

MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF SERBIAN MEDIA SCENE

ANEM Publikacija III
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UVOD

Ovo je Treći broj Monitoring Publikacije ANEMa, koja se bavi medijskom scenom u Srbiji. Njen sadržaj su odredili rezultati prethodnog šestomesečnog pravnog monitoringa stručnog tima advokatske kancelarije „Živković&Samardžić“, koji su ukazali na nekoliko važnih pitanja za srpski medijski sektor.

Prema nalazu monitoring tima, u periodu *Januar - Jun 2010. godine*, stanje u medijskom sektoru se nije mnogo promenilo u odnosu na prošlu godinu. Nije bilo značajnog napretka, ni u medijskoj regulativi, ni u praksi. Politička volja je i dalje opterećujući faktor za stanje u medijima, ali je u ovom periodu bio više izražen njen nedostatak za bilo šta što ima veze sa rešavanjem problema medijskog sektora za koje vlast snosi veliku odgovornost, nego njeno aktivno prisustvo radi zaštite političkih interesa u ovoj oblasti. Ključni medijski zakoni, Zakon o javnom informisanju i Zakon o radiodifuziji i dalje nisu usklađeni sa evropskim standardima i propisima, a za prošlogodišnje restriktivne izmene Zakona o javnom informisanju, još nije doneta odluka Ustavnog suda o predlogu Zaštitnika građana za ocenu njihove ustavnosti. Još uvek nema ni zakona kojim se onemogućava nedozvoljena medijska koncentracija, niti se pouzdano zna šta se dešava sa njegovim odavno urađenim Nacrtom. Medijsko vlasništvo je i dalje krajnje netransparentno. Izmene Zakona o javnom informisanju iz 2009. godine, kojima je Srbija dobila medijski registar, nisu obezbedile nikakav pomak na ovom planu, a javnost je i dalje uskraćena za pravo da zna ko su lica koja po vlasništvu ili drugim osnovima mogu vršiti uticaj na uređivačku politiku. Vlast nastavlja sa praksom nepridržavanja sopstvenih propisa i odluka i neizvršavanjem obaveza koje je sama sebi propisala, a sankcije trpe mediji. Tako, za važne tranzicione procese, privatizaciju i digitalizaciju, nadležni organi ne pokazuje ni minimum zainteresovanosti. Privatizacija medija se i dalje rešava od slučaja do slučaja, primenom odredbi opštih propisa koji regulišu privatizaciju i stečaj, bez dovoljnog uvažavanja posebnosti medijske delatnosti i specifičnih funkcija koje bi mediji trebalo da vrše u demokratskom društvu. Kašnjenje u pripremama digitalizacije televizije, koje je uzrokovano nespremnošću većine nadležnih organa da obave svoj deo posla, a posebno Vladinim odlaganjem da imenuje direktora JP „Emisiona tehnika i veze“, ozbiljno dovodi u pitanje realizaciju celog procesa u utvrđenom roku, a emitere u situaciju da ne mogu da planiraju svoje obaveze u procesu tranzicije. Napadi i pritisci na novinare i medije su sve izraženiji, jer nisu preduzete systemske mere koje bi otklonile uzrok ovog problema i sprečile njegovo ponavljanje, što neminovno dovodi i do autocenzure u medijima. Sve češće ozbiljne pretnje istaknutim novinarima i medijima koji se bave istraživačkim novinarstvom, pokazale su da u javnom prostoru u Srbiji i dalje postoje teme i društveni problemi o kojima je izuzetno rizično pisati i izveštavati. Sudske odluke i sudski postupci u takozvanim „medijskim slučajevima“, ni u ovom periodu nisu značajnije promenili sudsku praksu, pravosuđe nije bilo efikasnije u izricanju osuđujućih presuda i kazni ni protiv izvršilaca, ni protiv nalogodavaca, što takođe utiče na nesmanjen broj slučajeva ugrožavanja slobode izražavanja. Ni ekonomska situacija medija se nije značajnije popravila, jer nisu stvoreni uslovi za to. Deformisano medijsko tržište, sa povlašćenim pozicijama pojedinih subjekata, ne omogućava potrebne uslove za funkcionisanje medija, posebno u uslovima ekonomske krize. Lokalni mediji imaju sve veći problem neloyalne

konkurencije zbog načina raspodele lokalnih budžetskih sredstava namenjenih javnom informisanju od lokalnog značaja. Zbog nedostatka opšte obavezujućih pravila u ovoj oblasti, praksa lokalnih vlasti je neujednačena, ali se raspodela budžetskih sredstava uglavnom vrši bez ikakvih kriterijuma i transparentne procedure, uz favorizovanje pojedinih medija, najčešće opštinskih – neprivatizovanih, što pogoršava ekonomski položaj ostalih lokalnih medija. Međutim, otežan je i položaj budžetski finansiranih medija. Zbog odsustva bilo kakvih mehanizama systemske zaštite, ovi mediji su izloženi sve većim pritiscima na uređivačku politiku od strane njihovih formalnih osnivača, bilo da se radi o lokalnim vlastima, bilo da se radi o nacionalnim savetima nacionalnih manjina. U ovom periodu je održivost medijskog sistema i dodatno ugrožena raspisivanjem konkursa Republičke radiodifuzne agencije za dodelu novih dozvola za emitovanje programa, imajući u vidu, pre svega, opštu ocenu da je previše elektronskih medija u Srbiji, ali i potrebu čuvanja frekvencija za uspešnu digitalnu tranziciju. Pluralizam medija se u Srbiji tako i dalje svodi na kvantitet, a ne na suštinsko razlikovanje ideja i mišljenja koji se preko medija plasiraju javnosti. Percepcija medija kao industrije, bez uvažavanja specifičnosti njihove uloge u demokratizaciji društva, deformiše odnos društva i medija, pa mnogi mediji u trci za profitom prečesto zaboravljaju svoju funkciju, a društvo više ni nema bilo kakva očekivanja prema njima. Ipak, kada je reč o javnom servisu, takav odnos je izuzetno štetan. RTS, kao glavni nosilac javnog servisa, u svom delovanju treba primarno da služi zadovoljavanju potreba građana, a ne da maksimalizuje profit. Umesto toga, RTS svoj položaj shvata kao privilegiju bez ikakvih obaveza, prvenstveno se bavi svojim finansijama, a nadležni organi ni ne rade ocenu kvalitativnog ostvarivanja uloge javnog servisa i analizu sadržaja njegovog programa, već se zadovoljavaju ispitivanjem kvantitativnog ispunjavanja programskih kvota i poštovanja pravila o oglašavanju, kao u slučaju bilo kog drugog komercijalnog medija.

Iz navedenog proizilazi da je medijska scena nastavila da se suočava sa istim problemima kao i u prošloj godini, a da izvršna vlast nije pokazala ni volju ni sposobnost za njihovo rešavanje. Pojedini pozitivni pomaci, kao što su: izbor Gordane Suše za člana Saveta RRA, doduše, nakon 13 meseci od isteka mandata prethodnom članu, smanjenje naknada RATELa za korišćenje frekvencija, formiranje Saveta za štampu ili izmene Zakona o slobodnom pristupu informacijama kojima se omogućava bolje ostvarivanje ovog prava, što je važno i medijima, tek su sporadični slučajevi koji ne menjaju medijsko okruženje suštinski nabolje. Nedavno usvojeni Zakon o elektronskim komunikacijama, koji, s jedne strane, otvara mogućnost za lakše otkrivanje novinarskih izvora informacija, a s druge strane, stvara uslove da borba protiv „piratskih“ radio i TV stanica u Srbiji napokon postane efikasnija, pravi je primer dvostruke prirode gotovo svih dešavanja na medijskoj sceni. Stoga je očigledno da su u medijskom sektoru neophodne bitne promene. Osnov za njih treba da bude Medijska strategija, koja bi trebalo da, kroz konsenzus vlasti i medijskog sektora, utvrdi pravac tih promena. Medijska studija, prezentovana 25. juna u Beogradu, na čijoj su izradi radili eksperti koje je angažovala Evropska komisija, predstavlja bazu za početak javne debate o sadržaju Medijske strategije i daje priliku za važan korak napred. U narednom periodu, ostaje da se vidi da li će ova šansa za popravljavanje odnosa vlasti i medija biti pravilno iskorišćena za dobrobit i medija i društva.

Ova Publikacija se bavi važnim medijskim pitanjima iz prethodnog šestomesečnog perioda, a tekstovi su pisani pre objavljivanja Medijske studije. Autor dva teksta, advokat Slobodan

Kremenjak, u prvom piše o lošim dešavanjima u oblasti slobode izražavanja koja za posledicu imaju autocenzuru novinara i medija, a u drugom, o važnosti Medijske strategije za uspostavljanje dobre javne medijske politike, primerene društvenim potrebama i tehnološkim promenama. Dr Jovanka Matić piše o pojmu i značaju medijskog javnog servisa, kontroli i odgovornosti njegovih nosilaca za ispunjavanje javnog interesa građana u oblasti informisanja, a dr Ana Martinoli o radiju, nepravedno marginalizovanom mediju u uslovima tehnoloških promena i njegovoj budućnosti u novom medijskom okruženju. Peti tekst čine izvodi iz sudske prakse Evropskog suda za ljudska prava – sažet prikaz dve presude koje se odnose na primenu člana 10 Evropske Konvencije za zaštitu ljudskih prava i osnovnih sloboda.

Napadi na novinare i autocenzura

Slobodan Kremenjak, advokat¹

Vladimira Mitrića, dopisnika „Večernjih novosti“ iz Loznice, policija štiti već više od tri i po godine. On je u septembru 2005. godine brutalno pretučen, polomljena mu je ruka i imao je brojne kontuzije po glavi i telu. Za taj napad optužen je jedan bivši policajac, ali njegovi nalogodavci nikada nisu otkriveni. Suđenje napadaču i dalje je u toku. Dopisniku "Večernjih novosti" još uvek se preti, i pored policijskog obezbeđenja.

Predstavnica za slobodu medija OEBS-a, Dunja Mijatović, ocenila je početkom aprila u izjavi za agenciju Beta, da se stanje u medijima u poslednjih nekoliko godina pogoršalo, a posebno da su učestali primeri gušenja slobodne reči u vidu fizičkih napada na novinare širom regije, ali i samocenzura. Još skorije, u govoru pred Helsinškim Komitetom SAD, Mijatović je izjavila da nema istinske slobode medija dok novinari strahuju za život obavljajući svoj posao, te pozvala vlade država članica OEBS-a da glasno osude i kazne počinioce nasilnih napada na novinare.

Primeri gušenja medijskih sloboda u vidu fizičkih napada i pretnji, te posledična autocenzura, više su nego vidljivi i u Srbiji. Napadi su po pravilu usmereni na najuglednija novinarska imena, kao što su predsednik Nezavisnog udruženja novinara Srbije, Vukašin Obradović, ili višestruko nagrađivana novinarka Brankica Stanković. Nemoć ili nespremnost društva i države da na napade na novinare adekvatno odgovori, šalju svojevrsnu poruku. Ta poruka je da postoje zabranjene teme i da postoje stvari o kojima je bolje ćutati.

Vukašin Obradović, urednik novina „Vranjskih“ progovorio je o Goranu Tasiću Gokčetu, čoveku protiv koga su u toku dva postupka zbog pokušaja ubistva. Tasić je, doskorašnji član i, kako mediji prenose, glavni čovek Nove Srbije u Vranju, izuzetno blizak predsedniku ove stranke, Velimiru Iliću. Iz stranke je izbačen početkom aprila, zbog pretnji narodnom poslaniku, takođe, Nove Srbije, Radoslavu Mojsiloviću. Nakon teksta u „Vranjskim“, čija je tema bio, Tasić je čak držao konferenciju za štampu, na kojoj je najavio tužbe protiv Vukašina Obradovića. Lokalni političari u Vranju, ali i predsednik Nove Srbije, Velimir Ilić, izbegavali su da govore o ovom slučaju. Obradović je ostavljen da sebe i svoju porodicu čuva sam, kako ume i zna, od čoveka kome ova država već sudi za dva pokušaja ubistva.

Gotovo istovremeno sa Tasićevom konferencijom za štampu u Vranju, na kojoj nije demantovao da ima 21 krivično delo u kaznenoj evidenciji, već ponavljao da Vukašin Obradović tako nešto nije smeo da objavi, sudsko veće Prvog osnovnog suda u Beogradu, kojem je predsedavala sudija Jelena Milinović, odbacilo je optužnicu protiv šest navijača „Partizana“ za ugrožavanje sigurnosti novinarka B92, Brankice Stanković. Sud je našao da u njihovim radnjama nije postojala pretnja, za koju se goni po službenoj dužnosti, već eventualno uvreda, za koju se goni po privatnoj tužbi, te da Javno tužilaštvo nije ni bilo

¹ Advokatska kancelarija "Živković&Samardžić", Beograd

ovlašćeno da ovaj postupak pokrene. Podsetimo, grupa je na tribinama stadiona „Partizana“, tokom utakmice ovog kluba sa ukrajinskim „Šahtjorom“, učestvovala u performansu sa šutiranjem i bušenjem lutke koja je predstavljala novinarku, uz poruku da će proći kao njen ubijeni kolega Slavko Ćuruvija. Sve je usledilo nakon što je, u emisiji „Insajder“, emitovanoj na TV B92, Brankica Stanković javnost upoznala sa sadržajem preko sto prijava, koje je protiv vođa navijačkih grupa policija podnosila poslednjih godina, i po kojima, po pravilu, nije dolazilo do sudskog epiloga. Brankica je pod policijskim obezbeđenjem još od decembra prošle godine.

„Smatram da novinar ne može objektivno da radi svoj posao ako ga policija štiti“, izjavila je ova novinarka nedavno za Radio B92, i objasnila „ne znam kako bih ja sad mogla da idem da snimam neki intervju sa nekim sagovornikom ili da se prosto vidim sa svojim izvorom, jer ja, gde god idem, moram da idem sa obezbeđenjem.“ U ovom trenutku, nezahvalno je prognozirati koliko će ova novinarka još morati da bude pod obezbeđenjem, ali primer koji imamo sa Vladimirom Mitrićem, ne sluti na dobro.

Srbija je 2009. godine u sklopu širih reformi krivičnog zakonodavstva pooštrila sankcije za pojedina krivična dela usmerena protiv novinara. Jedno od tih dela je i ugrožavanje sigurnosti, odnosno pretnja usmerena na novinara u vezi sa obavljanjem njegovog posla. Na taj način kreirani su institucionalni okviri za adekvatniju zaštitu novinara. Nažalost, sve dok pravosuđe ne bude bilo efikasnije u izricanju kazni za pretnje i napade i dok postupci ne budu pokretani i okončavani osuđujućim presudama i protiv nalogodavaca, a ne samo protiv neposrednih izvršilaca, srpski mediji teško će moći da se izbore sa samocenzurom na koju i predstavnica za slobodu medija OEBS-a Dunja Mijatović ukazuje, a permanentno policijsko obezbeđenje za ugrožene novinare, ostaće neophodnost.

