



# Freedom of the Media and the Safety of Journalists through the Prism of Media Legislation in Montenegro

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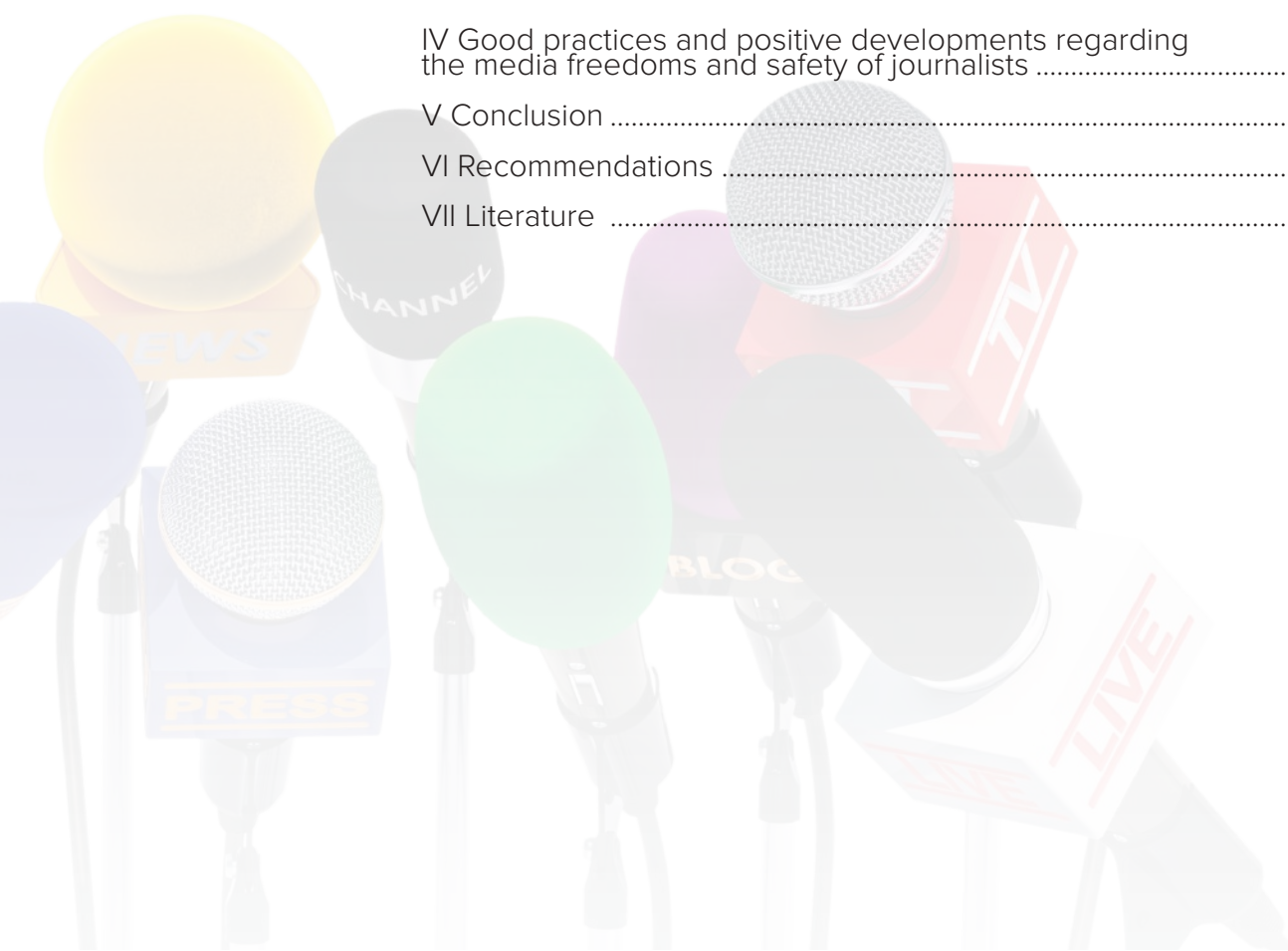
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# SUMMARY

The study "Freedom of the Media and the Safety of Journalists through the Prism of Media Legislation in Montenegro" is a baseline analysis of the laws relating to the media and/or journalists in Montenegro. The analysis is created in order to detect problems but also good practices that affect the freedom of the media and the safety of journalists in Montenegro. The subject of the analysis is seven media laws, two of which were amended during 2020 (Law on Media, Law on RTCG), while two are in the process of amendment (Law on Electronic Media and Law on Free Access to Information).

The analysis showed that the situation in the media in Montenegro reflects the situation in the laws that regulate this area. Although efforts are being made to include as much of the professional public as possible in the process of changes, negotiations on amendments to the law are taking too long, and in the end solutions that are being adopted lag behind European standards. In general, it can be said that the existing laws regulating the work of media and journalists in theory provide enough freedom to work, but the biggest problem is still the implementation of these solutions. During 2020, the speed of the adoption of two umbrella media laws - on the media and on the Public Service - was especially criticized, given that they were adopted immediately before the elections and did not provide enough space for the media to get acquainted and prepare for implementation.

The general conclusion of this study is that, although the laws regulating the media sector mostly contain solutions that are part of European standards, they still need to be amended more often and should act proactively and introduce newer standards (especially when it comes to, for example, electronic publications). Also, it is necessary to take care not only to rewrite the standards, but also to compare them with the existing circumstances in Montenegro.

It is positive that some new principles have been adopted, such as the Fund for Encouraging Pluralism and Diversity in the Media, which will, for example, encourage private media to publish a larger number of stories in the public interest (Law on Media). Also, the new solutions offer greater freedom to journalists, because they have the opportunity to refuse to sign the text if they believe that it does not correspond to the facts (Law on Media). The Law on RTCG guarantees the security of journalists that their employment cannot be terminated, their salaries reduced, their status in the editorial office changed or their responsibility established due to an attitude or opinion expressed in accordance with professional standards and program rules. The draft Law on Audiovisual Media Services also provides for some security for employees of local public broadcasters.

On the other hand, it is necessary to take care of the application of these solutions. It is also necessary to prescribe the criteria for the allocation of funds from the Pluralism Fund, so that it would not constitute legalized state aid. Also, the provisions of the Law on Media that refer to the restriction of the protection of journalistic sources must be subject to special control. Guarantees offered to journalists employed in the Public Service must be provided to employees of private media and local public broadcasters.

It is also extremely important to regulate the labor and legal status of media employees, who have been working in poor conditions for a long time, with irregular and low salaries, with pressure, threats and constant fear of losing their jobs. It is also positive that the current government has recognized the need for greater protection of the safety of journalists, but it is also necessary to work on investigations of unresolved attacks from the previous period.



# INTRODUCTION

The study in front of you aims to provide journalists, media, state bodies, civil society organizations and other professionals with an overview of current and planned legal solutions in the field of media, as well as some major problems that should be addressed by these or some new regulations. The study ***Freedom of the Media and the Safety of Journalists Through the Prism of Media Legislation in Montenegro*** was made for the needs of the Trade Union of Media of Montenegro (SMCG) by media experts and researchers Bojana Lakovic-Konatar and Drazen Djuraskovic. The analysis of this kind is of great importance for the media community in Montenegro, especially having in mind that the first comprehensive venture of this kind, as well as that it comes at a time when the Ministry of Public Administration is preparing a Media Strategy 2021-2025.

The media scene in Montenegro remains sharply polarized, while the status of journalists and other media workers is poor and disproportionate to the influence they have in society. Poor economic conditions in which they work, frequent pressures, threats and attacks are just some of the problems that reflect the work of Montenegrin newsrooms. The year that is now behind us was a complete change at various levels, but only the position of media workers remained at the same level. The adoption of key media laws (Law on Media and Law on National Public Broadcaster - RTCG) in August 2020 did not contribute to that.

The new government, constituted on December 4, 2020, announced a public debate on the strategy for the media, which would be the first document of this kind in Montenegro that would, in addition to introducing some order in this area, enable planning activities within a certain time frame. The media sector needs a comprehensive public register of media that would enable obtaining information on the media operating in our country. It is necessary for the register to go a step further and provide data on the ownership structure, but also the reach of the media (eg circulation or media views), because in that way a true picture of the media scene would be obtained. Especially important is the register of digital media or portals, which are, from the point of view of employees' rights, the least regulated area.

It is expected that the Law on Audiovisual Media Services (AVM) will be adopted in 2021, which would also better regulate the field of electronic media. However, the Ministry of Public Administration, Digital Society and Media announced that other media laws will be the subject of public consultations.

Advertising of public institutions and other institutions financed from the state budget remains a special problem, because that money is used to influence the media. For several years now, there have been data that advertising of state bodies is used as a means of political influence on the media, and that those media receiving the money are clo-

se to the governing structures. The problem remains the independence of the regulator. For many years, the Electronic Media Agency (AEM) has been accused of being subject to political influence, and the main problem remains the inability to propose penalties for media that violate program standards. The leaders of the Agency regularly point out that they only have the opportunity to make recommendations and not penalties, which contributes to the weak influence of this body on the media, and that should be corrected by the new Law on AVM Services, if the existing Draft is adopted.

With the adoption of the new Law on Media, special problems appeared in terms of the functioning of the Fund for Encouraging Pluralism and Diversity of the Media, all so that it would not be used as legalized state aid to the media. Therefore, clear and unambiguous criteria are needed for the allocation of funds that would avoid rewarding the media in exchange for government support. When allocating funds, special attention should be paid to the status of employees and respect for their labor rights in these media.

The position of journalists and other media workers is very bad. Wages in the media are in the largest percentage below the national average, in a large number of local public broadcasters salaries are late, and in some private media employees receive salaries in several "installments". When added to overtime work, non-payment of wages for work during the holidays, pressures, poor equipment and a high degree of censorship and self-censorship, it is clear that a strategic approach is needed in addressing the socio-economic situation of employees. The branch collective agreement (BCA) for the media has for some time been inconsistent with the importance and amount of work that media employees perform in the public interest (signed in 2004), and in 2017 SMCG initiated new negotiations on BCA. However, thanks to a unilateral decision by the employers, the negotiations were suspended. That is why it is necessary to envisage the protection of this part of the rights of media employees.

The big problem of Montenegrin journalists is still their safety. During 2020, the number of cases of threats, attacks and even arrests of journalists increased, and the beginning of 2021 already indicates that this situation will not change for the better. The most serious cases of attacks on journalists, such as the attempted murder of Olivera Lakić, as well as the murder of Dusko Jovanovic, remain unsolved, indicating weak state mechanisms for investigating and resolving these cases. It is necessary to re-investigate all unresolved cases and work on strengthening the Commission for Investigation of Attacks on Journalists, but also to influence the amendments to the Criminal Code in order to toughen the penalties for attacks on journalists.

The baseline study in front of you deals with the analysis of key media

laws: the Law on Media, the Law on National Public Broadcaster Radio Television of Montenegro, the Law on Electronic Media and the Draft Law on Audiovisual Media Services, the Law on Free Access to Information, the Law on Copyright and related rights, the Law on Obligations (in the part concerning the regulation of lawsuits for violation of honor and reputation) and the Criminal Code (in the part of the proposal for greater protection of the safety of journalists). The subject of analysis is also the economic and social position of journalists, as well as the safety of journalists and other media workers.

The baseline study of the national media legislation in Montenegro was made within the project "Improving the dialogue between journalists' associations and parliaments in the Western Balkans for a stronger civil sector", conducted by four media organizations from the region. The project is part of a broader project "Protection of Civil Space - Regional Hub for Civil Society Development", funded by the Swedish International Development Cooperation Agency (SIDA) and implemented by the Balkan Civil Society Development Network (BCSDN). The aim of the project is to enhance dialogue between members of national parliaments and journalists' organizations in the Western Balkans in order to improve the state of freedom of expression as a fundamental human right and strengthen the role of civil society organizations. The same study is conducted by the Association of Journalists of Macedonia (ZNM), the Independent Association of Journalists of Serbia (NUNS), the Trade Union of Media of Montenegro (SMCG) and the Association of BH Journalists (BHJA).

The aim of the study is to investigate the existing legal provisions related to media freedoms and security of journalists in Montenegro, Northern Macedonia, Serbia, and Bosnia and Herzegovina, as well as to identify good and bad practices that improve or harm media freedoms and security of journalists. The main research question is: What are the legal obstacles and practices that harm the development of media freedoms and the safety of journalists in the country? In addition to this, the researchers answered the following questions:

- Which legal provisions have proven to be ineffective or harmful for

the development of media freedoms and the security of journalists?

- What are the main factors that contribute to the further endangerment of media freedoms and the security of journalists in the country?

- What are the reactions of the media community, civil society and other relevant actors who are committed to the development of the media sector?

Are there any positive practices/joint initiatives/actions/projects of intersectoral cooperation in order to improve media freedoms and the safety of journalists?

The methodological approach in writing the study was related to:

- Normative analysis – i.e. desk research and analysis of media laws, namely the Law on Media, the Law on National Public Broadcaster Radio Television of Montenegro, the Law on Electronic Media and the Draft Law on Audiovisual Media Services, the Law on Free Access to Information, the Law on Copyright and related rights, the Law of Obligations and the Criminal Code;

- Analysis of qualitative documents: research studies and analyzes made by other research organizations, academies, NGOs, individual researchers, media research;

- Qualitative semi-structured interviews with six media experts, civil society representatives, journalists, and lawyers;

- Official statistics requested from public institutions or collected from available websites or other published sources.

In order to better understand the situation in the media sector, the study is divided into several parts: analysis of relevant legal solutions concerning media freedoms and security of journalists, good practices and positive events, and conclusions and recommendations.



# ANALYSIS OF RELEVANT LAWS CONCERNING MEDIA FREEDOMS AND SECURITY OF JOURNALISTS

## Law on Media

On the eve of the last year's parliamentary elections, in August 2020, an umbrella law regulating the media in Montenegro was adopted - the Law on Media. This law has provided some steps forward in the fight for media pluralism and media freedom, but there are still shortcomings and ambiguities when it comes to important areas of activity of the media and media workers.

According to Vuk Vukovic, a professor at the Faculty of Dramatic Arts and the Faculty of Political Sciences, the adoption of the law was criticized, especially because of the provisions concerning the disclosure of sources of information, which, as he says, does not contribute to indicators that strengthen freedom of speech.

*"The existing legal solutions were adopted in an atmosphere that was not stimulating for the media context, nor for freedom of speech, especially if we take into account the fact that the laws were adopted before the parliamentary elections last year."*<sup>1</sup>

One of the main objections still stands: Internet publications, i.e. portals, which today occupy an increasingly important place in informing citizens, are still quite unregulated. According to the latest data, there are 187 media outlets in Montenegro. The register of the Agency for Electronic Media<sup>2</sup> includes six media within the Radio Television of Montenegro, five local public TV broadcasters, 16 local public radio broadcasters, as well as two non-profit media. In addition, the register records 14 commercial televisions, 35 commercial radio broadcasters. The register also records 24 AVM operators, which are not media but media distribution platforms. Almost half of all media in Montenegro are online publications whose records are now under the jurisdiction of the Ministry of Public Administration, Digital Society and Media. Based on the data of the relevant Ministry, currently 104 electronic publications<sup>3</sup> are registered in Montenegro. In addition, there are four dailies, one agency and one weekly.

