

Is there specific legislation on foreign investment/ownership within the media business?

According to Serbian legislation, foreign companies are not allowed to directly establish media in the Republic of Serbia.

Although the LPIM states in principle that any legal or natural entity can be the founder of the media, already in the next paragraph of the same article it adds that the founder must be registered in the Business Registers Agency of the Republic of Serbia, in order to perform the activity in question.

Thus, if a foreign media company wants to register a medium in the Republic of Serbia, it must first establish a company in the Republic of Serbia under its ownership, and the newly registered company has the right to register the medium in the competent registry.

As stated earlier in the text, the change that is relevant to this issue is the change introduced by the draft of the new Law on Public Information and Media through the introduction of the term producer of media content, which term has already been explained earlier, whereby it should be emphasised that the producer of media content, as well as the media publisher, must be registered with the body of the Republic of Serbia responsible for commercial registers, so that everything that has been said about a foreign media company with regard to its business as a publisher also applies to its business as a producer of media content.

[18] Strategy of Development of of the System of Public Information in the Republic of Serbia

I.2. Implementation – control and monitoring of media concentration

Is there an institutional system to address media concentration in place? What sectors – e.g. press, broadcasting or new media – are included? What are the responsible bodies governing media concentration? What are the tasks, duties and responsibilities of the authority/ies defined in detail in the law (e.g. grant licenses, compliance monitoring, sanctioning, other)?

The threat to media pluralism is determined by the competent ministry, when it comes to print media and their online editions. For electronic media, in terms of the Law on Electronic Media, the independent regulatory body (Regulatory Authority for Electronic Media) is responsible.

When it determines that media pluralism is endangered, the competent Ministry/Regulatory Authority for Electronic Media warns the publisher about it and orders it to, within six months from the day of receiving the warning, submit evidence that its actions have eliminated the causes of endangering media pluralism and inform the competent media register (which is kept at the Business Registers Agency) about the issued warning.

If the media does not comply with the issued warning, the Ministry / Business Registers Agency issues a decision ordering the Registry to delete the relevant media from the registry.

The Law on Electronic Media specifically stipulates that тхе Regulatory Authority for Electronic Media will not issue a license for the provision of media services to an electronic media if it determines that media pluralism in the sense of LPIM would be threatened by its issuance.

Given that print media and digital editions can be registered without obtaining prior permission, this provision does not apply to them.

The holder of the license to provide services via electronic media must previously report to REM, any change in the ownership structure in the basic capital (change of owner or change in the amount of ownership shares in the capital of the founder of the media). If the Regulator determines that media pluralism would be threatened by the announced changes in ownership participation in the media founder's capital, it will recommend to the holder of the license to provide media services to make the changes in a way to avoid this situation. If the holder of a license to broadcast content via electronic media does not act in accordance with the recommendation of the Regulator, which causes a threat to media pluralism, REM will revoke its license to work. With the draft of the new Law on Electronic Media, the provisions in question have been partially amended, that is, made more specific. What is new is that it is defined that the provisions in question apply to the planned change of the ownership structure, as well as that the REM issues a decision on consent to the planned change, that is, a decision by which it will not issue consent to the planned change.

In addition to license revocation, the Law on Electronic Media also prescribes economic offences and misdemeanours for license holders that threaten media pluralism.

If the service provider does not submit proof that it has removed the situation that endangers media pluralism after REM's warning, it will be fined for an economic offence with a fine of 100,000 dinars to 1,000,000 dinars, and the responsible person at the service provider will be fined 10,000 dinars up to 200,000 dinars. If the provider of the media service is an entrepreneur and not a legal entity, it will be punished for a misdemeanour (instead of an economic offence) and a fine from 10,000 dinars to 500,000 dinars. As for the draft of the new Law on Electronic Media, the amounts of fines have mostly remained unchanged.

Media pluralism when it comes to electronic media is also protected by provisions related to the obligation to transmit radio or television programs by operators whose electronic communication network for the distribution and broadcasting of media content is used by a significant number of end users as the only or

primary way to receive media content. . The REM publishes a list of programs that must be broadcast at least once every three years.

However, it should be noted here that the draft of the new Law on Electronic Media is the article in question, i.e. the obligation to transmit as a measure to protect media pluralism is defined in much more detail, so it is established that the regulator (REM) establishes a list of media services of television and radio whose program contents are from of importance for the realization of public interest in the field of electronic media and public information in the appropriate geographical areas for which the services have been licensed and whose unavailability to a significant number of citizens (at least 40% of citizens in the appropriate geographic area) in that area would lead to a disruption of the achievement of the objectives of the public interest or media pluralism. In particular, program content is considered to be of public interest if that content meets at least one of the following criteria:

1. if it would meet the needs of citizens in the appropriate geographical area for informative, scientific-educational, entertainment, cultural-artistic and children's programs;
2. if it makes a significant contribution in the field of information, culture and education, by providing free, truthful, objective, complete and timely information, as well as through content that contributes to enlightenment, decency, social and spiritual development of citizens and overall spiritual, moral and social community development;
3. if it makes a significant contribution to the preservation of the cultural identity of the Serbian people or the national minority living in the corresponding geographical area;
4. if there is a significant amount of content intended for truthful, unbiased, timely and complete information of national minorities in their native language and encouraging understanding, appreciation and respect for the differences that exist due to the particularity of their ethnic, cultural, linguistic or religious identity;
5. if there is a significant amount of content intended to inform persons with disabilities or other minority groups or content aimed at improving their integration into society;
6. if there is a significant presence of program contents that are accessible, that is, they allow access to people with impaired hearing or vision;
7. if content intended for children or youth is represented to a significant extent;
8. if it would enrich and improve the offer of program content in the corresponding geographical area, by providing access to new types of program content that are otherwise not available in that area;
9. if scientific-educational, cultural-artistic, documentary or children's programs, i.e. programs for children or youth, together or individually, make up more than 20% of the total annual published program.

Furthermore, according to the current law, if the operator does not act in accordance with the order of the REM and does not transmit programs from the list, it will be fined for an economic offence with a fine of RSD 100,000 to RSD 1,000,000, and the responsible person at the operator, with a fine of RSD 10,000 up to RSD 200,000.

When it comes to print media and digital internet editions, if the media publisher - a legal entity - does not act upon the warning of the competent Ministry, it will be fined from RSD 100,000 to RSD 1,000,000, and the responsible person at the publisher will be fined RSD 10,000 to RSD 200,000.

If there are more than one authority assigned (e.g. media authority, competition authority, etc.): how is the differentiation of competencies of the diverse authorities defined? Does it work or are there overlaps or blind spots?

The Ministry responsible for information affairs is responsible for ensuring the protection of media pluralism for print media and digital internet editions, based on the LPIM.

The Independent Regulatory Body (REM) is responsible for electronic media, and acts on the basis of regulations and procedures for preventing threats to media pluralism, more specifically defined in the answer to the previous question, and on the basis of the Law on Electronic Media and the LPIM.

The LPIM also emphasizes that the provisions of that law do not affect the application of the provisions regulating the Law on Protection of Competition.

There is no overlap in that part between the LPIM and the Law on Electronic Media, because it is more or less precisely defined which media services are covered by the prescribed rules and procedures.

However, the LPIM and the Law on Electronic Media overlap with the Law on Protection of Competition, which is applied in parallel, and this inaccuracy is also a lack of regulation for the protection of media pluralism.

The Ministry of Culture and Information performs state administration tasks in the field of public information, including supervision of the implementation of the Law on Public Information and Media, through the Information and Media Sector, which includes: Department for normative affairs, project co-financing and records of foreign correspondents and correspondent offices (in which there are Group for normative affairs and Group for project co-financing and development of media pluralism) and Group for European integration, international cooperation and implementation of programs and projects financed from international funds in the field of public information). The total number of civil servants in the Media Sector is 11, and two civil servants work within the Normative Affairs Group, one of whom is the head of the group. On the other hand, the Ministry of Culture and Information does not sufficiently use other, more flexible mechanisms available to it under the Law on State Administration, which determine the way in which state administration bodies and holders of public authority execute certain provisions of the law or other regulation. Precisely a by-law act such as the Instruction, could serve as an adequate guideline in terms of how state bodies and other holders of public authority should apply the provisions of the LPIM that have proven to be the most problematic in practice, for example, when it comes to provisions that arrange entry into the Media Register. Opinions, which are issued at the request of legal and natural entities, in practice have a good effect in situations where there is doubt in the application of legal norms, regardless of the fact that they are not binding. Also, the notification, as a form of indicating certain legal provisions, would contribute to greater and more uniform application of certain legal provisions. The biggest problem is that in exercising supervision over the Law on Public Information and Media, the Ministry of Culture and Information does not have sufficiently effective mechanisms (reduced to the initiation of proceedings for economic offence and misdemeanour proceedings in a fairly limited number of cases) and modest measures in the area of establishing media pluralism.[19]

Are there any explicit constitutional or other legal guarantees of independence of the authorities (media, competition, telecommunication...) from political and/or commercial interference?

The Constitution of the Republic of Serbia, considering the character of the act itself, looks in quite detail at the freedom of the media, but also the right of citizens to be informed. It also guarantees the rights of opinion and expression.

After the Constitution, as the highest state act, the next level of guaranteeing media freedom is provided by laws, that is, the most general media act among them - the Law on Public Information and Media (LPIM), which at the very beginning, through the principles and goal of the law itself, stipulates that public information is free and not subject to censorship, that the public has the right and interest to be informed about matters of general interest, that monopoly in the media is prohibited, and information about the media is public.

[19] Strategy of Development of of the System of Public Information in the Republic of Serbia

The independence of the regulatory body, also through the principle of division of power into legislative, executive and judicial, is ensured first of all by the Constitution itself, and considering that according to the provisions of the Law on Electronic Media (LEM), the REM members are elected by the National Parliament.

It is prescribed that a member of the REM Council cannot be a person who performs a public function, i.e. a function in a political party in the sense of the regulations governing the rules regarding the prevention of conflicts of interest in the performance of public functions. The same law also regulates that members of the Council are proposed by the committees of the National Parliament and the Assembly of the Autonomous Province. Accredited universities, competent associations of electronic media publishers, associations of film, stage and drama artists and associations of composers, competent associations whose goals are the realisation of freedom of expression and the protection of children, national councils of national minorities, churches and religious communities, submit proposals by mutual agreement at the level of the relevant universities, that is, associations. It was emphasized that the members of the Council do not represent the views or interests of the bodies or organizations that proposed them, but perform their duty independently, according to their own knowledge and conscience. It should be noted that the procedure for electing REM council members has been partially changed within the draft of the new Law on Electronic Media. Namely, although members are still elected by the National Parliament as the holder of legislative power, the authorised proposers have been changed. According to the new draft, these are the Protector of Citizens, the Commissioner for Equality, universities accredited in the Republic of Serbia, associations of electronic media publishers whose members have at least 30 licences to provide audio and audio-visual media services and have been registered for at least 3 years before the announcement of the public call, associations of journalists in the Republic of Serbia, of which each association has at least 300 members with paid membership fees and were registered at least 3 years before the announcement of the public call, associations of film, stage and drama artists and associations of composers in the Republic of Serbia if they were registered at least 3 years before the announcement of the public call, associations whose goals are the realisation of freedom of expression and associations whose goals are the protection of children if they are registered at least 3 years before the announcement of the public invitation and if they have at least 3 implemented projects in that area in the last 3 years, national councils of national minorities, as well as churches and religious communities.