Sprečiti zloupotrebu Strategije medijskog razvoja

Slobodan Kremenjak, advokat¹

Odsustvo odgovorne javne medijske politike postalo je do te mere očigledno usvajanjem, sa svih strana kritikovanih, izmena i dopuna Zakona o javnom informisanju iz 2009. godine, da je Vlada bila prinuđena da, kao ustupak, ponudi medijskim i novinarskim asocijacijama partnerstvo u izradi Strategije medijskog razvoja Srbije. Na medijskim i novinarskim asocijacijama je da ne dopuste da iznuđena ponuda vlasti za zajednički rad na Strategiji bude zloupotrebljena.

U uslovima globalnih medijskih trendova, kao što su inflacija medijskih sadržaja i njihovo beskrajno recikliranje, opšta komercijalizacija i medijska koncentracija, aktivna uloga države u ostvarivanju Ustavom i međunarodnim aktima zajemčenog prava svakoga da bude istinito, potpuno i blagovremeno obaveštavan o pitanjima od javnog značaja, te zajemčene slobode mišljenja i izražavanja, kao slobode da se govorom, pisanjem, slikom ili na drugi način traže, primaju i šire obaveštenja i ideje, postaje sve značajnija. Ciljevi i mehanizmi ostvarivanja ove uloge države, zapravo predstavljaju njenu medijsku politiku. Prepuštanje tržištu i tržišnim mehanizmima da sami regulišu medijsku scenu, mogu dovesti i dovode do rezultata koji ugrožavaju neke od temeljnih vrednosti medijskog sistema, kao što su očuvanje i promocija medijskog pluralizma, kulturnog identiteta, odnosno, u svojoj krajnjoj instanci, do ugrožavanja prava građana da budu informisani o stvarima od javnog interesa.

Mehanizmi javne medijske politike, posebno u odnosu na elektronske medije, mogu se kretati u širokom spektru koji se proteže od nametanja regulatornih obaveza koje bi se ticale postizanja određenih programskih kvota i određenog kvaliteta programa, politike naknada za dozvole za emitovanje programa, kojima bi se podsticali društveno poželjni medijski sadržaji, finansijskom podrškom projektima kojima bi se osnaživao medijski pluralizam, izražavao kulturni identitet, pospešilo informisanje od lokalnog ili regionalnog značaja i slično. U uslovima tehnološke revolucije koja se odvija pred našim očima, konvergencije medijskih platformi i rušenja tradicionalnog medijskog okruženja, primena ovih i ovakvih mehanizama, nužno zahteva razumevanje tehnoloških promena i stalno preispitivanje i postavljenih ciljeva i ostvarenih rezultata. Drugim rečima, zahteva ozbiljan regulatorni kapacitet koji je nužno graditi.

Regulatorne intervencije srpskih vlasti u periodu nakon usvajanja Zakona o radiodifuziji iz 2002. godine i Zakona o javnom informisanju iz 2003. godine, nisu se, međutim kretale u ovom pravcu. Pre bi se moglo reći da su odslikavale odsustvo i regulatornog kapaciteta i bilo kakve odgovorne javne medijske politike i vizije o sve širem razmimoilaženju između pravca u kome se medijski sektor razvija i makar deklarativno proklamovanih ciljeva koji se pred takav medijski sektor stavljaju. Podsetimo, u Srbiji je i izdato daleko više dozvola za zemaljsko emitovanje programa, nego bilo gde u regionu. Razlika u broju izdatih dozvola još

¹ Advokatska kancelarija "Živković&Samardžić", Beograd

je drastičnija ako se obim i potencijal srpskog tržišta oglašavanja uporedi sa potencijalom tih istih zemalja u regionu. Sa druge strane, naknade za dozvole za zemaljsko emitovanje programa drastično su više, dok je kablovsko i satelitsko emitovanje, o novijim medijskim platformama da i ne govorimo, ostalo praktično neregulisano, čime su uslovi poslovanja srpskih elektronskih medija učinjeni težim od tih uslova bilo gde u okruženju. Politika naknada za dozvole za emitovanje programa, umesto da služi podsticajima društveno poželjnih medijskih sadržaja, vodi se kao da je informisanje javnosti isključivo komercijalna i visokoprofitabilna aktivnost, čije prihode treba dodatno opteretiti u cilju punjenja državnog budžeta, nevezano za bilo kakve šire društvene interese. Ideja javnog radiodifuznog servisa shvaćena je institucionalno. U odsustvu bilo kakvih regulatornih obaveza nametnutih komercijalnim emiterima, ali i adekvatne kontrole i verifikacije mere i obima u kojem RTS, kao institucionalno shvaćeni javni servis, ostvaruje proklamovani javni interes, građani su u dobroj meri ostavljeni bez programa koji se tradicionalno smatraju javnim servisom. Vlada je usvajala mere za pomoć medijima u uslovima krize, da bi zatim opstruirala njihovu primenu. Pravni okvir postajao je restriktivniji, što su političari pravdali svojom percepcijom manjka odgovornosti prema javnosti i javnoj reči kao ključnog problema u medijskom sektoru.

Odsustvo odgovorne javne medijske politike dovelo je i do situacije u kojoj su medijska scena i pravni okvir za njeno funkcionisanje postali polje političkih trgovina i neprincipijelnih međustranačkih ustupaka zarad obezbeđivanja koalicione podrške. Izmenama pravnog okvira koje su u tom smislu vršene, deo regionalnih i lokalnih javnih medija i javnih medija koji su informisali na manjinskim jezicima, odlaganjem privatizacije, ostavljen je pod neposrednom kontrolom bilo lokalnih vlasti, bilo političkih partija nacionalnih manjina, a njihovo budžetsko finansiranje nastavlja da narušava konkurenciju u direktnoj suprotnosti sa Zakonom o kontroli državne pomoći.

U takvom okruženju, bilo bi pogubno zloupotrebiti izradu Strategije medijskog razvoja zarad novih političkih trgovina i zarad postizanja nove preraspodele političkog uticaja na medijsku sferu. Na medijskim i novinarskim asocijacijama je da takvu zloupotrebu spreče, a izradu Strategije u punoj meri iskoriste u interesu uspostavljanja medijske politike primerene društvenim potrebama, uslovima tehnološke revolucije i konvergencije čiji smo svedoci.

Kome je odgovoran javni servis

dr Jovanka Matic¹

U prošloj deceniji publika u Srbiji je naučila da umesto „sredstva informisanja“ kaže „mediji“, a u tekućoj da umesto „državna televizija“ kaže „javni servis“. Nova mantra u iole relevantnijoj referenci na medijski sektor – javni servis, javni mediji, javna radio-difuzija ili javna radio-televizija – široko je prihvaćena i kao vrednost po sebi. Ona ne podseća na trome, preglomazne, birokratizovane, neefikasne radio-televizijske sisteme niti na azil za dosadne, napadno didaktički orijentisane emisije paternalističkog tona, što joj prebacuju brojni kritičari širom Evrope. Naprotiv, javni servis se smatra centralnom institucijom demokratije, vitalnim elementom otvorene, slobodne, emancipatorske i efikasne društvene komunikacije i bitnim aspektom evropske tradicije.

Za pozitivno vrednovanje institucije javnog servisa zdušno su zainteresovani mnogi akteri domaćeg medijskog polja. Pre svega su to sami nosioci javnog servisa, kako ih zakon definiše – Radio-difuzna ustanova Srbije, tj. RTS i Radio-difuzna ustanova Vojvodine tj. RTV. Njima status javnog servisa omogućava ne samo povlašćen ekonomski položaj (pored obavezne pretplate mogu da ubiru i reklamne prihode), nego njihovoj delatnosti unapred obezbeđuje politički i kulturni legitimitet. Osim toga, institucija javnog servisa za RTS i RTV predstavlja spasonosni most kojim se bezbolno udaljuju od svoje neslavne nedavne prošlosti, pa ne čudi njihov veliki entuzijazam uložen u samopromotivnu kampanju („Medijski javni servis evropske Srbije“). Drugi subjekti – Vlada, nadležna ministarstva, političke partije, regulatorna tela, profesionalna udruženja – takođe rado koriste simbolički potencijal javnog servisa za samolegitimišuće ciljeve. Kao simbol postkomunističke i postmiloševićevske reforme medijskog sistema, javni servis je zgodno sredstvo za demonstriranje privrženosti opredeljenju za demokratiju, evropske vrednosti i brige za javni interes.

Za uspešnu izgradnju javnog servisa svakako je neophodna široka društvena saglasnost o njegovim vrednostima. Međutim, istovremeno je potrebna i stalna provera funkcionisanja njegovih nosilaca, kontrola njihove usaglašenosti sa zakonskim rešenjima, analiza problema sa kojima se suočavaju, kao i redovno sumiranje iskustava, poređenje regulatornih rešenja, sagledavanje izvesnih i mogućih budućih izazova.

Upravo je redovan, nepristrasan i kritički uvid u tekuće funkcionisanje javnih medijskih servisa i njihovu neposrednu budućnost ono što nedostaje u složenom procesu tranzicije iz dojučerašnjeg državnog radija i televizije u poželjni model medija „stvorenih od javnosti, finansiranih od javnosti i kontrolisanih od javnosti“. Ovo tim više što ne postoje nikakvi mehanizmi koji dati medij čine odgovornim – pravno, finansijski ili krivično – za uspešnu transformaciju iz javnog preduzeća u javnu službu niti takvi koji bi mu u slučaju neuspešnog funkcionisanja mogli oduzeti status javnog servisa i dodeliti ga nekom drugom emiteru. Niko od pomenutih aktera koji ističu svoj afirmativni odnos prema ideji i instituciji javnog

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servisa ne doprinosi da se uspostavi stalni nadzor nad ovim novim vidom medijske organizacije u cilju unapređenja njegovog delovanja i boljeg zadovoljavanja interesa javnosti.

Medijski javni servis je suviše važna društvena institucija da bi se briga o njegovoj budućnosti poverila samo njemu. Pitanje, dakle, nije samo ko kontroliše javni servis i o njemu brine, nego i kome je javni servis odgovoran za svoj rad, za postignuća ili podbačaje, i kako se ta odgovornost iskazuje. Ima li javnost u Srbiji, u čijem interesu je javni servis uspostavljen, jasnu sliku o tome da li je ovaj proces završen i kakvi su njegovi rezultati nakon osam godina od formalne inauguracije? Kako se domaći sistem odnosi prema krizi identiteta javnog medijskog servisa koja je odavno registrovana u Evropi (Blumler, Gurevitch, 1995)? Kako će se na njega odraziti tekuća kriza dosadašnjeg modela poslovanja komercijalnih medija koja hara celom planetom? Kako će se u započetom procesu digitalizacije definisati javni interes građana u društvenom komuniciranju (Lowe, Hujanen, 2003)?

Šta je javni servis?

Iako je termin medijski javni servis u upotrebi više od 80 godina, ne postoji njegova standardna, nedvosmislena i opšteprihvaćena definicija. Prva definicija je imala tehničko-ekonomsko značenje i naglašavala je vrstu javne tj. društvene usluge (engleska reč je „service“) koju obezbeđuje država – efikasno dopremanje kvalitetnog signala – koja je podjednako dostupna svim građanima, na način na koji im je dostupna poštanska usluga ili usluga javnog prevoza. Javni servis tada se najčešće pominjao uz izraze „univerzalni pristup“, „jednake cene“, „regulacija profita“ i „visoki standardi tehničkog kvaliteta“ (Syversten, 1999). Mnogo kasnije se pojam „javni“ koristi u značenju „javne sfere“, a ona predstavlja kao polje u kome deluju građani tako što učestvuju u donošenju odluka od zajedničkog interesa. Medij u službi javne sfere je svim članovima društva obezbeđivao pristup znanju koje im je potrebno za obavljanje građanskih dužnosti. Ovo značenje afirmiše nove vrednosti jer ukazuje na medij koji je udaljen i od države i od tržišta i preuzima funkciju kritičkog „oka javnosti“. U novije vreme „javnost“ se izjednačava sa „publikom“ tj. sa individualnim korisnicima medija. Sada se pod javnim servisom sve češće podrazumeva emitovanje u službi slušalaca i gledalaca kao individua sa određenim preferencijama u pogledu medijskih sadržaja. Sve snažnija komercijalizacija medijskog sektora, koja je globalni trend, nameće ovo novo tumačenje umesto emitovanja u službi javnosti tj. građana kao aktivnih društvenih subjekata.

U domaćem javnom diskursu prisutne su sve tri definicije javnog servisa, jer se na njih oslanja i Zakon o radio-difuziji kojim je javni servis ustanovljen. Iza nekoliko popularnih sintagmi – „informiše, obrazuje i zabavlja u službi građana“, „osnovan, finansiran i kontrolisan od strane javnosti“, „treba mu novac da bi proizvodio program, a ne program da bi proizvodio novac“ stoji nekoliko opštih principa i funkcija javnog servisa.

U principe se ubrajaju univerzalna dostupnost, nezavisnost, autonomnost i raznovrsnost. Nezavisnost podrazumeva finansijsku nezavisnost (dovoljno, stabilno, kontinuirano i transparentno finansiranje), a autonomija samostalnu programsku i nepristrasnu uređivačku politiku u odnosu na političke i ekonomske interese i uticaje. U novije vreme se, pod uticajem

evropske regulative, kao principi još izdvajaju kvalitet, pluralizam, programska originalnost i orijentacija ka tehničkim inovacijama (Rutović, 2008).

Kao glavne funkcije javnog servisa se smatraju usluživanje komunikacionih potreba građana kao racionalnih i aktivnih društvenih subjekata, a ne samo kao potrošača, nediskriminatorska reprezentacija različitih socijalnih grupa i interesa i omogućavanje njihovog tolerantnog dijaloga, briga o raznim segmentima heterogene publike, posebno o manjinskim grupama radi jačanja njihove socijalne pripadnosti, poštovanje jezičkih razlika i zaštita nacionalnog identiteta i kulture.

Zakon o radio-difuziji iz 2002. godine afirmiše odgovarajuće principe delovanja javnog servisa i nabroja veliki broj njegovih obaveza. Naglašavaju se nezavisnost od uticaja vlasti, političkih organizacija ili centara ekonomske moći; raznovrsnost programa u pogledu žanra i porekla produkcije, poštovanje ljudskih prava i pluralizma mišljenja, negovanje tolerancije. Od javnog servisa se traži da uslužuje sve segmente društva bez diskriminacije, a posebno ranjive društvene grupe (deca, omladina, manjinske i etničke grupe, hendikepirani, socijalno i zdravstveno ugroženi), da dosledno reprezentuje delovanje udruženja građana i nevladinih organizacija, kao i verskih zajednica. Njegova obaveza je i da obezbedi izražavanje kulturnog identiteta kako većinskog naroda tako i nacionalnih manjina i etničkih grupa i njihovih jezičkih i govornih standarda.