The very definition of online publications is not precise enough and allows for a broad interpretation: "An online publication is a medium whose content is disseminated via the Internet, and which cannot be considered an audiovisual media service under the law governing audiovisual media services."<sup>4</sup>

The definition set in this way does not favor the final solution of the problem of increasingly frequent establishment of portals by non-go-

vernmental and other organizations and their registration in the group of "informative" portals, which SMCG has been warning about for many years<sup>5</sup>.

Also, the procedures for registration and recording of media are still unclear and do not create conditions for the adequate legal regulation of digital media, in the context of the intermediary or provider in the transmission of information from sender to recipient. This primarily refers to Internet providers and other intermediaries that enable the smooth operation of online publications, independent of the founder. Although the recommendations of the Council of Europe<sup>6</sup> indicate the recognition of all actors in the media space, which can play the role of "gatekeeper", the proponents did not decide to look at the media system in the broadest sense and anticipate the existence of ISPs and other service providers as important actors in information distribution. A broader definition and classification of the media would recognize the role of all actors in the media space, but also their responsibility, which would significantly reduce the space for manipulation.

The registration process is left to the owners and, if they do not do so, there are no sanctions, so the question of the actual application of this provision arises. The motive of the legislator was to motivate the media to register by making the right to participate in competitions for the allocation of money conditional on the records of the media.

What is a pronounced problem in Montenegro, but also in the region and beyond, is that it is very easy to launch a website from abroad, and that it publishes content about Montenegro. A concrete action requires synergistic cooperation with the country in which the portal is registered, and the process of identifying and suspending the site can take months, while the portal works and distributes information smoothly. The authorities are aware of that<sup>7</sup> and, as they claim, they are working on finding modalities to put this practice in the legal framework.

The recommendation is the introduction of penal provisions and cooperation with other state bodies responsible for the protection of the Internet, in order to facilitate the identification of responsible persons in these cases. We remind you that during the 2020 election campaign, the Udar portal<sup>8</sup> found its place in the media space with very problem-

1 Interview, Vuk Vukovic, interviewed by Bojana Lakovic Konatar, April 10, 2021  
2 Register of Electronic Media, Agency for Electronic Media, URL: <https://aemcg.org/emiteri-i-operatori/>, accessed: April 4, 2021  
3 Decision on Free Access to Information, Ministry of Public Administration, Digital Society and Media, UPIO/2-037/21-860/2, dated April 13, 2021  
4 Article 26, Law on Media (Official Gazette 82/20)

5 Trade Union of Media of Montenegro, "Novi mediji stari problemi 2019", [New media old problems 2019] p. 8, URL: <https://safejournalists.net/wp-content/uploads/2019/10/Mne-final.pdf>, accessed: April 4, 2021

6 Council of Europe Recommendations CM/Rec(2011)7, URL: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cc2c0](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2c0), accessed: April 4, 2021

7 Meeting, Goran Vukovic, Director of the Agency for Electronic Media, discussed with Drazen Djuraskovic, March 29, 2021

8 Jovanovic, Jelena, Vukotic, Nemanja, "Abazović: Peruničić je nalogodavac nezakonitog praćenja novinara i političara, materijal iz ANB završio na portalu "Udar"" [Abazović: Peruničić ordered the illegal monitoring of journalists and politicians, the material from the ANB ended up on the portal "Udar"], Portal Vijesti, URL: <https://www.vijesti.me/vijesti/politika/509891/uzivo-vlada-o-vezama-bivseg-rukovodstva-anb-i-portala-udar>, accessed: April 4, 2021

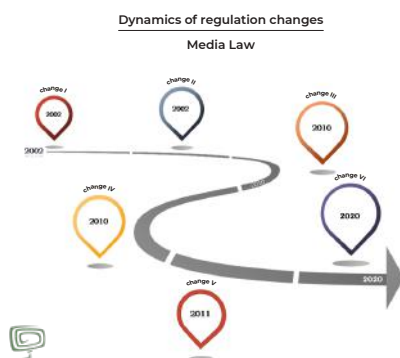
tic content, which directed various insults at the expense of the then opposition representatives and the media, and that the competent authorities either did not react or were unable to determine who launched that portal. After parliamentary elections, the portal was shut down.

Existing legal solutions do not guarantee greater independence of journalists from the influence of owners in private media. The relations between publishers, editors-in-chief and journalists, as well as their mutual rights and obligations, as a rule, are more closely determined by the statute of the media.

The President of the Trade Union of Media of Montenegro, Marijana Camovic Velickovic, states that the statute as a mechanism for protecting journalistic autonomy and the conscience clause as a mechanism for protecting those who warn of censorship must be defined in the Law on Media together with mechanisms guaranteeing their implementation.

It should be emphasized that Slovenia and Croatia are among the few countries that provide their journalists with such a degree of legal autonomy.

*“A special decision of the founders regulates the issues of participation of journalists in the procedure of appointment and dismissal of the editor-in-chief, freedom of work and responsibility of journalists, and conditions and procedure under which the editor-in-chief has the right to resign with fair severance pay in case of such a change in the owner or management structure of the medium which leads to a significant change in the program basis or program content of that medium (the so-called conscience clause).”<sup>9</sup>*



The proposal of the SMCG is that the Statute of the Media be adopted by the publisher or the owner and the representative of the journalists, with the prior consent of the majority of the total number of journalists from the media. Journalists elect their representative by a majority vote.

*“If the publisher and the journalist’s representative do not adopt the statute within six months from the beginning of work of the media, a mechanism is introduced that the statute will be adopted, at the request of the journalist’s representative, within three months from the date of receipt of the request, by mediation composed of an equal number of representatives of publishers’ associations and journalists’ associations”.<sup>10</sup>*

The new Law on Media establishes for the first time in Montenegro a Fund for Encouraging Media Pluralism and Diversity, whose goal is to support commercial media in the production of the content of public interest.

The law stipulates that at least 0.09% of the current budget of Montenegro determined by the annual budget law be allocated for the Fund, for electronic media 60 percent of that amount, and 40 percent for daily and weekly print media and online publications. For the operational costs of the various self-regulatory mechanisms, five percent of the annual funds will be allocated from each of the sub-funds.

The media union welcomed the intention of the legislator, but also warned of possible abuses. Namely, during the response to the Covid crisis, the media was provided with significant aid from the state, but the employees, who carried and are carrying the main burden, did not feel this aid for the most part. That is why the Trade Union of Media appealed<sup>11</sup> to the founders and owners of the media to change this kind of situation for which they also announced that they would actively monitor the allocation of new assistance to the media.

*“We understand the complex economic situation in which we all find ourselves as a society, but we warn that media employees are vital for the survival of this sector in Montenegro and we call on employers to become aware of this. When allocating funds from the Pluralism Fund, it is necessary to prescribe clear and measurable criteria, as well as mechanisms for controlling the intended use of funds, in order to avoid the situation of simple legalization of state aid to the media, which has been illegally granted to them several times in recent years.”<sup>12</sup>*

Article 22 of the Law stipulates that the Ministry and the regulator for audiovisual media services must adopt acts defining the criteria and procedure for the distribution of funds, the manner of use, as well as the maximum amount that can be allocated to one media outlet during the year. Also, according to the Law, funds are allocated for a clearly defined purpose, without discrimination and on the basis of pre-defined, clear, objective and transparent criteria and scoring methodology.

It is necessary to ensure an objective and transparent distribution of money and at the same time protect the standard of employees because they will be the ones who will implement projects and produce media content for which their media will receive money.

The Trade Union of Media notes that it is necessary to prevent the idea of encouraging media pluralism by the state to turn into an additional income of media owners, to the detriment of employees who will produce those media content.

*“In addition to the conditions for applying to the competition, which the media must meet under Articles 21 and 23 of the Law on Media, the Trade Union of Media proposes that the following criteria be prescribed:*

1. that the beneficiary of the Fund’s resources is obliged to direct at least 50% of the allocated funds to rewarding employees who will produce media content by increasing salaries or awarding bonuses. The beneficiary of the Fund’s resources is obliged to document this through accounting. We believe that this is very important in order to prevent abuse and additional work of media employees for the same earnings;

<sup>9</sup> Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>10</sup> Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>11</sup> Trade Union of Media of Montenegro, “Drzavnu pomoc moraju osjetiti i zaposleni” [State aid must also be experienced by employees], URL: <https://sindikatomedija.me/saopstenja/drzavnu-pomoc-medijima-moraju-osjetiti-i-zaposleni/>, accessed: April 4, 2021

<sup>12</sup> Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021



2. that the responsible person in the media that is the beneficiary of the Fund's funds signs a statement guaranteeing that there are no employees hired contrary to the Labor Law (work through employment contracts or undeclared work) and undertakes to return all funds to the state if found otherwise;

3. that the criterion when scoring projects for which funds are allocated from the Fund be also whether the media has employed photojournalists and how many. In that way, the media that employ photojournalists would get more points, as opposed to those who do not have them and take photos from other media, which violates the copyright. In this way, in addition to preventing copyright infringement, the employment of photojournalists in the media<sup>13</sup> would be stimulated.”

The Fund for Encouraging Media Pluralism and Diversity, i.e. the state that allocates funds for this Fund in accordance with the GDP of Montenegro, should not finance self-regulation, because self-regulation is an internal matter of the media, and thus its financing as well, as it was advocated by some members of the Working Group during the public debate on that regulation.<sup>14</sup>

At the suggestion of the Trade Union of Media, a provision was included in the Law, which guarantees the right of journalists to be informed about changes in the text after submitting the text to the editor, and the right to refuse to sign it if they believe it does not correspond to the facts. This provision protects journalists from possible subsequent interventions in their text, which may result in misinterpretation by the editor.

**“Media content that has changed its meaning in the process of editorial processing may not be published under the name of a journalist without his consent.**

The editor-in-chief is responsible for the media content referred to in paragraph 1 of this Article.

If the reputation of a journalist is violated by the media content referred to in paragraph 1 of this Article, the journalist may claim damages.”<sup>15</sup>

The law gives a journalist the right to refuse to prepare, write or participate in shaping media content that is contrary to the law and the Code, with a written explanation to the editor-in-chief.

As a result, their employment cannot be terminated, their salary or remuneration cannot be reduced, nor can they be put in a less favorable position in any other way.

Vukovic points out that the laws provide protection to journalists in cases of tasks that are not in accordance with professional ethics, but “of course there is the question of application and control of legal solutions, as well as clear procedures in which journalists exercise their rights.” He explains that the existing solutions refer exclusively to journalists, while the status of other media workers is questionable.

**“So the question is whether a producer, cameraman or editor has the right to refuse to participate in shaping media content that is contrary**

**to the law and professional ethics, or whether their employment may be terminated because of that.”<sup>16</sup>**

The protection of journalists goes a step further in the case of Radio Television of Montenegro, so it is prescribed that a journalist cannot have their employment terminated, their salary reduced, their status in the newsroom changed or responsibility established “due to attitude or opinion that was expressed in accordance with professional standards and program rules.”<sup>17</sup>

Such a guarantee must be provided to employees in private media and local public broadcasters as well, especially in view of several attempts by individual private media to impose restrictions on the use of social networks by employees in expressing their views.

Therefore, it is necessary to transpose the provisions that offer such protection to employees of the Public Service. That is, to prescribe that a journalist has the right to express their opinion regarding all events, phenomena, persons, objects and activities, and that due to the stated views their employment contract cannot be terminated, their salary cannot be reduced, their position in the newsroom cannot be changed, nor the contracted income or its part can be reduced or suspended. If the employer initiates such a procedure, the burden of proof must be on the issuer.

**“Freedom of speech must be guaranteed to all and media workers must not be excluded from that rule.”<sup>18</sup>**

For the first time, the Law on Media introduces restrictions on the protection of sources of information, i.e. that at the request of the prosecution, a journalist has the obligation to find out who the unofficial source is. The cases in which this restriction is allowed must be more precisely defined, leaving no room for broader interpretations. When such restrictions are necessary in the interests of national security, territorial integrity and health protection, the State Prosecutor's Office may request the competent court to order the journalist to publish information on the source of published information or information they intend to publish. The court may order the journalist to publish information on the source of the published information or the information they intend to publish if this is necessary for the protection of the public interest and if these are particularly important and serious circumstances.

Although it was announced that the intention is to introduce the application of Article 10 of the European Convention on Human Rights through the Law on Media, because in the old law the freedom of protection of sources was absolute, there are numerous objections to the adopted solution.

**“First of all, there is a real fear of how the adopted provisions will be applied in Montenegrin conditions. The domestic courts, and in particular the prosecution, are not perceived by a large part of the public as objective and impartial, so the fear of abuse of power is justified. There is a fear that the prosecution will unreasonably invoke the rights granted to it by this law and ask journalists to disclose sources even when there is no need for that. Such cases have not yet been recorded (eight months after adoption).”<sup>19</sup>**

13 Proposals of SMCG in order to specify the criteria for allocating money from the Fund for Achieving Pluralism of Media Content, sent to the Ministry of Public Administration, Digital Society and Media March 31, 2021

14 Mina, J.B.C. “Problematicna odluka da se iz Fonda finansira samoregulacija” [Problematic decision to finance self-regulation from the Fund], Portal RTCG, URL: <http://www.rtcg.me/vijesti/drustvo/263231/problematicna-odluka-da-se-iz-fonda-finansira-samoregulacija.html>, accessed: April 4, 2021

15 Article 27 Law on Media (Official Gazette 82/2020)

16 Interview, Vuk Vukovic, interviewed by Bojana Lakovic Konatar, April 10, 2021

17 Article 16 Law on National Public Broadcaster Radio and Television of Crne Gore (Official Gazette 80/2020)

18 Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

19 Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

It is also indisputable to establish “that there is no reasonable alternative measure for disclosing information on the source of information or that the person or body requesting disclosure of the source of information has already used that measure”,<sup>20</sup> as well as that the legitimate public interest in disclosing information on the source of information clearly prevails over the interest of protecting the source of information.”

“With the understanding of media representatives that any restriction of freedoms is perceived as a fear of further deterioration of the media environment, especially investigative journalists, the Ombudsman reminds that the right to protection of sources, as part of the right to freedom of expression protected by Article 10 of the ECHR, is not an exception but similar to the principles and rules that exist in most Council of Europe member states (since this freedom is not absolute but can be subject to certain restrictions). As the experts of the Council of Europe involved in the drafting process have pointed out, judges and courts must respect the standards and practices established by the relevant European institutions when interpreting legal provisions.”<sup>21</sup>

Another novelty of the Law on Media is the introduction of records of media financing from public revenues. Until now, the issue of advertising of state bodies and local self-government bodies has been secret and the subject of numerous appeals from the civil sector, which demanded greater, i.e. complete, transparency. The practice so far has made it possible to “reward” the media loyal to the authorities and “punish” those who are critical, so there have been absurd situations of disproportion between ratings and influence, on the one hand, and the aid provided, on the other.<sup>22</sup>

From now on, in accordance with the provisions of the Law on Media, state bodies and local self-government bodies, as well as the media themselves, will be obliged to report on money from public funds paid for advertising, and this information will be public.

