

RECOMMENDATIONS FOR STRENGTHENING THE INDEPENDENCE OF PUBLIC BROADCASTERS IN SERBIA

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Public service broadcasters in the Republic of Serbia are facing the growing political pressures and financial instability. This threatens their institutional independence, program quality, and affects the citizen's trust in public broadcasters. In order to fulfil their mission, public service broadcasters need to enjoy stronger guarantees of their institutional independence, adapt appropriate funding model, secure transparent and adequate process of appointment of members of the governing bodies, and become more accountable towards citizens of Serbia.

SUMMARY

1. INTRODUCTION

The Broadcasting Act from 2002 set the legal foundations for the transformation of state-controlled into the public service broadcasters (PSB) in Serbia. Two broadcasters, Radio-television of Serbia (RTS) and Radio-television of Vojvodina (RTV) formally started operating as public service broadcasters in 2006, with the license fee as the main source of funding. By adopting the law, newly elected government in Serbia demonstrated its willingness to support democratic processes including in the domain of the media. However, substantive support for reforms of public broadcasters, and media sector in general, remained absent. Only as result of external pressures, the Serbian Government adopted the Strategy for Media Development in 2011, and a set of new media laws, including the Law on Public Media Services in 2014.

On normative level, Serbia adopted laws which include key principles and norms

regarding the status, operation and remit of public broadcasters. Nevertheless, in practice it was evident that authorities stay blind to many problems and shortcomings of the legal framework. Public media reforms in Serbia are characterized by continuous impediments to their institutional independence, such as through the frequent changes of legislation regarding nominations and appointment of management and supervisory bodies; usurpation of the key managerial positions; lack of transparency; marginalization of supervisory bodies; broken funding model; as well as the politicization of regulatory body which is responsible for nomination of members of the main PSB managing bodies and also for control of its compliance with the laws.

Considering normative principles and successful practices from other countries, the aim of this policy brief is to suggest contextually suitable solutions in domains of organizational, managerial and financial independence of public broadcasters in Serbia.

2. THREE ASPECTS OF INDEPENDENCE OF PUBLIC BROADCASTERS

Public service broadcasting represents the specific model of media organization which is expected to be independent from political and economic influences. It should have high level of governing and program autonomy, should be funded with public money, is expected to produce quality programs and have strong informative, educational and entertainment function, and serve all citizens of the country.

To fulfil its remit, independence of public service media is crucial. This is emphasized by the leading international organizations, such as the Council of Europe and OSCE. In its declaration from 2012, Council of Europe indicates commitment of the member states to support the mission, funding, editorial and organizational independence of public media services.¹ Three aspects are important for the independence of public broadcasters – organizational, functional and financial independence.

Organizational independence is secured through the organizational structure of public service media and may include different mechanisms of internal control among different managerial, governing or control bodies. It is suggested that best way to secure organizational independence is to divide and distribute the duties on various levels.² Rules that regulate the status and jurisdiction of governing bodies, in particular the conditions for candidacy and appointments of their members, should ensure transparency of the process and promote professional qualifications and relevant experiences and criteria in order to eliminate potential impact of any particular interest on the work of the public service media.³ In order to minimize political influence, the director general is formally responsible to the PSB Board and is obliged to regularly report on PSB

operation, while the Board creates strategic and long-term plan on which, together with annual and financial reports, it informs the competent political and state bodies as well as the citizens in general.

Managerial independence implies the transparent operation of public service media and open decision-making processes, the prohibition of conflict of interest, the existence of mechanisms for expressing disagreement with the decisions made by the management, the possibility of insight into the budget, the possibility of questioning the work of public broadcasters by independent auditing houses, and the possibility of replacement of management members in the cases of abuse.⁴

Financial independence should be based on four principles - stability, independence, transparency, and proportionality. Stability stands for regular and continuous funding. Independence implies that funding sources are not subject to any individual interests, whether political or economic. Proportionality implies the rationale according to which the amount of money provided for the public broadcaster should be estimated as sufficient for its smooth operation and fulfilment of the basic mission. Transparency refers to the method of allocating public money that is collected through any of the legally defined ways of financing.⁵

States are free to regulate the funding of public broadcasters in their own way, with an obligation to enable development of long-term, stable and transparent mechanisms of funding. In practice, the most widespread is the so called 'mixed' model of funding, based on the license fee, with possibility to collect some limited amount of money through commercial activities, as well as from the state budget. The mixed (or 'hybrid') model is advocated by the Council of Europe, and by the most of local media experts, who emphasizes that only a combination of fixed licensee fee,

taxes, state subsidies and sponsorship revenues, can provide a sufficient and stable funding for public service broadcasters.⁶

3. PROBLEMS AT THE LEVEL OF ORGANIZATIONAL INDEPENDENCE

The Law on Public Service Media from 2014, Article 5, formally provides basic guarantees of institutional independence and editorial autonomy but does not elaborate in detail the ways in which these guarantees will be achieved in practice. Also, the Law regulates the process of nomination, appointment and dismissal, of the members of the governing bodies - the Board of Directors (Articles 17 to 22) and the Director General (23 to 27), advisory bodies such as the Program Council (Articles 28 to 31) mutual controls, as well as their obligations.

