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PROTECTION OF EMPLOYER'S REPUTATION VERSUS EMPLOYEE'S FREEDOM OF EXPRESSION AND PROTECTION OF PRIVACY:

Decisions of the Radio-Television of the Federation of Bosnia and Herzegovina

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Sarajevo, October 2018

INTRODUCTION

When and how much of the behavior of individuals outside of their work obligations has a direct impact on the jobs they perform and when and to what extent does the employer have the right to supervise, control and limit this behavior?

These questions are not new, because there have always been jobs that did not finish with the end of working hours (army, police, journalism, etc.). With the arrival and development of digital media, these issues are actualized to the maximum and the relationship between the employer and the employees is of paramount importance. In the business world, including media outlets, we find a variety of solutions which are still being debated in various forms and forums.

Research shows that today companies routinely check the internet presence and behavior of potential employees when hiring, and situations where statements on private social media profiles lead to significant consequences in real life are not rare at all.

At the end of 2017, the Bosnian and Herzegovinian public was upset about a Facebook status of Dženan Selimbegović, Deputy General Secretary of the Presidency of Bosnia and Herzegovina, in which he inappropriately spoke about the appearance and behavior of two female journalists. In a similar way, remarkable attention was drawn to a Facebook post in October 2018 attributed to renowned drummer Amar Češljar, calling for sending tanks against protesters in Mostar who were protesting Željko Komšić's election for member of the B&H Presidency. After the post came to the attention of the media, his employers, renowned musicians, canceled their cooperation.

In this paper, we will analyze two recent decisions of the Radio-Television of the Federation of B&H (RTVFBiH) regulating the behavior of employees outside of working time. The first decision of RTVFBiH regulates the behavior of employees of this house on social networks and blogs and the second concerns a ban on moderating and chairing meetings, events, roundtables and similar events during a limited period – from 9 July 2018 to 31 October 2018 (pre-election and post-election period).

Both decisions are directly related to the labor status of employees of RTVFBiH, but also to the rights and freedoms guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR) – the right to freedom of expression (Article 10) and the right to respect for private and family life (Article 8).

1. DECISIONS OF THE RADIO-TELEVISION OF THE FEDERATION OF B&H

The first decision, passed on 28 May 2018, treats the RTVFBiH employees' public appearances. It prohibits expressing their own opinions or views on social networks or blogs that would harm the reputation of this media outlet. Particular emphasis is placed on the responsibility of journalists employed in news programs dealing with socio-political issues. They "must respect the culture and legitimacy of public appearance and must not disclose information or make statements, post photos or video content that may harm the reputation, program credibility, interests and values promoted by RTVFBiH". If a worker commits an offence in the above-mentioned situations, this will be treated as a violation of the employment obligation under the Labor Act and the Rulebook on Labor. In the explanation of the Decision, it is stated that it is brought because it was observed that workers and permanent external associates arbitrarily make statements or have positions, especially on social networks, which are contrary to the RTVFBiH General Acts.

The second decision called **the RTVFBiH Public Appearances of Employees Decision** of June 6, 2018 prohibits all employees of this house from making public audio-visual appearances on social networks and blogs other than those that fall within the sphere of privacy. In addition, it is prohibited to moderate and chair meetings, events, promotions and similar activities. To participate in such activities, it is necessary to request the approval of the RTVFBiH Board of Directors. In the end, it is strictly prohibited to appear in all events that are organized for pre-election purposes or that can be used for that purpose. This decision is temporary and is valid for four months. It is stated in the explanation that it is being adopted to confirm the credibility of the media in pre-election time and to prevent abuses of public appearances of the employees of this house for pre-election purposes.

Both decisions were made on the basis of the RTVFBiH Law, the RTVFBiH Statute, the RTVFBiH Rulebook on Labor, the RTVFBiH Code of Ethics and the authority of the General Director. Article 35 of the Law on RTVFBiH and Article 36 of the RTVFBiH Statute, referred to in these decisions, describe the powers and responsibilities of the General Director, from which his management role in the business operations and representation of this house is seen. The provisions of the RTVFBiH Code of Ethics are more specific. The Code in three chapters touches upon issues relevant to the appearances of employees outside of working time.

In Chapter VII - *Relations with the State, Government, Politics and Economy,* it is stated that "journalists of RTVFBiH news programs must avoid public appearances of all kinds that are objectively inappropriate for the work they do, which change their 'image' in the public or diminish their professional or public persuasiveness" (Article 98).