## Law on National Public Broadcaster - Radio Television of Montenegro

Amendments to the Law on National Public Broadcaster - Radio Television of Montenegro, adopted in the summer of 2020, also immediately before the parliamentary elections, were supposed to strengthen the independence of the media, through the establishment of the Ombudsman Institute, strengthening the Council and certain restrictions on advertising. That, however, did not help change the public's perception of the influence that, until recently, the ruling Democratic Party of Socialists had on that medium, especially the work of the Television. The work of the RTCG Council is always under public scrutiny, especially after the dismissal of some members during 2018<sup>23</sup> and the change of CEOs<sup>24</sup>. RTCG is still

predominantly financed from the state budget<sup>25</sup>, but the experts' opinion is that it still does not represent society as a whole. These problems have been recognized by the European Commission in Montenegro's Progress Reports for years.

“The Parliament has appointed a new RTCG Council, but there are still concerns about the editorial independence and professional standards of RTCG, and that the transition from a state media organization to a true public service has not yet been completed. The EC recalls several court rulings in 2019 which established that members of the Council and the Management Board of RTCG were unlawfully fired in 2018.”<sup>26</sup>

According to the recommendations of the Council of Europe, “member states are empowered to define and assign the task of meeting public service objectives to one or more media organizations, in the public and/or private sector, representing the umbrella elements on which the role of public services is based, which at the same time entails their adaptation to new circumstances.”

The document defines “public service broadcasting service as:

- a) a reference point for the general public, which provides universal access;
- b) a factor of social cohesion and integration of all individuals, groups and communities;
- c) a source of impartial, independent information, commentary, innovative and diverse content that complies with high ethical and quality standards;
- d) a place for pluralistic public debate and a way of promoting the wider democratic participation of individuals;
- e) a service which provides an active contribution to the audiovisual creation, production, greater appreciation and dissemination of the diversity of national and European cultural heritage.”<sup>27</sup>

The Law on the National Public Broadcaster guarantees the independence of the public service. This legally prescribed independence gives RTCG the freedom to determine the program scheme, the concept of production and broadcasting, to edit and broadcast information on current events, as well as to organize the performance of activities<sup>28</sup>.

The law stipulates that the realization of the public interest implies independent and autonomous production, editing and transmission of programs and multimedia content that are not in the service of political, economic or other interests of power.

Although the Law RTCG is defined as independent and service to all citizens, which should work in the interest of all citizens, not enough has been done to ensure independence in practice, because the Law did not define

20 Glavas, Davor, “Nacrt zakona o medijima – Mišljenja i komentari” [Draft Law on Media - Opinions and Comments], OSCE Mission to Montenegro, URL: <https://www.osce.org/files/f/documents/8/e/403655.pdf>, accessed: April 4, 2021

21 Protector of Human Rights and Freedoms - Ombudsman, “Izveštaj o radu za 2020” [Work Report for 2020], p. 134-135, URL: [https://www.ombudsman.co.me/docs/1619074992\\_izvestaj\\_01042021.pdf](https://www.ombudsman.co.me/docs/1619074992_izvestaj_01042021.pdf), accessed: April 14, 2021

22 Center for Civic Education, “Novcem svih građana do podobne uređivačke politike” [With the money of citizens towards a suitable editorial policy], URL: [http://cgo-cce.org/2021/04/23/novcem-svih-gradana-do-podobne-uredivacke-politike/?fbclid=IwAR22HpACf\\_TGdez2xiDWZIH8z\\_hgtgVIGD2Mk2VNgZ9ka5ifD-8kn4laZE#YifaolUzbiX](http://cgo-cce.org/2021/04/23/novcem-svih-gradana-do-podobne-uredivacke-politike/?fbclid=IwAR22HpACf_TGdez2xiDWZIH8z_hgtgVIGD2Mk2VNgZ9ka5ifD-8kn4laZE#YifaolUzbiX), accessed: April 23, 2021

23 Safe Journalists.net, “Smijenjen član Savjeta RTCG Goran Đurović” [Goran Djurovic dismissed of membership in the RTCG Council], URL: <https://safejournalists.net/me/dps-servis-tacka/>, accessed: April 4, 2021

24 Radio Slobodna Evropa, “Andrijana Kadija na čelu RTCG, Savjet smijenio Vojvodića” [Andrijana Kadija at the head of the RTCG, the Council dismissed Vojvodić], URL: <https://www.slobodnaevropa.org/a/28148754.html>, accessed: April 4, 2021

25 From the budget of Montenegro for the realization of the basic activity of RTCG, funds are redirected annually in the amount of 0.3% of GDP, the estimate of which is determined by the Government of Montenegro by adopting guidelines for macroeconomic and fiscal policy.

26 European Commission, “Izveštaj za Crnu Goru 2020” [Report for Montenegro for 2020], p. 31, URL: <https://www.eu.me/radna-verzija-prevoda-izvestaja-evropske-komisije-o-crnj-gor-za-2020-godinu/>, accessed: April 14, 2021

27 Recommendations of the Council of Europe CM/Rec (2011)7, URL: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805cc2c0](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cc2c0), accessed: April 4, 2021

28 Article 15 of the Law on National Public Broadcaster RTCG (Official Gazette 080/20)

responsibility for "obvious fan editorial policy and violation of professional standards and principles."<sup>29</sup>

Member of the RTCG Council in the period 2014-2021, Milan Radovic, proposes that, in order to strengthen independence, the Council should be given greater powers in terms of raising the issue of responsibility not only of the Director General but also of the Director of Television and Radio and editors, and that these should be clearly defined.

Such a situation, he believes, would personalize the omission and identify the source of the problem. On the other hand, the current solutions do not offer this, as they do not prescribe penal provisions for violating the prescribed provisions of the law.

**"The problem of independence can be solved by determining the criteria for omissions that are of a continuous nature, and if the Council and the General Director ignore them, it is necessary to envisage the possibility of initiating the procedure of their resolution. I think that in this moment of development of our culture and society, it is necessary to act in such a way in order to build objective information and in order for the public to gain trust in RTCG."<sup>30</sup>**

Members of the RTCG Council are elected by the Parliament of Montenegro, with the prior opinion of the Administrative Board. Members are selected on the basis of proposals submitted by legally defined nominators.

The law stipulates that one candidate is proposed by the universities in Montenegro, the Montenegrin Academy of Sciences and Arts and Matica Crnogorska, national cultural institutions and non-governmental organizations in the field of culture, the Chamber of Commerce of Montenegro and the employers' association represented in the Social Council, as well as non-governmental organizations in the field of media, except broadcasting associations. One candidate is also proposed by the trade unions represented in the Social Council and the Montenegrin Olympic Committee and the Montenegrin Paralympic Committee. On the other hand, non-governmental organizations in the field of protection of human rights and freedoms, which deal with the realization and protection of: national, gender and overall equality; the right to a healthy environment; consumer rights; the rights of persons with disabilities or the rights to education and social protection propose two candidates.

Part of the civil sector believes that the process of election of RTCG Council Members has improved, justifying it by the fact that not only NGO stamps are important in order for someone to be elected, but that person must be presented to the public through the work of Parliament, and the biographies of proposed candidates are especially valued.

**"I hope that people who do not have experience in the required areas will no longer be a part of the Council and that the overall process will be more transparent. I think that the practice of presenting candidates through live broadcasts of sessions, which was started by the Administrative Board of the Parliament of Montenegro, is good and should be continued in the future."<sup>31</sup>**

Despite the fact that the procedure was improved, this did not prevent different interpretations of its provisions. At the session of the Administrative Board of the Parliament of Montenegro<sup>32</sup>, which is in charge of determining the list of candidates for members of the RTCG Council, representatives of the government and the opposition looked differently at the provisions prescribing the appointment of members on behalf of the Montenegrin Chamber of Commerce and employers' associations. Article 31, paragraph 4, stipulates that the Chamber of Commerce of Montenegro and the employers' association represented in the Social Council propose candidates for one member. The same Article prescribes the situation in case both associations propose their candidates.

**"If the proponents from paragraph 1 point. 2, 4 and 8 of this Article submit separate proposals, the proposal of the proponent shall be considered according to the order of these proponents, and if that proposal fails to meet the prescribed conditions, the proposal of the next proponent shall be considered."<sup>33</sup>**

**Dynamics of regulation changes**  
Law on National Public Broadcasting Radio-Television of Montenegro (RTCG)



The civil sector also reacted to the decision of the majority of members of the parliamentary committee, stating that it was only necessary to apply the law, without further interpretation of who currently has a member in the Council.

**"The fact that a representative of the Chamber of Commerce participates in the outgoing convocation of the Council cannot be an excuse for the Administrative Board to appoint a representative of the Montenegrin Employers' Federation as a member of the new Council, because the fact that this procedure of appointing members of the Council is carried out under the new law that came into force in July 2020. In the procedure of appointment, the Administrative Board should apply the valid regulation which does not, in the transitional and final provisions, stipulate that during the appointment of the new Council, the representatives of the Chamber of Commerce and the Montenegrin Employers' Federation will rotate."<sup>34</sup>**

The latest amendments to the Law on RTCG introduce the provision of Ombudsman, as a new mechanism of self-regulation on the Public Service. The Ombudsman takes over the responsibilities of the Commission for Petitions and Complaints of Listeners and Viewers, which operated within the RTCG Council and consisted of its members. The system of

<sup>32</sup> Meeting of the Administrative Board held on April 08, 2021, URL: <https://www.skupstina.me/me/sjednice-radnih-tijela/administrativni-odbor>

<sup>33</sup> Interview, Milan Radovic, member of the RTCG Council, discussed with Drazen Djuraskovic, April 14, 2021

<sup>34</sup> Hajdukovic, Blazo, "Abazovic: Napad na novinare tretirati kao napad na službeno lice" [Abazovic: Attack on journalists to be treated as an attack on an official], Vjesti.me, March 28, 2021, URL: <https://www.vjesti.me/vjesti/drustvo/524919/abazovic-napad-na-novinare-tretirati-kao-napad-na-sluzbeno-lice?fbclid=IwAR2AlxN6mMaRnxHEBSZOSp8gRT-X4xC3WBpd4wNdnvFqMwmNHC-i7wI3i3w>, accessed: March 28, 2021

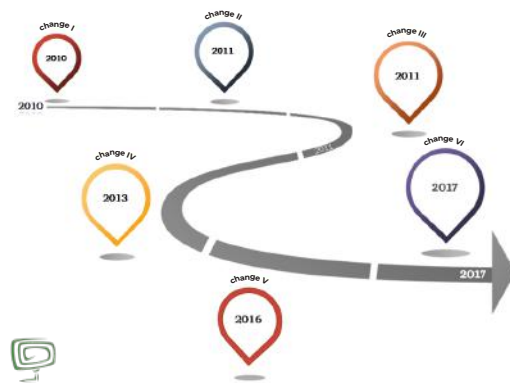
<sup>29</sup> Interview, Milan Radovic, member of the RTCG Council, discussed with Drazen Djuraskovic, April 14, 2021

<sup>30</sup> Interview, Milan Radovic, member of the RTCG Council, discussed with Drazen Djuraskovic, April 14, 2021

<sup>31</sup> Interview, Milan Radovic, member of the RTCG Council, discussed with Drazen Djuraskovic, April 14, 2021

## Dynamics of regulation changes

### Law on Electronic Media



self-regulation, however, is not elaborated in detail, so the conclusions of the Ombudsman, as well as the previous Commission, are adopted by the RTCG Council, which has no mechanisms for determining responsibility for omissions.

In the last year, only a few disciplinary proceedings have been initiated by the management, according to the adopted conclusions of the Council.

Before that, such a practice almost did not exist. Self-regulation is important but it cannot be based solely on identifying failures. It needs to have more effects. So, in addition to identifying omissions, it is necessary to determine responsibility, it is realized through sanctions, but also that the work of the current Commission and the future work of the Ombudsman has an educational character to editors and journalists in order to prevent the same mistakes.<sup>35</sup>

The independence of journalists in the public service is "solidly elaborated" in the legal solution and can represent a potential model for transposition into the Law on Media.

Article 16 of the Law on RTCG states that "journalists employed in RTCG are independent in their work and act in the interest of the public." The same article states that journalists "cannot be terminated their employment, reduced their salary, changed their status in the newsroom or established responsibility for an attitude or opinion expressed in accordance with professional standards and program rules."

The potential impact on their reporting is further elaborated, so it is prescribed that journalists employed in RTCG cannot receive compensation from other legal and natural persons for their regular work with the primary employer.

## Law on Electronic Media – Law on Audio-Visual Media Services

The previous two years were marked by work on amendments to the Law on Electronic Media, i.e. work on the Law on Audiovisual Media Services, as this legal act will be called in the future. The still valid law was adopted in 2010 and has undergone seven amendments since then. All these amendments did not help bring the provisions of this law closer to modern problems in the field of audiovisual media services, so the Ministry of Culture in 2019 began the process of amending this law and harmonization with the Audiovisual Media Services Directive (AVMS) (EU) 2018/1808 of the European Parliament. According to the latest available data, the draft Law on Audiovisual Media Services<sup>36</sup> is currently being processed by Council of Europe experts who should submit their suggestions and recommendations.

The draft law, as it was pointed out, regulates the rights, obligations and responsibilities of legal and natural persons "who perform the activity of production and provision of audiovisual media services, services of electronic publications via electronic communication networks"<sup>37</sup>. In addition, it regulates the work of the Agency for Electronic Media, but also media concentration, media pluralism and "other issues of importance for

the provision of AVM services."

The current Law on Electronic Media has been criticized for many years, both because of outdated provisions, because of the limited powers of the Agency for Electronic Media, but also because it does not protect local public broadcasters from the arbitrariness of local authorities. For all these reasons, the Law on AVM Services was drafted, which will harmonize the solutions with the umbrella Law on Media, transpose the Revised AVM Services Directive, define solutions related to the regulator, but also "rights and obligations of AVM services and especially public broadcasters."<sup>38</sup>

The draft Law on AVM stipulates that its provisions do not apply only to electronic media, but also to all natural and legal persons who provide audiovisual media services.