However, despite the legal guarantees, there is still a great possibility of political influence during the election of Council members, delay in the election of Council members, non-approval of the Statute, the application of regulations on the position of employees in the state administration and regulations on public procurement limit the organizational independence of the regulatory body to a considerable extent.

The existence of personal and functional independence of this body was questionable in numerous situations. Namely, although the role of the competent parliamentary committee in the process of electing members of the Council is only of a technical nature, this body directly influenced the election of individual members of the Council (in the case of the election of members of the Council on the proposal of civil society organizations). Also, the term of office of certain members of the Council has expired, and the procedural steps to elect new ones have not been followed. The consequence of all this is that there have been situations in which the Council functions for a long period of time with only six instead of nine members, as well as the fact that the majority of the Council's convocation is made up of members proposed by the state. All of this affects the quality of the Regulator's work, since not all the structures of society provided for in the Law on Electronic Media are included in the decision-making process. Finally, it should be noted that the Law on Electronic Media does not contain clear criteria for the selection of Council members or provisions on the responsibility of Council members. The draft of the new Law on Electronic Media made a partial step forward with regard to the criteria for selecting REM council members, so the draft established that a member of the council can only be a person who has a higher education in basic academic studies in the scope of at least 240 ECTS, i.e. in basic studies lasting at least four years, who is a citizen of the Republic of Serbia and resides in the territory of the Republic of Serbia. Also, since it was stated that the members of the REM Council are reputable experts in the fields that are important for the performance of tasks under the authority of the regulator, it was also stated who in particular is considered such an expert, namely:

1. professors and scientific associates who have at least ten years of work experience in the profession, at faculties where journalism, communication and media are studied, in fields and scientific disciplines related to journalism, communication and media, if those faculties have existed for at least 20 years;
2. journalists and editors with at least ten years of experience in content production and editing or management in electronic media, radio and television.
3. experts who have at least ten years of experience in electronic media business, or deal with the media market and other tasks in the field of electronic media in professional domestic and international organisations, in particular: lawyers, political scientists, communicators, sociologists;
4. musicians, writers, directors, screenwriters, who have at least ten years of experience working on electronic media programs;
5. media researchers who have been engaged in media research at universities, institutes and other professional organisations or civil society organisations for at least ten years.

The independence of the Council of the Regulator is of key importance for the independence of public media services, given that the Council of the Regulator elects the Management Boards of public media services, which further appoint directors, elect members of the Program Council, appoint and dismiss chief and responsible editors, as well as program directors, if they are those provided for in the PMS Statute, and on the proposal of the general director appoints responsible editors of programs in the language of the national minority.

How are the appointment procedures for the authorities defined (e.g. transparent, democratic and objective and designed to minimise the risk of political or commercial interference, for instance by including rules on incompatibility and eligibility? Are they respected in practice?

Although in the Republic of Serbia, legislative, judicial and executive powers are formally separated, in practice they intertwine and spillover of influence from one to the other is inevitable. As far as the media is concerned, the influence of the executive power on the legislative power and vice versa is particularly important.

Namely, as REM Council members are elected by the Parliament from among distinguished experts in the fields that are important for the performance of tasks within the competence of the Regulator (media experts, economists, lawyers, telecommunications engineers, etc.), the final word on their selection is given by the Parliament, i.e. there is an open space for people who correspond to the interests of the parliamentary majority to be elected to the membership of the Council.

Also problematic is the procedure of candidacy itself, that is, the legally prescribed joint coordination of proposed candidates, at the level of universities and associations, where there are possible influences of political interests.

Although compared to the previous regulation, the criterion for associations that have the right to propose candidates has been tightened, so the condition is set that at least 3 years have passed since their establishment, unclear procedures regarding the way of proposing within the associations themselves, lobbying and over-voting of interest groups, also affect to the choice of candidates.

The solutions proposed in the draft of the new Law on Electronic Media did not make a step forward in terms of increasing the autonomy and independence of the regulator, since the procedure largely remained the same, with the determination of the difference in terms of authorized proponents, all as explained earlier in the text.

Executive powers are another criterion for assessing the independence and authority of the regulatory body. However, of the measures available to the Regulator, two have proven to be ineffective in practice (reprimand and warning), while the remaining two, although legitimate, can significantly limit media freedom,

so they are rare (temporary ban on publishing program content) or not imposed at all (revocation of license). The regulator does not have the ability to perform inspection supervision, nor does it have other more flexible enforcement mechanisms at its disposal, such as, for example, monetary sanctions.

Nevertheless, it should be noted here that the draft of the new Law on Electronic Media expanded the powers of the regulator, as well as that the method of conducting the procedure was determined in more detail in the chapter entitled Supervision and Control. As far as supervision is concerned, the draft in question establishes that the regulator, through direct insight into the actions of media service providers, supervises the implementation of the law in question and the regulations adopted on the basis of it, with the aim of ensuring the legality of the actions of media service providers through preventive action or imposing measures or taking other actions and prevent or remove violations of the law or harmful consequences of goods protected by law. In addition to supervision itself, the regulator monitors and analyses the situation in the area of media services, by collecting and analysing data and monitoring and analysing the situation in that area, through direct insight into individual or entire program contents (monitoring programs), by analysing program contents, data, notifications, documentation obtained from media service providers, data obtained from public authorities, associations and institutions that monitor the situation in the field of media services, public opinion research, statistical and other data, collection and analysis of administrative, judicial and business practices from areas of media service provision.

The draft also defines preventive action as the ability of the regulator to undertake activities and measures of preventive action if it considers that preventive action could standardize the behaviour of media service providers in order to prevent violations of the law or other regulations or if it deems that the publication of a certain type of program content, program format or type of program may lead to a violation of the law or other regulation, while the next paragraph states that preventive action is particularly achieved by publishing valid regulations and monitoring plans, by notifying media service providers about changes in regulations and their rights and obligations, by providing professional and advisory support, by issuing opinions, guidelines or explanations on the application of laws or other regulations.

In addition to the above, the draft of the new Law also defines the manner of initiating and conducting the investigation procedure. As for the specific protection measures envisaged by the draft in question, they are:

- notice;
- warning;
- temporary ban on the publication of program content or temporary ban on the publication of advertising messages;
- temporary revocation of licence or approval for the provision of media services;
- permanent revocation of license or approval for the provision of a media service.

It can be concluded that the draft in question paid more attention to this area compared to the law that is valid at the time of writing this text, and it remains to be seen, if the draft in question is adopted, whether it will, with the application of the stated provisions, bring improvement in terms of of electronic media.

According to the Law on Electronic Media, the media service provider, in relation to its program content, in accordance with its program concept, is obliged to respect the ban on political advertising outside the pre-election campaign, and during the pre-election campaign to provide representation to registered political parties, coalitions and candidates without discrimination.[20] However, this ban is rarely respected, so indirect political advertising outside the pre-election campaign is part of everyday life, and the favouring of certain political options by certain media is the rule. In connection with this topic, the journalist Tamara Skrozza also came into the public spotlight, whose reports about the Government being favoured by the media in the campaign were the reason for her to be labelled by certain media as an opponent of the Government.[21]

[20] Law on Electronic Media (Official Gazette of the Republic of Serbia, No. 83/2014 i 6/2016 - other law), Article 47
[21] https://www.danas.rs/drustvo/rem-ignorisao-nalaze-svojih-sluzbi-da-opravda-kampanje-pinka-i-studija-b/

Also, another problem of the regulatory body is the inability to constantly improve its personnel structure and attract experts from the field of audiovisual media services in the conditions of salary restrictions and employment restrictions in the public sector.

In the reports of the European Commission on Serbia's progress for 2016 and 2018, it was stated that "the regulatory body still lacks independence in the supervision of broadcasters to ensure that they fulfil their program obligations", and that the financial and operational independence of the regulator should be "secured".[22]

Is the budget adequate and consistent for the authority to safeguard its independence and/or protect it from coercive budgetary pressures and to perform its functions?

The REM has its own budget or financial plan, which is adopted by the Council and approved by the National Assembly. Here we emphasise that in the draft of the new Law on Electronic Media, there is no provision establishing that the National Assembly gives its consent to the relevant financial plan of the REM.

The Regulator's income consists of funds generated from the fee paid by the media service provider for obtaining a broadcasting licence. In addition to the above, as another type of income, the draft of the new Law foresees compensation for the provision of services under the jurisdiction of the regulator

The law stipulates that if there is a surplus in the budget of the REM, on the revenue side in one calendar year, it is paid into the state budget. In the past few years, the REM operated with a large surplus, and every year it was obliged to pay the realised profit into the Republic budget.

In case of a negative balance in the REM financial plan, the missing funds are provided from the state budget.

Also, a certain percentage of the Budget of the Republic of Serbia is set aside for the media, and that money is placed through the announcement of tenders for projects in the field of public information, as an attempt to achieve independence and media freedom. The financial independence of the regulator, due to the process of approving the Financial Plan by the National Assembly and the sub-legal act regulating fees by the Government, is also threatened. Since the beginning of the application of the Law on Electronic Media, the Parliament has been late in passing a decision approving the Financial Plan, and that delay continued until the end of 2018. In December 2018, the Parliament, for the first time since the beginning of application of the Law on Electronic Media, approved the financial plan before the beginning of the year to which the plan refers.[23]

What sanctioning power do the authorities have to accomplish its role (e.g. power to refuse license requests and to divest existing media operations where plurality is threatened or where unacceptable levels of ownership concentration are reached)? Are there effective appeal mechanisms?

ISSUE OF LICENCE

The regulator decides on the request for the issuance of a licence by means of a decision.

[22] European Commission (2018). Republic of Serbia: Report for 2018 accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Communication on EU enlargement policy for 2018. Available at: https://bit.ly/2QEnZas i Evropska komisija (2016). Republic of Serbia: Report for 2016 accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Announcement on EU enlargement policy for 2018. Available at: https://bit.ly/2rkgBIP

[23] Strategy of Development of of the System of Public Information in the Republic of Serbia

If the request is in accordance with the law, the REM issues a license for the provision of media services and enters the same in the Register of Media Services, which is normally maintained and updated by the Regulator.

If the legal conditions for issuing a licence are not met, the REM rejects the request by decision

The decision made in this way is final and no appeal is allowed. However, a complaint can be filed with the competent administrative court and an administrative dispute can be initiated.

WITHDRAWAL OF LICENCE

If the reasons specified by the law occur for which the permit ceases to be valid even before the expiration of the legal term, the Regulator issues a decision on the revocation of the licence by a two-thirds majority.

The decision is also final and it is possible to initiate an administrative dispute against it.

SANCTIONS FOR BROADCASTING WITHOUT LICENCE

The Law on Electronic Media also prescribes economic crimes and misdemeanours.