Međutim, od načelno definisanih obaveza javnog servisa, Zakon nešto detaljnije precizira samo tri, koje su relativno male i nije ih teško ostvariti. Prva se odnosi na obaveznu kvotu od najmanje 50 posto programa na srpskom jeziku u ukupno emitovanom programu tokom godine (umanjenom za trajanje repriza, sportskih prenosa, igara i reklamnog programa), a druga na kvotu od najmanje 50 posto sopstvene produkcije u programima na srpskom jeziku. Obe, inače, važe i za komercijalne emitere, dok je treća ekskluzivna obaveza javnog servisa i odnosi se na emisije koje potiču od nezavisnih proizvođača, a koje moraju činiti najmanje 10 posto ukupnog godišnjeg vremena emitovanja programa (za britanski Bi-Bi-Si ova obaveza je 25 posto).

Ostali zahtevi nigde nisu precizirani kao evidentne, proverljive i merljive obaveze. To nije učinjeno pri dodeljivanju dozvola za emitovanje, kao što je to u nekim drugim zemljama (Bugarska, na primer), jer RTS i RTV za takve dozvole nisu ni konkurisali, već su zakonom odmah identifikovani kao nosioci delatnosti javnog servisa. To takođe nije učinjeno ni statutima ovih organizacija, koji uglavnom prepisuju odgovarajuće odredbe Zakona o radio-difuziji.

Nadzor bez kontrole

Postojeći normativni okvir, dakle, ne daje jasne indikatore na osnovu kojih se može vrednovati kako RTS i RTV obavljaju svoje uloge javnog servisa.

Nije, na primer, jasno kako ocenjivati specifičnu ulogu koju javni servis treba da ima u odnosu na etničke manjine u Srbiji naspram odsustva specijalizovanih programa, osim malog broja emisija na romskom jeziku. Ova vrsta obaveze se pominje u odnosu na

„specifične društvene grupe“, kao što su etničke manjine, deca, omladina, socijalno i zdravstveno ugroženi, o kojima javni servis treba posebno da „vodi računa“ (čl. 78, stav 3). U potpuno drugom kontekstu se navodi obaveza emitovanja programskih sadržaja koji „izražavaju kulturni identitet, kako naroda, tako i nacionalnih manjina, odnosno etničkih grupa“ i stvaranje mogućnosti za manjine da „određene programe ili programske celine, na područjima na kojima žive i rade, prate i na svom maternjem jeziku i pismu“ (stav 5), kao i obaveza uvažavanja „jezičkih i govornih standarda, kako većinskog stanovništva, tako, u odgovarajućoj srazmeri, i nacionalnih manjina, odnosno etničkih grupa, na području na kome se program emituje“ (stav 4). Nijedan dokument koji se odnosi na RTS – bilo zakonskog-podzakonskog oblika, administrativnog, samoregulativnog ili „platformskog“, ne utvrđuje koje od ovih obaveza se odnose upravo na RTS i koje su to etničke manjine (od zvanično registrovanih 19) kojima RTS treba da se obraća na njihovom jeziku, u kojem obimu i kojom vrstom sadržaja.

Redovnim ocenjivanjem performansi javnog servisa ne bavi se niko u Srbiji. Zakonski, nadzor nad radom javnog servisa poveren je Republičkoj radio-difuznoj agenciji. Međutim, RRA nema ni finansijske, ni kadrovske, ni tehničke resurse da se iole ozbiljno bavi monitoringom ponašanja emitera, a ni poseban interes da se specijalno bavi evaluacijom funkcionisanja javnih radio-difuznih ustanova. Do sada je to činila samo monitoringom izbornog izveštavanja svih emitera i poštovanja Zakona o oglašavanju. Za pet godina rada (iako formalno uvedena u medijski sistem još 2002. godine, RRA je faktički počela da funkcioniše tek 2005.), RRA je tri puta do sada obavila evaluaciju RTS-a kao javnog servisa, a izveštaj o tome je javno dostupan samo iz evaluacije urađene u prvom tromesečju 2010. godine.

Analiza, koju je sprovela Služba RRA za nadzor i analizu, veoma je površna i neambiciozna. Odnosi se samo na emitovani televizijski program na dva RTS-ova kanala i sadrži kvantitativne prikaze udela programa na srpskom jeziku u ukupno emitovanom programu, udela sopstvene produkcije i spoljne nezavisne produkcije, udela pojedinih žanrovskih vrsta programa u programskoj ponudi, kao i zbirnog udela programa namenjenih specifičnim društvenim grupama.

RRA se opredelila za najbezbolniji potez, za administrativno-nekritički pristup, ne pokušavajući da kvantitativne nalaze stavi u vremensku perspektivu ili da ih uporedi sa produkcijom komercijalnih emitera (Heikki, 2001). Ključna pitanja se tako nisu ni razmatrala – da li se 4-5 dominantnih vrsta programa javnog servisa razlikuju od programa koji dominiraju kod komercijalnih emitera, na primer (Matić, 2009) – jer se njihovo postavljanje našlo izvan teorijsko-metodološkog okvira. Vrsta podataka koja je izabrana za prikazivanje, namera da se dođe do jednostavnog zaključka „poštuje ili ne poštuje“ određene kvote i obavezu da proizvodi i emituje „programe informativnog, kulturnog, umetničkog, obrazovnog, verskog, naučnog, dečjeg, zabavnog, sportskog i drugih sadržaja“ (čl. 77) mogla je da proizvede samo apologetske rezultate. Zaista, u izveštaju RRA pod nazivom „Radio-televizija Srbije kao javni servis: Načini ispunjavanja zakonskih programskih obaveza“ se tvrdi da RTS ispunjava sve nadzirane programske obaveze (kvota od 10 posto za nezavisne produkcije nije u potpunosti postignuta u kvartalnom razdoblju, ali se ona i inače odnosi ne celogodišnju produkciju). Pravi smisao ovog izveštaja vidi se tek u obavezama koje nisu nadzirane – na primer, u odnosu prema etničkim manjinama, nepristrasnosti i objektivnosti

u tretiranju različitih političkih interesa u informativnom programu, ili u utvrđivanju odnosa dečjeg i naučno-obrazovnog programa u odnosu na reklamni (prva dva su zbirno zastupljena manje od reklama, TV prodaje i promocije sopstvenog programa).

Ogromna i izuzetno važna nepoznanica delovanja javnog servisa jeste njegovo poslovanje – ostvarivanje programskih funkcija, udeo pretplate i reklame u prihodima, rashodi, godišnji finansijski bilans, plate zaposlenih, način donošenja poslovnih i programskih odluka u upravnim telima – iako su sve ovo važni aspekti funkcionisanja javnog servisa.

Postojeća medijska regulativa ne obezbeđuje transparentnost upravljanja i poslovanja javnog servisa, odnosno uvid u programske i finansijske odluke. Rezultat ove netransparentnosti je nekoliko skandala u vezi s poslovanjem RTS-a (prevara u nagradnoj igri, kontroverza oko troškova Evrosonga itd), koji umanjuju kredibilitet institucije. Na izmaku prve polovine 2010. godine dostupan je samo godišnji finansijski izveštaj o poslovanju RTS-a iz 2008. godine. On je sačinjen tako da ga laička javnost kojoj je, naizgled, namenjen, ne može razumeti. Najnoviji javno dostupan izveštaj sa sednice Upravnog odbora RTS-a, glavnog upravnog tela, je star gotovo godinu i po (januar 2009), a ovi izveštaji su sačinjeni tako da poslovanje RTS-a i argumentaciju koja se na sednicama iznosi pri donošenju određenih odluka učine što netransparentnijim za spoljnu javnost.

Autentični interes civilnog društva

Politička elita je nebrojeno puta do sada demonstrirala odsustvo motivacije za stvaranje uslova za realnu nezavisnost i autonomiju javnog servisa. Sve postmiloševićevske vlade su odugovlačile sa medijskim reformama, donosile strateška i zakonska rešenja u zavisnosti od kratkoročnih političkih potreba i iskazivale sasvim malo brige za poštovanje zakona i za unapređenje programskih standarda javnog servisa i jačanje njegove efikasnosti. U vreme krize, vlada se nije libila da pribegne i direktnom kršenju zakona da bi obezbedila svoj uticaj na izveštavanje javnog servisa (Milivojević, 2005). U novije vreme, jakim pritiscima da se obezbedi prenošenje sednica Skupštine, politička elita je dokazala da javni servis još vidi kao instrument zadovoljavanja potreba najmoćnijih političkih interesa, a ne interesa građanstva.

Javne radio-difuzne ustanove, uprkos samolegitimirajućoj kampanji, takođe se nisu dokazale kao akter koji će samovoljno razvijati nove standarde proizvodnje programa, poslovanja i upravljanja. Aktuelni direktor RTS-a javno zagovara budžetske donacije kao jedino dugoročno rešenje ekonomske pozicije RTS-a, ne videći u tome opasnost po njegovu nezavisnost. Neuspeh RTS-a da obezbedi bar natpolovičnu naplatu pretplate on ne vidi kao svoj neuspeh, niti ga povezuje sa kvalitetom programske ponude i neuspešnom identifikacijom publike sa medijem koji, na rečima, postoji samo da bi služio njoj. Po njemu, svi problemi RTS-a se mogu svesti na manjak finansija, a njihovi izvori su izvan RTS-a. U vizuri direktora RTS-a, svako spoljno upiranje prstom na neodgovorno rukovođenje i poslovanje kao uzrok manjka finansijskih sredstava i negativno ocenjivanje programske koncepcije ili je proizvod loših namera koje počivaju na lažima ili je posledica ličnih frustracija netalentovanih novinara. Reformski kapacitet RTS-a, odnosno poverenje u RTS je dodatno ugroženo uspostavljenom tradicijom neodgovornosti u odnosu na poštovanje Zakona o reklamiranju i plaćanje autorskih prava, tj. spor koji RTS već dugo vodi sa organizacijom SOKOJ.

Kao iskreni saveznici javnog servisa do sada su se, i po domaćem i po stranom iskustvu, iskazali pre svega civilno društvo, profesionalna udruženja i stručna javnost. Međutim, njihova reprezentacija u rukovodećem (Upravni odbor) i savetodavom telu (Programski savet) nije dala vidljive rezultate. Ni Upravni odbor RTS-a ni Programski savet nisu doprineli većoj javnosti delovanja RTS-a niti su se afirmisali kao zaštitnici interesa javnosti, već pre kao zaštitari odluka užeg menadžerskog tima RTS-a. Do sada njihova uloga nije čak ni prepoznata kao pitanje koje zaslužuje stručnu raspravu i nalaženje adekvatnijih rešenja. Strana iskustva ukazuju na potrebu da se preispita način reprezentovanja civilnog društva u ovim telima, potrebne kompetencije njihovih članova, ali i priroda njihovog mandata, pogotovo u odnosu na civilno društvo i da se intenzivira komunikacija članova ovih tela sa slušaocima i gledaocima (Škrabalo, 2010).

Civilno društvo se na još nekoliko načina može uključiti u razvijanje institucije javnog servisa, posebno u eksterni nadzor. Poželjno je inicirati redovni nezavisni monitoring produkcije javnog servisa, i to onaj kritički, koji će ovu produkciju staviti u sistemski kontekst i analizirati kako se programske obaveze obavljaju kroz određeni vremenski okvir i u odnosu na javne emitere u regionu i komercijalne domaće emitere. Ovakvu vrstu monitoringa Radio-televizije Vojvodine je jedno vreme obavljala Novosadska novinarska škola (2006-2009), ali nikada nije rađen nezavisni monitoring produkcije RTS-a.

Nedostajuća karika je i uvid u očekivanja i preferencije publike u pogledu programske ponude javnog servisa. Istraživanja očekivanja publike, naročito kvalitativna istraživanja, jesu najviše zanemarena vrsta medijskih istraživanja. Otkako je javni servis postao deo medijskog sistema Srbije nije obavljeno nijedno značajno istraživanje o tome šta publika od njega želi, kako on zadovoljava njene raznolike potrebe, šta joj nedostaje i kako ona vidi odgovornost javnog servisa prema javnosti.

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Izazovi novih tehnologija i budućnost radija

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Komparativne analize različitih medija vrlo često radio stavljaju u inferioran položaj u odnosu na ostale medije. Nedostatak slike se označava kao fatalna mana radija koja će ga koštati napretka, budućnosti, opstanka. Međutim, pažljiviji pogled na razvoj radija pokazuje da je ovaj medij uspešno preživio različite informacione i „entertainment“ tehnologije, sistematično usvajao najnovija tehničko-tehnološka dostignuća i tako se samounapređivao, beležeći porast slušalaca i jačajući na medijskom tržištu.

OECD navodi da prvu deceniju 21. veka obeležavaju simultane i veoma moćne društvene transformacije koje će dodatno ojačati raznolikost našeg privatnog i profesionalnog okruženja: krećemo se od uniformnosti i „poslušnosti“ ere masovnih komunikacija ka jedinstvenosti i kreativnosti ekonomije, znanja i društva.

Način na koji će radio-stanice odgovoriti na ove promene, sposobnost da se prilagode i na najbolji mogući način iskoriste mogućnosti koje im pružaju nove tehnologije, umnogome će odrediti njihov budući uspeh i pozicije na tržištu, čak i domaćem, za koje je digitalizacija još apstraktan pojam.

Konverzija sa analognog na digitalni način difuzije medijskih sadržaja suočava publiku sa mogućnošću mnogo većeg izbora sadržaja nego što je to bilo do sada. Posledice su hiperfragmentacija publike, grupisanje u manje celine slušalaca sa zajedničkim interesovanjima i mnogo manji broj ukupnih slušalaca po jednom medijskom kanalu. Kao rezultat dobijamo višeslojno medijsko okruženje, u kome odnos prema medijima i potrebe ni dva slušaoca nisu slični.

Ono što, iz perspektive potrošača, karakteriše „novi medijski poredak“ jeste razvoj novih medijskih servisa, novih sistema isporučivanja medijskih sadržaja. Krajnji cilj je razvoj informacija i komunikacionih „brzih autoputeva“ koji će nas iz ere masovnih medija dovesti u eru individualizovanih medija i ličnog izbora.

Kod komercijalno uspešnih *mainstream* stanica najviše se kritikuje dominacija banalnih tema, popularna muzička selekcija koja je previše repetitivna, preveliki uticaj industrije, korporativni interesi, što smanjuje izazovnost programa, čini ga predvidivim, homogenim, a publiku primorava da svoje potrebe zadovolji na mestima gde joj je omogućena veća aktivnost, uključenost u selekciju, ali i distribuciju sadržaja. Ovakva praksa, moguća u slučaju Internet radija, otvoreno izaziva *mainstream* medije – iznoseći informacije, emitujući muziku i baveći se temama koje su prenebregnute, svesno ili nesvesno, koje su ignorisane i isključene iz medijskog toka kojim dominiraju komercijalni zahtevi.