In the next, eighth chapter of the Code − *Pre-election Campaign* − permitted and unacceptable behaviors in these campaigns, as well as activities in political parties generally, are detailed. Journalists are generally allowed to be members of political parties or political associations, but it is stated that journalists should avoid such practices. But if they are already members, then they are expected to notify the editor of it in all situations where "such membership could objectively cause a conflict of interest or suspicion in the impartial, objective and credible performance of their task" (Article 113). By contrast, journalists are prohibited from holding positions in political parties or associations, as well as membership in the bodies of these organizations (Article 112). Finally, if journalists, authors, managers and editors of this media house run for elections, they should not do their job during the pre-election campaign and 30 days before its start (Article 114).

Chapter XI − *Work and Behavior Obligations* further specifies permitted, undesirable and prohibited employee behavior and some provisions in preceding chapters are repeated here. The reputation and integrity of this media house are the basic values that are to be protected by these provisions, including, among other things, the following obligations for employees:

- They should not adversely affect the public and the business environment by their actions and are obliged to take into account the reputation and integrity of RTVFBiH in all stages of their activities (Article 149).

- They may not appear with their voice or character in other media houses and special media events (festivals, events, etc.), **except with the written approval of the General Director of RTVFBiH and then for a maximum of six months** (Article 150).
- They are obliged to respect and uphold the business and program interests of RTVFBiH, its social reputation and professional credibility and their own professional and personal credibility and reputation in all forms of public appearance (Article 153).
- An employee is obliged to inform his/her manager at least one day in advance about the intent and the general content of his/her public performance or activity (Article 154).
- An employee of RTVFBiH shall not disclose RTVFBiH's business statements or business records or provide access to RTVFBiH's documentation, except based on authorizations and legal regulations (Article 155), unless it is authorized by the General Director (Article 156).
- Journalists and presidents and members of the RTVFBiH bodies must pay particular attention to ethics and stay out of activities that might compromise their credibility (Article 158).
- Journalists in particular must ensure that in their work they are independent of political, economic and other interests that might affect their objectivity and avoid situations that may create an impression of their bias (Article 163).
- Employees of RTVFBiH may not enter into business arrangements, for their own or somebody else's account, or perform tasks falling within the activity of the RTVFBiH (Statutory Ban on Competition). Due to a possible conflict of interest and competition with the Employer, it is incompatible with the work at RTVFBiH and the RTVFBiH employment relationship that the employee has at the same time holdings of shares or management rights in other electronic and print media (TV, radio, daily newspapers) or in legal persons performing the same or similar activities (Articles 167 and 168).

The Code does not explicitly mention prohibitions related to social media or the internet, but the provisions are generally set widely to include all employee behavior at or outside the workplace, regardless of the media platform they might possibly use for the public appearance. Examples: avoiding "public appearances of all types"; prohibition of "negative impact on the public and business environment", etc.

2. WORKING IN FREE TIME

The basic question that arises is whether a worker may perform a job s/he wants in free time without the employer's interference? The answer is that s/he cannot, or cannot in all situations. In principle, there is a provision in the Labor Law of the Federation of Bosnia and Herzegovina that prohibits the competing of a worker with the employer.

> An employee may, only with the prior approval of the employer, enter into business arrangements, for his own or somebody else's account, and perform tasks falling within the activity of the employer. (Article 85 of the Labor Law of FB&H).

Hence, if it is about doing business falling within the activity performed by the employer, then the worker is required to seek the employer's approval for doing the job. On the other hand, in case of a job that is not part of the activities performed by the employer, the Labor Law does not prescribe the obligation to seek permission from the employer, but such obligation can be found in the individual contract of employment between the employer and the employee. Moreover, there are numerous jobs in which it is particularly important to protect the integrity and reputation of the employer by prescribing various obligations and bans on employees during and out of working hours. Journalism certainly belongs among them. For example, in the BBC Code of Conduct, employees are expected to have in mind their employer's reputation on their personal social media profiles:

- You won't say or share anything that might damage the BBC's reputation.
- You'll think carefully before liking or retweeting anything that makes it look like the BBC is expressing an opinion (especially if it's about politics or religion). (BBC Code of Conduct).

Similarly, The Washington Post expects employees to work exclusively for this newspaper:

> We work for no one except The Washington Post without permission from supervisors. Many outside activities and jobs are incompatible with the proper performance of work on an independent newspaper. (The Washington Post Conflict of Interest).