In addition to the warning about the threat to media pluralism, which was discussed earlier, a fine of RSD 1,000,000 to 3,000,000 will be imposed on a legal entity for a commercial offence that broadcasts content without the permission of the Regulator (there is a possibility that the fine can be imposed in proportion to the amount of the offence damage, unfulfilled obligations or the value of goods that are the subject of an economic offence, in which case the fine cannot exceed twenty times the amount of those values), while the responsible natural entity is subject to a fine of RSD 150,000 to 200,000.

In addition to a fine, the regulator can impose a ban on a legal entity from performing certain activities for a period of up to 3 years.

The LEM prescribes a series of offences for failure to comply with the provisions regulating the prohibition of hate speech, the protection of minors, special technical obligations or for failing to obtain prior consent in connection with a change in the ownership structure.

Please describe the method and the criteria for assessing the level of media concentration. e.g. thresholds based on objective criteria, such as audience share, circulation, turnover/revenue, distribution of share capital or voting rights; taking into account both horizontal integration (mergers within the same branch of activity) and vertical integration (control by a single person, company or group of key elements of the production and distribution processes, and related activities such as advertising).

The LPIM regulates horizontal integration in the media through restrictions on ownership and management rights, and according to the criteria of circulation in print media (50%) and viewership in electronic media (35%).

The law does not specifically regulate the attendance of online editions, but the provisions relating to the circulation of printed editions of the media can be applied analogously, which is very difficult to do in practice.

Vertical concentration is the prohibition of participation of more than 50% in the founding capital between publishers of daily newspapers, which publish information from all areas of social life, with an average daily realised circulation of more than 50,000 copies per year, and publishers that provide audio and audio-visual media services. Also, a legal entity that, in addition to the activity of a media publisher, also deals with the distribution of media content, is obliged to perform the activity of a media publisher through a related legal entity.

And here we once again note the draft of the new Law on Public Information and Media, which introduced the concept of the relevant market and expanded the application of the aforementioned provision.

Is the competent authority accountable to the public for its actions (e.g. is it obliged to publish regular or ad hoc reports on its work or the execution of tasks within its jurisdiction)?

The regulator is obliged to publish on its website, free of charge, all adopted decisions, i.e. general and individual acts, as well as other data from its scope, such as the strategy for the development of radio and audio-visual services, by-laws that define in detail the application of the LEM, public tenders for issuing permits and decisions made based on them, data from the register, judgments of the administrative court made in disputes against the decisions of the Regulator, decisions imposing measures based on the law, decisions based on applications, annual report, financial plan, financial and audit reports, professional opinions, minutes of meetings, studies and analyses prepared on the order of the REM, as well as data on public hearings

Can the Government arbitrarily overrule the decision of the authority? In what cases? Are there cases of illegal state interference?

Formally, the Government has no power to change the regulator's decision or directly influence its work.

However, there are indirect influences through the method of electing members, in which way the decision-making in the regulatory body is controlled.

Have there been cases of merger and acquisitions over the past five years? How proactive and how detailed has the authority implemented the regulation on media ownership? Have there been cases in which regulators refused license requests, mergers or forced divestment of existing media operations in order to avoid excessive concentrations of media ownership? What are the main challenges for the authority on the implementation?

The REM has not refused the issuance of any licence in the last 5 years due to a possible violation of the regulations on the prohibition of concentration, that is, it has not revoked any license granted on that basis, which decision it is entitled to on the basis of Article 89, paragraph 1, item 6 of the LEM.

The reason for the termination of validity of permits was mainly the fulfilment of one of the many legal conditions. Such as the termination of the existence of the legal entity of the licence holder, non-broadcasting of content, notification to the Regulator of the intention to stop broadcasting or non-payment of the fee for the provision of media services.

Does decisional practice of the authorities indicate that they use their powers in practice in the interest of the public? Have there been cases of the abuse of regulatory power? What, when? Are the authorities considered a political or technical body?)

The regulatory body does not publish reports from citizens for violating the provisions of media laws, but only decisions, which makes this type of REM activity non-transparent. Many applications were never taken into operation, that is, no decisions were made based on them. The draft of the new Law on Electronic Media

also contains one amendment that is relevant to this issue. Namely, according to the text of the subject draft, the application is considered an initiative for the initiation of the investigation procedure, so it was established that, depending on whether the regulator determined from the application that there are or are not conditions for the initiation of the investigation procedure ex officio, the operator within 30 of the day informs the applicant if there is no place to initiate the investigation procedure, i.e. initiates the subject procedure if the conditions are met, in which case it is obliged to inform the applicant about the outcome of the same.

One of the problems is that the regulatory authority does not conduct regular market analyses, and makes decisions on which the proper functioning of the market depends without the necessary data from those analyses. Also, there is no publicly available, reliable and complete data on the preferences of the media audience. Furthermore, the regulatory authority does not efficiently supervise the work of foreign media service providers, which is why they are in a more favourable position compared to domestic media. Also, domestic (electronic) media face unfair competition from radio and television media service providers, who provide media services via the Internet and are not registered in the Registry of Media Service Providers maintained by the REM. After digitization, regional televisions face additional competition from local televisions that pay far less fees for the same coverage area. In the same way, there are unequal conditions in the media content distribution market due to the lack of regulated rules (logical channel numbering), improper application of existing rules (mandatory transmission rules), non-compliance with the obligations that operators have as "gatekeepers", that is, as entities who actually decide which media service provider will have access to their network, but also due to the fact that these obligations do not apply to new forms of media content distribution.[24]

Thus, the "Support RTV" movement announced and reported by the Beta news agency that more than 100 individual complaints from citizens submitted due to omissions in the work of the broadcaster during the pre-election campaign for the 2017 presidential elections were not published on the website of the Regulatory Authority for Electronic Media (REM) and announced that it will demand from the competent prosecutor's office to determine who in the REM is responsible for ignoring reports and thus abusing his official position.

Because of all this, a complaint about REM's work was announced to the Parliamentary Committee for Information, and the MPs were requested to launch an initiative to replace members of the REM Council.

As explained in the statement of this movement, during the campaign, the Movement launched an action and monitoring of the work of both public services RTS and RTV and together with the citizens submitted more than 100 reports for violations of the law and the Rulebook of the regulator, but they are not listed on the REM website.

The movement also stated that under the Law on Access to Information of Public Importance, it asked REM to provide them with a list of all individual applications they received during the election campaign.

This way of working opens up the possibility of selective decision-making, that is, of working in the interest of certain interest groups that indirectly control the council of the REM through the election method.

In practice, the status of non-national frequency television stations that are broadcast via cable operators also remained unclear, because according to LPIM, mandatory privatization of all media was carried out. However, certain television channels, such as TV Arena sport, are owned by ARENA CHANNELS GROUP DOO BEOGRAD (a company that previously operated under the name HD-WIN d.o.o., Belgrade), and in which company is 100% owned by Telekom AD, Serbia, which is 100% owned by the state.

Although the Republic of Serbia is not the direct holder of the license but a company majority-owned by it, the question of the interpretation of this provision arises.

[24] Strategy of Development of of the System of Public Information in the Republic of Serbia

Inconsistent implementation of the privatisation of the remaining media whose publishers are the Republic of Serbia, an autonomous province, or a unit of local self-government, as well as a publisher that was founded directly or indirectly by an institution, company and other legal entity that is wholly or predominantly in public ownership or that is wholly or mainly financed from public revenues (apart from the exceptions prescribed by media laws) and affects disruptions in the media market. Report of the European Commission on Serbia's progress towards the EU for 2018 explicitly states that "legislation on media should still be fully implemented", which includes the provisions of the Law on Public Information and Media, which regulate the privatization of the above-mentioned category of publishers. For this reason, the obligation to privatize the remaining publicly owned media should also be viewed in the context of the continuation of the European integration of the Republic of Serbia. One gets the impression that the state (state bodies, bodies of territorial autonomy and local self-government and other public entities) is still a significant actor in the media market. Namely, the previous Media Strategy and then the media laws only partially solved the problem by redefining the state's participation in the media scene (mandatory privatization and project co-financing), but even in those areas many things remained undefined, and more importantly, a large segment of the state's influence to the media scene remained outside the scope of media policy (and legislation), including the mentioned other problematic types of allocation of public funds.[25]

I.3. Transparency of media ownership

Please describe binding (legal) and non-binding (voluntary) transparency and disclosure practices of media companies with regard to transparency and disclosure of information on ownership, investments and sources of income. regarding ownership, investment and revenue sources?)

The Business Registers Agency maintains a public Media Register, where information is available on each media and its owner.

Given that the media does not have the status of a legal entity, on the website of the Business Registers Agency, the financial reports of the founders of the media are available to the public, and that is for the entire company, not behind the business related to the media in question individually.

Financial reports are submitted annually, and are updated on the website of the Business Registers Agency (BRA) with a calendar delay of one and a half years.

In addition to information about the media and the founder, the media register also includes financial resources received by the media in the name of assistance from competent ministries, cities and local governments, based on the competition for media financing, provided for by the LPIM.

The draft of the new Law on Public Information and Media proposes the introduction of a unique information system for the implementation and monitoring of co-financing of projects in the field of public information, which will be managed by the competent ministry, and through which, among other things, it will be possible to monitor the distribution of public funds in tenders, as well as financial reports on implemented projects.

In addition to the media register, which is maintained by the Business Registers Agency, the Regulatory Body (REM), on the basis of the LPIM, also maintains a register of media service providers as well as a record of media service providers on request, for electronic media for which this body is responsible.

In the Register of Media Services, the REM enters the notices and measures issued to holders of licences for broadcasting content, which notes are deleted from the register after 2 years. The draft of the new Law on Electronic Media established that when it comes to notice measures, they are deleted after 3 years, unless

[25] Strategy of Development of of the System of Public Information in the Republic of Serbia

the media service provider violated the law during that period for which a legality protection measure was issued. On the other hand, if it is a warning measure, it was established that they are not deleted from the register in question.

Untimely updating of documentation in media registers is a big problem, and there is no legal instrument that would force the Registers to update their databases more often.

Which media organisations are covered by the reporting requirements? To whom must disclosure be made? How often/ in what cases has the data to be updated?

The media are obliged by law to submit information to the Media Registry, i.e. REM, in order to enter it in the registry.

The need for documents attached to the registration application is prescribed by a separate Rulebook.

An additional fee in the amount of RSD 3,000.00 is payable for untimely submission of the necessary data to the Media Registry of the Business Registers Agency.

The Law on Electronic Communications does not specifically regulate the obligation to provide data, nor does it provide for sanctions for failure to provide the necessary information. Nevertheless, the law in question foresees the operator's obligation to keep, that is, save data on electronic communications, namely data necessary for:

- monitoring and determining the source of communication;
- determining the destination of the communication;
- determining the beginning, duration and end of communication;
- determining the type of communication;
- identification of the user's terminal equipment;
- determining the location of the user's mobile terminal equipment.

Although the operator retains the data in question, access to the same is not possible without the user's consent, except in the case of access for a certain period of time and based on a court decision, if it is necessary for conducting criminal proceedings or protecting the security of the Republic of Serbia.