⁴) Asistent na Fakultetu dramskih umetnosti Univerziteta u Beogradu i producent programa na Radiju B 92

Ukrštanje sa novim tehnologijama donelo je uslozljavanje funkcionalnosti radija, omogućavajući prenosivost, specijalizaciju programa, mogućnost interakcije, vizuelnost... Nove funkcije i nove mogućnosti radija nametnule su pitanje kako će se slušaoci radija u budućnosti prema programu odnositi, kada će ga, gde, koliko i kako konzumirati.⁵

U eri konvergiranih medija, ukrštenih analognih radio-stanica sa Internetom, na primer, upravo su potrošači oni koji vode glavnu reč i upravljaju medijima – kreiraju sopstvene radio-programe, muzičke plejliste, distribuiraju ih, dele, emituju, čine ih dostupnim masovnoj publici. Više ne možemo govoriti o zarobljenoj, masovnoj publici u tradicionalnim okvirima – današnji medijski potrošač je jedinstven, zahtevan i angažovan, uključen u praktično sve etape medijske proizvodnje. Sposobnost stanice da ove mogućnosti prepozna i iskoristi za unapređivanje sopstvenog programa mogu napraviti razliku između klasičnog, arhaičnog i modernog, dinamičnog i višeslojnog radijskog sadržaja. Radio-stanice, ukoliko žele leadersku poziciju na tržištu, više neće moći da se ograniče na distribuciju i promociju sadržaja isključivo kroz linearne, tradicionalne kanale, jer su očekivanja publike sve kompleksnija, sve više upotrebljava različite platforme za praćenje sadržaja koji je zanimaju – od mobilnih telefona, Interneta, MP3 plejera, do *iPoda*... Ovde dolazimo i do ključnog elementa uspešnosti medija, onako kako ga je definisao Mek Farland.⁶

Najjednostavniji oblici upotrebe novih medija, Interneta za početak, mogu se realizovati na više načina i svi su prisutni u savremenoj radijskoj praksi.

Live streaming je oblik distribucije radio-programa koji je najbliži emitovanju uz pomoć elektromagnetskih talasa, samo je u ovom slučaju radio-signal digitalizovan i emituje se na drugoj platformi. *Live streaming* se odvija simultano sa emitovanjem radio-programa putem redovnog terestrijalnog frekventnog opsega.

Arhiviranjem već emitovanog radio-programa u vidu audio fajlova, podkasta koji su dostupni korisniku u bilo kom trenutku, menjaju se okolnosti u kojima se radio-program može konzumirati odloženo vremenski, u segmentima, isključivo prilagođeno željama i potrebama korisnika. Korišćenje podkasta, međutim, ne mora biti ograničeno samo na emisije koje su već doživele premijeru na analognim ili digitalnim radio-stanicama. Podkast jednako dobro podnosi eksperimente, provokativne sadržaje ili sadržaje namenjene uskoj ciljnoj grupi, koji možda ne bi bili dovoljno isplativi za regularno emitovanje, ali su stanici bitni zbog imidža ili se, jednostavno, obraćaju slušaocima koje stanica ne želi da izgubi, a koji su, pak, nešto probirljiviji od prosečnog radijskog slušaoca. Jedan od razloga za pokretanje podkast kanala je i činjenica da će radio-stanica analizom aktivnosti po ovom kanalu moći da dobije jasniju, precizniju sliku o interesovanjima slušalaca, njihovim apetitima za *downloadovanje*,

⁵ Prema podacima iz 2006. godine, 16% ukupnih sati posvećenih programima komercijalnih radio-stanica u Velikoj Britaniji bilo je slušanje radio-programa preko digitalnih platformi, uključujući i podkast i Internet. Broj ovih sati raste, a analiza trendova i strukture slušalaca pokazuje da mlađa publika pokazuje veće interesovanje i motivaciju da sluša radio i preko novih platformi, kao i rast integracije radija sa platformama poput MP3 plejera, mobilnih telefona, Interneta, podkasta...

⁶ „Odgovor na pitanje o uspešnosti medija ne leži toliko u tehničkim unapređenjima audio reprodukcije, koliko u unapređenjima proizvoda koje publika traži - programiranje koje odgovara na potrebe slušalaca. Programiranje koje je fleksibilno, omogućava eksperiment, koje nije ograničeno tržišnim potencijalom *mainstream* sadržaja“, Dejvid Mej Farland, „*Future Radio Programming Strategies: Cultivating Listenership in the Digital Age*“, Lea's Communication Series, New York, 1997.

preferiranim sadržajima – ukratko, moguće je prikupiti više informacija koje će pomoći pri kreiranju budućih strategija programskog, ali i tehničko-tehnološkog razvoja.

Kao što danas možemo govoriti o multiplatformskim medijima, možemo govoriti i o multidimenzionalnoj publici, a da bi u takvoj medijskoj realnosti tradicionalni emiteri ostali relevantni, moraće da odgovore na zahteve za novim servisima i proizvodima, omogućavajući iskustvo interaktivnosti i šire razmene, što je upravo suština ukrštanja radija i Interneta.

Korišćenjem novih tehnologija radijski sadržaji dobijaju novu dimenziju, prevazilaze se uobičajena ograničenja medija poput jednodimenzionalnosti, efemernosti... samim izlaskom na Internet dobija se mogućnost nadogradnje vizuelnim komponentama – *scroll* tekstovima, slikama, video sadržajima, tekstom... proširujući iskustvo korisnika i dodatno ga podstičući na interakciju, razmenu, kreiranje sopstvenog sadržaja.

Dostupnost radio-programa i preko novih platformi doprineće povećanju broja situacija u kojima će radio-program moći da bude konzumiran. Činjenica da će slušalac moći da čuje program svoje omiljene radio-stanice svaki put kada je onlajn ili da će svoj omiljeni program moći da spakuje u *iPod* i sluša ga bilo kada, bilo gde, proširuje broj mogućnosti za konzumiranje radija kao medija i, posledično, donosi radio-stanici ne samo nove slušaoce, već i potencijalno mnogo veći broj sati provedenih uz program stanice (povećanje TSL-a tj. minutaže).

Poseban potencijal nove tehnologije Internet i podkast nude lokalnim i regionalnim stanicama, koje sada mogu da se obrate slušaocima van dometa terestrijalnog emitovanja programa.⁷

Može se zaključiti da stasavaju nove medijske generacije koje sve sadržaje konzumiraju dominantno preko novih tehnoloških platformi („digi-life“ generacija⁸) – Interneta, mobilnih telefona, *iPoda* – dok je njihovo iskustvo sa tradicionalnim medijima minimalno. Ovakav trend tradicionalnim elektronskim medijima, pa tako i radiju, nameće kao imperativ ukrštanje sa novim tehnologijama, kako bi se osvojila publika koja će za samo nekoliko godina postati premijum komercijalna grupa, grupa najatraktivnija za oglašivače.

Razlozi koje mlađa publika najčešće navodi kao ključne u odustajanju od tradicionalnih medija su loše i previše prisutne reklame, predvidive i previše komercijalne plejliste, kao i program stanica koji nije namenjen direktno njima, koji ne odgovara njihovim potrebama i interesovanjima.

Tod Mafin, CBC konsultant, kaže: „Analogni radio je jak u grupi slušalaca preko 40 godina... a podkasting omogućava otvaranje prema sasvim novoj demografiji... to je potencijalno

⁷ Kada je u pitanju naše tržište, istraživanja novih medija uglavnom se svode na navike korisnika Interneta, dok se pitanje konvergencije medija pominje samo u delovima istraživanja redovnog merenja slušanosti koja se obavljaju dvaput godišnje. Rezultati tih istraživanja pokazuju da broj slušalaca radija preko Interneta raste. U maju 2009. godine na pitanje „Da li imate tehničke mogućnosti da slušate radio preko Interneta?“ pozitivno je odgovorilo 27% ispitanika, dok tu mogućnost koristi 11% ispitanika istog istraživanja (procenat je najveći u Beogradu, 15%, a najmanji u centralnoj Srbiji, 9%). Ovo pitanje se u istraživanju postavlja tek od 2009. godine.

⁸ OFCOM/The Knowledge Agency, „The *iPod* Generation“, jul 2004.

odličan način da se nova publika, mlada, uvede u radijski diskurs i da se proširi uticaj analognog radija”.⁹

Nakon analize potreba publike, mogućnosti novih tehnologija i objektivnih nedostataka tradicionalnog radija, može se zaključiti da se ukrštanjem tradicionalnog radija sa novim tehnologijama odvija značajan pomak sa kontrolora programa („oni odlučuju”) na kontrolu koju sprovode slušaoci („ja odlučujem”). Tradicionalni radio se našao ugrožen zbog nemogućnosti da u potpunosti ispuni neke od zahteva: da ponudi obogaćen, inovativan sadržaj, kreativne, originalne prezentere, kapacitet da iznenadi muzičkom raznovrsnošću, informativan i promišljen govorni program. Dodatno, tradicionalni radio, da bi opstao, mora zadovoljiti potrebu slušalaca za većom kontrolom nad sadržajem, a upravo je to ono što omogućava upotreba novih tehnologija.

Podkasting i konvergencija radija sa Internetom otvaraju i nove mogućnosti za osvajanje publike koja je proteklih godina sve manje zainteresovana za tradicionalne medije. Kako pokazuju istraživanja u Sjedinjenim Državama i Velikoj Britaniji, popularnost radija kao medija je sve manja u grupi slušalaca starosti od 15 godina do 24 godine. Britansko regulatorno telo zaduženo za medije Ofkom 2004. godine je publikovalo izveštaj „iPod generacija”¹⁰ čiji su rezultati uznemirili tradicionalne elektronske medije, jer su pokazali da oni ne obezbeđuju ono što želi mlađa publika.

Opadanje lojalnosti prema tradicionalnim stanicama ogleda se i kroz sledeće tvrdnje koje su rezultat istraživanja – većina komercijalnih stanica ocenjena je kao bezlična ili šizofrena; slušaoci se vezuju za voditelje, ali ne i za stanice u celini; postoji negativan stav prema voditeljima koji se previše trude da budu mladi, u trendu, duhoviti; istinska strast prema muzici kod voditelja može biti presudna u prihvatanju i vezivanju; postoji prezir prema kulturi plejlista, konzistentnog programa, predvidivosti.

Istraživanja pokazuju da je poželjnost *iPoda* i njegova popularnost kod publike, dominantno mlađe (18-30), posledica tri faktora: želje za većom kontrolom programskih sadržaja, posebno muzičkih, trenda mobilne i personalizovane tehnologije i privlačnosti proizvoda – uređaja.

Kvalitativno istraživanje navika slušalaca grupe 18-30 godina pokazalo je da je njihov ukus u odnosu na radijske formate vrlo eklektičan – traže mešavinu opšte zabave, avangarde, *mainstreama*, ali i govorne sadržaje, ozbiljne teme... U ovakva očekivanja i potrebe auditorijuma uklapaju se nove tehnologije sa mogućnostima koje nude – lični izbor muzike i programskih sadržaja, nepostojanje reklama, nepotrebnog govora, potencijalno manje repetitive, spontanost i željena nepredvidljivost radijskog programa može se stvoriti tzv. „randomizovanim” plejlistama, mogućnost preslušavanja nove muzike i razmena sa drugim članovima „mreže” koji dele ista interesovanja, ukus...

⁹⁾ Ibid

¹⁰⁾ *The iPod Generation - Devices and Desires of the Next Generation of Radio Listeners*, izveštaj pripremio The Knowledge Agency za Ofcom, Juli 2004, London

Najveći potencijal radija leži u njegovoj sposobnosti da ostvari blisku vezu sa slušaocima, a zatim i u mogućnostima da zadovolji potrebe i želje svoje publike na način na koji to ne može nijedan drugi medij, te da im ponudi beskonačno otvoren medijski tekst, podložan bezbrojnim interpretacijama. Stoga bi i najvažnija preporuka radio-stanicama bila – hrabro zakoračite u prostor koji vam otvaraju nove tehnologije, besplatne, jednostavne za korišćenje i sa beskonačnim mogućnostima da svoj program učinite savremenijim, dostupnijim, kompleksnijim. Jačanje interaktivnosti i davanje aktivne uloge slušaocima redefinišaće tradicionalne odnose između radio-stanica i slušalaca, stvarajući od slušaoca istovremeno i urednika i producenta programa i stavljajući ga u središte produkcije i distribucije radijskih sadržaja.¹¹ Konvergencija tradicionalnog radija i novih tehnologija direktno će uticati na dosadašnji način praćenja radio-programa, u smislu dužine vremena koje se provodi uz program i povećanja kvaliteta i raznovrsnosti programa, što će, posledično, uticati na jačanje radio-industrije.¹² Takođe, nove tehnologije doprineće prevazilaženju predvidivosti i homogenizacije radijskog programa, otvarajući mogućnost za kreiranje programa namenjenog samo jednom slušaocu, podstičući kreativnost, dostupnost kanala produkcije i distribucije i interaktivnost između slušalaca i radio-stanice (praktično pokazano na primerima Last.FM, B92.FM...). Uključite svoje slušaoce u kreiranje programa svoje stanice i svi učesnici tog procesa, zajedno sa oglašivačima, biće na dobitku.

¹¹⁾ www.saffo.com

¹²⁾ na osnovu redovnih merenja slušanosti radio-programa putem novih platformi, rađenih za britansko tržište, Radio Advertising Bureau i RAJAR

Evropski Sud za ljudska prava, sudska praksa¹

Br.125

Decembar 2009. godine

Član 10 Evropske Konvencije za zaštitu ljudskih prava i osnovnih sloboda

SLOBODA IZRAŽAVANJA

Odluka parničnog suda da su člankom kojim se kritikuje uloga autora u stvari od najvišeg javnog interesa povređeni čast i ugled: Povreda
(strane 28-29)

Karsai protiv Mađarske - 5380/07
Presuda 1.12.2009. godine

Činjenično stanje – 2004. godine u Mađarskoj se vodila javna debata o tome da li treba postaviti spomenik u znak sećanja na bivšeg premijera Pala Telekija, koji je sarađivao sa nacističkom Nemačkom i učestvovao u donošenju antisemitskih zakona. Podnosilac predstavke, mađarski istoričar i univerzitetski profesor, objavio je članak u kojem kritikuje desničarsku štampu, uključujući i autora B.T. za veličanje uloge Pala Telekija i izražavanje antisemitskih stavova. B.T. je podneo tužbu protiv podnosioca predstavke, tvrdeći da je njegov ugled narušen navodima iz članka u kojima se optužuje desničarska štampa da „podstiče protiv i napada Jevreje“. Okružni sud nije međutim uvažio njegovu tvrdnju da se sporna tvrdnja ne odnosi ne na B.T. lično, već generalno na desničarske medije. Odluka je kasnije ukinuta od strane Apelacionog suda, koji je zauzeo stav da je tvrdnja mogla biti shvaćena da se odnosi na B.T. i da podnosilac predstavke nije uspeo da dokaže da je ona istinita. Taj sud je naložio podnosiocu predstavke da o svom trošku objavi ispravku i da snosi sudske troškove. Odluku Apelacionog suda potvrdio je u junu 2006. godine i Vrhovni sud.