RTVFBiH also stipulated in the Code of Ethics that employees should not appear with their voice or character in other media houses and special media events (festivals, events, etc.), except

with the written approval of the General Director of RTVFBiH, and then for a maximum of six months (RTVFBiH Code of Ethics, Article 150).

3. EUROPEAN STANDARDS AND EMPLOYEES' FREEDOM OF EXPRESSION

Freedom of expression includes the freedom to hold opinions, the freedom to receive and impart information and ideas, and the freedom to access information held by public authorities. Expression protected by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) includes spoken or written words, but also refers to paintings (*Muller v. Switzerland*, 1995) and symbols (*Vajnai v. Hungary, 2008),* leaflets (*Chorherr v. Austria*, 1993), films (*Otto-Preminger Institute v. Austria*, 1994), demonstrations (*Piermont v. France*, 1995), and even expression through dressing *(Stevens v. The United Kingdom,* 1986; *Donaldson v. The United Kingdom*, 2009).

Principally, freedom of expression is not limited to words but may include activities aimed at expressing ideas and information. This means that the protection afforded by Article 10 of the Convention is not limited to the essence of the ideas and information expressed but includes the form in which they are conveyed (*Jersild v. Denmark*, 1994).

When talking about employment relationships, it should be borne in mind that Article 10 of the ECHR also applies to all relationships between employer and employee. This also includes relations that fall within the sphere of private law − then there is a so-called "positive obligation" of the state to protect the right to freedom of expression. The European Court of Human Rights has made a number of decisions in which it deals with the issue of freedom of expression in this context. In essence, they are based on two arguments. The first is that it is necessary to establish a balance between protecting the employer's interests and protecting the freedom of expression of employees. It is necessary to assess in each particular situation which of these two legitimate goals in a democratic society has greater weight − for example, whether it is protecting the reputation, dignity and privacy or the right of the public to know about certain abuses, irregularities and the like. The second argument of the European Court of Human Rights has to

do with the severity of the sanction − whether the sanctions imposed on employee are proportional to employee's misconduct?

The Court therefore begins with the fact that the employee owes loyalty to the employer, but tries to assess whether the employee in case of violation of that loyalty acted in good faith and had a reasonable basis for the appeal, whether the disclosed information contrary to the employer's wish was in the public interest, and whether there were more discreet ways to eliminate abuses from public appearances. Likewise, the Court carefully examines the sanctions imposed and their consequences.

3.1. The need to establish a balance between protecting the employer's reputation and protecting the employee's freedom of expression

In the case of *Matuz v. Hungary* (2014), the European Court of Human Rights ruled that the right to freedom of expression of the applicant was violated. He was a journalist who was employed on state television, who was fired after publishing a book containing allegations of censorship carried out by the director of the company. The television fired him based on a breach of confidentiality clause. However, the European Court of Human Rights considered that the Hungarian courts had to examine whether the publication of the book represented a manifestation of freedom of expression in the public interest − as the applicant pleaded, and not only to rule on the sole ground that he had violated the confidentiality clause.

The European Court of Human Rights issued a decision confirming violation of the right to freedom of expression in the case of *Bucur and Toma v. Romania* (2013). Constantin Bucur was an employee of the Romanian Intelligence Service responsible for monitoring and recording tapped telephone communications. After noticing several irregularities, he informed the head of department who reprimanded Bucur for broaching the issue. That is why Bucur contacted a member of the Parliamentary Commission for Overseeing the Intelligence Service, who considered that bringing the case to the House of Representatives could only mean delaying the investigation and recommended that Bucur present the case at a press conference. Bucur held a press conference where he made public 11 audio cassettes that contained telephone communications between journalists and politicians. Romanian military courts sentenced him to two years of imprisonment for theft and illegal disclosure of secret information or information related to privacy, honor and reputation.

In the decision of the European Court of Human Rights, in which the decisions of the Romanian courts were declared a violation of the right to freedom of expression, it is alleged that Bucur had a legitimate ground for believing that the information he disclosed was true and that the public interest in disclosing the illegal activities of the Romanian Intelligence Service outweighed the interest of maintaining public trust in the Service, and that Bucur had acted in good faith.