Also, failure to inform the Regulatory Body is not foreseen as a reason for revocation of the licence by the REM (except in the case of the obligation of prior notification of a change in the ownership structure, in order to ensure protection of media pluralism).

The Law on the Registration Procedure at the Business Registers Agency prescribes a criminal offence for submitting a false or modified document as a real one, and foresees a threatened prison sentence of 3 months to 5 years.

According to the same law, submitting an application with incorrect information is also a reason for cancelling the registration of a company before the competent court. However, it is not regulated in detail whether this sanction also refers to stating incorrect content in the application to the media register of which the company in question is the founder.

There is no specific criminal offence, misdemeanour or economic offence for failure to submit a report.

However, when it comes to the procedure before the Business Registers Agency, the Law on the Registration Procedure in the Business Registers Agency stipulates that for everything that is not regulated by that law, the Law on General Administrative Procedure of the Republic of Serbia shall be applied as a subsidiary.

In this regard, the Business Registers Agency has the right to carry out actions in accordance with the general rules of administrative procedure in order to ensure cooperation and fulfilment of obligations by registrants.

The biggest problem with the legal regulations concerning the publicity of work and registers maintained by the Business Registers Agency or REM is precisely the lack of an effective legal mechanism that would compel the media to send their reports and information to the competent authorities, and the competent authorities, i.e. Business Registers Agency or REM, to update the databases often enough and they publish such information to the public in a timely manner.

The Law on Free Access to Information of Public Importance also applies to the publicity of the work of the Regulator, who is obliged to act according to the regulations and orders of the commissioner.

What information is required to be disclosed? (e.g. key persons/bodies and their functions in the media; details of shareholders and size of their holding, beneficial owners; interests of the people/body in other media / economic sectors; people influential to the programming/editorial policy; political or other affiliations of the owners and its family members; public advertising revenues, funding form other external sources)

The media register, at the BRA, collects and publishes the following information:

- name and registration number of the media
- personal name and personal number of a domestic natural entity or passport number and country of passport issuance of a foreign natural entity who is the responsible editor of the media;
- licence number for the provision of media services for electronic media;
- information about the language in which the media is published, that is, in which the media service is provided;
- information about the Internet, electronic and other forms of media;
- internet address for media that are exclusively distributed via the internet;
- business name/name, registered office and registration number of the media publisher/media service provider;
- a document that contains data on legal and natural entities that directly or indirectly have more than 5% of the share in the founding capital of the publisher, data on their related parties in the sense of the law governing the legal status of companies and data on other publishers in which these persons have more of 5% share in the founding capital;
- data on the amount of funds allocated to the media in the name of state aid, in accordance with the provisions of this law;
- data on the amount of funds received from public authorities, which means state bodies, bodies of territorial autonomy, bodies of local self-government units, organisations entrusted with the exercise of public powers, as well as legal entities founded or financed in whole, i.e. in the majority part of the Republic Serbia, autonomous province, i.e. unit of local self-government (hereinafter: public authority);
- data on the average media circulation sold in the calendar year;
- other documents on the basis of which the registration was made;
- date and time of registration;
- changes to registered data;
- date and time of data change registration.

In addition to the above, the draft of the new Law on Public Information and Media proposes to collect and register additional information, namely:

- a document that provides internal measures and procedures for achieving gender equality;
- a document that provides measures and procedures for the protection of editorial policy;

- a document that provides measures and procedures for the employment of persons with disabilities;
- a document that provides measures and procedures for ensuring a safe working environment for journalists and media workers.

Also, in the point that obligates the registration of data on the amount of funds from public authorities, its scope has been partially extended, since the wording of the draft of the new law, in addition to public authorities, also mentions companies in which the public authority has a significant share in the share capital.

The Registry of Media Services of the Regulatory Body collects the following data:

- media service name;
- the name of the media service provider and information about the provider (name, TIN, headquarters);
- the number and date of the decision on the issuance of a permit, i.e. the basis for providing the service if it is provided without the obligation to obtain an approval, i.e. a permit;
- type of media service in accordance with Article 43 and 44 of this law (it should be noted here that this point was omitted in the draft of the new Law on Electronic Media);
- the period for which the approval or permit is issued;
- data on the responsible person of the media service provider;
- data on the measures imposed on the media service provider;
- a warning to the media service provider about the existence of a violation of media pluralism.

In addition to the Register, the Regulator is obliged, based on the Law on Free Access to Information of Public Importance, the provisions of which law are referred to by the LEM, to make the following data available on the website:

- Strategy for the development of radio media services and audio-visual media services in the Republic of Serbia (this concept was changed in the draft of the new Law on Electronic Media to the wording "guidelines for the development of media services in the Republic of Serbia");
- regulations for the application of this law and other general acts of the Regulator;
- public tenders for issuing permits;
- decisions made on public tenders with explanations;
- data from the register and records;
- judgements in administrative disputes initiated against the decision of the Regulator;
- decisions imposing measures in accordance with this law with explanations;
- Annual report of the Regulator;
- Financial plan, financial reports and reports of the authorised auditor;
- decisions on applications by natural and legal entities;
- expert opinions, studies and analyses ordered for the needs of the Regulator;
- the invitation and program of the public hearing, as well as the report on the conducted public hearing;
- minutes from the sessions of the Council of Regulators.

How accessible is the information to the public? In what manner is the information to be made available? Is it comprehensible for the general public?

The data, as mandatory elements of the registers, listed in the previous question, are available on the website of the Business Registers Agency and the Regulatory Body.

However, on the website of the BRA, it is possible to search data only according to the name of the media, that is, the registration number, so it is practically impossible to look at the media from the publisher's point of view, or to determine how many media an individual owner owns.

The same applies to the register of media service providers, on the REM website, where in addition to the search based on the name and registration number, the criteria of the type of media is also enabled, but not the search by entering the name of the owner or licence holder.

The lack of regular data updates is another major disadvantage of the registry data.

How is this monitored and regulated? Are there any sanctions for the failure to report?

There are two forms of controlling the work of the Regulator.

The first one is from the National Assembly and concerns the general operation of the Agency, implementation of decisions and efficiency.

The law prescribes that by the end of the first quarter of the current year for the previous year, the REM Council submits a report to the National Parliament, which contains: data on performed tasks within the competence of the Regulator in the previous calendar year, Financial plan, financial statements and reports of the authorised auditor, report on decisions on applications of natural and legal persons and other data related to the implementation of the law.

The regulator is also obliged, at the request of the National Assembly, to submit an extraordinary report on work for a period of less than a year.

The law prescribes a mandatory public hearing for general acts of the REM before adoption

In addition to the control of the REM operations and the application of objective legal regulations, the Law also prescribed judicial control of the Regulator's decisions, which ensured the second level of control of the individual decisions of the the REM and the protection of subjective rights through court proceedings.

Thus, in the procedure before the regulator, the provisions of the Law on General Administrative Procedure are applied, and the court leaves the possibility of initiating a legal dispute against the decision of the Regulator, which is final, within 30 days from the delivery of the final decision, and the dispute in question is marked as urgent.

However, the legislator prescribes an important limitation of the court's powers in the case of a dispute based on a lawsuit filed against a decision made in the procedure of issuing or revoking a license or imposing measures. Thus, the court cannot change the decision and independently decide on a legal matter, but can only annul or cancel it due to a violation of the law and return the case to the Regulator to act again, so the court cannot act in a so-called full jurisdiction dispute.

This provision also limits judicial control over the Regulator, because it is considered that the administrative court has the knowledge and competence only to take care of compliance with legal provisions in the sense of checking whether a procedural right has been violated, but not to independently decide whether to grant or revoke the broadcaster's license.

Transparency provisions: Does the responsible body monitor the fulfillment of the provision? Do the media fulfill the requirements?

The media are obliged to post information about their publisher not on their website or on a copy of the printed edition, within the imprint, which is what the LPIM obliges them to do. There is also a misdemeanour for failure to act, so if it fails to publish the imprint, the publisher - a legal entity has to be fined from 100,000 dinars to 1,000,000 dinars.

The media are obliged to report to the Media Registry any change of publisher, no later than within 15 days from the moment of the change.

Electronic media that are under the jurisdiction of the Regulator are additionally obliged to report in advance any change in the ownership structure or founding capital in writing.

The new media strategy proposed measures to improve the transparency and functioning of the media register, consisting of the following activities:

- by amending the existing regulation, precisely define the scope of data that is entered in the appropriate registers, which concern the media themselves, the ownership structure of media publishers, all monetary and other benefits from public revenues from all sources and other data of importance for achieving influence over the media (for example, information about providers of loans and loans under conditions more favourable than those prevailing in the market, data on legal entities that participate in the publisher's income above a certain percentage, data on donations, gifts and sponsorships that participate in financing above a certain percentage in the income, and the like);
- by changing the existing regulations, precisely define the scope of data that is entered in the appropriate registers, concerning the media themselves, the ownership structure of media publishers, monetary and other benefits from public revenues;
- technically improve the environment and search of the register as well as connection with other public registers, through automatic data download;
- provide mechanisms for up-to-date data submission to the Media Registry;
- establish clear criteria for deleting media from the Media Register, as well as the Registrar's obligation to delete from the Media Register all media that are not registered in accordance with the law;
- determine adequate sanctions for non-compliance with legal provisions;
- by amending the regulations, define the procedure and method of control in connection with the registration and updating of data in the Media Register by amendment.

I.4. Other state influence on media organisations

Does the state impose prohibitive taxes or levies on media organizations? Does the state tax policy and practice discriminate against or favor specific private media outlets over others?

Apart from the broadcasting license fee paid by the electronic media to the REM, there are no additional fees or tax levies on the media compared to other legal entities.

The amount of the annual fee is calculated through a mathematical formula made up of a series of coefficients, such as the actual costs of regulation, the number of inhabitants in the coverage area, the type of program, the type of electronic media, the method of broadcasting and the coefficient of the program concept.

The Rulebook regulating the method of determining the broadcasting fee was adopted in 2016 and replaced the previously valid Rulebook from 2006, which included a significantly smaller number of coefficients in the formula, and prescribed percentage reductions on the previously determined fee depending on the type of program and media.

Privatisation of the media, which was carried out on the basis of the LPIM, removed the basis for the possibility of discrimination between privately and state-owned media, and at least formally, they are all equal before the law. There are only public media services, whose activity is regulated by a special law, as well as the mentioned televisions (TV Arena Sport) without a national frequency, which broadcast their content through cable operators, and are owned by Telekom Srbija.

What entry barriers does the regulatory and institutional system create for new entrants to the media market (e.g. start-up fees or other restrictions)?

There are no institutional or bureaucratic barriers for new investments in the media in the Republic of Serbia, except in the case of procedures for obtaining permits, i.e. national frequencies for electronic media to broadcast programs.

Registration of print media and internet portals is quick and available to any legal or physical person who is registered to perform the activity of providing public information, and the registration costs are RSD 3,300.00 (about EUR 28).