Pravo – Član 10: Sud je, pre svega, smatrao da se sporne tvrdnje posredno odnose na ličnost B.T. i da na taj način utiču na njegovu reputaciju. Iako su domaći sudovi kvalifikovali tvrdnju podnosioca predstavke kao činjeničnu, Sud je smatrao da takva kvalifikacija ne prekludira slobodu izražavanja ako je neodrživa i arbitrarna. Tačno je da su argumenti podnosioca predstavke sadržali činjenične navode koji su opisivali B.T. kao nekog ko je imao aktivnu ulogu u ulepšavanju istorijske uloge Pala Telekija. Međutim, takav činjenični navod bio je vrednosno intoniran, budući da je podnosilac predstavke u svom članku tvrdio da je opravdavanje političara sa dobro poznatim antisemitskim uverenjima predstavljalo učešće u procesu, koji se odvijao u desničarskoj štampi, trivijalizacija njegove rasističke politike. U takvim okolnostima, Sud nije mogao da u potpunosti podrži nalaženje domaćih sudova da se spor tiče isključivo činjeničnih navoda. S obzirom na ulogu koju je Pal Teleki imao u usvajanju antisemitskih zakona u Mađarskoj, zaključci koje je podnosilac predstavke iznio, ne mogu se smatrati neumerenim i lišenim činjeničnog osnova.

Članak podnosioca predstavke je objavljen u sklopu javne debate od najvišeg javnog interesa. Štaviše, B.T. se dobrovoljno izložio javnoj kritici objavljivanjem članka u čitanom dnevnom listu, u sklopu takve debate. Konačno, sankcija koja je izrečena podnosiocu predstavke, posebno obaveza da povuče navod na način koji bi uticao na njegov profesionalni kredibilitet kao istoričara, podobna je da proizvede odvrćajuće dejstvo. U svemu, domaći sudovi nisu uverljivo utvrdili postojanje snažne društvene potrebe koja bi zaštitu ličnih prava učesnika u javnoj debati pretpostavila pravu na slobodu izražavanja podnosioca predstavke.

Zaključak: Povreda prava (jednoglasno)

Član 41: 4.000,00 eura na ime naknade nematerijalne štete.

SLOBODA IZRAŽAVANJA

Naredba kojom je mediju naloženo da otkrije „procureli“ dokument koji može da dovede do identifikacije izvora: povreda prava

(strane 29-30)

*Financial Times Ltd i drugi
protiv Ujedinjenog Kraljevstva - 821/03
Presuda 15.12.2009.godine*

Činjenično stanje – Predmet se tiče prigovora podnosilaca predstavke – četiri dnevna lista i jedne novinske agencije – kojima je od strane domaćih sudova bilo naloženo da učine dostupnim dokument podoban da dovede do identifikacije jednog od njihovih izvora. U novembru 2001. godine novinar u jednom od listova dobio je kopiju „procurelog“ dokumenta od nepoznatog izvora X, koji se ticao moguće ponude za preuzimanje od strane kompanije Interbrew. Novinar je istog dana telefonom kontaktirao investicionu banku savetnika kompanije, kako bi ih obavestio da je dobio takav dokument i da namerava da ga objavi. U članku koji se poziva na „procureli“ dokument, objavljenom oko 10 časova uveče na internet stranici lista, tvrdilo se da Interbrew planira ponudu za preuzimanje. Ostali podnosioci predstavke su objavili članke istog i narednih dana, takođe se pozivajući na „procureli“ dokument i moguću ponudu za preuzimanje. Nakon Interbrew-ovog saopštenja za štampu, nastavili su da izveštavaju o ovoj stvari, dodajući da je „procureli“ dokument moguće falsifikovan. Praćenje događaja u štampi imalo je značajan uticaj na tržište akcija, kako Interbrew-a tako i ciljnog društva. Konsultanti za bezbednost i rizike Interbrew-a neuspešno su pokušavali da identifikuju X. Po njihovom mišljenju, da bi pristup originalima „procurelog“ dokumenta mogao suštinski pomoći istrazi, Interbrew je tražio i 19. decembra 2001. godine dobio odluku kojom se podnosiocima predstavke nalaže da „procureli“ dokument učine dostupnim. Viši sud posebno je našao da je X namerno poturio opasnu smešu poverljivih i netačnih informacija sa ozbiljnim posledicama po integritet tržišta kapitala, te da postoji preovlađujuća potreba za činjenjem dokumenta dostupnim u interesu pravde i radi sprečavanja kriminala. Takvu odluku je potvrdio i Apelacioni sud, koji je zaključio da javni interes zaštite izvora nije bio dovoljan u poređenju sa preovlađujućim

javnim interesom da Interbrew traži pravdu protiv izvora, pri čemu je ključna bila X-ova očigledna namera da „nanese štetu zarad dobiti ili iz pakosti ...“. Do ovog trenutka podnosioci predstavke nisu dokument učinili dostupnim, niti je nalog koji im je dat u tom smislu prinudno izvršen.

Pravo – Član 10: Odluka od 19. decembra 2001. godine kojom se podnosiocima predstavke nalaže da „procureli“ dokument učine dostupnim, i dalje je izvršna, te koliko god je mogućnost njenog izvršenja udaljena, ona predstavlja mešanje u slobodu izražavanja podnosioca predstavke. Takvo mešanje je predviđeno zakonom i određeno radi ostvarivanja legitimnog cilja zaštite prava drugih i sprečavanja otkrivanja obaveštenja dobijenih u poverenju.

Po pitanju neophodnosti takvog mešanja u demokratskom društvu, Sud je našao da nalog da se „procureli“ dokument učini dostupnim štetno utiče ne samo na izvor, već i na medij, čiji ugled bi mogao biti narušen kod budućih potencijalnih izvora, ali i na javnost, koja ima interes da prima informacije od anonimnih izvora, te čiji su predstavnici potencijalno i sami izvori. Po pitanju toga da li držanje samog izvora može da isključi princip zaštite, Sud smatra da su domaći sudovi morali opreznije da zaključuju, u odsustvu uverljivih dokaza, da je izvor nesumnjivo delovao u lošoj veri i sa namerom da nanese štetu, te da je umišljajno obelodanio falsifikovan dokument. U svakom slučaju, uzimajući u obzir suprotstavljene interese, držanje samog izvora nikada ne može biti presudno za odlučivanje o nalogu za otkrivanje, već samo jedan od faktora koji se uzimaju u obzir pri oceni srazmernosti. U oceni srazmernosti ovaj sud cenio je sledeće aspekte slučaja podnosioca predstavke: cilj obelodanjivanja informacije, autentičnost „procurelog“ dokumenta, interes Interbrew-a da identifikuje izvor i pokrene postupak, te, na kraju, efekat naloga za otkrivanje.

Što se tiče prvog od navedenih aspekata, Sud je utvrdio da su ključni činilac odluke da se naloži otkrivanje, bile pobude izvora X prilikom obelodanjivanja dokumenta, koje je Apelacioni sud opisao kao „u svakom pogledu maliciozne, sračunate da nanese štetu, bilo iz razloga profita, bilo iz pakosti“. Međutim, iako prihvata da su moguće okolnosti usled kojih bi pobude izvora, same po sebi, bile dovoljan razlog nalogu za otkrivanje, Sud je našao da u trenutku pokretanja postupka protiv podnosioca predstavke, pobude izvora X nisu mogle biti utvrđene sa dovoljnom izvesnošću kako bi mogle proizvesti takvo dejstvo. Drugi aspekt – pitanje autentičnosti „procurelog“ dokumenta – takođe ne može biti posmatran kao pitanje od presudnog značaja, imajući u vidu da domaći sudovi nisu zaključivali o tome da li je dokument falsifikovan. Pitanje koraka koje su novinari preduzeli kako bi potvrdili tačnost dokumenta, takođe ne može biti presudno, već se mora posmatrati u kontekstu čitavog slučaja.

Vraćajući se na pitanje interesa Interbrew-a da identifikuje izvor, Sud je primetio da je Interbrew otkrivanje izvora tražio, kako sa ciljem da spreči eventualna buduća „curenja“ informacija, tako i radi omogućavanja podnošenja tužbe radi naknade štete. Međutim, u ovom slučaju je relevantna i činjenica da, uprkos tome što je obavešten o nameri medija, Interbrew nije privremenom merom tražilo zabranu inicijalnog objavljivanja. Šta više, cilj sprečavanja eventualnih budućih „curenja“ informacija opravdavao bi nalog za otkrivanje izvora samo u izuzetnim okolnostima, kada ne bi postojala druga razumna alternativna sredstva koja bi predstavljala manje mešanje, te kada bi opasnost bila dovoljno ozbiljna i

određena kako bi takav nalog činila neophodnim u smislu člana 10. stav 2. Evropske konvencije. Iako je Apelacioni sud našao da sredstva koja bi predstavljala manje mešanje nisu bila na raspolaganju, Sud je primetio da Interbrew nije dao sve detalje o istrazi koju je vodio, te da je nalaženje Apelacionog suda zasnovano na pretpostavkama. Na posletku, u pogledu efekta naloga za otkrivanje, Sud smatra da ne postoji suštinska razlika između otkrivanja koje bi neposredno vodilo i otkrivanja koje bi moglo neposredno voditi identifikaciji izvora, budući da do odvrćajućeg efekta dolazi uvek kada su novinari percipirani da pomažu u identifikaciji anonimnih izvora. Dovoljno je da je takva informacija ili pomoć tražena radi identifikacije X-a.

Stoga, interes sprečavanja štete koju bi nanela buduća otkrivanja poverljivih informacija i naknade štete za ranije povrede poverljivosti, čak ni kada se kumulativno posmatraju, nisu dovoljni da prevagnu nad javnim interesom zaštite novinarskih izvora.

Zaključak: Povreda prava (jednoglasno)

Član 41: Nije stavljen zahtev u pogledu naknade štete

¹ Izvod iz zvaničnih dokumenata Evropskog suda za ljudska prava, dostupnih na web sajtu Suda; prevod uradila advokatska kancelarija "Živković&Samardžić", Beograd

INTRODUCTION

This is the Third issue of ANEM Monitoring Publication dedicated to the media scene of Serbia. Its contents are determined by the results of the previous six-month monitoring of the expert legal team of the law office “Zivkovic&Samardzic” that pointed to several issues important for the Serbian media sector.

According to the findings of the monitoring team, *in the period January – June 2010*, the situation in the media sector has not changed much from last year. There has been no significant progress, both in media regulation and in practice. Political will is still a burdening factor for the media situation. However, this period was more marked with the absence of such will for anything that had to do with solving problems of the media sector for which the government is greatly responsible, rather than with its active presence in order to protect political interests in this area. The key media laws – the Law on Public Information and Broadcasting Law – are still not in compliance with the European standards and regulations, while for the last year’s restrictive amendments to the Law on Public Information, the decision of the Constitutional Court has not yet been reached on the proposal of the Ombudsman for the assessment of their constitutionality. There is yet no legislation that prevents illegal media concentration, nor is it known with certainty what is going on with its already prepared Draft. Media ownership is still very non-transparent. Amendments to the Law on Public Information from 2009, which established the Serbian media registry, did not provide any improvement in this area; the public is still denied the right to know who are the persons who can influence the editorial policy based on their ownership or other grounds. The government continues the practice of non-compliance with its own regulations and decisions, as well as failure to act in line with obligations that it prescribed itself, while the media still suffer the sanctions. Hence, for the important transition processes, privatization and digitalization, the authorities are not showing even the smallest interest. Privatization of the media is still dealt with on a case by case basis, applying the provisions of the general rules governing the privatization and bankruptcy, without sufficient consideration of particular nature of media activities and their specific functions that they should be carrying out in a democratic society. The delay in the preparation of television digitalization, caused by the unwillingness of most of competent authorities to do their part of the job, especially the failure of the Government to appoint a director of Public Company “Broadcasting Equipment and Communications”, seriously challenges the entire process of implementation within the planned period, and put broadcasters in a position to be unable to plan their obligations in the process of transition. The attacks and pressures on journalists and media are stronger, because no systematic measures to eliminate the cause of the problem and prevent its recurrence have been taken, which inevitably leads to self-censorship in the media. More frequent serious threats to prominent journalists and the media engaged in investigative journalism have shown that there are still issues and social problems in the public sector in Serbia, which are extremely risky to write and report about. Court decisions and legal proceedings in so called media cases, did not significantly change the legal practice even in this period, the judiciary were not more efficient in sentencing and reaching condemning judgments against both, direct

perpetrators and contractors, which also affected the unreduced number of cases of violation of freedom of expression. Not even the economic situation of the media has significantly improved, because the conditions for it have not been created. Distorted media market, with privileged positions of certain entities, does not provide needed conditions for the functioning of the media, especially in conditions of economic crisis. Local media have a growing problem of unfair competition caused by the method of the distribution of local budget funds, earmarked for public information of local interest. Due to the lack of general binding rules in this area, the practice of local governments is uneven; the distribution of budget funds are generally done without any criteria and transparent procedures, with the bias treatment of certain media, usually municipal, non-privatized, thus deteriorating the position of other local media. However, the position of the budget-funded media is also made difficult. Due to the absence of any mechanisms of systemic protection, the editorial policies of these media are exposed to increasing pressures of their official founders, whether they are local authorities, or national councils of national minorities. During this period, the sustainability of the media system has been further compromised by the new competition for broadcasting licenses called by the Republic Broadcasting Agency (RBA), keeping in mind, before all, the general assessment that there are too many electronic media in Serbia, but also the need of preserving the frequencies for a successful digital transition. The pluralism of the media in Serbia is thus reduced to quantity and not to the essential diversity of ideas and opinions offered to the public through the media. The perception of the media as an industry, without respecting the specificity of its role in the democratization of the society, distort the relations between the society and the media; hence, many media too often forget, in its pursuit of profit, its fundamental purpose, while the society does not have almost any expectations from them. However, when it comes to the public service, such a relation is very harmful. In its conduct, RTS, as a public service broadcaster, should primarily serve the needs of citizens and not strive to maximize the profit. Instead, RTS takes its position as a privilege without any obligation; it primarily deals with its own finances, while the authorities neither assess the qualitative fulfillment of the role of a public service nor do the analysis of the program content, but rather limit their analysis to quantitative overviews of compliance with minimum program quotas and with advertizing rules, like for any other commercial media outlet.