3.2. The severity of sanctions

In the case of *Heinisch v. Germany* (2011), the European Court ruled that the sanction imposed – dismissal without notice – was disproportionately severe. The applicant, a geriatric nurse, was dismissed from work after filing a criminal complaint against her employer, alleging deficiencies in the institutional care provided. The Court said that the sanction had negative repercussions not only on the applicant's career, but could also have a serious chilling effect on other employees at this company, as well as other employees in the nursing service sector, discouraging them from reporting any shortcomings in institutional care. In this way, it is harming society as a whole because it is about patients who are often not capable of defending their rights, and nurses are best placed to act in the public interest because they are the first to find unsatisfactory conditions in the care provided.

In the case of *Matuz v. Hungary* (2014), in which an employee was fired from work after publishing a book referring to censorship exercised at the state television company, the European Court of Human Rights considers that the imposed sanction – termination of his employment with immediate effect – is extremely severe.

In the case of *Fuentes Bobo v. Spain* (2000), the Court considered that the sanction imposed on an employee constituted a violation of his right to freedom of expression. Fuentes Bobo was employed on the national television TVE and was fired after writing an article criticizing TVE's management and then being a guest on two radio shows where he made offensive statements about TVE officials. However, the European Court of Human Rights considered that, given his age and length of service, the most stringent sanction imposed – termination of the employment contract without compensation – was of extreme severity and that a more appropriate disciplinary sanction could have been applied.

In contrast, in the case of *Palomo Sanchez and Others v. Spain* (2011)[1], the European Court of Human Rights stated that the most stringent sanction – dismissal from work – was appropriate for the offense committed. The applicants were executive members of a trade union and were dismissed by the employer after the release of the union newsletter on the grounds that the union newsletter had impugned the reputation of other employees.

The newsletter had reported on a labor tribunal judgment the applicants had positively taken against their employer. The cover of the newsletter included a cartoon with speech bubbles showing certain employees who had testified against the trade union waiting to sexually satisfy a member of management. Inside the newsletter were two articles, one entitled "When you've rented out your arse you can't shit when you please", which vehemently criticized these employees and management, using language which was crude and vulgar. The Court reiterates that a clear distinction must be made between criticism and insult and that the latter may, in principle, justify sanctions. Regarding the proportionality of the sanction imposed, the Court considered several factors. The Court acknowledged that the published content contributed to a discussion of general interest for workers of the company, but that the criticism was not just about the management, but also about other employees. The extent of acceptable criticism when directed against a private individual is narrower than that directed against authorities or public institutions. Hence, the existence of public interest cannot justify the use of offensive cartoons and expressions. Also, the Court emphasized that the remarks did not constitute an instantaneous reaction in the context of oral conversation in which it would be possible to understand the exchange of these offenses, but they were carefully prepared written materials that were publicly displayed. Lastly, the Court concluded that the cartoon and texts were intended more as an attack on colleagues for testifying before the courts than as a means of promoting trade union activities.

[1] See: Rónán Ó Fathaigh and Dirk Voorhoof (2011), Grand Chamber Judgment on Trade Union Freedom of Expression. Available at: https://strasbourgobservers.com/2011/09/14/grand-chamber-judgment-on-trade-union-freedom-of-expression/#more-1143

4. EUROPEAN STANDARDS AND EMPLOYEE'S RIGHT TO PRIVATE LIFE

Although the right to private life is one of the protected rights in the ECHR, there is no precise definition of this term. The European Court of Human Rights has accepted, instead of a precise definition of private life, an approach that recognizes situations related to private life on a case-by-case basis. From the practice of this court it is quite clear that private life is not limited to home and other private situations in which an individual is found, but includes contacts with others and generally relationships related to the outside world. It can be inferred from the various judgments of the Court that this term includes: the physical and moral integrity, the personal development, the social integrity of an individual, relations with other people and the outside world, as well as professional and business activities.

This means that certain workplace activities that at first glance do not appear to be private are under the protection offered by Article 8 of the ECHR. Thus, telephone calls from the official phone, sending private e-mails during working hours, as well as use of the internet for private purposes during working hours, fall under the concept of private life. In case there is no explicit ban on using the phone, e-mail or the internet for these purposes, there is reasonable expectation of employees that these calls, e-mails and use of the Internet are private and are not supervised by anyone. Nevertheless, it should be stressed that the Court interprets "expectation of privacy" as a significant but not determinant factor for assessing whether communications are protected by ECHR Article 8. (*Barbulescu v. Romania*, 2017).

