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PRAVNI MONITORING MEDIJSKE SCENE U SRBIJI

LEGAL MONITORING OF SERBIAN MEDIA SCENE

Monitoring Novosti 1 / Monitoring News Letter 1

Ovim brojem, ANEM započinje svoju novu aktivnost kreiranja i dostavljanja Monitoring Novosti široj medijskoj javnosti, kojima promoviše aktivnosti na realizaciji projekta „Pravni monitoring medijske scene u Srbiji i prateće promotivne aktivnosti“. Ovaj projekat, ANEM sprovodi u saradnji sa advokatskom kancelarijom „Živković&Samardžić“, uz podršku USAIDa i IREXa Srbija. Više o projektu, [ovde](#)

Za prvi broj Monitoring Novosti, izdajamo:

1. Prvi Izveštaj o pravnom monitoringu medijske scene u Srbiji - Monitoring medijske scene u Srbiji, sprovodi advokatska kancelarija „Živković&Samardžić“, specijalizovana za oblast medijskog prava, koja obavlja i poslove Pravnog odeljenja ANEMa. Navedenim projektom je, pored samog monitoringa, predviđeno i podnošenje redovnih mesečnih izveštaja, koji će biti dostupni na web sajtu ANEMa. Prvi izveštaj se odnosi na period maj - jun 2009.g. i sadrži niz podataka i činjenica, prikupljenih monitoringom, kao i njihovu stručnu analizu, uz ocenu stanja u medijskom sektoru Srbije za taj period. Više o Izveštaju, [ovde](#)

Ukazujemo na najvažnije nalaze i mišljenja iz ovog Izveštaja, koje detaljnije možete naći na ANEMovom sajtu:

- 1.1. Stanje medijskih sloboda i slobode izražavanja u Srbiji** - U posmatranom periodu, uočeno je da su pritisci na medije, u cilju njihovog ometanja u obavljanju posla, svakodnevna pojava i da često izostaje adekvatna reakcija javnosti na pokušaje pritiska. Postupci koji se vode povodom napada na novinare, traju dugo, a postoje i slučajevi njihove aktivne opstrukcije. Primetne su i kampanje, koje se organizovano i sistematski vode, od strane jednih medija protiv drugih. Mediji koji učestvuju u napadima često imaju krajnje netransparentnu vlasničku strukturu i netransparentno finansiranje, što otežava da se vidi ko zapravo stoji iza takvih kampanja. U sudskim postupcima koji se vode protiv novinara, po pravilu za klevetu i naknadu štete zbog povrede časti i ugleda, i pored toga što pravni okvir u dobroj meri jeste usklađen sa međunarodnim standardima, praksa sudova često odstupa od prakse Evropskog suda za ljudska prava u primeni člana 10 Evropske konvencije. Više o tome, [ovde](#)
- 1.2. Monitoring implementacije postojećih zakona** - U implementaciji Zakona o radiodifuziji nije bilo ozbiljnijih nepravilnosti. Ostaje, međutim, problem što Savet RRA i dalje radi u nepotpunom sastavu, s obzirom da Skupština još uvek nije izabrala nove članove na upražnjena mesta u ovom telu, što svakako baca senku na rad Saveta. U odnosu na druge propise od značaja za rad medija, ozbiljno se kasni u implementaciji Zakona o zaštiti podataka o ličnosti. Sa druge strane, Vlada je, reagujući na oštre kritike iz medijske industrije, predložila izmene Zakona o porezu na dohodak građana koje su usvojene i stupile na snagu 8. juna 2009. godine. Njima je korigovano povećanje poreza na honorare, u znatno manjem iznosu od prvobitno usvojenog. Međutim, iznos poreza ni time nije vraćen na prethodni nivo, pre izmena. Videti [ovde](#)