Problems are the most visible when it comes to implementation of these provisions in practice. Pressures that led to removal of managerial and editorial staff at the Radio-television of Vojvodina during 2016⁷ indicated the main shortcoming of the current legal framework: the fact that the legal provisions for selection and appointment of the main persons responsible for managing and taking care of the program in public media services do not include sufficient mechanisms and guarantees that will protect the process from political interference.

Regulatory Agency for Electronic Media (RAEM) is the most important guarantor of the institutional independence of public broadcasters in Serbia. Problems that are perceived through the politicization of the work of regulators, and its reduced independence, are directly related to the guarantees of the institutional and functional independence of the public broadcasters. In this regard, two articles of the

Law on Electronic Media (2014) that refer to the work of regulator seem to be problematic: In the Article 5, RAEM employees are treated as civil servants – part of state bureaucracy – although the provision of the same Article prescribes that “the regulator is functionally and financially independent from state bodies and organizations, media service providers and operators”. Such a status equals regulator and its employees with bureaucratic structure in any other public institutions, including ministries and other public service providers. International experts, media lawyers and local media experts advocate for change of this status in order to distinguish regulator and to highlight its autonomous and independent status from the state and from the political interference of dominant political parties.⁸ Moreover, Article 22 prescribed that regulator for all decisions and acts should obtain an opinion on legality and regularity, but doesn't precise which institution has this authority. Consequently, in such a situation the Ministry of Culture and Information automatically has been recognized as the institution responsible for providing such opinion. In the Serbian context, Ministry lacks resources and expertise which prevents it from being a neutral and professional arbiter in this domain.⁹

4. PROBLEMS AT THE LEVEL OF MANAGERIAL INDEPENDENCE

Only transparent and responsible operation of public media, regular interaction with citizens, and production of the program of good quality ensures the necessary legitimacy and public support for their independent work. In the case of public broadcasters in Serbia so far, none of the three segments are at the satisfactory level.

The problem of non-transparent operation of public media services in Serbia



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has been reflected in the lack of access to important information that would provide a basis for insights and external control on their operations and fulfilment of its remit. For example, the RTS did not publish its financial statements in the period from 2008 to 2013. However, this practice has been changed, and for the last two years both public broadcasters started to publish their annual and financial reports.

Additionally, Law on Public Media Services (2014) does not provide mechanisms for external control of fulfilling the PSB's public missions, neither it defines who and how will control this, and what are the potential consequences of noncompliance with the legal obligations. In its article 53, the Law explicitly mentions that the responsible ministry (implicitly, the Ministry of Culture and Information) should supervise the implementation of Law. This is problematic since all other important stakeholders, such as media professionals, media and law experts, specialized organizations, regulatory bodies, citizen's organizations, and interest groups are not mentioned.

Mechanisms for internal control are not properly defined and developed which is reflected in practice where position of the General Manager has been usurped for a long period of time, while marginalization of the Steering Board and Program Council prevented them to perform their role, and control neither the work of the General Manager nor the compliance with the highest production standards and shortcomings related to program.

Moreover, the way of how members of program councils are nominated and appointed proved to be problematic. First problem is politically motivated process of nomination in which persons are formally nominated as independent or by politically non-affiliated organization, but essen-

tially, they are affiliated to a certain political or business interests. Second problem is related to their qualifications and competences, since persons nominated for membership in Program Council often (but not always) lack proper educational and professional background to perform their role.

Law prescribed that assemblies at the state level and the level of the province of Vojvodina, and regulator's Council, should be provided with the reports from both, state and province level broadcaster, but it is not clear what are potential consequences of noncompliance.

When the production of program is concerned, public media services do not have internal documents that regulate editorial principles and criteria for selection and production of the program, such as editorial guidelines and rules on covering elections and other events of public importance. The Law provides obligations for public media to produce programs in minority languages (Article 7, 8 and 9), but there are no program quotas or sanctions for non-compliance with these provisions.