In the *Copland v. United Kingdom* case (2007), the European Court of Human Rights ruled that the Carmarthenshire College violated the applicant's right to private life and correspondence by tracking, collecting and keeping private information relating to her use of telephone, e-mail and the internet.

In the *Barbulescu v. Romania* case (2017), the Grand Chamber of the European Court of Human Rights ruled that domestic courts did not ensure adequate protection of the applicant's right to protect his private life and correspondence and failed to make a fair balance between the interests of the employee and the employer.

Bogdan Mihai Barbulescu worked as a sales engineer at a private company and was asked to create a Yahoo Messenger account, which would be used exclusively for business purposes. Barbulescu signed two internal company documents that prohibit the use of workplace computers and the internet in the workplace for personal and non-work purposes. The notice also stated that the employer had a duty to supervise and monitor the work of the employee. When the employer informed him that he was using the company Yahoo Messenger account for private purposes, Barbulescu replied in writing that he had only used it for work-related purposes. Subsequently, the management of the company provided him with 45-page transcripts of his communications, containing communications with his brother and fiancé, and some of the messages were of intimate nature. Barbulescu replied in writing to the employer that it had committed a criminal offense by violating the secrecy of correspondence, and the employer terminated Barbulescu's employment contract. Domestic courts supported the decision of the employer, as did the European Court of Human Rights in a 2016 decision. However, the Grand Chamber of the European Court issued a counter-verdict in 2017, setting out important criteria to be applied by national authorities in assessing whether a given measure is proportionate to the goal to be achieved and whether employees are protected from arbitrariness.

The Court found that it was clear that the applicant had been informed of the ban on using the company internet for personal purposes, but that it was less clear whether the applicant had been informed prior to the monitoring that such monitoring would actually take place. The Court noted the following factors that the domestic authorities should take as relevant when considering such cases:

- whether the employee has been notified of the possibility that his or her communications may be monitored by the employer;
- the extent of the monitoring and the degree of the intrusion onto the employee’s privacy;
- whether the employer has provided legitimate reasons to justify the monitoring;
- whether it would have been possible to establish a monitoring system based on less intrusive methods;
- the consequences of the monitoring for the employee subjected to it;
- whether the employee had been provided with adequate safeguards (a remedy before a judicial body).

5. CONCLUDING REMARKS

Freedom of expression is a basic human right, but not absolute. This is a general principle embedded in UN documents and the European Convention (Article 17), which states that human rights must not be used to jeopardize the rights of others. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (ECHR) set forth several conditions in which freedom of expression may be limited:

- national security, territorial integrity or public safety;
- the prevention of disorder or crime;
- the protection of health or morals;
- the protection of the reputation or rights of others;
- preventing the disclosure of information received in confidence;
- maintaining the authority and impartiality of the judiciary.

Article 17 of the European Convention on Human Rights is referred to as an "abuse clause", which provides for the protection against the abuse of all rights in the Convention in the event of a request for termination or restriction of the rights contained therein.

The process of limiting freedom of expression is the subject of a mandatory three-part test, which is the key mechanism represented by the European Court in such cases:

1. Any restriction of the right must be prescribed by law;
2. The restriction shall be used for one of the prescribed reasons specified in the documents protecting human rights (Article 10 (2) of the ECHR);
3. Limitation must be necessary in a democratic society for the protection of this interest.

Prescribed by law: This is a statement of the principle of legality, which is the basis of the rule of law. The law should be clear and should not be retroactive. In accordance with existing regulations, it is necessary to establish unambiguously the justification for restricting the freedom of expression (for example, in the interest of the protection of the freedom and the reputation of others, that is, in the interest of the protection of certain social values). The European Court of Human Rights points out that the explanation of the limitations prescribed by

law must be “adequately accessible” to citizens and “formulated with sufficient precision to enable the citizen to regulate his conduct” (*The Sunday Times v. United Kingdom*, 1979).

The second part of the test requires that the restriction attempts to achieve some legitimate goal or interest (from national security to maintaining the authority and impartiality of the judiciary). Since this is a very wide list of legitimate goals and interests, then, judging by the European Court's practice, it excludes some other (new) goals and interests.

Necessity in a democratic society, as the third and last part of the test, presupposes or requires that any proposed restriction must be "necessary in a democratic society". This highlights the premise that limiting the rights is the last option and must always be proportionate to the goal that is to be achieved. "Necessary" is a more powerful norm than "reasonable" or "desirable", because the limitation in such cases does not have to be "necessary".