From all the above, it follows that the media scene continues to encounter the same problems as in the last year, while the executive power has shown neither the will nor the ability to provide solutions. Some positive developments, such as the election of Gordana Susa for a member of the RBA Council, however, 13 months after the expiry of the mandate of the previous member, then reduction of RATEL fees for the use of frequencies, formation of the Press Council, or amendments to the Law on Free Access to Information that enable better exercise of this right, which is of importance for the media – all of these are yet sporadic cases that do not make any fundamental change of the media environment for the better. The recently adopted Law on Electronic Communications, which, on one hand, opens the possibility for easier revealing of journalistic sources of information, while on the other hand creates the conditions for fight against “pirate” radio and TV stations to finally become more effective, is a true example of two-sided nature of almost all events on the media scene. Therefore, it is obvious that the media sector requires significant changes. Their basis should be the Media Strategy, which is supposed to determine the direction of those changes, through the consensus of the government and the media. The Media Study, presented on

June 25 in Belgrade, drafted by the experts appointed by the European Commission, represents the starting point for a public debate on the content of the Media Strategy and provides an opportunity for an important step forward. In the upcoming period, it remains to be seen whether this opportunity to improve the relations between the authorities and the media will be properly used for the benefit of the media and society too.

This Publication tackles important media issues from the previous, six month long period. The articles were written before the publication of the Media Study. Author of two texts, attorney at law Slobodan Kremenjak, elaborates, in his first article, on the bad developments in the area of freedom of expression, which resulted in self-censorship of journalists and the media, while in the second, he deals with the importance of the Media Strategy for the establishment of viable public media policy that responds to the social needs and technological changes. Dr. Jovanka Maric writes about the concept and importance of the media public service, control and accountability of its holders to meet the general public interest in the area of information, while Dr. Ana Martinoli deals with the radio as the unfairly marginalized media in terms of technological change, as well as its future in the new media environment. The fifth article is comprised of the excerpts from the court practice of the European Court of Human Rights – a summary of two judgments related to the application of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Attacks on journalists and self-censorship

Slobodan Kremenjak, attorney at law¹³

Vladimir Mitric, a correspondent of daily “Vecernje Novosti” from Loznica, has been under police protection for more than 3.5 years. In September 2005, he was brutally beaten, his arm was broken and he suffered many head and body contusions. Although a former policeman was accused of this assault, it had never been discovered who was behind it. Court trial against the attacker is still going on. Irrespective of being under police protection, the “Vecernje novosti” correspondent still receives threats.

Dunja Mijatovic, the OSCE Representative for Freedom of the Media, said in the beginning of April in her statement for Beta Agency that the situation in media had exacerbated in the recent period, particularly in view of the attempts, present all over the region, to suppress free speech by physical assaults on journalists, but also with regard to self-censorship. Even more recently, speaking in front of the U.S. Helsinki Committee, Ms. Mijatovic stated that there was no true press freedom as long as journalists had to fear for their lives while performing their job and called on the OSCE governments to vociferously condemn and punish the perpetrators of violent attacks on journalists.

The instances of attempted media freedom suppressing by physical attacks and threats, and the resulting self-censuring, are only too evident in Serbia. The assaults are as a rule made on the most reputable figures in Serbian journalism, such as Mr. Vukasin Obradovic, the Vice-President of the Independent Journalists’ Association of Serbia, or Ms. Brankica Stankovic, a many times awarded journalist. The powerlessness or reluctance of the society and the state to appropriately counteract these assaults on journalists is sending out a kind of message. The message is that there are some topics that are forbidden and some matters that are better not discussed in public.

Vukasin Obradovic, the Editor-in-Chief of “Vranjske” Newspapers, dared to say something about Goran Tasic Gokce, a man accused of attempted murder in two different proceedings currently taking place in the courts of Serbia. As reported by media, Tasic was until recently the leading man of Nova Srbija in Vranje and a close friend of Velimir Ilic, the President of this political party. He was expelled from the Party in the beginning of April because he threatened Radoslav Mojsilovic, a MP and a member of Nova Srbija. After the text about him published in “Vranjske”, Tasic held a press conference and announced that he would press charges against Vukasin Obradovic. Local politicians in Vranje, but also Velimir Ilic, the president of Nova Srbija, avoided addressing the matter in any way whatsoever. Obradovic has been left to his own devices to defend himself and his family against a man prosecuted for two attempted murders in this state.

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Almost concurrently with Tasic's press conference in Vranje, at which he did not deny that he was accused of 21 criminal offences in the past, but repeated again that Vukasin Obradovic should not have disclosed that fact, the judicial panel of the First Primary Court in Belgrade, chaired by Jelena Milinovic, acquitted six "Partizan" football fans of all charges of threatening the safety of B92 journalist Brankica Stankovic. The court decided that their act constituted no serious threat that was prosecuted *ex officio* but rather an insult that required a civil lawsuit the instigating of which was not under the responsibility of the public prosecutors' office. Let us remind ourselves of what had happened: from their seats at the Partizan football stadium, during the match between the club with the same name and Ukranian Shahtjor, this groups of young men took part in a performance that included kicking and piercing a doll made in the image of this journalist, yelling out that she would meet the fate of her murdered colleague, Slavko Curuvija. All this had ensued after, in the program called Insider that was broadcast on TV B92, Brankica Stankovic informed the public about the content of more than a hundred reports that police had filed against the leaders of football supporter groups in the recent period, in which, by rule, the court epilogue was missing. Brankica has been under police protection since December last year.

"I believe that a journalist cannot be objective in doing he job if under police protection", this journalist said a while ago for Radio B92, explaining: "I don't see how it could be possible for me to go and interview somebody or simply go meet with my source if security people follow me everywhere." Nobody can say for how long this journalist would have to stay under protection at this moment but the case of Vladimir Mitric is not a good omen.

In 2009, within a framework of broader criminal law reforms, Serbia sharpened its sanctions for certain criminal offences perpetrated against journalists. Affecting safety, namely threatening journalists in connection with them doing their jobs, is among these offences. In this way, the institutional framework was created for a more suitable protection of journalists. Unfortunately, as long as the judiciary are not more efficient in sentencing for threats and attacks and court actions are not instigated or concluded with condemning judgments against contractors and not only direct perpetrators, it is highly unlikely that Serbian media would be able to combat the self-censorship mentioned by Dunja Mijatovic, OSCE Representative for the Freedom of Media, whilst continuous police protection for the journalists who are affected would still be necessary.

Prevent the misuse of Media Development Strategy

Slobodan Kremenjak, attorney at law¹

With the adoption of largely criticized amendments to the 2009 Law on Public Information, the absence of an accountable media policy became so evident that, in order to compensate for it, the Government was forced to offer to media and journalists' associations to be its partners in the process of drafting the Strategy for development of media in Serbia. It is now up to media and journalists' associations not to allow this offer for joint work on the Strategy that was extorted from the Government to be abused.

In the situation of global media trends, such as the inflation of media contents and their endless recycling, general commercialization and media concentration, active role of the state becomes increasingly more important in ensuring the exercise of the right of all, guaranteed by the constitution and international treaties, to be truthfully, fully, and timely informed about the issues of public interest, as well as the guaranteed freedoms of opinion and expression, such as the freedom to demand, receive and disseminate information and ideas by speech, in writing, through images or using other means. The goals and mechanisms for performing this role of the Government actually characterize its media policy. Letting the market and market mechanisms regulate the media scene on their own can and do adversely affect some of the fundamental values of media system, such as maintenance and promotion of media pluralism and cultural identity; namely, they ultimately infringe upon the right of citizens to be informed about the matters of public interest.

The mechanisms of public media policy, particularly those related to electronic media, come in a wide specter: the imposition of regulatory obligations concerning a requirement that particular program quota or level of program quality is met; the policy concerning licenses to broadcast programs that promote the socially desirable media content; financial support to the projects strengthening media pluralism; expressing cultural identity; improving dissemination of the information of local or regional importance, etc. In the circumstances with technological revolution taking place in front of our eyes, the convergence of media platforms, and devastation of the traditional media environment, the use of these and similar mechanisms necessitates understanding of technological changes and constant revision of the goals set and the results achieved. In other words, a serious regulatory capacity is required and it is necessary to have it built.

Regulatory interventions by Serbian authorities, in the period after the Broadcasting Law and the Law on Public Information were adopted, in 2002 and 2003 respectively, did not, however, move in this direction. They rather reflected the absence of both the regulatory capacity and any other accountable public media policy and vision about the ever widening gap between the direction in which media sector developed and, at least in words, proclaimed goals that were placed in front of the media sector. It should be noted at this

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point that the number of licenses for terrestrial broadcasting of program is much higher in Serbia than anywhere else in the region. A difference in the number of issued licenses is even larger if the scope and potential of the Serbian market is compared with the potential of those same countries. On the other hand, the fees charged for the licenses for terrestrial program broadcasting are much higher, whilst cable and satellite broadcasting, not to mention more recent media platforms, was practically left unregulated, which made the business environment for Serbian electronic media much worse than that in the surrounding countries. Instead of being an instrument for promotion of socially desirable media contents, the policy on the fees for program broadcasting licenses is implemented as if the informing of the public is an exclusively commercial and a highly profitable activity, whose revenues need to be additionally burdened so as to shore up the state budget, irrespective of any broader social interests. The idea of public broadcasting service was understood in institutional terms; in the absence of any regulatory obligations imposed on commercial broadcasters, as well as considering the lack of suitable control and verification of the level and the scope in which institutionally perceived public service (RTS) implements the proclaimed public interest, the citizens are significantly deprived of the program which have been traditionally deemed to be public service. The Government adopted the measures to assist media in the times of crisis only to, later, obstruct the implementation of those same measures. Legal framework became more and more restrictive, which the politicians justified by their perception that lack of the accountability to the public and the public voice was the main problem in media sector.

The absence of accountable public media policy led to the situation in which the media scene and legal framework for its functioning became a place for political trade-offs and unprincipled concessions among the political parties so as to ensure support of the coalition. By the amendments of legal framework that were made to this end, and with the delay of privatization, some regional and local public media and public media in minority languages were left under direct control of local governments, i.e. political parties of national minorities, while their funding from the state budget is still distorting the competition and is in direct contravention to the Law on State Aid Control.

In such environment it would be disastrous to misuse the drafting of the Media Development Strategy so as to make new political deals and redistribute the political influence on media. It is on media and journalists' associations to prevent any misuse like that and take full advantage of this opportunity to ensure the establishment of a media policy that is appropriate to social needs, technological revolution, and convergence which we are witnessing.

To whom is a public service broadcaster accountable

PhD Jovanka Matic²

In the last decade, Serbian audience learned to say “media” instead of “means of public information”; in this decade it is learning to say “public service broadcaster” instead of “state television”. Even in the most marginal references to the media sector, this new mantra – public service broadcasting, public media, public broadcasting, or public radio/TV – has become widely accepted and is now a value *per se*. It does not stand for slow-paced, cumbersome, bureaucratized, inefficient radio-television systems or for the safe haven for boring, didactically-oriented programs of paternalistic discourse (as it is being referred to by many critics in Europe). Quite to the contrary, public service broadcasting is deemed to be the central institution of a democracy, a vital element of an open, free, emancipatory and efficient communication in the society and a key feature of European tradition.

Many actors on the domestic media scene show keen interest for the institution of public broadcasting service to be positively valued. This primarily includes the main holders of the function of public service broadcasting, as defined by law – Serbian Broadcasting Institution (or RTS) and Vojvodina Broadcasting Institution (or RTV). The status of a public service broadcaster provides them not only a privileged economic position (in addition to the mandatory subscription fee they collect, they can also generate income through advertising), but also guarantees their activities political and cultural legitimacy. Besides, for RTS and RTV, the institution of a public service broadcaster presents a safe bridge that helps them detach themselves from their recent infamous past painlessly; so it does not surprise that they have invested so much enthusiasm in their self-promotional campaign (“Public Media Service of the European Serbia”). Other stakeholders – the Government, relevant ministries, political parties, regulatory bodies, professional associations – also often resort to the symbolic potential of public service broadcasting for the purposes of self-legitimization. Being a symbol of the post-communist and post-Milosevic reform of the media system, public service television is a convenient agent to demonstrate their commitment to democracy, European values, and care for public interest.

For successful development of public service broadcasting, it is doubtlessly necessary to reach a wide social consensus about its values. At the same time, however, it is necessary to continuously monitor its holders, control their legal compliance, analyze the problems they encounter, and regularly sum up the experiences, compare regulatory arrangements, and weigh up pending and potential challenges.

A regular, unbiased and critical insight into functioning of the public service broadcasters and at the moment and in near future is precisely what is lacking in the process of transition from yesterday’s radio and TV company to a desirable media outlet model “established by the public, funded by the public, and controlled by the public”. This is even more important given the absence of any mechanisms that can make the media outlets in question liable –

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legally, financially, or criminally – for successful transformation from a public enterprise into a public service broadcaster, or mechanisms which, in case of failed functioning, could deprive it of the status of a public service broadcaster and assign such status to another broadcaster. None of the above mentioned actors, who are underlining their affirmative opinions with regard to the concept of the public service institution, does anything to establish continuous supervision over this new type of media organization, so as to promote its operation and ensure that public interest is met.

A public media service is too important a social institution to be allowed to exclusively take care of its own future. Thus, the question is not only who has control over public service broadcasting and who takes care of it, but also who public service broadcasters are accountable to for their performance, their success or failure, and how this accountability is manifested? Does the Serbian public, whose interest public service broadcasting was established in, have a clear picture of whether this process is completed and what are its outcomes now, eight years after its formal inauguration? What is the position taken by the domestic system in respect of public service broadcasting identity crisis that emerged in Europe a long time ago (Blumler, Gurevitch, 1995)? How will it be affected by the current crisis of the commercial media business model that is ravaging the planet? In what way will the public interest of citizens in social communication be defined in the already initiated digitalization process (Lowe, Hujanen, 2003)?

What is public service broadcasting?

Although the expression ‘public broadcasting service’ has been used for more than 80 years, its standard, unambiguous and widely accepted definition is still lacking. The first definition had a technical-economic meaning and emphasized that it was a kind of a public, namely social service – efficient delivery of quality signal – provided by the state, equally available to all citizens, just like postal services or public transportation services. At that time, the term ‘public broadcasting service’ mostly accompanied the terms “universal access”, “equal prices”, “profit regulation”, and “high standards of technical quality” (Syversten, 1999). Much later, the term “public” was used so as to mean “public sphere” which is a setting in which citizens act by getting involved in the process of making decisions in common interest. A media outlet serving the public domain provided all members of the society with an access to the knowledge they needed to be able to perform their civil duties. This new meaning promotes new values since it suggests a media outlet detached both from the state and the market, which assumes a critical role of a “public eye”. In recent times, “the public” is taken to be same as “the audience”, i.e. individual users of media. At present, public service broadcasting increasingly implies broadcasting intended for the listeners or viewers as individuals with specific preferences in terms of media content. The ever increasing commercialization of the media sector, which is a global trend, imposes this new interpretation to replace the “broadcasting intended for the public”, i.e. citizens as active social actors.