While the registration of electronic media requires to first obtain permission from the Regulatory Body and then pay a fee.

The fee to the Regulator is paid on a monthly basis, at 1/12 of the annually determined amount.

However, for the first fee payment after obtaining the permit, ½ of the total annual fee must be paid for the period of the next 6 months.

The idea of the obligation set in this way was to deter requests for obtaining a license from a wider circle of potential broadcasters who did not properly assess and calculate the costs of the broadcast fee, it can be said that this conditional obligation to pay the fee for 6 months in advance is the only levy that can be characterized as an institutional obstacle to the wider availability of broadcaster status through electronic media.

In the period from when RATEL conducted the first market analysis (2011), after the adoption of the previous Law on Electronic Communications until the end of 2016, the media content distribution market was recognised as a "market subject to previous ex ante regulation", and treated as "a market in which there are structural, regulatory and other more permanent obstacles that prevent the entry of new competitors, in which it is not possible to ensure the development of effective competition without prior regulation, and in which the observed shortcomings cannot be eliminated only by applying competition protection regulations." Ex ante is a specific mechanism established in areas where there were (or are) traditional monopolies. Determining the market ex ante is a confirmation that there is not enough competition in a certain market, so it is necessary to be under some kind of "preventive and additional regulatory supervision" (in addition to the supervision of the Commission for the Protection of Competition). In such a market, an operator with significant market power is determined and regulatory obligations are imposed on it in order to ensure competition. RATEL's analysis conducted in 2015 and 2016 showed that this market is no longer subject to ex ante regulation. Since the end of 2016, a trend of consolidation has been noticeable, so the question arises whether the aforementioned decision of the regulatory body was premature. As already pointed out, the trend of consolidation in the media content distribution market can have negative effects on media pluralism, and this issue is also important from the aspect of implementing the goals of media policy.[26]

In this sense, the consolidation trend continued even later, and in particular the actions of Telekom Srbija operator, which buys smaller cable and internet operators in order to increase its market share, can be pointed out. In this regard, in the last few years the operator Telekom Srbija has become the owner of operators such as Supernova, Kopernikus, Telemark, Radijus Vektor, etc.

As for the intervention of the state, that is, competent authorities, by their actions or in some cases by inaction, they can influence, or fail to influence, the situation in the media and their position, both in terms of concentration in the media and other relevant issues.

[26] Strategy of Development of of the System of Public Information in the Republic of Serbia

Does media concentration play a role in the process of spectrum allocation?

The Law on Electronic Communications (LEC) pays a lot of attention to concentration by establishing special rules for operators with significant market power.

After the Agency - RATEL, which operates on the basis of the LEC, on the basis of a previously conducted market analysis, determines the absence of effective competition on the relevant market (as well as on the closely related market), by decision it determines the operator who, individually or together with other operators, on that has significant market power in the market. With the decision in question, RATEL can assign one or more of the obligations to the operator, such as the obligation to publish certain data, non-discriminatory treatment, accounting separation, access to construction infrastructure, etc.[27]

Through this regulation, the Legislator, by adopting the LEC, largely proclaimed international standards when it comes to the regulation of concentration and the prohibition of this type of abuse, however, the question of the rest of the other provisions of the law outside of the basic principles and principles, i.e. the application of the law itself in practice, remains.

Is the decision-making process about the allocation of frequencies between public, private and community broadcasters transparent, open, participatory and overseen by an independent regulatory authority, which meets international standards and is free from political or commercial interference or control by any vested interest?

The allocation of frequencies is regulated by the Law on Electronic Communications, and is under the jurisdiction of the Regulatory Agency for Electronic Communications and Postal Services (Agency or RATEL), founded by the Republic of Serbia. The law stipulates that the frequency, i.e. the radio frequency spectrum, is used in three ways:

- on the basis of an individual permit that can be issued on the basis of a request or on the basis of a public bidding procedure;
- under the regime of general authorization;
- for special purposes.

According to legal provisions, the agency is functionally and financially independent from state authorities, as well as from organisations and entities that perform electronic communications and postal services.

Although the Law on Electronic Communications also stipulates that RATEL is financially and functionally independent from state authorities, the very fact that supervision over the legality of work is carried out by the competent ministry, and the manner of RATEL's work is regulated by a statute approved by the National Assembly with the previously obtained consent of the Government, makes this body not beyond the reach of the influence of public authorities, both executive and legislative. Also, the law in question stipulates in a number of situations that the Agency makes proposals to the competent ministry, which makes final decisions on certain issues.

RATEL council members (in the previous law there was a board of directors instead of a council) are elected on the basis of a public competition from among distinguished experts with high academic education in electrical engineering, computer engineering, traffic engineering, economic sciences and legal sciences for the duration of basic academic studies of at least four years, and in addition they must have at least nine years of work experience in jobs within the scope of RATEL.

Members are selected by the National Parliament, on the proposal of the competent committee for electronic communications, taking into account equality.

[27] Law on Electronic Communications (Official Gazette of the Republic of Serbia, no. 35/2023), Article 70.

The criteria set by the Law on Electronic Communications are insufficiently clear and precise, and as in the case of the election of REM members, this directly enables the selection of politically suitable candidates

Is the state advertising distributed to media fairly, for example proportionately to their audience share? How would you describe the rules of distribution of state advertising? Is it being monitored? - Is there a monitoring of advertising allocation?

The advertising of state bodies and publicly owned companies is not regulated by a separate law nor covered by the Law on Advertising, which represents a big gap and gives the possibility of large irregularities, that is, it opens up the possibility of influencing media content indirectly through enabling or preventing advertising by the state, which in market conditions in which it operates in the Republic of Serbia appears as one of the most important advertisers.

Due to the specificity of electronic media, the Regulator adopted a special Rulebook on advertising and sponsorship in electronic media, which regulates this area in more detail in relation to the aforementioned Law.

Advertising of state and public companies is carried out through the public procurement system, as well as for all other types of public purchases, so through pre-set criteria that the media must fulfil, a large number of unsuitable media tend to be excluded and the door opened to those that correspond to the various interests of the advertiser, in in this case the state or a publicly owned company under the direct control of the Government.

According to data from the current Strategy for the Development of the Public Information System in the Republic of Serbia. although the data was taken from a few years ago, the general advertising market is characterised by the fact that most of the money goes to televisions, namely those with a national frequency. This market is also characterised by a large concentration of media audience preferences (audience, viewership, readership) among the four largest publishers in each category, so the four largest broadcasters have a combined share of 62% in the total viewership, the four largest radio broadcasters have a share in the audience of over 51% , and the four largest print media publishers have a readership share of over 63%. Although the digital media market records constant and stable growth, advertisers' money ends up where it is measured to be the largest audience. Thus, to determine the media potential of the media, commercial measurements are used in which not all media participate. In such an environment, local and regional media lose the race with those that have national coverage and are always included in the measurements. More precisely, even 89% of the share in television advertising belongs to television stations with national coverage. The rest of the advertising funds are divided by foreign programs that are distributed via the cable system. Data show that of the 15 largest commercial advertisers in Serbia, none advertises on local or even regional stations.[28]

Also, it should be pointed out that the five largest printed daily newspapers have a total RCH of 33.9%, which still means that a downward trend has been recorded compared to statistics from previous years. As for radio broadcasters, it can be said that the market is more divided, but we can point out that the two most listened to radio stations together have a daily RCH of a total of 9.6%. Finally, when it comes to television, the four largest television programs, taking into account only those with a national frequency, together have a SHARE as high as 51.28%.[29]

Finally, it should be noted that digital media record constant and stable growth, but that advertisers' money still ends up where it is measured to be the largest audience. In this regard, out of a total of 241.2 million euros invested in various types of advertising during 2022, the money was distributed as follows:

- advertising through TV media – 122.3 million;

[28] Strategy of Development of of the System of Public Information in the Republic of Serbia
[29] Media Landscape Serbia 2022, IPSOS

- advertising through digital media – 59 million;
- advertising through print media/print - 28 million;
- OOH (out of home advertising) – 28.5 million;
- radio advertising – 12.7 million;
- other types of advertising – 0.7 million.[30]

On the other hand, the basic media market (media content production market) is characterised by the fact that publishers of print media and news agencies do not have equal starting positions, either because of the role of the state as a co-owner or because of the preferential treatment of some commercial publishers (tax conditions, debt rescheduling, preferential communal and other services of public companies, preferences in public procurement). In addition, the related media content distribution market is also quite concentrated. According to data from 2019, 81 operators providing media content distribution services (via cable and other networks) are registered in the Register of Operators of Public Communication Networks and Services maintained by RATEL. Four operators make up to 85.7% of the market in terms of the number of users, one of which is private, and the remaining three are publicly owned. Currently, there is only one operator of media content distribution via terrestrial means with conditional access (Pay TV), which uses the infrastructure of PE Emisiona tehnika i veze, so theoretically it can cover over 95% of the population. The state of the connected distribution market (actually a small number of actors), along with the lack of adequate supervision (REM and RATEL) can lead to the favouring of certain media service providers, and therefore discrimination against others, thus representing a potential threat to media pluralism. Namely, large operators, in addition to providing telecommunication services for the distribution of media content, are also active in the production of content (and are actually publishers of numerous media through related parties), so there is a real possibility of favouring such content to the detriment of media that do not operate in the system of the mentioned operators. This state of affairs in the connected distribution market makes it impossible for the contents of one large operator to be found in the network of another large operator, which is the current factual situation regarding sports contents (some of which are even on the List of the most important events of special importance for the citizens of the Republic of Serbia), but also in the field of informative content, which is an even more dangerous trend for media pluralism.[31]

The problem is particularly pronounced in the market of local and regional media, which is characterised by the unequal position of all subjects on the market, especially after privatisation. Individuals who came into possession of the former state media, close to the ruling party in terms of editorial policy, were favoured in the distribution of funds at tenders for co-financing content of public interest.

The unequal position of local and regional media is also reflected in illegal financing through the public procurement system or the conclusion of contracts on business and technical cooperation with public companies, mainly with those media inclined to local and regional authorities.

Is there a monitoring of advertising allocation?

Also, this type of redistribution of funds through state advertising is formally supervised by the competent ministry - the executive state authority, but only in the domain of the regularity of the implementation of public procurement rules and procedures, and not through the inclusion of other parameters that would ensure a transparent and fair redistribution of public funds.

The State Audit Institution controls whether the tenders and state advertising in the financial sense have been done in accordance with the plan and budget, however, it does not deal with the criteria for the allocation of funds, but only checks the financial part of the work.