Available monitoring results show that the program of public service broadcasters only formally meets obligations prescribed by Law¹⁰, but there are numerous indicators that point to the lack of program quality. For example, political bias was indicated in the news program, with a large number of pseudo-events whose actors are bearers of high political functions.¹¹ Moreover, public service broadcasters demonstrate clientelistic attitudes towards certain power centers to which they are dependent when it comes to funding.¹² The lack of content in minority languages on RTS has been highlighted as yet another major problem.¹³ Finally, there is also a lack of children's and educational program comparing to other types of program, such as sport.¹⁴

5. PROBLEMS WITH FINANCIAL INDEPENDENCE

Until 2014, the main source of funding was the license fee, but the model was abolished due to the problems related to its collection.¹⁵ Now, both broadcasters – RTS and RTV – have the mix funding model. The main source of funding is the public service broadcasting tax while additional incomes is provided from the state budget, net profits from commercial exploitation of content, advertising activities and other sources.¹⁶

According to the latest financial report from 2016, the annual budget of Radio-Television of Serbia was EUR 90 million. Almost half (48%) of sources have been collected through tax, 30% comes from the state budget, while 21% from commercial activities. This was 16.6 % higher than in 2015, where budget comprised 73% of the EUR 76 million annual budget of the broadcaster.¹⁷ Annual budget of the RTV for 2016 was EUR 17.5 million, out of which 53 % is collected through the tax and 43 % from the budget.¹⁸

Funding model of public service broadcasters, as evidence indicate, hardly fulfil the principles of financial independence. First, it is highly instable, and doesn't provide sufficient and continuous funding to both public broadcasters. Main reason for instability comes from the fact that PSB still highly depends on the budget funding, while tax collection is problematic due to the absence of tax payers base (currently, citizens of Serbia are paying tax through the electricity bill). The tax only partially functions in practice. For its application, both broadcasters were obliged (Article 39) to keep records of taxpayers, and create a data base, which did not happen. The biggest obstacles are provisions of the Law on Personal Data Protection (2009) that prevent broadcasters to collect all necessary data.

Existing evidence show that budgetary funding contributed to the temporary financial stability of public broadcasters in Serbia from 2014 to 2016, but also some analyzes indicated that budget funding significantly decreased the balance, independence, as well as diversity and plurality of editorial policies on both public service broadcasters.¹⁹

6. CONCLUSION AND RECOMMENDATIONS

In order to fulfil the mission of public media services, it is necessary to strengthen institutional guarantees of their independence, adapt financial model to its needs, ensure transparent and adequate selection of members of management and control bodies, and make their work accountable to citizens. To achieve this, the following steps should be considered:

- Law regulating the status, remit and operation of PSM should emphasize that members of management boards should be selected and nominated among media professionals, in particular with experience in radio, television and multimedia production, or to be distinguished academics, scholars and experts with media and communication background,
- Candidates for the Director General should be persons with proven managerial experience and achievements. It should be required that each candidate should submit the concept of development of the public service broadcaster.
- In the case of program editors, editorial experience in radio, television and multimedia programs should be emphasized.
- Members of the Program Council should be appointed in a way to represent various segments of Serbian society, including the civil sector, professional community, cultural institutions, and interest groups, through clearly



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defined procedures and a transparent nomination and election process, rather than being elected by the Governing Board. The model of selection of members of the Program Council on Croatian Radio-Television (HRT) can serve as a good example.

- The law should strengthen the control and advisory role of the Program Council, with mandatory consultations while management and editorial boards are evaluating existing programs or introduce new program services. Meetings of the Program Council should be regular, with publicly available minutes, decisions and records published online.
- The practice of organizing public discussions with citizens, organized by the Program Councils, proved to be important, and should be continued. Involving citizens in discussion on the program quality and different other services provided by public broadcasters are crucial for improving the program itself, but also for building relations with audience and increasing the level of trust in public service media.
- The law should prescribe the establishment of the specialized department for communication with the audience and citizens in general.
- The law should prescribe the establishment of an ombudsman or commissioner for those who use PSM services, which should operate with a certain degree of autonomy in relation to PSB's managing and controlling bodies. The aim of this institution / person would be to establish two-way communication channels directly with the PSB service users. For example, the BBC has 4 Councils for its audience, each having jurisdiction over one of the countries within the United Kingdom (England, North Ireland, Scotland, and Wales) and is directly responsible to the BBC Trust, the main governing body of this public service.

Since organizational independence of public services is significantly dependent on the status and operation of the main regulatory body, there is a need for permanent and parallel support to its independence. In that respect, two recommendations are of paramount importance:

- It is necessary to amend the Article 5 of the Law on Electronic Media in which members of the Regulatory Council are treated as civil servants, and to insist on professional and expert qualifications among candidates for these positions,
- There is a need for more precise formulations in the Article 22 of the Law on Electronic Media, in the part that explains who has the authority to interpret the law and its provisions.