**"AVM service is an audio or audiovisual service that is under the editorial responsibility of the service provider, whose main purpose, in whole or in part, is to broadcast programs for informing, entertaining or educating the general public via electronic communications networks, in terms of the Law on Electronic Communications, and may take the form of electronic media (radio or television programs), AVM services on demand and commercial audiovisual communications."<sup>39</sup>**

The novelty introduced by this law is that it also applies to video content exchange platforms, the main purpose of which is to provide the public with access and exchange of videos, created by users for whose exchange the owner (or provider of the platform) is not editorially responsible.<sup>40</sup>

Although the current Law on Electronic Media envisages the independence of the Agency for Electronic Media (AEM) as a regulator of electronic media, it has not been established in practice. From year to year, the report of the European Commission points out that there is doubt in the independence of this regulator, and this is indicated by some non-governmental organizations and representatives of the media and civil sector who criticize AEM because of the alleged political influence of the ruling Democratic Party of Socialists (DPS)<sup>41</sup>. The historic year behind us, before the elections, brought protests against the adoption of the Law on Freedom of Religion, and in that period, AEM decided to limit the broadcasting of Happy and Pink M TV programs from Serbia, which criticized the

35 Interview, Milan Radovic, member of the RTCG Council, discussed with Drazen Djuraskovic, April 14, 2021

36 Draft Law on Audiovisual Media Services, URL: [https://www.paragraf.me/nacrti\\_i\\_predlozi/nacrt-zakona-o-audiovizuelnim-medijkim-uslugama.pdf](https://www.paragraf.me/nacrti_i_predlozi/nacrt-zakona-o-audiovizuelnim-medijkim-uslugama.pdf), accessed: April 01, 2021

37 Ibid. Article 1

38 Government of Montenegro, "Obrazloženje Nacrta zakona o audiovizuelnim medijskim uslugama" [Explanation of the Draft Law on Audiovisual Media Services], p. 2, URL: <https://www.gov.me/ResourceManager/FileDownload.aspx?Id=367630&rType=2>, accessed: March 25, 2021

39 Draft Law on Audiovisual Media Services, Article 8, URL: [https://www.paragraf.me/nacrti\\_i\\_predlozi/nacrt-zakona-o-audiovizuelnim-medijkim-uslugama.pdf](https://www.paragraf.me/nacrti_i_predlozi/nacrt-zakona-o-audiovizuelnim-medijkim-uslugama.pdf), accessed: April 01, 2021.

40 Ibid.

41 Center for Civic Education, "Mediji u Crnoj Gori: Između zagrijaja vlasti i borbe za profesiju" [Media in Montenegro: Between the embrace of Government and the struggle for the profession], Podgorica: 2020, URL: <http://cgo-ccce.org/2020/04/20/mediji-u-crnoj-gori-izmedu-zagrijaja-vlasti-i-borbe-za-profesiju/#:YjB2q8zY2w>, accessed: April 20, 2021

Montenegrin government for passing this law. However, AEM explained the decision by the fact that it was made solely because the programs of those televisions promoted "hate speech, intolerance and discrimination against members of the Montenegrin nationality."<sup>42</sup>

The draft law prescribes a new norm defining that the AEM is an independent regulatory body that exercises its competencies impartially and transparently "in order to achieve freedom of expression, media pluralism, cultural and linguistic diversity, consumer protection, accessibility of content, equality, proper functioning of the market and promotion effective competition"<sup>43</sup>. Also, if the new Law on AVM is adopted, the regulator will have the task of conducting administrative proceedings and resolving individual administrative matters, submitting requests for initiating misdemeanor proceedings to the competent court, imposing administrative and supervisory measures, as well as promoting and taking measures for the development of media literacy and encourages the promotion of self-regulation and the use of co-regulation. The law also provides for the competencies of the Agency's bodies, the Council and the director. The new Law on Media stipulates, and the Draft Law on AVM specifies, that the Council of the Agency is in charge of distributing part of the funds from the Fund for Encouraging Pluralism and Diversity of the Media. The work of the AEM Council in the earlier period was exposed to public criticism, especially in the area of election of members. It is envisaged that the members of the Council may be experts that have proven their expertise in the field related to the work of the Agency, who have at least five years of work experience and have completed four years of study. Also, in order to avoid conflicts of interest, the legislator has provided a number of restrictions for members. Thus, for example, members of the Council cannot be members of the Parliament and councilors, members of the Government, the President of the state or the municipality "during the term of office and for at least two years from the termination of office". Members of the Council may also not be persons who were candidates for the presidency or in the electoral list for elections for members of the Parliament or councilors, for at least two years from the submission of the candidacy or electoral list.<sup>44</sup> The term of office of the members of the Council is five years, and the same person may be part of this body for two consecutive terms.

When it comes to user rights, the Draft specifies that AVM service providers are obliged to provide users with easy, direct and permanent access to information such as the name of the service provider and the physical address of the headquarters, as well as e-mail addresses or the provider's website. Article 50 stipulates that the Agency is obliged to encourage the providers of these services to adapt them to persons with disabilities, which is an improvement over the current Law which recognized only persons with hearing and/or visual impairments.

When it comes to electronic media, the Draft also introduces some innovations, especially when it comes to broadcasting. Thus, for example, it is envisaged that a television broadcaster is obliged to broadcast news for at least 30 minutes a day "of which at least one show lasting at least 20 minutes, predominantly with information from the coverage area that are important for the population from the coverage area."<sup>45</sup> On the other hand, a radio broadcaster is obliged to broadcast news for 20 minutes a day.

The minimum duration of programs for radio and TV broadcasters must be realized in the period between 6 and 23 hours. The draft introduced and specified norms concerning its own production, which was often the subject of criticism. Namely, the representatives of the media community have so far often sharply criticized both the media and AEM for the inaccuracy in determining what its own production is, and why those broadcasters who do not have it are not punished. If adopted, the new provisions of the Law introduce an obligation that radio and television broadcasters must have 10% of their own production in the total weekly broadcast<sup>46</sup>. In addition, it is stated that this percentage does not refer to the broadcaster of a specialized TV or radio program.

The law also defines that there are commercial, non-profit and public broadcasters, and specifies certain types of commercial and public broadcasters (national, regional and local). When it comes to public broadcasters, the legislator states that they can be national - whose founder is a state, regional whose founders are several units of local self-government, or local whose founder is one local self-government. The draft specifies how much should be the coverage of the radio or television signal for each public broadcaster individually, but also what services they provide. Obligations to progressively ensure the accessibility of program content to persons with impaired hearing and sight, as well as to encourage and promote the principles of gender equality and media literacy, are also being introduced.

**"Public broadcasters are obliged to provide services of production and broadcasting of radio and/or television programs with informative, cultural, artistic, educational, scientific, children's, entertainment, sports and other program contents, which ensure the realization of the rights and interests of citizens and other entities in areas of information."<sup>47</sup>**

The current Law on Electronic Media (ZOEM) had great limitations when it comes to the position of local public broadcasters, whose founders are municipalities, because it did not offer them adequate protection. ZOEM envisages financing of public broadcasters from the state budget and local self-government budgets but does not establish the obligation to determine the minimum amount of the part of the general budget that should be determined by law (as for the state public broadcaster) and decisions on the establishment (as for local public broadcasters). Without such an obligation, the sustainability of these media is in question and the possibility for these media to fulfill their role in society is reduced.

The problem of financial sustainability of the state public broadcaster Radio Television of Montenegro is significantly smaller because the amendments to this regulation in 2016 established the obligation<sup>48</sup> to finance RTCG from the budget of Montenegro for the core business with funds at the annual level of 0.3% GDP (gross domestic product), estimated by the Government by adopting macroeconomic and fiscal policy guidelines. Adoption and introduction of a similar provision defining the financing of LJE would provide some form of security for these media. Directive 2010/13/EU of the European Parliament and of the Council (Audiovisual Media Services Directive) creates an obligation for effective and sustainable financing of public services in order not to exert political influence on their work. In the previous period, different practices of local self-governments in financing local public broadcasters were noticeable, which

42 NN "Agencija za elektronske medije: Odgovor na ocjene iz analize CGO" [Agency for Electronic Media: Response to the assessments from the CCE analysis], Portal U-Info, April 27, 2020, URL: <http://mne.u-info.com/agencija-za-elektronske-medije-odgovor-na-ocjene-iz-analize-cgo/>, accessed: March 25, 2021

43 Draft Law on Audiovisual Media Services, Article 10, URL: [https://www.paragraf.me/nacrti\\_i\\_predlozi/nacrt-zakona-o-audiovizuelnim-medijskim-uslugama.pdf](https://www.paragraf.me/nacrti_i_predlozi/nacrt-zakona-o-audiovizuelnim-medijskim-uslugama.pdf), accessed: April 01, 2021

44 Ibid. Article 16

45 Ibid. Article 58

46 Ibid. Article 66

47 Ibid. Article 75

48 Law on National Public Broadcaster Radio Television of Montenegro, Official Gazette of Montenegro 079/08 of Dec 23, 2008, 045/12 of Aug 17, 2012, 043/16 of July 20, 2016, 054/16 of Aug 15, 2016

were conditioned by the size of local self-government budgets, but also by the type of broadcasters (radio or television), which speaks of the need to change existing provisions.

The needs for these changes are huge, given the major problems of electronic media and especially local public broadcasters, of which there are currently 14 in Montenegro and the process of establishing new ones is underway (RTV Podgorica and RTV Kolašin). Namely, local public broadcasters are, by all parameters, media that have been in the most difficult position of all in Montenegro for decades. In some of them, salaries have been late for years, the debt for taxes and contributions has reached alarming figures in some, and if regulations had been enforced consistently, many would have gone bankrupt long ago. In addition, thanks to the current legal solutions, these media are directly dependent on the political sets in power in local self-governments, which are their founders and the most important financiers, so they are prevented from reporting objectively and professionally. All of this is a major problem for strengthening media freedom in Montenegro, which has been a sore point for years where there has been no progress in European Commission reports.

Apart from financial unsustainability, the problem remains the great influence of local powerful people and ruling parties at the local level. The management independence of a public broadcaster depends on the structure of the members of the highest governing body – the Council and the procedure for their election. If the members of the public broadcaster’s council are appointed by organizations or institutions that are under the influence of political parties, executive bodies or economic centers of power, the space for influencing the editorial policy of the public broadcaster is very pronounced. In addition, if there are people on the Council who can be politically influenced, they will also elect a director to follow such a practice.

The draft Law on AVM at least formally offers the protection to LJE, so in addition to the content of the statute, it also regulates the financing of public broadcasters.

**“The budget of Montenegro, i.e. the budget of the local self-government unit, provides funds to cover the costs of transmission and broadcasting of public broadcasters through terrestrial broadcasting systems. The budget of the local self-government unit shall provide funds for the stable, sustainable and independent functioning of the local public broadcaster.”<sup>49</sup>**

The draft law also offers precise percentages for financing local public broadcasters. Thus, it is envisaged that, depending on the annual budget of the local self-government, the funds allocated for LJE also depend. If the municipal budget is below three million euros, LJE receives 3% of the budget from that municipality, for municipalities with a budget of 3-6 million, allocations for local broadcasters are 2.7%. For the richest municipalities, whose annual budget is over 20 million euros, allocations for local public broadcasters are 1.5% of the total budget. However, these amounts are valid only if the LJE broadcasts only the radio program. In case LJE broadcasts both radio and television programs “the amount of funds is increased by at least 100%.”<sup>50</sup>

Table 1. Allocated funds for financing local public broadcasters

Budget of the local self-government	Allocation from the budget for LPB
Up to 3 million euros	3%
From 3 to 6 million euros	2,7%
From 6 to 10 million euros	2,5%
From 10 to 15 million euros	2%
From 15 to 20 million euros	1,7%
Above 20 million euros	1,5%

In order to formalize the “cooperation” of the state, i.e. the municipality and the broadcaster, and to determine the obligations and rights of both parties, the signing of contracts for the provision of public services is also envisaged. In terms of financing, the contract also offers additional protection related to the obligation of temporary monthly financing of broadcasters, in case the contract is not signed six months after the expiration of the valid contract.

In order to achieve the independence of public broadcasters, some new provisions concerning management bodies have been introduced. For example, Article 86 states that the authorized nominators of members of the council of a local or regional public broadcaster are legal entities from the territory of the municipality that is the founder. Thus, one member is nominated by NGOs dealing with education, culture and the media, one by NGOs dealing with human rights, environmental protection and consumer rights. Also, one member is nominated by sports organizations, as well as local associations of businessmen and employers, tourist associations or agricultural associations. One member is also nominated by a representative trade union represented in the Social Council. The conditions for the nominators of the members of the Council are also specified, that they must be legal entities that have existed for at least three years, which in the previous three-year period were not financed from local self-government or state funds over 50% of the total annual income or which in their founding acts have the fields provided by the founding act of the public broadcaster.

The draft of the Law on AVM introduces specific guidelines relating to on-demand AVM services, linear AVM service distribution services and video sharing platforms.

This document, if adopted in its current form, introduces additional obligations for commercial media. Among other things, covert and fraudulent commercial audiovisual communication is prohibited, then, sending messages that may affect the subconscious, as well as endangering human dignity, promoting hatred or discrimination, inciting harmful behavior or discrediting and belittling a competitor, its program or service.<sup>51</sup> Additional obligations regarding the advertising of alcoholic beverages are also envisaged, as well as special conditions for product placements.

The Draft stipulates that radio or television advertising and teleshopping must be easily recognizable and audio and/or visually separated from other program content, and that the advertiser must not exert any editorial influence on the program content.<sup>52</sup> In practice, this has proven to be a very big problem, because the research of the Trade Union of Media of Montenegro shows that journalists have a great reluctance when reporting on advertisers.<sup>53</sup> Namely, it is not uncommon for individual advertisers to threaten to withdraw advertising budgets from the media or to do

<sup>51</sup> Ibid. Article 99

<sup>52</sup> Ibid. Article 107

<sup>53</sup> Trade Union of Media of Montenegro, “Indikatori nivoa slobode medija i bezbjednosti novinara 2019” [Indicators on the level of media freedom and journalists’ safety 2019], Podgorica: 2020, URL: <https://sindikatomedija.me/publikacije/cijeli-izvjestaj-indikatori-za-nivo-slobode-medija-i-bezbjednosti-novinara-2019-cma-gor/>, accessed: March 25, 2021

<sup>49</sup> Ibid. Article 80  
<sup>50</sup> Ibid.

so if journalists write critically about those advertisers, even when it is in the public interest. It will therefore be very interesting to follow the application of these provisions which, although they offer greater security, still do not guarantee that the situation will change in practice.

A special section of the Draft Law also refers to political advertising.

**“Political advertising is advertising, with or without financial compensation, that recommends a submitter of a particular electoral list or a candidate or their activities, ideas or political views.”<sup>54</sup>**

The rights and obligations of broadcasters during election campaigns and political advertising are defined by a regulation issued by the AEM Council no later than seven days after the announcement of the elections. The submitter of the electoral list or the competent body for conducting the elections may file an objection to the work of the broadcaster with the competent body of the broadcaster, and an appeal against the decision of that body shall be submitted to the Council. If they are not satisfied with it either, an administrative dispute can be initiated against the decision of the AEM Council.

According to the Draft Law on AVM, the Agency is obliged to keep a register of service providers, namely: linear AVM services (register of broadcasters), register of on-demand AVM service providers, distribution of AVM services (register of distributors), as well as a register of video exchange platforms. The Agency is obliged to publish all that on its website. For many years, AEM has been running a database of broadcasters that is comprehensive and useful, and until the adoption of the Law on Media, portals, i.e. electronic publications, were part of that database. However, after the Law was adopted, electronic publications or portals came under the jurisdiction of the Ministry of Public Administration, Digital Society and the media. The register of portals maintained by AEM was formally exhaustive and up-to-date, but in practice it showed shortcomings, such as the inability of the regulator to “force” the media to provide all required information or the fact that numerous NGO websites appeared in the media register.

The new law should also regulate the manner of promoting and protecting the pluralism and diversity of AVM services, through transparency of ownership and regulation of media concentration.