All three definitions of public service broadcasting are present in the domestic public discourse considering that the Broadcasting Law, which has established it, leans on all three of them. Behind a number of popular phrases – “it informs, educates and entertains to

benefit the citizens”, “it is established, funded and controlled by the public”, “it needs money to make the program rather than the program to make money”, there are several general principles and functions of public service broadcasting.

The principles include universal accessibility, independence, autonomy and diversity of programming. Independence means financial independence (adequate, stable, continuous and transparent funding), while autonomy means unbiased programming and editorial policies, which are not affected by political and economic interests and pressures. More recently, under the influence of European legislation, a number of new principles appeared, such as quality, pluralism, program originality, and orientation to technical innovation (Rutovic, 2008).

The main functions of public service broadcasting are deemed to include: responding to communication-related needs of citizens - rational and active social actors and not only consumers; non-discriminatory representation of different social groups and interests, and facilitation of their tolerant dialogue; taking care of different segments of a heterogeneous audience, particularly minority groups, with the aim to promote their social inclusion, respecting the linguistic differences and protecting the national identity and culture.

The 2002 Broadcasting Law promotes several principles of a public service operation and lists a large number of its duties. It particularly underlines its independence from the influence of those in power, political organizations or centers of economic power; program diversity in respect of genre and origin of production, respect for human rights and pluralism of opinion, nurturing tolerance. A public service broadcaster is required to provide services to all segments of the society, without discrimination, and particularly to vulnerable social groups (children, young people, minority and ethnic groups, the disabled, etc.), to adequately represent the activities of citizens’ associations and non-governmental organizations, as well as of religious communities. It must also be the means of expressing of cultural identity, both of the majority nation and ethnic minorities, as well as their linguistic and speech standards.

However, the Law specifies in more detail only three among the other generally defined duties of a public service broadcaster, and these three are relatively small and easy to perform. The first relates to the requirement to have not less than 50% programs in Serbian language in the total amount of program broadcast in a year (reduced by the time of reruns, broadcasting of sports events, games and advertising program); the second requires to have not less than 50% of the programs in Serbian in own production. Both of them apply to commercial broadcasters too, whilst the third requirement is exclusive to the public service broadcasters and concerns the programs originating from independent producers, which should present at least 10% of the total time of the program broadcast in one year (for BBC, this requirement is 25%).

The other requirements are not precisely defined as clear, verifiable and measurable obligations. This was not done when broadcasting licenses were granted, as was the case in some other countries (such as Bulgaria) since neither RTS nor RTV applied for such a license, being automatically identified by the Law as the main holders of the public service

broadcasting function. This was also not done in their Articles of association, as these documents primarily transposed the relevant provisions of the Broadcasting Law.

Supervision without control

The existing regulatory framework, therefore, does not provide clear indicators based on which one can evaluate whether RTS and RTV are successful in playing their role of public service broadcasters.

For instance, it is not clear how to evaluate the specific role that a public broadcaster should play with regard to the ethnic minorities in Serbia in view of the absence of any specialized program, with the exception of a small number of programs in the Romani language. This type of obligation is mentioned with regard to “specific social groups”, such as ethnic minorities, children, young people, disabled, etc, of whom the public media service is supposed to “take special care” (Art. 78, paragraph 3). In an utterly different context, the Broadcasting Law mentions the obligation to broadcast the contents that “express cultural identity of both the nations and the national minorities or ethnic groups” and to provide an opportunity for the minorities to “be provided with particular programs or program units in their mother tongue and script in the areas where they work and live” (paragraph 5), and the obligation to respect “linguistic and language-related standards of both the majority population and, proportionately, national minorities or ethnic groups, in the areas in which the program is broadcast” (paragraph 4). None of the acts relating to RTS – whether a law or a bylaw, an administrative, self-regulatory, or “framework” act – actually specifies which of these obligations apply to RTS or indicates the ethnic minorities (out of the total of 19 registered) that RTS should address in their own language, or the scope and type of the relevant content.

In Serbia, nobody tackles regular assessment of the public service broadcasters’ performance. The Law entrusted supervision over the public service broadcasters to the Republic Broadcasting Agency (RBA). However, RBA lacks financial, human and technical resources to seriously engage in monitoring of the broadcasters, and does not have any particular interest to engage in evaluation of the public broadcasting institutions. To date, it has only monitored the way the broadcasters reported on elections and their compliance with the Advertising Law. In the five years of operation (although it was formally introduced into the system in 2002, RBA did not actually start functioning before 2005), RBA made evaluation of RTS as a public service broadcaster three times only, and the related report is available to public only in terms of the evaluation performed in the first quarter of 2010.

The analysis made by the RBA Department for Supervision and Analysis was quite superficial and unimposing. It addressed only the TV program broadcast on the two RTS channels and included quantitative overviews of participation of programs in Serbian language in the total broadcast program, portions of own production and external independent production, participation of individual genres of the offered programs, and aggregate participation of the programs intended for specific social groups.

RBA chose the least painful option, the administrative/non-critical approach, and did not attempt to put these quantitative findings into a time framework or to compare them with the commercial broadcasters' production (Heikki, 2001). Key issues were not addressed at all – for instance, whether 4 or 5 dominant types of programs broadcast by the public service broadcaster are any different from the programs dominantly broadcast by commercial broadcasters (Matić, 2009) – since they were outside the theoretical-methodological framework. The kind of data RBA chose to indicate and its intention to come to a simple conclusion: “complies or does not comply” with a particular minimum requirements or obligations to produce and broadcast “programs with news, cultural, artistic, educational, religious, scientific, children’s, entertaining, sports or other content” (Art. 77) could hardly produce anything but apologetic results. Indeed, the RBA report entitled “RTS as the public service broadcaster: the ways in which legally prescribed program-related obligations are met” states that RTS complied with all program-related obligations that were monitored (the 10% requirement for independent production was not fully met in the quarter concerned, but the relevant period is actually the period of a year). The real intent of this Report is to be seen only in the obligations that were not under observation – such as the treatment of ethnic minorities, impartial and objective coverage of different political interests in the news program, or the amount of children’s and scientific-educational program compared with the amount of the advertising program (the former two are aggregately less represented than commercials, TV sale and promotions of own program).

A huge and critically important part of the public service broadcasters' business activity remains unseen – performance of program functions, the shares of subscription fees and advertising in the revenues, expenditures, annual financial reports, salaries of the employees, the way business and program-related decisions are taken in the management bodies – even though these are very important aspects of the functioning of public media service.

Current media legislation does not provide for transparent management and operation of public service broadcasters; namely it does not allow for an insight into program-related and financial decisions. This non-transparency led to a number of affairs that were related to RTS business operations (a fraudulent game of opportunity, a controversy with regard to the Euro song expenses, etc), which marred credibility of this institution. Now, at the end of the first half of 2010, the only RTS financial report available is the one for 2008. It was formulated in a manner incomprehensible for non-professional public, who it was seemingly intended for. Also, the latest publicly available report of its main management body, RTS Managing Board meeting, is almost 1.5 years old (January 2009). These reports are also composed so as to make the RTS business operations and the arguments put forward in certain decisions as non-transparent as possible for the external public.

Authentic interest of the civil society

Political elite has already and for numerous times demonstrated lack of motivation to create an environment conducive to the genuine independence and autonomy of public service broadcasting. All post-Milosevic governments stalled media reforms, adopted strategic and legislative arrangements in view of short-term political needs, and expressed only insignificant amount of care for legal compliance so as to ensure the influence on the public

service broadcasters' reporting (Milivojević, 2005). As of late, by exerting strong pressures to ensure broadcasting of the National Parliament sessions, the political elite proved that it still perceives public service broadcasting as an instrument to be used to satisfy the needs of the most powerful political interests, rather than the interests of the general population.

Despite their self-legitimizing campaign, the public broadcasting institutions also failed to prove themselves as actors who would freely develop new standards in program production, business operation and management. The present RTS General Manager very loudly advocates the idea that budget allocations are the only long-term solution for the economic situation of RTS and does not see any risk for independence of the institution in it. He does not see the failure of RTS to ensure at least 50% of subscription fee collection as his own failure, nor does he in any way associate it with the quality of the program offer and failed identification of the audience with the media outlet that, at least declaratively, exists solely to serve the audience. According to him, all problems of RTS come down to the lack of funds, while their causes lie outside RTS. As seen by the RTS General Manager, any finger-pointing from outside to the irresponsible management and business caused by the lack of financial funds and any negative assessment of the program concept is either a product of ill will that is built on lies, or a result of personal frustrations of untalented journalists. The reform capacity of RTS, or trust in RTS, is further affected by the established practices of lacking accountability in terms of compliance with the Advertising Law and payment of copyrights, i.e. by the prolonged fight between RTS and SOKOJ.

Both in the domestic and international experience, genuine allies of the public service broadcasters have thus far included civil society, professional associations, and expert public. The way they are represented in the management (Managing Board) and consulting bodies (the Program Council), however, failed to bring any visible results. Neither the RTS Managing Board nor the Program Council contributed to increased transparency of RTS operations, nor did they assert themselves as an agent for safeguarding of public interest, but rather as the protectors of a narrow RTS management team. Thus far their role has not even been recognized as an issue that deserves to be a matter of a professional debate or to be found more appropriate solutions. Foreign experience suggests that there is a need to reconsider the manner in which civil society is represented in these bodies, the competences their members should have, but also the nature of their mandates, particularly with regard to civil society, and the need to intensify communication between the members of these bodies and the listeners and viewers (Škrabalo, 2010).

There are further ways in which civil society can get involved in the development of the public service broadcasting institution, particularly in its external supervision. It would be desirable to institute independent monitoring of the public service broadcasters' production, which is their critical part, so as to place the production into a systemic context and analyze the fulfillment of program-related obligations, in a particular time period, against the public broadcasters in the region and commercial broadcasters at local level. For RTV this kind of monitoring was for a period of time (2006-2009) performed by Novi Sad School of journalism, whilst relevant independent monitoring of RTS production has never taken place.

Another missing link is an insight into the expectations and preferences of the audience with regard to the program offered by the public service broadcasters. Audience surveys, particularly qualitative surveys, are the most neglected types of media surveys. Ever since public broadcasting service became a part of the Serbian media system, not a single survey of any significance was published to reveal what the audience expects from it, whether it satisfies the versatility of needs of its audience, what it misses, and how it sees public accountability of the public service broadcasters.

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Challenges of new technologies and future of the radio

PhD Ana Martinoli ¹⁶

Comparative analyses of different media frequently place radio in an inferior position compared with that of other media. The absence of video is held as the radio's fatal flaw, the one that will cost it its progress, future and survival. A more thorough look at the development of radio, however, reveals that this media has successfully survived different information and entertainment technologies by systematically absorbing the latest technical-technological accomplishments and thus improving itself, winning more listeners, and strengthening its position on the media market.

The OECD states that first decade of the 21st century has seen concurrent and very powerful social transformation, which will further enhance the versatility of our private and professional surroundings: we are moving away from the uniformity and "obedience" of mass communications and getting closer to the uniqueness and creativity of economy, knowledge, and society.

The manner in which radio stations will respond to these changes, their ability to adapt and make the best possible use of the opportunities proffered by the new technologies, will be decisive in determining their prosperity and market position. This is true for the domestic market too, even though digitalization is still an abstract concept here.

With the transition from analogue to digital broadcasting of media content, the audience is faced with a much greater choice of content than before. This results in hyper-fragmentation of the audience, their grouping into smaller units sharing a common interest, and much smaller number of total listeners per media channel. Media surroundings therefore become multilayered and you can hardly find two listeners with similar opinions or needs from the media.

From the perspective of consumers, typical for the "new media order" is the development of new media services, new delivery systems of media content. The ultimate goal is the generation of information and communication "fast freeways", which will take us out of the mass media era into the era of individualized media and personal choice.

In the case of commercially successful mainstream stations, the greatest criticism concerns the domination of banal topics, popular music selection which is too repetitive, the excessive influence of industry and corporative interests; all this diminishes the allure of the program, makes it predictable, homogenous, and forces the audience to satisfy its needs in places in which it can be more active and get involved, not only in the selection but also in the distribution of content. These practices, plausible in the case of Internet radio, are openly challenging the mainstream media by providing information, broadcasting music, and

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tackling the issues which are overlooked, whether knowingly or not, and are ignored or excluded from the media process that is dominated by commercial requirements.

Intertwining itself with new technologies made radio functionality more complex and enabled portability, program specialization, possibility of interaction, visualization, etc. New functions and new possibilities of radio raised the question of how future radio listeners would treat the program, when, where, how much and in what way would they consume it.¹⁷

In the era of converged media, such as analogue radio stations entwined with the Internet, it is the consumers who have the decisive word and manage the media. They create their own radio programs, music playlists, and distribute, share, and broadcast them, and in doing so, make them available to a wide audience. We can no longer speak about the confined, wide audience in the traditional sense – today's media consumer is unique, demanding and active; he is involved in almost all phases of media production. The capability of the station to see these possibilities and to use them to improve their own program is what can make the difference between the radio content that is classic and archaic and content that is modern, dynamic and multilayered. If they want a leading position on the market, radio stations would no longer be able to restrict themselves to program distribution and promotion exclusively through linear, traditional channels. Namely, the expectations of the audience become more complex, the versatility of different platforms is increasingly used to follow the content of interest – from cell phones, Internet, mp3 player, iPod, etc. At this point we come to the key element of successful media as defined by MacFarland¹⁸.

The simplest forms of the use of new media, the Internet for starters, may be implemented in different ways and they are all present in contemporary radio practices.

Live streaming is a form of radio program distribution that most resembles broadcasting using electromagnetic waves, but in this case radio signal is digitalized and it is broadcast on another platform. Live streaming takes place concurrently with program broadcasting through a regular terrestrial frequency range.

Archiving of already broadcast radio programs in the form of audio files – podcasts that are available to the user at any time, changes the circumstances in which radio programs can be consumed, deferred, in segments, exclusively adjusted to the users' wishes and needs. The use of podcast, on the other hand, is not always limited to the programs which have already had a "premiere" on analogue or digital radio stations. Podcast can handle equally well experiments, provocative content, or content intended for a narrow target group, which may

¹⁷ According to 2006 data, listening to the radio through digital platforms, including the podcast and Internet, accounted for 16% of total hours devoted to the commercial radio stations' program in Great Britain. The number of these hours increases and the listener trends and structure analyses suggest that a younger audience shows greater interest and motivation to listen to radio through new platforms, but also reveals the growth of radio integration with platforms such as mp3 players, cell phones, Internet, podcast, etc.