[30] Ibid.
[31] Strategy of Development of of the System of Public Information in the Republic of Serbia

The criteria for the allocation of public funds cause significant disruptions in the media market, especially through actual or potential public expenditures or a reduction in the realisation of public income, with which media publishers gain a more favourable position on the market compared to their competitors, as well as through the inadequate application of rules regarding project co-financing, which leads to public funds not being allocated for the realisation of public interest in the field of public information. In the implementation of the system of allocation of public funds through project co-financing, numerous problems were observed, which were established by the monitoring of this process that was completed in the country, but also by the negative reports of the European Commission on Serbia's progress towards the EU, which, among other things, emphasize that "co-financing of media content in order to fulfil obligations of public interest should be carried out in accordance with the legal framework, using transparent and fair procedures, and without interference from the state administration, especially at the local level", that "transparent ownership and financing of private media, state financing of media and co-financing of media content must be effectively monitored, including at the local level, and implemented in accordance with existing legislation", that the government should ensure "that informal pressure on editorial policy is not exerted through the distribution of advertising funds, including those from public companies, as well as through project co-financing from local budgets"[32]

Are there other laws or policies through which the state/ government interferes in the media business (e.g. blocking of websites, censorship)? Which? Is freedom of the press and editorial independence guaranteed in law and respected in practice?

Freedom of the media and prohibition of censorship is proclaimed by the Constitution of the Republic of Serbia and the media laws, as described in detail at the beginning of the report, so that the laws do not give the state the opportunity to directly influence the editorial policy of the media, nor to block websites in order to limit freedom of speech.

However, with the help of mechanisms for the selection of members of the Council of the Regulatory Body, as well as the lack of regulation of state advertising and irregularities and unclear criteria for the allocation of funds in public tenders by the state and local self-government, the state influences the media indirectly.

This influence is often not reflected in direct censorship intervention, but in the awareness of media workers and editors themselves about the need to report in a certain way, so self-censorship is very present on the territory of the Republic of Serbia.

It is not easy to prove the specific pressures and influences of individuals that influence the appearance of self-censorship, but even with a superficial monitoring of the media, especially during the election campaign, it is very visible.

Given that the media are privately owned, it is up to the editor and the capital owner to adapt their editorial policy in a manner and to whom they want, and there are no prescribed sanctions for this. Except those from the market, namely, by the group of readers who insist on objective reporting, in the form of not using the services of the media in question.

In addition to self-censorship, there is also a type of soft censorship that stems from non-transparent uncontrolled and unequal access to state aid, which includes selective access to subsidies and advertising funds from state sources.

Considering the difficult financial conditions for the functioning of the media in Serbia, it is almost impossible to operate on the market and achieve complete independence, for which the media have not yet found a sustainable model. Because of this, the media became dependent on state or budget money, which became one of the most important and desirable sources for funding the media work.

[32] Strategy of Development of of the System of Public Information in the Republic of Serbia

Have there been any major changes in these topics (state advertising, process of spectrum allocation, taxes for media outlets) over the past five years? Have there been conflictive cases or lawsuits on these topics?

In general, the level of media freedom changes from year to year based on the reports of the non-governmental sector and other organisations, for better or for worse, but during the previous and current government (before and after 2012) censorship and self-censorship in the media is present on a large scale.

How important the mass media are to politicians and political parties is shown by the fact that they, through close persons or companies, the connections with which cannot be proven, enter existing media or establish new ones, not for the sake of market business and achieving the purpose of objectively informing the public in the future. but for the purpose of carrying out the tasks of biased and non-objective information that favours a certain interest group.

Furthermore, through the unclear and non-transparent process of tax exemptions, which are available only to certain media publishers, without the existence of clear, pre-defined and non-discriminatory criteria for these exemptions, the potential abuse of the public procurement system, which procures services from the media that could not be the subject of public procurement. One way of favouring are the free rental services provided by local self-government units to certain media publishers, without the existence of clear, predetermined and non-discriminatory criteria, as well as other forms such as direct bargaining, business cooperation agreements, etc.

Economic pressures of local authorities, by not announcing tenders, allocation of insufficient funds for project co-financing, non-compliance with legal provisions and by-laws, favouring certain media through the distribution of funds have become the dominant form of pressure in the last two years.

When it comes to the supervision of the implementation of the Law on Public Information and Media, previously the Ministry of Culture and Information, and now the Ministry of Information and Telecommunications, does not have sufficiently effective mechanisms (they are reduced to the initiation of proceedings for economic offences and misdemeanour proceedings in a fairly limited number of cases) and modest measures in the field of establishing media pluralism.

I.5 Internet neutrality and media pluralism

Legal framework

What laws or other rules are used to regulate net neutrality, if any?

Net neutrality in the narrower sense represents the principle of the functioning of the Internet, according to which Internet service providers should treat all data found on the network in the same way, without discrimination based on content, type of platform - website and application, method of communication, etc. That is, they should not in any way favour a certain type of data by its content or source compared to other web-pages. According to certain viewpoints, Internet neutrality also implies enabling free access to all content by the user, on the other hand, taking into account a greater degree of restriction and suspension of copyrights.

The general regulation that indirectly proclaims the independence of the Internet in the Republic of Serbia is certainly the Law on Electronic Communications.[33] The law in question defines the Internet as a global

[33] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023)

electronic communication system made up of a large number of interconnected electronic communication networks and devices that exchange data using a common set of communication protocols.[34]

This act regulates, inter alia, the conditions and manner of performing activities in the field of electronic communications, the competence of state authorities in the field of electronic communications; position and work of the Regulatory Agency for Electronic Communications and Postal Services, performance of electronic communications activities under the regime of general authorisation, provision of universal service, determination of markets subject to prior regulation, market analysis, determination of operators with significant market power and authorisations of the Regulatory Agency in relation to such an operator, use and control of the radio-frequency spectrum, distribution of media content, protection of the rights of end users, security and integrity of electronic communication networks and services, supervision over the implementation of this law, measures for acting contrary to the provisions of this law, etc.[35]

The Constitution of the Republic of Serbia does not contain direct guarantees of the neutrality of the Internet, but they are derived from the freedom of the media and the right to be informed. Also, the Constitution does not recognise the category of independent regulatory bodies as a special category of authorities, one of which is responsible for the implementation of net neutrality regulations, but it recognizes the so-called holders of public powers, which include very different entities from bodies of territorial autonomy (autonomous provinces) and local governments, through universities, public companies, other institutions, private persons exercising public powers (notaries, bailiffs, etc.), and even bodies which perform a regulatory function.

The Constitution also states that individual public powers can be entrusted by law to companies, institutions, organisations and individuals, as well as to special bodies through which the regulatory function is exercised in certain areas or activities. Therefore, the most suitable constitutional term for REM would be a special body through which the regulatory function is exercised. Furthermore, the Constitution states that individual acts and actions of state bodies, organisations entrusted with public powers, bodies of autonomous provinces and local self-government units, must be based on the law, and that control of legality is carried out by court in an administrative dispute, if protection before another court is not provided (Article 198 of the Constitution). Thus, the Constitution prescribes the possibility of transferring certain public powers by law to organisations or regulatory bodies, and that the control of the legality of individual acts is entrusted to the judicial authority.

What is the legal status of the pertinent norms? (constitutional law, statutes, regulatory decisions, local ordinances, etc.)

The Constitution of the Republic of Serbia, as the highest state act, does not mention the neutrality of the Internet, but in a general way proclaims the rights and freedoms, which rules can in a broader sense be related to human rights on or in connection with the global network. Namely, the Constitution of the Republic of Serbia, first of all, as one of the most important rights, prohibits any discrimination, direct or indirect, on any basis.[36]

Furthermore, as in everyday life, proclaimed human rights apply in the online environment as well. This guarantees freedom of thought, conscience, belief and religion, the right to stand by one's convictions, freedom of thought and expression, as well as the freedom to seek, receive and spread information and ideas through speech, writing, pictures or in any other way. It is also guaranteed that there is no censorship

[34] Ibid, Article 4, paragraph 1, item 24
[35] Ibid Article 1
[36] Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006), Article 21

in the Republic of Serbia and that everyone is free to establish newspapers and other means of public information in accordance with the law without approval, in the manner provided by law.[37]

Perhaps the most concrete touch of the Serbian constitutional act with the neutrality of the Internet can be related to the right for everyone to be truthfully, completely and timely informed about matters of public importance, and the means of public information are obliged to respect that right, as well as to have the right to access the data in the possession of state bodies and organisations entrusted with public powers, in accordance with the law.[38]

How does the law define net neutrality?

The Law on Electronic Communications does not precisely define the concept of internet neutrality. Also, unlike the previous Law on Electronic Communications, which expressly regulated goals and principles in the field of electronic communications and which could be applied to all related issues, including the issue of Internet neutrality[39], the new Law does not have provisions that are grouped in that way, but in any case, certain provisions of this law can be interpreted so that, to a greater or lesser extent, they provide certain answers to the question of internet neutrality.

In this regard, below we highlight some provisions of the law in question, which can be pointed out as indirectly regulating the neutrality of the Internet:

- The Ministry contributes to the harmonisation of domestic regulations in the field of electronic communications with the corresponding regulations of the European Union;[40]
- The regulator designates one or more economic entities with the obligation to provide certain or all universal services, in part or all of the territory of the Republic of Serbia, taking care that universal services are available to all end users in the territory of the Republic of Serbia, regardless of geographic location;[41]
- The regulator issues instructions and publishes procedures applicable to enabling access and interconnection to ensure that SMEs and operators with limited coverage can be interconnected under reasonable conditions;[42]
- Universal services are provided on a technologically neutral basis, with adequate flow and quality, at affordable prices and in such a way that socially vulnerable consumers and persons with disabilities are not prevented from using these services;[43]
- The regulator manages and allocates addresses and numbers as a limited asset, in a way that ensures their rational, even and effective use, respecting the principles of objectivity, transparency and non-discrimination;[44]
- The Internet access service provider is obliged to provide its end users with access to information and content and their distribution, as well as the use of applications, services and terminal equipment of their choice, regardless of the location of the end user or the Internet access service provider, the origin or destination of the information, content, applications or services.[45]

Therefore, the issue of Internet neutrality can be recognised in almost every one of the mentioned provisions of the law, to a lesser or greater extent, and especially in the last item - ensuring the possibility of end users

[37] Ibid., Article 43- 50
[38] Ibid., Article 51
[39] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 44/2010, 60/2013 - Decision of the Constitutional Court, 62/2014 and 95/2018 - other law), Article 3
[40] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023), Article 5, paragraph 2, item 10.
[41] Ibid., Article 9, paragraph 1, item 7.
[42] Ibid., Article 58, paragraph 2.
[43] Ibid., Article 60, paragraph 2.
[44] Ibid., Article 85, paragraph 1.
[45] Ibid., Article 134, paragraph 1.

to freely access and distribute information, when using public communication networks and services, as well as to use applications, equipment and services of their choice. Furthermore, the Law defines the service of providing internet service as an electronic communication service which is, as a rule, provided for a fee through electronic communication networks and includes internet access service, communication service between persons and a service consisting in whole or for the most part of signal transmission, including the service of media distribution content and the service of communication between machines, but does not include the service of producing media content or exercising editorial control over media content transmitted via electronic communication networks and services.[46] Interpreting this norm, we can conclude that service providers are not granted the authority to engage in the evaluation of the content being transmitted or to influence the speed of its flow.

The rest of the law on electronic communications through specific legal norms further regulates electronic communications, and indirectly this issue.

If laws addressing net neutrality are not in place, are laws to do so being proposed? Have laws to address net neutrality been proposed previously? Have laws to address net neutrality been proposed previously?