Under the current law, the Agency had the authority to issue only warning measures to the media that would violate program standards. Although this measure was supposed to influence the media and, if nothing else, lead them to correct the omissions due to public criticism, in practice it happened that the media ignored these warnings because they were not punished. The legislator has now improved the norms related to this segment of AEM's work, so the Agency has the right to impose warning measures, fines, as well as penalties for temporary or permanent revocation of broadcasting licenses.

A warning, as stated in the Draft, is issued when the service provider violates an obligation contained in the Law, the act of the Agency or the issued approval, if it is expected that this will be enough to eliminate the consequences of such behavior. The new provision relates to fines.

**“The Agency shall impose a fine on the service provider who, despite the warning, violates the same obligation established by this Law, the**

**act of the Agency or the issued approval, within a period of not less than six months.”<sup>55</sup>**

Revenue from these fines will be paid into the Fund for Encouraging Media Pluralism and Diversity. It is also envisaged when AEM may temporarily and when permanently revoke the approval for broadcasting or providing the distribution service of AVM services. The law also envisages as many as 127 situations in which a legal entity can be fined from 500 to 20,000 euros.

According to Professor Vuk Vukovic, the draft Law on AVM is already terminologically outdated at this moment and “ignores the entire spectrum of media activity.”

**“I am thinking primarily of practices in the field of digital media, i.e. the Internet and social media, which should, at least in principle, be covered by this legal solution.”<sup>56</sup>**

Vukovic believes that the separation of electronic publications from AVM services and from the competence of AEM is unjustified and inconsistent with modern media practice, “and will open space for different interpretations and the Balkan recipe for avoiding responsibility.”

**“If we have a platform whose program backbone is e.g. a podcast, but also content that is not an ‘AVM service’ - whose jurisdiction it is, and more importantly - why? We must have a clear and adequate logic of the media system, so that we can change it for the better, and it seems to me that we will not get that with this law because we still stick to traditional terminology and traditional media systems, and live in digital, multimedia and multitasking era.”<sup>57</sup>**

He considers the envisaged solutions concerning financing, especially LJE, to be good, but implementation should be taken into account in that regard as well. Vukovic points out that there can be two types of problems, and one of them is that municipal leaders want to have absolute control over LJE and expand their influence, most often through television programs, even when it is not financially sustainable, so these media are falling into increasing existential problems. In those situations, Vukovic points out, the law should require a study on long-term sustainability (financial, program, personnel and technical), while the AEM should act indiscriminately and proactively in relation to those provisions. The second type of problem is the application and control of the solution. He points out that there are currently broadcasters on the media scene in Montenegro whose founding acts, statutes and other documents are not harmonized with the current Law on Electronic Media, so the “question arises why they are allowed to operate in a legal vacuum or even expand their activities.”

**“What will happen if the municipalities do not allocate as much funds from the budget as provided by law, and in what way will the Agency act in such situations?” The regulator must not be just a bureaucratic-administrative institution that is just an instrument for the wishes of officials, but exclusively to act in the interest of the public and the media sector, even when it is not popular.”<sup>58</sup>**

54 Draft Law on Audiovisual Media Services, Article 112. URL: [https://www.paragraf.me/nacrti\\_i\\_predlozi/nacrt-zakona-o-audiovizuelnim-medijskim-uslugama.pdf](https://www.paragraf.me/nacrti_i_predlozi/nacrt-zakona-o-audiovizuelnim-medijskim-uslugama.pdf), accessed April 01, 2021

55 Ibid. Article 166

56 Interview, Vuk Vukovic, interviewed by Bojana Lakovic Konatar, April 10, 2021

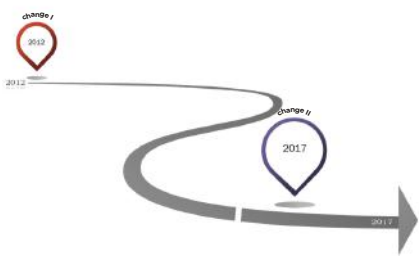
57 Ibid.

58 Ibid.

## Law on Free Access to Information

Although it was planned to adopt amendments to the Law on Free Access to Information (ZSPI) in 2020, which was adopted in 2012 and amended in 2017, it was abandoned due to the coronavirus pandemic and public pressure. The Ministry of Public Administration, Digital Society and Media and Minister Tamara Srzentic announced a public debate on this law in mid-April 2021.<sup>59</sup> In the meantime, five NGOs submitted a draft ZSPI to the new Ministry, urging the body to initiate a public debate and urgently adopt the first anti-corruption law.<sup>60</sup> According to NGOs, the proposed draft repeals a number of legal provisions introduced by the previous government to declare thousands of documents of public importance state or business secrets.

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Law on Free Access to Information



The current Law on Free Access to Information stipulates that every domestic and foreign natural and legal person has the right to access information, "without the obligation to state the reasons and explain the interest in requesting information."<sup>61</sup> Every domestic and foreign, natural and legal person, has the right to reuse information in accordance with the law.<sup>62</sup> Although enabling access to information, as specified by law, promotes transparency of work, encourages efficiency, effectiveness, accountability and affirms the integrity and legitimacy of public authorities, the subject of this law is not all information.

"The provisions of this Law do not apply to:

- 1) parties in judicial, administrative and other procedures prescribed by law, to which access to information from these procedures is determined by regulation;
- 2) information for which there is an obligation to keep it secret, in accordance with the law governing the field of classified information;
- 3) information that is classified information owned by an international organization or another state, and classified information of authorities that is created or exchanged in cooperation with international organizations or another states."<sup>63</sup>

The law further states that information is a document or part of a document in written, printed, audio, video, electronic or some other form, as well as copies, regardless of: content, source, author, time of creation or classification system. Under access to information, the Law means the right to request and receive information, regardless of the purpose and information contained therein. The law also prescribes special obligations of state bodies, such as, among other things, the obligation to prepare a guide for free access to information, and proactive access to information. In addition to guides, proactive access to information includes publishing (on the website) public registers, public records, programs and work plans, reports and other documents on work and the situation in the areas of its competence, drafts, proposals and final texts of strategic documents and programs for their implementation, as well as laws and other regulations and expert opinions on those regulations and other.

When it comes to information publishing, the obligation to publish it in an open format has been prescribed. In addition, the Law on Free Access to Information also defines access to information on request.

"A public authority shall have the duty to grant access to information or part of the information it holds to a natural and legal person who submits a request for access to information, except in cases provided by this Law."<sup>64</sup>

Besides the fact that the Law does not recognize journalists in this article, the list of limitations is so long that it makes access to information difficult. Thus, limitation on access to information is possible due to the protection of privacy, except in the case of public servants, in certain circumstances, as well as in the case of funds allocated from public revenues (except social benefits, health care and unemployment protection). A request for free access to information may also be denied for the protection of security and defense; foreign, monetary and economic policy; prevention, investigation and prosecution of criminal activities. The limitations may also be in the interest of performing official duties in order to protect the disclosure of data related to the inspection, control and supervision by public authorities; the deliberations within or between public authorities concerning the attitude determination; the preparation of official documents and solution proposal to a matter; the work and decision-making of collegial bodies and initiation and conduct of disciplinary proceedings.<sup>65</sup>

Access to information may be denied in the case of protection of trade and other economic interests, disclosure of data related to the protection of competition, business secrets related to intellectual property rights, as well as if the information is a business or tax secret. It is precisely because of the broad definition of a business or state secret, as one of the reasons, that this law has been the target of a great deal of criticism since its enactment. The law, as explained, gives a lot of room for state bodies to declare a large amount of information secret, which limits the number of available information and reduces public control over the work of state bodies.

The law further prescribes the duration of limitations and provides the harm test of the information disclosure.

59 Goranovic, Sinisa, "Uskoro javna rasprava o Zakonu o slobodnom pristupu informacijama" [Public debate on the Law on Free Access to Information Coming Soon], Portal Analitika, April 21, 2021, URL: <https://bit.ly/2QW86hz>, accessed: April 21, 2021

60 MINA, "Grupa NVO traži hitnu izmjenu Zakona o SPI" [NGO group requests an urgent amendment to the Law on Free Access to Information], Vjesti.me, published on December 9, 2020, URL: <https://www.vjesti.me/vjesti/drustvo/493293/grupa-nvo-trazi-hitnu-izmjenu-zakona-o-spi>, accessed: March 25, 2021

61 Law on Free Access to Information, Official Gazette of Montenegro "044/12 of Aug 09, 2012, 030/17 of May 09, 2017, Article 3

62 "Reuse of information in the sense of this law is the use of information that are in possession of the government in commercial and non-commercial purposes, different from the initial purpose for which these information came to be." Article 3a

63 Ibid. Article 1

64 Ibid. Article 13

65 Ibid. Article 14



“Access to information shall be limited if the disclosure of the information would significantly jeopardize the interest referred to in Article 14 of this Law, i.e. if there is a possibility that disclosure of the information would cause harmful consequences for the interest that is more important than the interest of the public to know that information unless there is an overriding public interest.”<sup>66</sup>

The law also stipulates the situations in which there is a predominant public interest in publishing some information or part of it. For example, it exists in situations where the requested information contains data indicating corruption, non-compliance, illegal use of public funds or abuse of power, suspicion of a crime, threat to security, life, public health or environment. The Law on Free Access to Information also prescribes the content of the request, the obligation of the state body to assist to the applicant, the manner of access to information, public registers and public records, as well as permission to reuse the information. The Law also prescribes situations when a request for free access to information can be denied. Such requests are decided within 15 days from the day of submitting the “proper request”. If the state body rejects the request for free access to information, it is possible to file a complaint to the Agency for Free Access to Information, unless the information in question is classified in which case an administrative dispute shall be initiated by the lawsuit.

The Law also prescribes the protection of whistleblowers, although it does not use that name for them. In this way, indirectly, the media and journalists are helped to investigate corruption and other illegal actions.

“A public authority employee who, in good faith, discloses information containing data on abuse or irregularity in the exercise of public office or official authority may not be held liable for the breach of the duty.”<sup>67</sup>

The Law also prescribes fines for legal entities that do not comply with the provisions of the Law in the amount of EUR 500 to 20,000. In addition, fines in the amount of EUR 200 to 2,000 are envisaged for the Agency if it does not comply with the Law in the part related to the obligations of that body.

Despite the limitations prescribed by the Law on Free Access to Information, journalists rarely use it. The Agency for Personal Data Protection and Free Access to Information announced that, during 2020, journalists submitted a total of 29 requests for free access to information.<sup>68</sup>

The reason for that is certainly the reduction in the number of journalists in newsrooms, which leads to the overload of media employees who have less and less time and resources for investigative journalism. That is why the non-governmental organization MANS has a special program to help journalists in situations when they need to send requests for free access to information.

“We invite journalists to use MANS’s service for sending requests for free access to information and ask the competent authorities for everything they need for story research and daily work. The MANS will take care of the procedures, deadlines and costs of the procedure, and the scanned documents will be forwarded to the journalists as soon as the MANS receives it.”<sup>69</sup>

66 Ibid. Article 16

67 Ibid. Article 45

68 Agency for Personal Data Protection and Free Access to Information, letter No. 07-436-576-2/20 dated Oct 19, 2020

69 MANS, “Slobodan pristup informacijama za novinare” [Free access to information for journalists], URL: <http://www.mans.co.me/slobodan-pristup-informacijama-za-novinare/>, accessed: March 20, 2021

Longtime journalist of the weekly Monitor, Predrag Nikolic, points out that non-governmental organizations and political parties have much more resources than journalists and media to use the opportunities offered by the Law on Free Access to Information, so they use it more often and provide much of the information obtained to the media.

“Several years ago, we tried a couple of times to get the necessary information through the free access to information. We did not succeed or the answers arrived when we almost forgot we had sent the requests.”<sup>70</sup>

According to him, it would be good if the questions asked by journalists were marked as a priority, as well as to exclude the costs of delivery and processing of documents, which are sometimes not small. Nikolic also believes that state bodies mark documents as secret without clear criteria.

“The freedom of state bodies to mark information of public importance as secret has often been abused. The latest example is the allocation of apartments on preferential terms. Now that the secrecy mark has been removed from the documents, it can be seen that the private interest of the selected individuals was crucial so that the public would not find out how and in what way they enjoyed the privileges.”<sup>71</sup>

## Law on Copyright and Related Rights

The Law on Copyright and Related Rights was last amended five years ago, in 2016. Despite not being adapted to the current development of digitization and its impact on copyright, it provides a solid legal framework to protect these rights of media employees. It is well harmonized with the most important international treaties, such as the Berne Convention, the Universal Copyright Convention, the so-called “Rome Convention” and the WIPO Copyright Treaty.

The objection to the Law on Copyright and Related Rights by a part of the

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media community is that journalistic works are not explicitly mentioned in Article 4, where the types of protected works are stated.

However, according to legal expert Mirko Boskovic, this is not a reason for poorer protection of these rights, because it is possible to clearly identify them with the established definition.

70 Interview, Predrag Nikolic, interviewed by Bojana Lakovic Konatar, April 12, 2020  
71 Ibid.

“When it comes to the media, i.e. journalists in general, it is important to point out that the provisions of Article 4 of the Law, in a general way, define what is considered copyright works. In this regard, spoken, written, as well as audiovisual works enjoy protection, definitely including the products of journalistic work which represent an ‘individual spiritual creation’.”<sup>72</sup>

Boskovic points out that the Law also stipulates that copyright protection does not include daily news or other data characterized as “ordinary media information”.

“This, at the level of the legal text itself, clearly makes the difference between the protected products of journalistic work that can be considered an (original) spiritual work and the products of everyday work which cannot be considered works of authorship. Accordingly, I believe that journalistic works of authorship, within the existing norms, could be recognized and protected without major problems. Another thing is that the field of copyright is quite unexplored and copyright holders, especially in Montenegro, are not overly interested in protecting their rights, which further causes a lack of case law in this field.”<sup>73</sup>

It should be borne in mind that the media themselves, in their daily work, due to the focus on the speed of content exchange, often do not take into account whether photos, videos or texts are protected by copyright, which results in a violation of these rights. Also, precisely to enable unhindered reporting and freedom of the media, the Law prescribes exceptions which allow free use of copyrighted works<sup>74</sup>, with the fact that their interpretation in certain situations, due to lack of knowledge of legal terminology, can be a problem for journalists.

Violations are most common when it comes to the use of photographs as illustrations for certain articles, which is why it is not surprising that numerous lawsuits are most often filed against online publications, due to copyright infringement by the photography authors. In addition, copyrighted texts are often used in other media without mentioning the author and the media that created them. It is not known that such a case had a court epilogue. We think that it would be good to prescribe a recommendation to the media to have a visible label in their content/program that would provide information on whether the content can be transferred and under what conditions.

A special challenge in terms of protection of copyright and related rights is digitalization, which we have witnessed especially in the last decade. The emergence of social networks, a large number of online platforms, but also media portals, represent a fertile ground for daily and flagrant infringement of copyright and related rights. New technologies have greatly changed journalism and created entirely new types of media that are already becoming the dominant form over traditional ones. This is where the biggest challenges and legislative shortcomings lie when it comes to copyright and related rights protection.

Boskovic reminds that the EU countries, in April 2019, after numerous controversies and heated debates, adopted the EU Directive 2019/790 on copyright and related rights in the digital single market, which is one of the most extensive acts in history of the copyright at the EU level.