¹⁸ "The answer to the success of media does not lie so much in the technical advancement of audio reproduction as in the improvement of the products demanded by the audience – programming that responds to the needs of the listeners. The programming is flexible, enables experimentation, and is not limited by the mainstream content market potential", David MacFarland, *Future Radio Programming Strategies: Cultivating Listenership in the Digital Age*, Lea's Communication Series, New York, 1997.

not be cost-effective enough to be regularly broadcast but are important for the station because of the image or, simply, address the listeners whom the station does not want to lose and which, for their part, are somewhat more choosy than the average radio listener. One of the reasons for instigating podcast channels lies in the fact that, by analyzing the activities on this channel, the radio station will be able to get a clearer, more precise picture of the interests of the listeners, their appetite for downloading, preferred content – in short, more information can be collected to help in the future the production of strategies, both of programs and technical-technological development.

Just like we can today speak about multiplatform media, we can also speak about multidimensional audience, and, in order to remain relevant in such a media reality, the traditional broadcasters will have to respond to the demand for new services and products, facilitating the experience of interactivity and wider exchange, which is actually the very essence of intertwining the radio and the Internet.

With the use of these technologies, radio content acquires a new dimension, overcoming the usual limitations of media, such as single-dimensionality, ephemerality (transience), etc. The very access to the Internet brings the possibility of upgrading by visual components – *scroll* texts, images, video content, text, etc, extending the user's experience and further enticing the users to interact, share, and create their own content.

Accessibility of radio program through new platforms will contribute to increasing the number of situations in which radio program may be consumed – the fact that the listener will be able to listen to the program of his favorite radio station each time he/she is *online*, or that he/she will be able to “pack up” his/her favorite program into the iPod and listen to it anytime, anywhere, extends the number of possibilities for consumption of radio as a media and, consequently, brings to the radio station not only new listeners but also potentially far greater number of hours spent listening to the station's program (increase of TSL, i.e. “the footage”).

New technologies, the Internet and podcast, particularly stir the potential of local and regional stations, which are now able to address the listeners outside the reach of terrestrial program broadcasting.¹⁹

A conclusion can be drawn that new media generation who dominantly consume the contents using new technological platforms (“digi-life” generation²⁰) – the Internet, cell phones, iPods – have matured while their experience with traditional media has come down to a minimum. This trend imposes on traditional electronic media, radio included, the

¹⁹ With regard to our market, the reasearch of new media is mostly reduced to looking at the habits of Internet users, whilst the convergence issue is mentioned only in the segment of regular listening rate measuring that take place twice a year. These findings show that the number of radio listeners through Internet is growing. In May 2009, the question “Do you have technical capacity to listen to radio via Internet?” was positively answered by 27% of the respondents, while this possibility is used by 11% of the respondents in the same survey (their share is highest in Belgrade, 15%, and the lowest in Central Serbia, 9%). This question was included in the surveys only after 2009.

²⁰ OFCOM/The Knowledge Agency, “The iPod Generation“, July 2004

imperative to intertwine with new technologies so as to win over the audience which will, in only a few years, become the premium commercial group, the group that is most attractive for advertisers.

The reasons most often mentioned by the younger audience as being critical for giving up the traditional media include the low quality and overwhelming presence of advertisements, predictable and overly commercial playlists and that the program is not intended directly for them, does not meet their needs or interests.

Tod Maffin, CBC consultant says: "Analogue radio is strong in the listeners group over 40 ... and podcasting enables opening up to a completely new demography... it is potentially an excellent way to introduce the new, young audience into the radio discourse and to expand the influence of analogue radio"²¹.

After assessing the needs of the audience, the possibilities of new technologies and objective shortcomings of the traditional radio, it can be concluded that by intertwining traditional radio with new technologies, a huge step forward is made from the program controller ("they decide") to the control exercised by the listeners ("I decide"). The traditional radio found itself held back by the impossibility of fully complying with some of the requirements: to offer enriched, innovative content, creative, original presenters, the capacity to surprise through musical versatility, informative and insightful speech program. Moreover, in order to survive, the traditional radio must satisfy the listeners' need for greater control over the content, and that it is exactly what is made possible by the use of new technologies.

Podcasting and convergence of radio and the Internet open up new windows for winning over the audience which has lately grown less interested in traditional media. As shown by the surveys in the United States and Great Britain, the popularity of radio as a media is decreasing in the listeners group of 15-24 years of age. In 2004, Ofcom, the British regulatory body in charge of media, published the report entitled "iPod generation"²² the findings of which alarmed the traditional electronic media – they do not provide what the younger audience wants.

Diminishing loyalty to traditional stations is manifested through the following statements derived from the surveys – most commercial stations are seen as being faceless or schizophrenic; listeners identify with the presenters rather than with the stations as a whole; negative opinion of the presenters who are trying too hard to be young, trendy, funny; the presenter's genuine passion for music can be decisive for accepting and identifying with him/her; contempt for the culture of playlists, program consistency, predictability.

Surveys show that the desirability of iPod and its popularity with the audience, mostly the young audience (18-30), is a product of three factors – desire for greater control over the program content, particularly music content; the mobile and personalized technology trend; and product/gadget appeal.

²¹ Ibid

²² *The iPod Generation - Devices and Desires of the Next Generation of Radio Listeners*, report made by: The Knowledge Agency for Ofcom, July 2004, London

Qualitative surveys of the habits of the listener group 18-30 showed that their taste for radio formats was quite eclectic – they are looking for a mixture of general entertainment, avant-garde, mainstream, but also the speech content, serious topics, etc. Easily fitting into such expectations and needs of the audience are new technologies with the possibilities they offer – personal choice of music and program content, absence of commercials, potentially less repetition, spontaneity and the desired unpredictability of radio program can be created by so-called “randomized” playlists, the possibility to listen to new music and communicate it to other members of the “network” who share the same interests, tastes, etc.

The greatest potential of radio lies in its ability to establish a close relationship with the listeners and also in its abilities to satisfy the needs and desires of its audience in a manner in which other media cannot do, to offer them an endlessly open media text, susceptible to numerous interpretations. Therefore, the most important recommendation for radio stations would be – take a brave step into the space that is opened for you by new technologies that are free, user-friendly and offer you infinite possibilities to make your program more modern, accessible and complex. Strengthening of interactivity and giving an active role to the listeners will redefine the traditional relationship between radio station and listener, making the listener, at one and the same time, the editor and the producer of the program and placing him/her into the centre of radio content production and distribution²³. Convergence of traditional radio and new technologies will directly influence the way the radio program is followed, namely the time spent listening to the program and increase the quality and versatility of the program, and this will in turn aid in strengthening the radio industry²⁴. Furthermore, new technologies will contribute to overcoming the predictability and homogenization of radio program, opening up the possibility of creating the program intended for only a single listener, encouraging the creativity, accessibility of production and distribution channels, and interactivity of listeners and radio station (illustrated by the examples of Last.FM, B92.FM, etc). Involve your listeners in creating your station’s program and all the participants of that process, along with the advertisers, will ultimately benefit.

²³ www.saffo.com

²⁴ Based on regular measuring of listening rate of radio program via new platforms, conducted for British market, Radio Advertising Bureau and RAJAR

European Court of Human Rights

Information Note on the Court's case - law¹

No. 125

December 2009

Article 10 of Convention for the Protection of Human Rights and Fundamental Freedoms

FREEDOM OF EXPRESSION

Finding by a civil court that article criticising author's role on a question of the utmost public interest was defamatory: violation
(pages no. 28 - 29)

Karsai v. Hungary - 5380/07
Judgment 1.12.2009 [Section II]

Facts – In 2004 there was a public debate in Hungary as to whether a statue should be set up to commemorate the former Prime Minister Pál Teleki, who had cooperated with Nazi Germany and had been involved in the passing of anti-Semitic legislation. The applicant, who is a Hungarian historian and university professor, published an article criticising the right-wing press, including the author B.T., for praising Pál Teleki's role and for making anti-Semitic statements. B.T. brought a civil action against the applicant, claiming that his reputation had been harmed by a passage in the article that accused the right-wing press of "inciting against and bashing the Jews". The regional court did not, however, grant his claim, holding in essence that the impugned statement had not concerned B.T. himself but the right-wing media generally. The decision was later reversed by the court of appeal, which held that the statement could be seen as relating to B.T. and that the applicant had failed to prove that it was true. It ordered the applicant to publish rectification at his own expense and to bear the legal costs. The court of appeal's decision was upheld by the Supreme Court in June 2006.

Law – Article 10: The Court firstly considered that the impugned statements made an indirect reference to B.T. personally and had thus affected his reputation. Even though the domestic courts had qualified the applicant's statement as one of fact, the Court considered that such classification should not preclude the protection of freedom of expression by being unreasonable or arbitrary. It was true that the applicant's argument contained a factual statement describing B.T. as someone active in embellishing Pál Teleki's historical role. However, that statement of fact was a value-laden one, since in his article the applicant had argued that the apologia of a politician with well-known anti-Semitic convictions amounted to participation in the process, ongoing in the extreme right-wing press, of trivialising his racist policies. In such circumstances, the Court could not fully endorse the domestic courts' findings that the dispute concerned a pure statement of fact. Given the role that Pál Teleki had played in the enactment of anti-Semitic legislation in Hungary, the conclusions advanced by the applicant could not be considered excessive or devoid of factual basis.

The applicant's article had been published in the course of a public debate of the utmost public interest. Moreover, B.T. had voluntarily exposed himself to public criticism by publishing articles in the popular daily press as part of that debate. Lastly, the sanction imposed on the applicant, namely the duty to retract in a matter which affected his professional credibility as a historian, was capable of producing a chilling effect. In sum, the domestic courts had not convincingly established any pressing social need for putting the personality rights of a participant in a public debate above the applicant's right to freedom of expression.

Conclusion: violation (unanimously).

Article 41: EUR 4,000 in respect of non-pecuniary damage.

FREEDOM OF EXPRESSION

Order requiring news media to disclose a leaked document liable to lead to the identification of their source: violation
(pages no. 29 – 30)

*Financial Times Ltd and Others
v. the United Kingdom - 821/03
Judgment 15.12.2009 [Section IV]*

Facts – The case concerned a complaint by the applicants – four newspapers and a news agency – that they had been ordered by the domestic courts to disclose a document that was liable to lead to the identification of one of their sources. In November 2001 a journalist at one of the newspapers had received a copy of a leaked document from an undisclosed source X concerning a possible takeover bid by a company called Interbrew. The journalist had telephoned the company's investment-bank advisers the same day to advise them that he had received the document and intended to publish it. An article was published at about 10 p.m. on the newspaper's website and, referring to the leaked document, stated that Interbrew had been plotting a takeover bid. The other applicants had published articles on the same and following days, also referring to the leaked document and the possible takeover bid. Following a statement by Interbrew to the press, they continued to report on the issue, adding that the leaked document may have been doctored. The press coverage had a significant impact on the market shares of both Interbrew and the target company. Interbrew's security and risk consultants made unsuccessful attempts to identify X. Following advice from the consultants that access to the originals of the leaked document might vitally assist the investigation, Interbrew sought and obtained on 19 December 2001 an order requiring the applicants to disclose the leaked document. The High Court found in particular that X had deliberately leaked a lethal concoction of confidential and false information, with serious consequences for the integrity of the share market, and that there was an overriding need for disclosure of the document in the interests of justice and for the prevention of crime. That decision was upheld by the Court of Appeal, which concluded that the public interest in protecting the source of the leak was not sufficient to withstand the prevailing public interest in allowing Interbrew to seek justice against the source, the critical

point being X's evident aim "to do harm whether for profit or for spite...". To date, the applicants have not delivered up the document and the disclosure order has not been enforced against them.

Law – Article 10: The disclosure order of 19 December 2001 remained capable of being enforced and so, no matter how remote a possibility that was, constituted interference with the applicants' freedom of expression. That interference was prescribed by law and pursued the legitimate aims of protecting the rights of others and preventing the disclosure of information received in confidence.

Turning to the question whether the interference had been necessary in a democratic society, the Court noted that disclosure orders had a detrimental impact not only on the source, but also on the newspaper, whose reputation could be negatively affected in the eyes of future potential sources, and on members of the public, who had an interest in receiving information through anonymous sources and were also potential sources themselves. As to whether the conduct of the source could override the principle of non-disclosure, the Court explained that domestic courts should be slow to assume, in the absence of compelling evidence, that a source was clearly acting in bad faith with a harmful purpose and had disclosed intentionally falsified information. In any event, given the multiple interests in play, the conduct of the source could never be decisive in determining whether a disclosure order ought to be made but merely operated as one, albeit important, factor to be taken into consideration in carrying out the requisite balancing exercise. In carrying out that exercise, the Court focused on the following aspects of the applicants' case: the purpose of the leak, the authenticity of the leaked document and the interests of Interbrew in identifying the source and bringing proceedings, and, lastly, the effect of the disclosure order.

As regards the first of these aspects, the Court noted that a critical factor in the decision to order disclosure had been X's purpose in leaking the document, which the Court of Appeal had described as being "on any view a maleficent one, calculated to do harm whether for profit or for spite...". However, while accepting that there could be circumstances in which a source's harmful purpose would in itself constitute a relevant and sufficient reason to order disclosure, the Court found that in the instant case the legal proceedings against the applicants had not allowed X's purpose to be ascertained with the necessary degree of certainty for any significant weight to be placed on it. The second aspect – the question of the authenticity of the leaked document – could not be seen as significant either, as the domestic courts had reached no conclusion as to whether the document had been doctored and the question of what steps the journalists had taken to verify its accuracy could not be decisive, but had to be considered in the context of the case as a whole.

Turning to the issue of Interbrew's interest in identifying the source, the Court noted that it had sought disclosure both to prevent future leaks and to enable it to bring an action in damages. However, it was relevant here that, despite receiving prior notice of the intention to publish, Interbrew had not sought an injunction to prevent the initial publication. Moreover, the aim of preventing further leaks would only justify an order for disclosure of a source in exceptional circumstances where no reasonable and less invasive alternative means were available and where the risk was sufficiently serious and defined to render such an order necessary within the meaning of Article 10 § 2. Although the Court of Appeal had

found that there had not been any less invasive means available, the Court noted that Interbrew had not given full details of the inquiries that had been made and that the Court of Appeal's conclusion had been based on inferences. Lastly, as regards the effect of the disclosure order, the Court considered that no crucial distinction could be made between disclosure that would directly result and disclosure that might result in the identification of the source, as a chilling effect arose whenever journalists were seen to assist in the identification of anonymous sources. It sufficed that information or assistance had been required for the purpose of identifying X.

Accordingly, the interests in eliminating damage through the future dissemination of confidential information and in obtaining damages for past breaches of confidence were, even if considered cumulatively, insufficient to outweigh the public interest in the protection of journalists' sources.

Conclusion: violation (unanimously).

Article 41: No claim made in respect of damage.

¹ Excerpts from official documents of European Court of Human Rights, available on its web site