State administration bodies were traditionally responsible for the regulatory affairs in these areas (that is, ministries at the federal and republic level), and due to this historical inertia, the independent regulatory bodies themselves often levitate between state administration bodies and the regulatory body.

The first independent regulator - the Republic Broadcasting Agency (RRA) in Serbia was established in the field of broadcasting in 2003, in accordance with the then Law on Broadcasting. That law defined the RRA as an autonomous, that is, an independent organisation that exercises public powers, in accordance with that law and the regulations adopted on the basis of that law, with the status of a legal entity. Although the name of this institution contained the word agency, its position was different from the agencies that were introduced in 2005, by the Law on Public Agencies. That is why at that time it was not clear what the legal nature of the RRA was in the legal order of the Republic of Serbia.[47] At that time, the main goals that needed to be achieved were the establishment of independent regulation of this broadcasting and telecommunications sector and harmonisation with the practice that was already established in the European Union, and providing prerequisites for the smooth functioning of the electronic media market.

After RRA, two separate agencies were formed, REM, which remained responsible for broadcasting, and RATEL, which took over the telecommunications broadcasting of media content.

With the new Law on Electronic Communications, RATEL retained its responsibilities as a regulator with regard to electronic communications and postal services.

Are lawmakers discussing net neutrality?

The issue of internet neutrality in the Republic of Serbia is not only a matter of the regulatory framework in which state bodies operate, the rights and obligations of internet service providers and internet users, but is inseparable from the global trend of consolidation of service providers, large internet platforms and, in a way, the increasing level of monopolisation of certain services In this way, the path is opened for influential and more powerful Internet companies to use their dominant position or participation in the capital of service providers to choose a better position compared to all other participants on the network, that is, it allows them to be favoured.

[46] Ibid., Article 4, paragraph 1, item 16.
[47] Legal analysis of the position of the independent regulatory body in the field of electronic media in Serbia, NUNS, p. 3

Therefore, the question of discussion on this topic is always open and interesting. It cannot be said that the executive authorities responsible for proposing regulations that regulate this issue go into a more detailed explanation of these rules, nor that they emphasise the need to protect or limit the neutrality of the Internet. The discussion on this topic is mainly represented in the circles of internet activists, advocates of consumer protection and the non-governmental sector.

Implementation

How is net neutrality being regulated?

In addition to the aforementioned Law on Electronic Communications, which regulates the Internet and its neutrality in the most direct way, in its cause-and-effect relationship, it can be said that the anti-monopoly regulations of the Republic of Serbia, although they are not aimed exclusively at the Internet, largely regulate the abuse of monopolistic behaviour also in telecommunication, i.e. internet network.

Thus, according to the law in question, acts or actions of market participants whose aim or effect have or can have a significant limitation, distortion or prevention of competition are considered a violation of competition in the sense of this law.[48]

The provisions of the same act prohibit the abuse of a dominant position on the market, which includes, in particular, the direct or indirect imposition of an unfair purchase or sale price or other unfair business conditions, then limiting production, the market or technical development, applying unequal business conditions to the same businesses with different participants in the market (thereby placing individual market participants in a disadvantageous position compared to competitors), as well as conditioning the conclusion of the contract by the fact that the other party accepts additional obligations that by their nature or according to trade customs are not related to the contract subject.[49]

In order to prevent the monopolistic position of operators with significant market power, the law provides for the obligation of non-discriminatory treatment, which refers to the equal treatment of operators with significant market power when providing interconnection and access services in comparable circumstances. Namely, such an operator is obliged to, in accordance with the stated obligation, provide access and information to other operators under equal conditions and deadlines, including conditions regarding prices and quality levels of services and using the same systems and processes as it does for its own needs, that is, for the needs of related parties or partners in order to ensure equality of access.[50]

What regulatory agencies or authorities are charged with enforcing net neutrality norms?

The highest authority of the executive power of the Republic of Serbia that supervises the implementation of the Law on Electronic Communications, and therefore the provisions guaranteeing the freedom of the Internet, is the Ministry of Information and Telecommunications. In Serbia, there is a certain number of these bodies, the most significant of which are those that perform tasks in the field of competition protection (Commission for the Protection of Competition - KZK), electronic communications and postal services (Regulatory Agency for Electronic Communications and Postal Services - RATEL) and electronic media (Regulatory Authority for Electronic Media - REM). Operationally, at the agency level, the implementation of the Law on Electronic Communications is carried out by the Regulatory Body for Electronic Communications and Postal Services (RATEL) - an independent regulatory organisation with the status of a legal entity, which exercises public powers with the aim of effectively implementing the established policy in the field of

[48] Law on Protection of Competition (Official Gazette of the Republic of Serbia, No. 51/2009 and 95/2013), Article 9
[49] Ibid., Article 16
[50] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023), Article 72.

electronic communications, encouraging competition in electronic communication networks and services, improving their capacity, i.e. quality, contributing to the development of the electronic communications market and protecting the interests of electronic communications users.[51] Among other things, he Agency decides on the rights and obligations of operators, i.e. postal operators and users, cooperates with bodies and organisations responsible for the field of broadcasting, competition protection, consumer protection, protection of personal data and other bodies and organisations on issues relevant to the field of electronic communications and postal services.[52]

What is/are the enforcement mechanism/s? imposition of sanctions, voluntary agreements, etc.

The mechanism of control by the Agency is regulated by Article 161 of the Law on Electronic Communications, which is called expert supervision. In accordance with the same, and for the purpose of carrying out professional supervision, the Regulator is authorised to request the necessary data and information from business entities and other persons, as well as to perform measurements and tests of the operation of electronic communication networks and services, associated assets, electronic communication equipment, radio-equipment and terminal equipment.[53]

When conducting expert supervision, the authorised person has the right and obligation to control:

- performance of electronic communications activities in accordance with the prescribed general conditions, special obligations to certain economic entities with significant market power, obligations related to universal service, conditions from licences for the use of numbering, conditions from individual licences, as well as other obligations determined by the relevant law and regulations adopted on the basis of it;
- conformity of the parameters of the elements of the electronic communication network with the regulations adopted on the basis of the law in question;
- fulfilment of prescribed parameters of service quality when providing universal service, as well as prescribed quality parameters of other types of electronic communication services;
- fulfilment of technical requirements for electronic communication equipment and radio equipment, including technical requirements for interception of communications and access to retained data;
- ensuring the security and integrity of public communication networks and services;
- performance of measurement and testing operations from Article 167 of the subject law.[54]

If, in the course of professional supervision, the Agency determines irregularities, deficiencies or omissions in the application of the law in question and the regulations adopted on the basis of it, it shall inform the supervised subject thereof and set a deadline in which it is obliged to eliminate them, which cannot be shorter than eight days from the day of receipt of the notification, except in cases requiring immediate action.[55] Furthermore, if the Regulator determines that the supervised entity has not, within the time allowed, eliminated the identified irregularities, deficiencies or omissions in the application of the law in question and the regulations adopted on the basis of it, it submits a report to the inspection.[56]

In addition to the Agency, as a form of control and ensuring compliance with the law, i.e. network neutrality, the law also foresees inspection supervision, which is carried out over the implementation of this law, the regulations governing the activity of electronic communications, as well as international agreements in the field of electronic communications, performed by the Ministry, through a special inspectorate in charge of electronic communications. The inspection supervision over the implementation of this law and the

[51] Statute of the Regulatory Agency for Electronic Communications and Postal Services, Article 2
[52] Ibid., Article 12
[53] Law on Electronic Communications (Official Gazette of the Republic of Serbia, No. 35/2023), Article 161, paragraph 2.
[54] Ibid., Article 161, paragraph 5.
[55] Ibid., Article 161, paragraph 6 and paragraph 7.
[56] Ibid., Article 161, paragraph 8.

regulations regulating the activity of electronic communications in the territory of the Autonomous Province is carried out by the Autonomous Province through its bodies, as entrusted assignments. The inspector is independent within the limits of the powers established by the law and other regulations governing the performance of inspection duties, and he/she is personally responsible for his/her work and is obliged to include in the application procedure of the Agency, citizens, natural and legal entities, as well as to inform the applicant of the results of the procedure.

In addition to the authority from the law governing the performance of inspection activities, the inspector also has a special authority provided for in the Law on Electronic Communications, which is the authority to check:

- the conduct of the company in accordance with the prescribed general conditions for the performance of electronic communications activities, special obligations to certain operators with significant market power, obligations related to universal service, conditions prescribed by licenses for the use of numbering, individual licenses for the use of radio frequencies, as well as other obligations established by this law and regulations adopted on its basis;
- operation of electronic communication networks and services, associated means, electronic communication equipment, radio equipment and terminal equipment, as well as fulfilment of prescribed technical and other requirements;
- whether the radio frequency spectrum is used in accordance with this law;
- the actions of individual licence holders and other users of the radio frequency spectrum in relation to the obligations established by the licences, this law, regulations adopted on the basis of it and corresponding international agreements;
- the existence of harmful interference in the operation of electronic communication networks;
- the conduct of the business entity in connection with the implementation of personal and privacy data protection measures, ensuring the security and integrity of public communication networks and services;
- actions of the operator in connection with enabling the lawful interception of electronic communications and access to retained data, in accordance with the law governing the area of lawful interception and retention of data.[57]

On the basis of the powers exercised in this way, the inspector can issue a decision ordering measures to eliminate the established illegalities and, with a deadline for their elimination, take temporary measures, including banning the operation of electronic communication equipment and terminal equipment, sealing and confiscation of electronic communication equipment, radio equipment and terminal equipment or parts of equipment, as well as temporarily prohibiting the performance of electronic communications activities or the performance of certain activities in the field of electronic communications, by closing the premises in which the activity is performed or a certain activity is performed or in another appropriate way, in cases where it is impossible to carry out supervision, when activity is carried out without authorisation or when previously determined measures are not applied, while determining the duration of the temporary prohibition of activity in which persons are obliged to eliminate the illegal situation that is the reason for the imposition of the measure. An appeal against the inspector's decision can be filed with the Ministry within 15 days of receiving the decision, which postpones the execution of the decision, and an administrative dispute can be initiated against the Ministry's decision. The inspector is obliged to inform the Agency about the determined irregularities, deficiencies or omissions in the application of this law and the regulations adopted on the basis of it and, if necessary, propose to the Agency to take measures within its jurisdiction.[58]

We can say that as one of the mechanisms for ensuring the implementation of the law, the transparency of RATEL's work is also foreseen. Thus, the Statute obliges the Agency to be transparent in its work, so that it is obliged to provide regulations for the implementation of the Law, minutes from the meetings and decisions of the Management Board (the Management Board was changed to the Council by the new Law), registers,

[57] Ibid., Article 165.
[58] Ibid., Article 166.

records and databases, comparative reviews of quality and the price of publicly offered services and other data of interest for the protection and promotion of the interests of consumers, i.e. end users, expert opinions, studies and analyses ordered for the needs of the Agency, as well as statistical data and other indicators of the development of the market, electronic communications and postal services market, make annual financial statements publicly available on the Agency's website, in compliance with the regulations governing the protection of personal data.[59]

It should be noted that the Law on Electronic Communications also prescribes penal provisions for various types of violations, both for legal entities and for responsible persons in those legal entities. The prescribed fines differ, depending on the type of violation.