“The directive is an attempt to harmonize regulations in this area with the rapid technological development that has changed the way copyrighted and related works are created, produced and used. It is in this direction that amendments to our legislation in this area should be made (which is expected in the process of joining the EU).”<sup>75</sup>

Article 100 of the Law on Copyright and Related Rights refers to the issue of creating a work of authorship during employment.

“If the author created a work of authorship during the employment and performance of the duties or following the instructions of the employer, all property and other rights of the author of that work are considered to be unlimitedly and exclusively ceded to the employer for five years from the completion of the work, unless otherwise specified in the contract.”<sup>76</sup>

In this regard, Boskovic believes that the issue of mutual relations between the author of a newspaper work that can be considered a work of authorship, on the one hand, and the media house where a journalist is employed, on the other hand, could be posed as controversial if the work was created as a part of work tasks of a journalist.

## Criminal Code

The endangered security of journalists and other media workers, along with the impunity of attacks on journalists, is a serious problem that makes the already poor working conditions in the media even more difficult. After the competent authorities in Montenegro together with the database run by the Trade Union of Media of Montenegro ([www.safejournalists.net](http://www.safejournalists.net)) registered three attacks on journalists in 2019, the situation changed significantly for the worse. Only in 2020, the Police Administration registered 18 and the Trade Union of Media 16 attacks on journalists<sup>77</sup>. Out of that number, there were four arrests of journalists, four other<sup>78</sup> threats to journalists, three threats to media outlets and organizations, two attacks on journalists and two death threats, as well as one attack on the property. Only during the first four months of 2021, six attacks or verbal threats on journalists were registered<sup>79</sup>. The problem that remains is related to the lack of a special database or the way of keeping records of attacks on journalists and other media workers at the Police Administration, and the fact that its records relate only to the occupations of victims of attacks. Therefore, sometimes attacks that refer to other media workers or attacks that are not related to a person's job are not registered in the database.

Although condemnations of attacks on journalists occur immediately after the attack, the impunity of attacks on journalists remains a major problem. Even when some serious attacks on journalists happened and the perpetrators were found, in almost none of the cases was the person who ordered that attack found. For example, the murder of the editor-in-chief of the newspaper Dan, Dusko Jovanovic, which took place in 2014, is still not completely clarified. One person is currently serving a 19-year prison sentence for complicity in Jovanovic's murder. By the way, the case of the

<sup>72</sup> Interview, Mirko Boskovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>73</sup> Interview, Mirko Boskovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>74</sup> “Without acquiring the appropriate property right and with the obligation to pay compensation, it is allowed to: make a reproduction of published articles, broadcast works and works of a similar nature on current economic, political or religious issues in form of print media or press clipping unless those rights are expressly reserved.” Article 46 paragraph 3 of the Law on Copyright and Related Rights

<sup>75</sup> Interview, Mirko Boskovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>76</sup> Article 100 of the Law on Copyright and Related Rights

<sup>77</sup> Direct contacts with journalists enabled the Trade Union of Media of Montenegro to create a more comprehensive database of attacks on journalists. Some of the cases registered by the Police Administration were excluded because they were not related to the work of the victims of the attacks.

<sup>78</sup> Other threats include non-physical threats and harassment, such as surveillance, harassing telephone calls, aggressive statements by public officials and other forms of pressure that may jeopardize the safety of journalists during the performance of their duties.

<sup>79</sup> [SafeJournalists.net](https://safejournalists.net), “Izveštaji o napadima” [Reports on attacks], URL: <https://safejournalists.net/me/1484-2/>, accessed: March 21, 2021

murder of Dusko Jovanovic is in fourth place on the list of oldest unsolved crimes against journalists in Europe<sup>80</sup>. The case of the injury of journalist Olivera Lacic, from May 2018, has not been fully resolved either, because, despite the claims of the Police that they solved the case and discovered the suspects in the attack, there is no indictment against them even after three years. At the end of 2020, the information reached the public that her liquidation had been agreed upon in the Institute for the Execution of Criminal Sanctions (ZIKS) in Spuz. Special state prosecutor Sasa Cadjenovic announced that two suspects for planning the murder of journalist Olivera Lacic had been arrested, while the others were in prison<sup>81</sup>.

In 2020, the Institution of Ombudsman also reacted to the limitations on freedom of expression, especially to the arrests of journalists. The Institution said that the position of the Protector of Human Rights and Freedoms was that the state's authority to control freedom of speech was misunderstood and that certain cases were "at least debatable, from the point of view of the application of convention standards."

**"As for the arrest of journalists as a restrictive measure to combat disinformation, it was pointed out that that could be done as a last resort, used after all other options had been exhausted and lasted as short as possible."<sup>82</sup>**

Since 2014, the Trade Union of Media of Montenegro has been advocating the adoption of the proposed solutions of the Human Rights Action (HRA) which prescribe two new criminal offenses and offer amendments to the criminal offenses of Aggravated Murder and Serious Bodily Injury, in order to strengthen protection of journalists in performing professional tasks<sup>83</sup>. Namely, the HRA submitted the proposal for amendments to the Criminal Code to the Government and parliamentary parties in 2010. They aim to "provide enhanced protection of journalists in performing their profession of special public importance." The HRA proposed the adoption of two new Articles, the first of which relates to preventing journalists from performing professional tasks.

**"(1) Whoever by means of force or threats of direct use of force prevents journalists from performing professional tasks or in connection with the performance of professional tasks undertaken within their powers or in the same way forces them to perform a professional task, shall be punished by a prison sentence for a term from three months to three years."<sup>84</sup>**

This proposed article states that the perpetrator shall be punished by imprisonment for a term between three months and five years if they, during the commission of the offense referred to in paragraph 1, insult or abuse the journalist, inflict light bodily injury or threat to use a weapon. If the offense referred to in paragraph 1 was committed in a group or an organized

manner, a sentence of six months to five years is envisaged. The second Article proposed by this organization refers to the attack on journalists during the performance of professional tasks.

**"(1) Whoever attacks or threatens to attack a journalist in the performance of professional tasks or in connection with the performance of professional tasks, shall be punished by a prison sentence for a term not exceeding three years.**

**(2) If a journalist has suffered a minor bodily injury or is threatened with the use of a weapon during the commission of the offense referred to in paragraph 1 of this Article, the perpetrator shall be punished by a prison sentence for a term between three months and five years.**

**(3) If the offense referred to in paragraph 1 of this Article is committed in a group or an organized manner, the perpetrator shall be punished by a prison sentence for a term between six months and five years.**

**(4) For an attempt to commit an offense referred to in paragraphs 1, 2, and 3 of this Article the perpetrators shall be punished."<sup>85</sup>**

The HRA also proposed the amendments of existing Articles that refer to Aggravated Murder and Serious Bodily Injury. The proposed solution refers to the introduction of provisions concerning a prison sentence of at least 10 years or a prison sentence of 40 years for one who takes the life of a journalist while performing or in connection with the performance of professional tasks. In addition, the HRA proposal refers to prescribing a prison sentence of one to eight years for those who seriously injure or severely damage the health of journalists. If a journalist is seriously injured or his/her health is impaired to such an extent that his/her life is endangered because of the attack "or an important part of his body or an important organ is destroyed or permanently and significantly damaged; or permanent work incapacity of the injured person or permanent and severe impairment of his/her health or disability has been caused", a prison sentence for a term of 2 to 12 years is prescribed. If a serious bodily injury results in the death of a journalist, a prison sentence for a term of 5 to 15 years is proposed.

In the explanation of the proposal, the HRA states that, although the best form of prevention would certainly be efficient and effective prosecution and punishment of existing cases of attacks on journalists, the proposed solutions can help deter potential perpetrators of attacks. This organization explains that it is not good to provide journalists with the status of an official, because criminal offenses against state bodies - officials protect the lawful performance of official actions (duties).

**"Official actions or duties performed by officials, as a rule, mean the application of regulations and other decisions of the competent state authorities. The professional tasks of journalists are not the same as official activities."<sup>86</sup>**

The HRA explains that the proposed acts are based on the description of criminal offenses related to preventing an official from performing official actions and attacking an official. They believe that all officials (judges, prosecutors, police officers, prison officials) and journalists should be protected by the same high penalties, for a term of six months to five years of a prison sentence. The HRA believes that the protection of journalists in the performance of professional tasks would be secured by introducing proposed criminal offenses and adopting amendments to existing articles of the law.

80 SafeJournalists.net, "Savjet Evrope: Ubistvo Duška Jovanovića među najstarijim neriješenim slučajevima" [Council of Europe: Murder of Dusko Jovanovic among the oldest unsolved cases], May 1, 2020, URL: <https://safejournalists.net/me/savjet-evrope-ubistvo-duska-jovanovica-medu-najstarijim-neriješenim-slucajevima/>, accessed: March 21, 2021

81 SafeJournalists.net, "Čadjenović: Uhapšeni osumnjičeni za napad i planiranje ubistva Lakić" [Cadjenovic: Suspects for attack and murder planning of journalist Lacic arrested], December 25, 2020, URL: <https://safejournalists.net/me/cadjenovic-uhapseni-osumnjiceni-za-napad-i-planiranje-ubistva-lacic>, accessed: March 25, 2021

82 Protector of Human Rights and Freedoms - Ombudsman, "Izveštaj o radu za 2020" [Work Report for 2020], Podgorica: 2021, p. 21, URL: [https://www.ombudsman.co.me/docs/1619074992\\_izvjestaj\\_01042021.pdf](https://www.ombudsman.co.me/docs/1619074992_izvjestaj_01042021.pdf), accessed: April 7, 2021

83 Human Rights Action, "Predlog propisivanja dva nova krivična djela i dopune krivičnih djela Teško ubistvo (čl. 144) i Teško tjelesna povreda (čl. 151) u cilju pojačane zaštite novinara u obavljanju profesionalnih zadataka" [Proposal for prescribing two new criminal offenses and amending the criminal offenses of Aggravated Murder (Art. 144) and Serious Bodily Injury (Art. 151) for the purpose of enhanced protection of journalists in performing professional tasks], Podgorica: 2020, URL: <http://www.hracion.org/wp-content/uploads/HRA-Predlog-izmene-KZ-a-19-01-2014.pdf>, accessed: April 10, 2021

84 Ibid. p. 2

85 Ibid.

86 Ibid. p. 4

“Such protection would be in line with the European standards and the case law of the European Court of Human Rights which in several decisions highlighted the “positive obligation” of the state under Article 10 of the European Convention on Human Rights to provide a safe environment for enjoying the freedom of expression. Thus, the adoption of proposed amendments to the Criminal Code would help to meet this obligation.”<sup>87</sup>

Regardless of the elaboration and importance of the proposed solutions, the amendments proposed by the Human Rights Action, and supported by the Trade Union of Media of Montenegro, were not accepted during the amendment process of the Criminal Code in 2017.

In 2014, in order to establish greater efficiency in investigations of attacks on journalists and to examine the conduct of state bodies in investigations of previous cases of attacks on journalists, the Government of Montenegro established a Commission to monitor the actions of competent authorities in investigating threats and violence against journalists, murders of journalists and attacks on media property. Although it has been functioning for many years, this body still does not work at full capacity because the state authorities and primarily the Prosecutor's Office do not provide the necessary data. Only in April 2021<sup>88</sup> the Government decided to appoint new members of the Commission. Thus, the Commission expanded the number of members and its powers in the new mandate.

After numerous attacks on journalists in 2021, the Ministry of the Interior announced its intention to initiate amendments to the Law on Public Order and Peace in order to strengthen the protection of journalists.

“Whoever obstructs or belittles an official of a state body or organization... or a journalist in connection with the performance of a professional task, shall be punished for the misdemeanor by a fine of EUR 50 to 1,500 or prison sentence for a term of up to 60 days.”<sup>89</sup>

## Socio-economic position of journalists and other media workers

Although the Labor Law is not directly related to the media sector, it is necessary to regulate labor relations in the media and establish standards that the media, as employers, must respect when it comes to the rights of employees.

In Montenegro, there are no precise data on the number of employees in the media, because it is not known how many media operate in our country, given that a significant number of them are not registered. The latest data on the number of journalists are from a survey conducted by the CEDEM in 2014 for the needs of the Trade Union of Media of Montenegro. According to the report “Social position of the journalistic profession in Montenegro”<sup>90</sup>, a total of 809 journalists worked in all media. The total number of media was 57. In the meantime, after almost seven years, a large number of media outlets have been founded and a number of media outlets have dismissed a significant number of employees so that this

data cannot be used as relevant today.

Unfortunately, the position of journalists remains unchanged in Montenegro: poor salaries, pressures and attacks on journalists are pronounced, with great fear of losing their jobs. Salaries of media employees are still in the largest percentage below the national average and do not correspond to the importance and contribution that the media community has and gives to society. According to the data of the Trade Union of Media of Montenegro, the salaries of journalists in private media are around EUR 450-500 on average, while in local public broadcasters this average is even lower. Wage arrears are also very pronounced, especially in the local media where salaries are up to 10 months late.

Low wages are not the only problem that exists in the media. Undeclared work or work based on service contracts, dismissals, overburdening of a small number of employees, as well as non-payment of salaries for overtime and work during the holidays, are still present. All this leads to censorship and self-censorship, which weakens the professional standards and reduces the research capacity of the editorial offices. Investigative journalism in Montenegro is also endangered by the overload of a small number of employees and the “daily tape” which forces them to publish a large number of articles/stories every day. The volume of work in the Montenegrin media has not decreased over the years, although the number of employees in the media has decreased several times during that period. A special problem is the almost unregulated labor relations in digital media portals, which often do not have their newsrooms, not to mention employment contracts for employees. All of these are problems that multiplied during 2020, especially due to the corona-virus pandemic. According to the data of the Trade Union of Media of Montenegro, some Montenegrin media outlets' newsrooms with an already little staff were left to a small number of employees who came to work every day. Namely, the possibility of absence due to the coronavirus pandemic, as well as the possibility of working from home, was used by media employees as well, which led to the overload of those who worked from the newsrooms. On the other hand, working from home represented additional costs for media employees (costs of electricity, telephone, and computer) because the newsrooms did not provide them with additional funds for teleworking. Working hours were also very flexible, which in many cases meant unpaid overtime. The TUMM data show that journalists found stories easily and that they are already used to the changed way of communicating with their interlocutors. During 2020, layoffs were also registered in some private media.

During the pandemic, the Government of Montenegro helped, directly and indirectly, the Montenegrin media with EUR 2.5 million<sup>91</sup>. The Trade Union of Media believes that it was necessary to prescribe rules that would provide the employees in these media to experience this help as well. Namely, during the last year, the TUMM submitted an initiative<sup>92</sup> to the media to partly redirect the money they received as help from the state to employees because they were the ones who felt the biggest impact of the pandemic. However, it is not known how many media outlets actually did it.