Taking into account the above-mentioned international legal standards, the practices of leading media houses and the decisions of the European Court for Human Rights, in this case two decisions of the RTVFBiH (the first adopted on 28 May 2018, which deals with the public appearances of RTVFBiH employees, and the second, the RTVFBiH Public Appearances of Employees Decision of 6 July 2018, which specifically relates to the electoral period) basically fulfill the prescribed three-part test to introduce restrictions on the right to freedom of expression.

These decisions are based on laws, codes and rules that are known to employees. The RTVFBiH Code of Ethics states that "when concluding a labor contract and a contract with an external associate, the employee or external associate receives one copy of this Code, the RTVFBiH Law and other supporting documents required for their work" (Article 4). Of course, it should be checked whether this really happens in practice, but it seems that the decision is based on a law known to the employees.

The purpose of these decisions is to protect the reputation, integrity and preservation of RTVFBiH's business interests and this is, of course, a legitimate goal. The protection of the integrity of public broadcasters in pre-election times is particularly significant given the misuse and inappropriate links with political parties that have been observed in previous election cycles.

Are the restrictions listed necessary? The offered explanations of RTVFBiH's management for the first decision seem reasonable. The first decision regulates the behavior of employees on social media and applies the principles already contained in the Code of Ethics. However, as we already mentioned, the Code does not mention explicitly social media, so this decision may be understood as a warning to employees that the ethical principles mentioned in the Code apply to social media as well. Also, such measures are not uncommon in the world. As we have shown, almost identical provisions are found in the BBC Code of Conduct.

In the second decision, the behavior of employees in pre-election and immediate post-election period is regulated. This decision requires a more detailed analysis. First and foremost, the impression is that this decision was written by a commander of a military unit and not a director of a public broadcasting service who manages people who are expected to be creative and impressive individuals. In the first article, all three prohibitions are given with the explicit emphasis of the phrase "It is prohibited to ...". If the RTVFBiH management had already recognized that the behavior of their employees out of working time may harm the integrity of the outlet, then they should treat them with more esteem and respect in order to empower their integrity within the house.

The first ban is: "Public audio-visual appearances on social networks and blogs are prohibited for all RTVFBiH workers other than those that fall into the sphere of privacy." The question arises why it is necessary to state such a general ban if it is to ensure objectivity and credibility in the pre-election time. Would it not be possible to limit audio-visual appearances related to political events, controversial social topics, or, more accurately, appearances related to the pre-election campaign? On the other hand, the exception quoted may also be discussed – "Other than those that fall into the sphere of privacy". We have already seen that the sphere of privacy is not limited to home and family but includes relationships with other people. Essentially, this exception does not appear to be sufficiently precise and the employer and the employees could understand and interpret it differently.

The second ban is: "The moderation or chairing of meetings, events, promotions, roundtables, conferences, forums etc. is prohibited and the consent of the Board of Directors is required for participation in them." From this we understand that there is an absolute ban on moderating or chairing events, while participation in another capacity is possible with the consent of the

management. The same question as for the previous ban is again asked – is it possible that all events are subject to pre-election manipulations? Would the promotion of a healing herbal book harm the reputation of RTVFBiH? Thus, it does not appear that such an absolute ban, though temporary, is necessary to achieve the goals set out in the explanatory statement.

The third ban is: "Any appearance at any event organized for pre-election purposes or that can be used for that purpose is prohibited." This ban has nothing to complain about. It reflects the essence of what is to be achieved by this decision.

For the implementation of these decisions, it is of utmost importance that international standards and the three-part test for justification of limiting the right to freedom of expression be taken into account in practice in order to avoid any subjectivity in specific cases.

As for the question whether a worker in free time can do a job he or she wants without the employer's interference, the answer is negative, that is – s/he cannot in all situations. If it is a job from the same scope of activities performed by the employer, then a worker is required to seek the employer's approval for doing the job. On the other hand, in the case of a job that does not fall in the scope of activities performed by the employer, the Labor Law does not prescribe the obligation to seek permission from the employer, but this obligation may be contained in an individual contract between the worker and the employer.

On the other hand, the employer cannot set restrictions on the employees, especially those outside the workplace, without having regard for the international standards of freedom of expression and private life and correspondence. This means that the employer does not have the absolute discretion to decide what is allowed and what is not, but must also consider human rights and freedoms that concern the relationship between the employer and the employee.