If enforcement mechanisms exist, are they effective?

The Constitution does not recognise independent regulatory bodies as a special category of authorities, but it recognizes the so-called holders of public powers, which include very different entities from bodies of territorial autonomy (autonomous provinces) and local governments, through universities, public companies, other institutions, private persons exercising public powers (notaries, bailiffs, etc.), and even bodies which perform a regulatory function.

The Constitution states that individual public powers can be entrusted by law to companies, institutions, organisations and individuals, as well as to special bodies through which the regulatory function is exercised in certain areas or activities. From this, it can be concluded that regulatory bodies fall under the category of special bodies.[60] Furthermore, the Constitution states that individual acts and actions of state bodies, organisations entrusted with public powers, bodies of autonomous provinces and local self-government units, must be based on the law, and that control of legality is carried out by court in an administrative dispute, if protection before another court is not provided.[61]

The executive and legislative authorities participate in the election of RATEL Council members. Namely, on the proposal of the competent committee for electronic communications affairs, the National Assembly elects and dismisses the president and members of this body. Particularly problematic is the provision which stipulates that if the election of all members fails, the procedure is repeated until all members are appointed, thus allowing the legislature to vote on the election again until members that suit the parliamentary majority are elected. As for the director of RATEL, he/she is elected and dismissed by the thus elected Council of RATEL.[62]

Independent regulation cannot be carried out by a body dependent on the administration, that is why it is necessary to place an independent regulator on a level where it will be clear that they are separate authorities, which are controlled by the judiciary. This is the only way to ensure that the institution that performs the responsible regulatory function is an organisation of integrity, independent and respected, without the possibility of direct or indirect influence of the executive power.

Although the Law on Electronic Communications more closely defines the legal status of the Regulatory Body for Electronic Communications and Postal Services (RATEL) in such a way that it stipulates that RATEL is an independent regulatory organisation that exercises public powers with the aim of effectively implementing the established policy in the field of electronic communications, ensuring competition, development of the market of electronic communications and protection of the interests of end users, in accordance with the provisions of this law and the regulations adopted on the basis of it, as well as public

[59] Statute of the Regulatory Agency for Electronic Communications and Postal Services, Article 29
[60] Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006) Article 137
[61] Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/2006) Article 198
[62] Law on Electronic Communications (Official Gazette of the Republic of Serbia, no. 35/2023), Article 15 and Article 20.

authorities in order to regulate the market of postal services in accordance with the special law regulating postal services.[63]

Which enforcement mechanisms have been effective, and which have been ineffective?

Although the Republic of Serbia has a certain level of guarantees of internet neutrality, at the legal level, the biggest problem in achieving their purpose is the questionable independence of the regulatory bodies that implement the law, as well as the non-transparency of both the operations of the operator and the operator itself, which questionability is reflected in the impossibility of separation of these, in principle, independent bodies from the executive power.

One of the mechanisms that is non-transparent is the one that takes care of the right to secrecy of communication, that is, the monitoring of electronic communications.

The right to secrecy of communication is a component of the right to privacy and refers to the inviolability of secrecy of letters and other means of communication, while deviations from inviolability are allowed only for a certain period of time and based on a court decision, if they are necessary for conducting criminal proceedings or protecting the security of the Republic of Serbia. in the manner provided by law (Article 41 of the Constitution of the Republic of Serbia). This right is "technologically neutral", so it does not matter by what means the communication is carried out, every communication implies the existence of the same level of legal protection. On the other hand, protection of confidentiality of communication implies equally protection of the content of communication and data about communication.[64]

Covert surveillance of electronic communications can be defined as any interception of electronic communications that reveals the content of the communication (which takes place between participants in the communication, at least one of whom is under surveillance), through all its forms (voice, text, video, data transfer and others) . It implies a measure ordered by authorised state bodies in order to detect certain criminal acts.[65]

Legal interception of electronic communications represents the secret surveillance of electronic communication services, activities and traffic provided by a telecommunications operator, which refers to the content of communications itself, and which is carried out by authorised government bodies or organisations. It is allowed only for a certain period of time and based on a court decision, if it is necessary for conducting criminal proceedings or protecting the security of the Republic of Serbia, in the manner provided by law.[66]

Vague legal regulations and frequent abuse of authority by security services, non-transparency in their work and general lack of information or lack of interest of users, create suitable preconditions for massive violation of privacy and secrecy of communication. That is why, in parallel with the reform of laws related to security, one must also think about changing the way the security services work, their habits, along with the establishment of strong public (civil society) control mechanisms, which can also be achieved through constant education and raising awareness of the problem. which is one of the goals of this research.[67]

In 2012, the Commissioner for Information of Public Importance and Protection of Personal Data supervised the implementation and execution of the Law on the Protection of Personal Data by landline and mobile operators, in the part related to the submission of retained data to state authorities, in accordance with Articles 128 and 129 of the previous Law on Electronic Communications. Supervision was conducted over

[63] Ibid., Article 8, paragraph 1.
[64] http://wiki.sharedefense.org/index.php/Nadzor_i_postupanje_u_skladu_sa_zakonom
[65] Criminal Procedure Code, Article 161, paragraphs 1 and 2 and Articles 166 to 170.
[66] Law on Electronic Communications (Official Gazette of the Republic of Serbia, no. 44/2010, 60/2013 – Decision of the Constitutional Court, 65/2014, 95/2018 – other law and 35/2023 – other law), Article 126
[67] http://wiki.sharedefense.org/index.php/Nadzor_i_postupanje_u_skladu_sa_zakonom

the following operators: ORION Telekom, Telenor d.o.o., VIP Mobile d.o.o. and Telekom Srbija, and it pertained to mobile and fixed telephony services. All operators were sent an identical letter in which they were asked to declare the total number of received requests from state authorities for the delivery of withheld data, then on what basis the data was requested, whether the request was answered and in what way, the method of data delivery in the event that the answer was positive regarding the type of information carrier on which the requested data was submitted, for the past 12 months. Operators were also required to declare whether security services have direct access to certain data about user communications. This report showed, first of all, that the regulation is unclear, but also that even as such, it is applied completely inadequately, with a high degree of suspicion that communication data is accessed without authorisation. The Commissioner's report showed that the state authorities approached the operators with a request for access to retained data a total of 4382 times, that the operators responded positively 3914 times and declined requests 364 times. What is also interesting is which entities require access to retained data, for example, Telekom was approached by City Administrations, Ministries, the Provincial Fund for Pension and Disability Insurance, Preschool Establishment, City Headquarters for Emergency Situations, and even a Detective Agency from abroad and a natural entities. Based on the operator's response, it can be concluded that they have special professional services that respond to requests for data access. All operators indicate that they do not provide data if the legal requirements are not met, but it is interesting that a large number of requests were answered even though no legal basis for accessing the data was given. The content of the request for access to data is not regulated by any regulation, so formally this kind of request was legally valid, but it is simply incredible that the state authorities do not state what is the basis for accessing the retained data, and even the courts that issue an order for access to data sometimes miss to arrange that.[68]

What entities do net neutrality norms apply to? What is the scope of net neutrality regulation? (broadband, mobile, etc.)

The provisions of the Law on Electronic Communications that relate to the neutrality of the Internet cover all activities in the field of electronic communications, as well as the competences of state bodies in the field of electronic communications, as well as the position and work of the Regulatory Agency for Electronic Communications and Postal Services, design, construction or installation, use and maintenance of electronic communication networks, associated assets, electronic communication equipment and terminal equipment, determination of markets subject to prior regulation and its analysis, determination of operators with significant market power and authorisations of the Regulatory Agency for Electronic Communications and Postal Services in relation to such operators, management and use of addresses and numbers (numbering), management, use and control of the radio frequency spectrum, distribution and broadcasting of media content, protection of the rights of users and subscribers, security and integrity of electronic communication networks and services, confidentiality of electronic communications and conditions for lawful interception and retention of data.

What exceptions exist to the application of net neutrality norms? (traffic management, safety, legality of content, etc.)

The processing of data on the traffic content of the end user is permitted only exceptionally. That is, the business entity that processes and stores the end user's traffic data is obliged to delete that data or to process and save it so that it is not possible to recognise which person it is, when the traffic data is no longer necessary for the transmission of communication, with the exception of data that are necessary for the creation of invoices for services or interconnection (only until the expiry of the deadline provided by law for complaints or collection of claims), then data that the business entity uses for the purpose of advertising and

[68] http://wiki.sharedefense.org/index.php/Nadzor_i_postupanje_u_skladu_sa_zakonom

selling services (with the prior consent of the person to whom the data refer, as well as for providing services with added value, to the extent and time necessary for those purposes), as well as in other cases in accordance with the law that regulate the retention of data. Also, the law allows the Agency (RATEL) and other competent state bodies to gain insight into network traffic data that are important for deciding disputes, especially regarding bills for services or interconnection.[69]

Regarding the collection of location data, the business entity may process the user's location data (which is not traffic data), only when it is processed so that it is not possible to identify which person it is or with the prior consent of the end user in order to provide services with added value, to the extent and time necessary for those purposes.[70]

The provider of a publicly available communication service between persons that is based on the use of numbering is obliged to provide the end user with filtering of unsolicited and harmful electronic messages, as well as a simple way to set up or turn off the filter, which is another form of interference by the operator in the content of communications, based on the law.[71]

RECORDING, STORING, MONITORING AND INTERCEPTION OF COMMUNICATIONS AS A TYPE OF RESTRICTION ON INTERNET NEUTRALITY

Recording, storing and any form of interception or monitoring of electronic communications and traffic data related to them is prohibited, provided that the prohibition in question does not apply to:

technical storage of data that is necessary for the transmission of communication, without encroaching on the principles of data confidentiality protection;

recording of communications and related traffic data, which is carried out for the purpose of proving commercial transactions or other business relationships, in which both parties are aware or should be aware or have been expressly warned that the communication may be recorded.

Also, the use of electronic communication networks and services for the purpose of storing or accessing data stored in the subscriber's or user's terminal equipment is allowed on the condition that the end user has given his/her consent, after having been given a clear and complete notice of the purpose of data collection and processing, in accordance with the law governing the protection of personal data, as well as being given the opportunity to refuse such processing, provided that this does not prevent technical storage or access to data for the sole purpose of ensuring communication within electronic communication networks or providing services which is the end user expressly requested.[72]

The law, within the general conditions for the provision of a public electronic communication network and/or service under the regime of general authorisation, with the exception of communication services between persons that are not based on the use of numbering, prescribes that the subject general conditions, among other things, also refer to enabling the lawful interception of electronic communications and access to retained data in accordance with a special law.[73]

[69] Law on Electronic Communications (Official Gazette of the Republic of Serbia, no. 35/2023), Article 152.
[70] Ibid., Article 153.
[71] Ibid., Article 149.
[72] Ibid., Article 160.
[73] Ibid., Article 40, paragraph 2, item 4.