In order to strengthen **managerial independence**, there is a need for:

- Clearly defined principles and tools of public control over the operation and services provided by public broadcasters. Control should be external and exercised by citizens. This means that public broadcasters should be regularly scrutinized for their work, and that all interested parties and actors should be invited to take part in public discussions. Management and editorial board members should also take an active part in these discussions and take into consideration external comments and suggestions.
- Frequent public debates and discussions are highly recommended, as well as the obligation to publish reports regularly, including information of public importance, or other means that would make public broadcasters to work in a responsible and transparent manner (for example, public statements by their managing bodies in which they commit to the remit and mission for a certain period of time).
- Public services should publish on a regular basis, and in line with the current systematization, salaries of their

employees, including members of managing bodies, editors, and members of advisory bodies.

- In their annual financial reports, public broadcasters should clearly and accurately indicate how much funds have been invested in production of its own program and provide a rationale for different types of programs produced, how much they spent on purchasing independent production programs, what equipment they purchase, what procedures they followed to complete this and how much they spent on this.

In order to empower public broadcasters in domain of **financial independence**, and make them financially stable and sustainable, the following should be considered:

- There is a need for thorough and targeted analysis of the media market trends in Serbia based on which decisions can be made on the most adequate model to fund public service media, specifying sources of financing, method of money collection, amount of funds which is needed for independent work of public broadcaster, and the way how these funds will be spent, as well as how the entire process will be supervised.
- Previous experience shows that the most adequate model of funding of public service media in Serbia is a mixed model which includes license fee as the main source, additional com-

mercial sources and a funding from the state budget that would fill the gap when there is a lack of funds. Additional incomes could be generated through subscription to special contents (mostly online, or on demand) and through specialized commercial activities (content production and content sale).

- In order to have stable financing there is an urgent need for creation of a database of tax payers on the territory of Serbia. Both, bad and positive experiences from the neighboring Croatia, could serve as an illustration of how such a database could be created in the most efficient and the least costly way, and how collisions with other laws could be avoided or solved.
- In order to increase the independence of public broadcasters, there is a need for more transparent financial operation.
- Public broadcasters and their managements are urged to prepare and publish their annual financial plans in which they will indicate in detail how much funds they need for a regular operation, how much they aim to collect through tax, and through other sources, and how they will re-allocate collected funds (for program production, for salaries, for innovations). These plans should be based on evidence, on research, and presented in the form of feasibility study.

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3 Ibid.

4 Warrick Smith, "Utility Regulators – The Independence Debate", in *Public Policy for the Private Sector*, no. 127, (Washington: The World Bank, 1997), pp. 1-2.

5 Protocol to the Amsterdam Treaty June 1997 on Public Service Broadcasting. http://www.internationaldemocracywatch.org/attachments/313_Amsterdam%20Treaty%20-%20Protocols%201997.pdf (Accessed on May 10, 2017).

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7 Following elections in 2016, the series of removals from the main managing and editorial positions happened in the Province of Vojvodina regional broadcaster, which the journalist associations and opposition parties considered as pressure from the ruling structures.

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10 Dubravka Valić Nedeljković, Rade Veljanovski and Stefan Janjić, *Izveštaj o monitoringu programskih šema RTV i RTS, kao indikatora ostvarivanja zakonskih funkcija javnih medijskih servisa: Medijska (ne)zavisnost u 2015 [Report on Monitoring of RTS and RTV Programmes, as Indicator of Compliance with Legally Defined Functions of Public Media Services]* (Novi Sad: Novosadska novinarska škola, 2015), pp. 24-25. <http://www.novinarska-skola.org.rs/sr/wp-content/uploads/2015/10/Izveštaj-o-monitoringu-programskih-sema-Radio-televizije-Vojvodine-i-Radio-televizije-Srbije-okto-bar-2015.pdf> (Accessed on July 10, 2017).

11 Dubravka Valić Nedeljković, *Public Service Broadcasters Are (Not) in The Service of Citizens: Monitoring the Implementation of New Media*

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12 Ibid.

13 Ibid.

14 Ibid.

15 For more details, see: Davor Marko, *The Future of Public Service Broadcasting in Serbia* (Sarajevo: Analitika, 2017); For additional comments and discussions see Monitoring of media scene in Serbia provided by ANEM, <http://www.anem.rs> (Accessed on July 12, 2017).

16 “Law on Public Media Services”, *Official Gazette of the Republic of Serbia* 83/2014, 103/2015 and 108/2016.

17 Radio-television of Serbia, *Izveštaj o poslovanju za 2016 [Report for 2016]* (Belgrade: Radio-television of Serbia, March-May 2017). <http://www.rts.rs/page/rtv/sr/javniservis/story/287/finansijski-izvestaji/67333/finansijski-izvestaji.html> (Accessed on October 10, 2017).

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19 Valić Nedeljković, *Public Service Broadcasters*, p. 1.



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