Ombudsman Sinisa Bjekovic points out that the Covid-19 pandemic in Montenegro showed that the period of uncertainty and challenges remin-

87 Ibid, p. 5

88 M.S. “Nova komisija” [New Commission], Dan.co.me, published on April 23, 2021, URL: <https://www.dan.co.me/?nivo=3&rubrika=Drustvo&clanak=789666&datum=2021-04-23>, accessed: April 23, 2021

89 Proposal for amendments to Article 11, paragraph 1 of the Law on Public Order and Peace, presented by the Ministry of the Interior at a working breakfast for representatives of the media community on May 11, 2021

90 Cedom, OSCE, “Socijalni položaj novinarske profesije u Crnoj Gori” [Social position of journalism in Montenegro], Podgorica: 2014, URL: <https://www.osce.org/files/documents/4/3/135561.pdf>, accessed: April 2, 2020

91 SafeJournalists.net, “Državna pomoć medijima: Od svakoga po malo, ni od koga dovoljno” [State aid to the media: A little from everyone, not enough from anyone], February 25, 2021, URL: <https://safejournalists.net/me/drzavna-pomoc-medijima-od-svakog-po-malo-ni-od-koga-dovoljno/>, accessed: March 17, 2021

92 Trade Union of Media of Montenegro, “Sindikati: Zaposleni u medijima nijesu osjetili pomoć države u doba korone” [Trade Union: Employees in the media did not experience the state aid during the corona time], November 24, 2020, URL: <https://sindikatomedija.me/press/sindikati-zaposleni-u-medijima-nijesu-osjetili-pomoc-drzave-u-doba-korone/>, accessed: March 17, 2021

ded everyone of the irreplaceable role of journalists in reliable and timely informing the public and the importance they have in all democratic societies.

**"While citizens, in fear of an unknown disease, reduced their activities to the necessary minimum and performed all possible work duties from their homes, media workers with colleagues around the world were and remain one of the heroes of this story."<sup>93</sup>**

Bjekovic points out that, based on domestic and international reports, as well as monitoring the situation and events in the media sector, one gets the impression that the status of journalists still does not reflect the importance of the role they play in society. As an important precondition for improving the position of journalists in society, the Ombudsman emphasizes the obligation of dedicated and persistent work of public authorities to provide better security, labor, legal and economic conditions for the work of journalists.

**"At the same time, we expect that professionalism, objectivity and responsibility, as unquestionable postulates of the journalistic profession, will not give in to the challenges and interests created and imposed by the socio-political context. In that direction, greater cooperation within the media community is necessary, in order to influence the expected changes."<sup>94</sup>**

Censorship and self-censorship are still very pronounced, and the hierarchy of influence has been reaffirmed, so those closest to journalists (editors) are rated as the persons who have the most influence on the work of journalists. Researches as well as reports of the international organizations, primarily the European Commission, show that journalists face fears of lawsuits for violations of personality rights and that these lawsuits are used as "means of intimidating journalists and the media." Although defamation was decriminalized in 2011, the satisfaction of rights on this basis is possible in civil proceedings under the Law on Obligations<sup>95</sup>. The Law on Media stipulates that the publication of information that may harm reputation and honor is allowed if the information is accurate and if it reports on matters of public importance and contributes to the right to better information<sup>96</sup>. The novelty introduced by the new Law on Media is also the principle of joint responsibility of the founders, editor-in-chief and journalists if it is proven that they acted contrary to the due journalistic attention<sup>97</sup>. On the other hand, the Law on Obligations defines more precisely what a violation of reputation and honor is, as well as how it is possible to determine the amount of a fine in case of violation of that right.

**"(1) Whoever harms the honor of another person, as well as whoever states or disseminates untrue allegations about the past, knowledge, ability of another person, or anything else, and knows or should know that they are untrue, thereby causing them material damage, shall be obliged to compensate it. (2) The person who makes a false statement about another person without knowing that it is untrue if they or the person about whom they made the statement had a serious interest in it, shall not be liable for the caused damage."<sup>98</sup>**

The Trade Union of Media of Montenegro' research "Facts v. lawsuits - Ten years since decriminalization of defamation in Montenegro" showed that in the decade since defamation was decriminalized, more than 200

claims were filed for violation of personality rights and journalists and/or media were required to pay about EUR 3 million<sup>99</sup>. However, the research also showed that citizens were actually the ones who most often sued the media, while in second place were colleagues from other media or media owners who sued the competition. Such a practice is disastrous for strengthening media freedoms because, in addition to weakening the financial media, it also indicates weak self-regulatory mechanisms.

A special problem related to the state of play in the media is the position of other employees in the media. Namely, all civil sector's researches refer to journalists, and there is little data available on the number of other media workers, as well as on the salaries and position of other categories of employees (photojournalists, cameramen, TV editors, soundman...). For example, the Trade Union of Media's data shows that along with the increase in the number of electronic media, there has been a large decrease in the number of employed photojournalists by almost 50 percent (from 35 to about 15). It is necessary, when drafting laws and other legal acts, to take into account other categories of employees.

Improvement of the material and social position of employees can be partially achieved through the adoption of the Branch Collective Agreement for the media, which would regulate the employment status of media employees and offer minimum standards in which media workers would work in the future. In addition, it is necessary to, by the Strategy, encourage individual media and their employees to enter into collective bargaining, so that media organizations too would conclude collective agreements. Without economically empowered media workers and journalists, there can be no freedom of the media and freedom of expression, and thus no progress can be made in the country.

There is an additional problem when it comes to freelance journalists. The term freelancer is normatively partially recognized in Montenegro. It is foreseen neither by any of the media laws nor by Branch Collective Agreement for Information, Graphics and Publishing Field. Only the Statute of the Trade Union of Media envisages freelancers (freelance journalists) as possible members of the Trade Union, defining them as "freelance journalists who mostly earn their income by performing journalistic professions".

On the other hand, from the tax aspect, the Law on Personal Income Tax recognizes "freelance journalists" within the "freelance professions". Namely, Article 16, paragraph 1 defines income from self-employment as income from economic activity, freelance professions, professional and intellectual services and income from other self-employment that is not the main activity of the taxpayer but is occasionally performed for the purpose of generating income, unless, under this Law, it is taxed on another basis. In paragraph 3 of the same article as self-employed activities are considered independent activities of health workers, veterinarians, lawyers, notaries, auditors, engineers, architects, advisers, consultants, translators, journalists and other similar activities.

The issue of "freelance journalists" in a professional sense should be recognized through the media laws. Thus, they should be provided with all the rights that journalists employed by the media have, primarily from the aspect of freedom of the media and media workers<sup>100</sup>.

93 Interview, Sinisa Bjekovic, interviewed by Bojana Lakovic Konatar, March 17, 2021

94 Ibid.

95 Law on Obligations, "Official Gazette of Montenegro", No. 47/2008, 4/2011 – other law and 22/2017

96 Law on Media, Article 39

97 Ibid. Article 24

98 Law on Obligations, Article 205

99 Trade Union of Media of Montenegro, "Činjenica protiv tužbi – Deset godina dekriminalizacije klevete u Crnoj Gori", [Facts v. lawsuits - Ten years since decriminalization of defamation in Montenegro], Podgorica: 2021, p. 5, URL: <https://sindikatomedija.me/publikacije/cinjenica-protiv-tuzbi-deset-godina-dekriminalizacije-klevete-u-crnoj-gori/>, accessed: March 25, 2021

100 Trade Union of Media of Montenegro, "Nijedan medijski zakon ne prepoznaje freelansere" [No media law recognizes freelancers], May 4, 2021, URL: <https://bit.ly/3eQn45>, accessed: May 4, 2021

# GOOD PRACTICES AND POSITIVE DEVELOPMENTS REGARDING THE MEDIA FREEDOMS AND SAFETY OF JOURNALISTS

At the proposal of the Trade Union of Media, the Law on Media included a provision guaranteeing journalists the right to be informed about the changes in the text after submitting the text to the editor and to refuse to sign it if they believe that it does not correspond to the facts. This provision protects journalists from possible subsequent interventions in their texts, which may result in misinterpretation by the editors.

**“Media content which meaning has been changed during the editorial processing may not be published under the name of a journalist without his consent.**

**The editor-in-chief is responsible for the media content referred to in paragraph 1 of this Article.**

**If the reputation of a journalist is harmed by the media content referred to in paragraph 1 of this Article, the journalist may claim damages.”<sup>101</sup>**

The Law provides a journalist the right to refuse to prepare, write or participate in shaping media content that is contrary to the Law and the Code, with a written explanation to the editor-in-chief.

As a result, their employment cannot be terminated, their salary or remuneration cannot be reduced, nor can they be placed at a disadvantage in any other way.

Vukovic points out that the laws provide protection to journalists in cases of tasks that are not in accordance with professional ethics, but “of course, there is the question of application and control of legal solutions, as well as clear procedures in which journalists exercise their rights.” He explains that the existing solutions refer exclusively to journalists, while the status of other media workers is questionable.

**“The question then arises whether a producer, cameraman or TV editor has the right to refuse to participate in shaping media content that is contrary to the law and professional ethics, or whether their employment may be terminated because of that.”<sup>102</sup>**

The protection of journalists goes a step further in the case of the Public Broadcasting Service Radio-Television of Montenegro (RTCG). They prescribed that the employment contract of journalists cannot be terminated, their salary cannot be reduced, their status in the editorial office cannot be changed or their responsibility cannot be determined “due to an attitude or opinion expressed in accordance with professional standards and program rules<sup>103</sup>”.

Such a guarantee must be provided to both employees in private media and local public broadcasters, especially bearing in mind the several attempts of individual private media to impose limitations on the use of social networks by employees in expressing their views.

The potential impact on their reporting is further elaborated, so it is prescribed that journalists employed in the RTCG cannot receive compensation from other legal and natural persons for their regular work with the primary employer.

Therefore, it is necessary to transpose the provisions that offer such protection to employees of the Public Broadcasting Service. This means to prescribe that journalists have the right to express their opinion regarding all events, phenomena, persons, objects and activities, and that their employment contract cannot be terminated due to the stated views, their salary cannot be reduced, their status in the editorial office cannot be changed, nor the contracted income or its part can be reduced or suspended. If the employer initiates such a procedure, the burden of proof must be on the issuer.

**“Freedom of speech must be guaranteed to all and media workers must not be excluded from that rule.”<sup>104</sup>**

Another novelty of the Law on Media is the introduction of records of media financing from public revenues. Until now, the issue of advertising of state bodies and local self-government bodies has been secret and the subject of numerous appeals from the civil sector that demanded greater, i.e. complete, transparency. The practice so far has made it possible to “reward” the media loyal to the authorities and to “punish” those who were critical. Therefore, there were absurd situations of disproportion between viewership and influence, on the one hand, and the aid provided, on the other hand<sup>105</sup>.

From now on, under the provisions of the Law on Media, state bodies and local self-government bodies, as well as the media themselves, will be obliged to report on money from public funds paid for advertising and this information will be public.

In theory, it is a good practice to establish a Fund for Encouraging Media Pluralism and Diversity, because it will provide greater coverage of topics of public importance in the private media as well. However, the functioning of this Fund must be transparent and media employees must be adequately rewarded for the production of media content for which the media will receive money from this fund.

<sup>101</sup> Law on Media, Article 27 (“Official Gazette” No. 82/2020)

<sup>102</sup> Interview, Vuk Vukovic, interviewed by Bojana Lakovic Konatar, April 10, 2021

<sup>103</sup> Article 16 of the Law on National Public Broadcaster Radio-Television of Montenegro (“Official Gazette” No. 80/2020)

<sup>104</sup> Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

<sup>105</sup> Center for Civic Education, “Novcem svih gradana do podobne uredivacke politike” [With the money of citizens towards a suitable editorial policy], URL: [http://cgo-ccc.org/2021/04/23/novcem-svih-gradana-do-podobne-uredivacke-politike/?fbclid=IwAR22HpACTf\\_TGdez2xiDWZIH8z\\_hgtgVIGD2Mk2VNg-Z9ka5fID8kn4laZE#YifaoUzbIX](http://cgo-ccc.org/2021/04/23/novcem-svih-gradana-do-podobne-uredivacke-politike/?fbclid=IwAR22HpACTf_TGdez2xiDWZIH8z_hgtgVIGD2Mk2VNg-Z9ka5fID8kn4laZE#YifaoUzbIX), accessed: April 23, 2021

The Draft Law on Audio-Visual Media Services in some parts can be considered a step forward in regulating this area. For example, by obtaining the authority to impose administrative and supervisory measures, the Agency for Electronic Media (AEM) would address the main shortcoming that has not allowed the media to “take seriously” the decisions of this body so far. The proposed amendments, which are now in draft form, allow the AEM to impose warning penalties, fines, as well as to temporarily or permanently revoke broadcasting licenses. This is a big step forward in ensuring the independence of the AEM, because the media will look at the decisions made by this body differently. In addition, it is positive that the revenues collected in that way will flow into the Fund for Encouraging Media Pluralism and Diversity.

Vukovic commended the efforts of the Agency for Electronic Media in terms of affirmation of media literacy, which is also recognized by the Draft Law. The Draft Law on Audio-Visual Media Services introduces a novelty in the form of the obligation to promote media literacy. Thus, the AEM is obliged to promote and take measures for the development of media literacy and measures aimed at developing a media environment that is safe for children and youth as well as to periodically conduct research to improve media literacy<sup>106</sup>. In addition, the AEM is obliged to monitor international practice and studies and to distribute scientific and other publications on children and youth. In this regard, the AEM has made efforts in the previous period to raise the level of media literacy, especially in the area of training for students, teaching staff, etc. In addition, numerous analyzes and data that are of great importance for monitoring the level of progress when it comes to media freedom, media literacy, but also the position of media employees can be found on the AEM website.

The Draft Law on Audio-Visual Media Services, at least formally, offers the protection of the local public broadcasters. At the TUMM proposal, a new article was introduced referring to the content of the founding act of the public broadcaster<sup>107</sup>. This article prescribes that the Law or the decision on the establishment of a public broadcaster shall determine the provision of public services and activities of these broadcasters, competencies and all issues related to management bodies, the manner of financing these media, as well as the content of the statute. A new article is introduced which refers to the responsibility of public broadcasters towards the public<sup>108</sup>. As specified, it is realized through the procedure of appointment and work of council members, through informing the public about the activities of the public broadcaster, through the introduction and implementation of procedures for complaints and representations to their work, as well as through publishing reports on work, financial operations and audit. Special attention is paid to the financing of public broadcasters. It is prescribed that they receive revenues from the budget of Montenegro (for RTCG), i.e. the budget of local self-government units (for local public broadcasters) and other sources. In order to finance these media, the Government and municipalities sign agreements with public broadcasters regulating mutual rights and obligations. The Draft Law offers larger funds from the budget of local self-government units for local public broadcasters thus ensuring their financial sustainability, but also editorial independence that should be strengthened by a new way of electing the Council of the local public broadcasters, which is also prescribed by this draft law.

It has been shown by the example of the Law on Free Access to Information that public pressure can also influence the Government's policy. After the Government planned to organize a “public dialogue” on the Law Amending the Law on Free Access to Information at the beginning of 2020, it

gave up on that plan in March. Namely, due to pressure from the media, non-governmental organizations and the interested public, the Ministry of Public Administration (MPA) gave up on organizing online events to discuss these solutions. The MPA announced<sup>109</sup> that, once the health situation stabilized, the process of adopting this Law would continue. On the other hand, the civil sector considered that it was not a good way to decide on the constitutional right of all citizens in a short procedure and online<sup>110</sup>.

By ratifying the Council of Europe Convention on Access to Official Documents<sup>111</sup>, which entered into force on 1 December 2020<sup>112</sup>, Montenegro has undertaken an obligation to provide access to public documents in possession of the state authorities. Certainly, this positive practice will make it easier to access information. As explained in the CoE document, “official documents mean all information recorded in any form, drawn up or received and held by public authorities”<sup>113</sup>.

At the beginning of 2021, due to the increased number of attacks on journalists, the civil sector, but also the Government representatives, actualized the amendments to the Criminal Code and offered several solutions on how journalists could be protected, one of which was to provide journalists with the status of an official<sup>114</sup>. Public condemnation and attempts to increase the protection of journalists and other media workers were also understood by representatives of the Government and representatives of the ruling majority in Montenegro and were supported by Prime Minister Zdravko Krivokapic himself<sup>115</sup>.

According to the TUMM president, Marijana Camovic Velickovic, the most acceptable solution for the Trade Union of Media is the one offered by the HRA.

**“The introduction of new criminal offenses in which the penalties for attackers on journalists have been increased is a solution that, it seems to us, would have an effect in terms of demotivating the attackers. The current government recently expressed readiness to amend the Criminal Code in order to help journalists and put an end to attacks on them, so we hope that it will do so in a way that will be the most useful to the journalistic community and that it will be open to our proposals and arguments.”<sup>116</sup>**

109 Ministry of Public Administration, “Nastavak dijaloga oko Zakona o SPI po isteku privremenih mjera” [Continuation of the dialogue on the Law on Free Access to Information after the expiration of temporary measures], April 14, 2020, URL: <https://www.mju.gov.me/vijesti/223762/Nastavak-dijaloga-oko-Zakona-o-SPI-po-isteku-privremenih-mjera.html>, accessed: March 27, 2021

110 Rudovic, Milos, “O slobodnom pristupu sljedeceg mjeseca” [Free access to be discussed next month], Vijesti.me, published on June 21, 2020, URL: <https://www.vijesti.me/vijesti/drustvo/444351/o-slobodnom-pristupu-sljedeceg-mjeseca>, accessed: March 25, 2021

111 Law on Ratification of the Council of Europe Convention on Official Documents (“Official Gazette of Montenegro”, No. 7/201)

112 Council of Europe, member states that have ratified the Convention on Access to Official Documents, URL: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p\\_auth=uj9Nupx](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p_auth=uj9Nupx), accessed: April 14, 2021

113 Matijasevic, Biljana, “Vlast mora da omogući pristup javnim dokumentima” [The authorities must provide access to public documents], Vijesti.me, published on December 2, 2020, URL: <https://www.vijesti.me/vijesti/politika/491177/Vlast-mora-da-omogući-pristup-javnim-dokumentima>, accessed: March 25, 2021

114 Hajdukovic, Blazo, “Abazovic: Napad na novinare tretirati kao napad na službeno lice” [Abazovic: Attack on journalists to be treated as an attack on an official], Vijesti.me, March 28, 2021, URL: <https://www.vijesti.me/vijesti/drustvo/524919/abazovic-napad-na-novinare-tretirati-cao-napad-na-sluzbeno-lice?fbclid=IwAR2AlxN6mMaRnxHEBSZO5P8gRT-X4xC3WBpd4wNdnvFqMwmNHC-7wI3i3w>, accessed March 28, 2021

115 Cabinet of the Prime Minister of Montenegro, “Premijerski sat – premijer Krivokapic: Otvoreno pitanje oko Prevlake ne može biti prepreka za dalje napredovanje Crne Gore ka članstvu u EU” [Prime Minister's Question Time - Prime Minister Krivokapic: Open issue about Prevlaka cannot be an obstacle for further progress of Montenegro towards EU membership], Government of Montenegro, April 28, 2021, URL: <https://www.gov.me/vijesti/243478/Premijerski-sat-premier-Krivokapic-Otvoreno-pitanje-oko-Prevlake-ne-moze-biti-prepreka-za-dalje-napredovanje-Crne-Gore-ka-clanstvu-u-EU>, accessed: April 28, 2021

116 Interview, Marijana Camovic Velickovic, interviewed by Drazen Djuraskovic, April 11, 2021

106 Ibid. Article 51

107 Ibid. Article 78

108 Ibid. Article 79

# CONCLUSION

In order to harmonize Montenegrin legislation with the European regulations, the laws that treat the media in Montenegro have undergone several changes in recent years. What all of them have in common is that the public debates generally lasted a very long time, but in the end, the adopted solutions were still the target of serious criticism from the media community and the civil sector.

This is also the case with the laws adopted in summer 2020: the Law on Media and the Law on National Public Broadcaster Radio-Television of Montenegro.

The very context of the adoption of the laws (on the eve of the Parliamentary elections in 2020) caused certain reservations about the adopted solutions.

The Law on Media has been criticized for insufficiently precise regulation of the media registering procedure, especially online publications, again leaving much room for abuse.

The Law introduces the Fund for Encouraging Media Pluralism and Diversity for the first time as a support mechanism for commercial and non-profit media in Montenegro. The Law stipulates that at least 0.09% of the current budget of Montenegro is allocated for the Fund, out of which 60 percent for electronic media, and 40 percent for daily and weekly print media and online publications. For the operating costs of the various self-regulatory mechanisms, five percent of the funds will be allocated annually from each of the sub-funds.

It is necessary to prescribe clear and measurable criteria for the allocation of financial means from that Fund. This time, the effects of state aid need to be experienced by media employees who are responsible for creating media content and placing it towards the final audience. Having regard to this, the state must make sure that the new legal solutions are not only mere legalization of state aid for the media sector but also that media employees are recognized as part of the media system, most responsible for timely informing of the citizens.

The self-regulation financing by the state is also problematic, which, in the nature of things, should be exclusively a matter of the media.

Existing legal solutions do not guarantee greater independence of

journalists from the influence of owners in private media. The statute as a mechanism for the protection of journalistic autonomy and the conscience clause as a mechanism for the protection of those who warn against censorship must be defined by the Law on Media together with the mechanisms that guarantee their implementation.

For the first time, the Law on Media introduces limitations on the protection of sources of information i.e. that, at the request of the prosecution, journalists have to disclose the unofficial source. The cases in which this limitation is allowed must be more precisely defined, as well as the procedure itself, leaving no room for broader interpretations.

At the proposal of the Trade Union of Media, the Law on Media included a provision guaranteeing journalists the right to be informed about the changes in the text after submitting the text to the editor and to refuse to sign it if they believe that it does not correspond to the facts. This provision protects journalists from possible subsequent interventions in their texts, which may result in misinterpretation by the editor.

The protection of journalists goes a step further in the case of Radio Television of Montenegro. They prescribed that the employment contract of journalists cannot be terminated, their salary cannot be reduced, their status in the editorial office cannot be changed or their responsibility cannot be determined "due to an attitude or opinion expressed in accordance with professional standards and program rules". Such a guarantee must be provided to both employees in private media and local public broadcasters.

The mentioned Law introduces the institute of Ombudsman of the Public Broadcasting Service for the first time. It will take over the competencies of the Commission for Representations and Complaints, which operated within the RTCG Council. The system of self-regulation, however, has not been elaborated in detail, so the RTCG Council, which has no mechanisms for determining responsibility for omissions, adopts conclusions of the Ombudsman, as well as conclusions of the previous Commission.

Although the call for the election of persons to perform this function for a three-year term was announced twice, the first time at the end of 2020, and the second time in January 2021, the public is not awa-



re that anyone has been appointed, about which there is no information on the RTCG website.

The issue of independence of the national broadcaster is a topic that draws the most attention of the domestic and international public when it comes to the functioning of the RTCG. Although the Law guarantees such independence, it does not prescribe adequate mechanisms for determining accountability in the case of biased and unilateral reporting by the RTCG.

Different interpretations of certain norms of that law were again present during the election of the new RTCG Council in April 2021, which is why it is necessary to define more clearly the criteria and rights of candidates proposed for membership in the Council.

The new Government of Montenegro, voted by the Parliament in December 2020, has already announced amendments to the existing laws, explaining that, apart from them, the Law on Electronic Media that has been in a draft form for several years will be amended as well. The significance of the amendments to that regulation and its adaptation to the modern working conditions of the media is thus greater if we take into account the chronically poor economic position of local public broadcasters, which must certainly be the subject of that law.

The applicable Law on Electronic Media has great limitations when it comes to the position of local public broadcasters, whose founders are municipalities because it does not offer them adequate protection. It envisages financing of public broadcasters from the state budget and local self-government budgets but does not establish the obligation of determining the minimum amount of the part of the general budget that should be defined by the law (in the case of state public broadcaster) and decisions on the establishment (in the case of local public broadcasters). Without such an obligation, the question of the sustainability of these media is raised and the possibility for these media to fulfill their role in society is reduced.

The problem of financial sustainability of the national public broadcaster Radio-Television of Montenegro was significantly reduced due to the amendments to this regulation in 2016. It established the obligation of financing the RTCG from the budget of Montenegro for the core business, with annual funds amounting to 0.3% GDP and being estimated by the Government through the adoption of macro-economic and fiscal policy guidelines. The adoption and introduction of a similar provision that would define the financing of local public broadcasters would provide some kind of security for these media. The draft Law on Audio-Visual Media Services (which should succeed the Law on Electronic Media) at least formally offers the protection of local public broadcasters, so, in addition to the content of the statute, it also regulates the public broadcasters financing.

The Law on Free Access to Information, on the other hand, does not recognize journalists as special subjects that use the mechanisms of that regulation but goes a step further prescribing a whole list of limitations that hinder access to information. It is precisely because of the broad definition of a business or state secret, as one of the reasons, that this law has been the target of a great deal of criticism since its enactment. The Law, as explained, gives a lot of space to public authorities to declare a large amount of information secret, thus limiting the amount of available information and reducing the public control over the work of state bodies.

Lack of recognition of the journalistic profession and journalistic work is a potential problem in the Law on Copyright and Related Rights as well. The issue of regulation of mutual relations between the employer and the media worker is disputable in cases where the media worker is the author of a copyrighted work, which is ceded to the employer without limitation if the work was created as part of the work tasks of a media worker.

The atmosphere of the "impunity" for attacks on journalists must be stopped by an adequate reaction of the competent authorities by introducing criminal protection of journalists, prescribing new criminal offenses and tightening the penal policy for offenses committed to the detriment of journalists within the Criminal Code of Montenegro. The NGO Human Rights Action (HRA) has been advocating such solutions for more than 10 years.

The socio-economic position of media employees is extremely poor and is characterized by low wages, disrespect for labor rights especially when it comes to overtime and work during public and religious holidays, which is not proportional to their importance in society and which was especially evident during coronavirus pandemic.

# RECOMMENDATIONS

Amendments to the Law on Media and the Law on National Public Broadcaster Radio-Television of Montenegro in 2020 have led to some improvements in the overall media legislation of Montenegro. However, there are numerous objections to some solutions as well as certain ambiguities and shortcomings in these laws, so it is necessary to restart the debate on amendments to these laws to further improve the media pluralism and freedom of the media in Montenegro. Given that the new Government has announced its readiness to reopen a dialogue on all media laws, it is necessary to use this opportunity to further define the legislative framework in the field of media.

The Law on Media needs to be further amended, in particular, to better regulate the registration and operation of online publications (portals) and prevent negative impacts on freedom of speech; to try to further improve the independence of media workers within newsrooms by transposing provisions of the Law on National Public Broadcaster Radio-Television of Montenegro which provide complete freedom of speech to employees; to initiate a debate on further democratization of the media that could be achieved by introducing provision on the possibility of journalists' influence on the election of the editor-in-chief as well as provision on a conscience clause, as in Slovenia and Croatia. It is necessary to reopen the debate on the provision that envisages the obligation of journalists to disclose sources in certain cases and to define more clearly the situations when this provision can be used.

It would be welcome to partially amend the Law on National Public Broadcaster primarily in terms of strengthening the accountability of management bodies: the Director-General and the Director of Radio-Television of Montenegro as well as to define penal provisions for violation of program and professional standards

Given the difficult situation in some local public broadcasters, it is necessary to adopt a new Law on Audio-Visual Media Services as soon as possible, which would ensure the financial sustainability and editorial independence of local public broadcasters. It is necessary to establish the obligation of municipalities to determine the minimum amount of the part of the general budget that will be used for the local public broadcasters' financing. In addition, it is necessary to change the current way of electing the councils of local public broadcasters to neutralize the political influence of the governing structures in the municipalities on the work of these media. The Law on Audio-Visual Media Services should also strengthen the independence of the Agency for Electronic Media by enabling it to impose fines on broadcasters for violations.

The Law on Free Access to Information needs to be amended in order to reduce the large scope of limitations on journalists to access information held by state bodies. In addition, the amendments should eliminate the administrative costs of submitting and processing data that are currently at the expense of journalists or newsrooms, and perhaps simplify the procedures for obtaining this information from state bodies because it is information of public importance. This would also improve the framework for investigative journalism in Montenegro that faces numerous administrative barriers, to which this law contributes the most.

It is necessary to amend the Law on Copyright and Related Rights in order to better protect the copyrights of journalists, photojournalists and other media workers, which are being increasingly violated due to the rapid digiti-

zation and emergence of new technologies and social networks.

In order to better protect media workers from attacks and threats, it is necessary to amend the Criminal Code and introduce two new criminal offenses: Prevention of journalists from performing professional tasks and Attack on journalists when performing professional tasks, as well as to amend the criminal offenses of Aggravated Murder and Serious Bodily Injury, i.e. to increase penalties for these offenses if they were committed to the detriment of journalists and media workers. Other legislative proposals aimed at enhancing the protection of journalists and deterring potential future attackers should also be considered.

The State Prosecutor's Office and the Police Administration should re-investigate and try to resolve at least some of the old cases of attacks on journalists. The Commission for Monitoring Investigations of Attacks on Journalists can make a significant contribution by pointing out shortcomings in previous investigations, but also by proposing certain measures or actions that could be taken in re-investigations to possibly resolve these cases.

During the first allocation of financial means from the Fund for Encouraging Media Pluralism and Diversity, it is necessary to prescribe clear, measurable and objective criteria as well as control mechanisms for earmarked funds spending, in order to prevent the fund from becoming legalized state aid to the private sector, but also political clientelism, and the purchase of influence in the media. In particular, it is necessary to ensure that part of the financial means from the Fund is used directly to improve the socio-economic position of media employees, as they will produce media content for which their media will receive money from this fund.

Negotiations on the adoption of a new Branch Collective Agreement for the media sector need to be restarted to improve the labor and economic rights of media employees. This especially refers to employees in private and, above all, digital media where the labor rights of employees are severely affected or practically not even recognized by the owners of these media. It is necessary to increase the coefficients for photojournalists through bargaining as well as to introduce freelancers into the media framework through amendments to the media laws.

The Media Strategy of Montenegro 2021-2025 that will define the goals of media policy in the coming period needs to be adopted. It is necessary for the Strategy to clearly recognize the numerous challenges that exist in the field of media brought by digitalization and new technologies and to offer at least some solutions for them.

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