- 1.3. Monitoring procesa usvajanja novih zakona** - Nacrt Zakona o medijskoj koncentraciji i javnosti medijskog vlasništva, koji je pripremila radna grupa koju je formiralo Ministarstvo kulture, i dalje nije ušao u skupštinsku proceduru. U najavi su, izmene Zakona o radiodifuziji, Zakona o slobodnom pristupu informacijama od javnog značaja, Zakona o oglašavanju, Krivičnog zakonika i Zakona o autorskom i srodnim pravima. Ipak, ostaje da se vidi kakvi će biti konačni tekstovi ovih propisa kada budu usvojeni. Ono što ohrabruje, su javne rasprave koje se vode povodom izmena zakona, u kojima se uvažavaju zahtevi medijske industrije, kao u slučaju Zakona o autorskom i srodnim pravima. Iako je protekli period obeležila povećana aktivnost resornih ministarstava na izradi izmena postojećih ili pripremi nacrtu novih zakona, generalni zaključak je da su promene medijske regulative nedovoljne i spore. Više o svemu, [ovde](#)
- 1.4. Monitoring rada regulatornih tela, državnih organa i kolektivnih organizacija za zaštitu autorskog i srodnih prava** - Osnovni zaključak je da nadležni organi i organizacije do sada nisu uspeli da obezbede povoljno okruženje za nesmetano funkcionisanje elektronskih medija. Neefikasnost regulatornih tela u zatvaranju stanica koje nelegalno emituju programe, kao i previsoke naknade, doprinose pogoršanju položaja elektronskih medija. Iako je RRA donekle snizila svoje naknade, to sniženje nema isti efekat na sve emitere, pa ne utiče dovoljno na poboljšanje njihovog ekonomskog položaja. Izmenama Zakona o porezu na dohodak građana, skupštinska većina je pokazala odsustvo minimuma razumevanja za položaj medija, a izmenama Zakona o radiodifuziji, realizovala je nameru da obezbedi mehanizme apsolutne kontrole izbora članova sektorskog regulatora za radiodifuziju. Vlada je, na predlog Ministarstva kulture, 25. juna usvojila interventne mere za pomoć medijima u krizi, koje su medijski stručnjaci ocenili kao nedovoljne i zakasnele. Efekat ovih mera biće moguće proceniti tek nakon njihove konkretizacije i realizacije. Kolektivne organizacije nisu smanjile svoje tarife, ali je OFPS dao neke olakšice za plaćanje. Očekuje se, da će u skladu sa preporukom Vlade, obe organizacije izaći u susret zahtevima emitera i sniziti svoje tarife. Više informacija, [ovde](#)
- 1.5. Monitoring procesa privatizacije i digitalizacije**- U posmatranom periodu, nije bilo nikakvog pomaka u oblasti privatizacije medija. Zakoni, koji su u međusobnoj koliziji i dalje su nepromenjeni, prekinute privatizacije medija nisu do danas nastavljene, zbog čega se neprivatizovani mediji nalaze u pravnom vakuumu. Postoje nezvanične najave iz Ministarstva kulture o donošenju strategije za medijski sektor, koja podrazumeva i pitanje privatizacije, a na nekim javnim skupovima, iskazana je i volja predstavnika nadležnih ministarstava za usaglašavanje kolizionih odredbi i za nastavak procesa medijske privatizacije. Međutim, ništa od toga nije konkretizovano u posmatranom periodu. Korak napred predstavlja angažovanje nadležnih organa na donošenju Strategije prelaska na digitalno emitovanje i dosadašnja transparentnost ovog procesa, uz uključivanje predstavnika medijske industrije. Na predlog Ministarstva za telekomunikacije i informaciono društvo, Vlada je, 02. jula, usvojila Nacrt strategije digitalizacije, čime je Srbija otpočela pripreme za ovaj važan medijski tranzicioni proces. O svemu, [ovde](#)

2. Uskoro Prva Monitoring Publikacija - ANEM je, u sklopu aktivnosti za promociju rezultata pravnog monitoringa, predvideo kvartalna izdanja specijalizovane Publikacije, u elektronskoj i štampanoj formi. Publikacija će, pored uvoda sa kratkim osvrtom na prethodno sprovedeni tromesečni monitoring, sadržati i stručne tekstove na teme, koje su kroz monitoring, ocenjene kao značajne za medije u posmatranom periodu. Prvi broj Publikacije se odnosi na period maj - jul 2009. godine. Ova Publikacija će sadržati tekstove o: Strategiji digitalizacije, koju je Vlada usvojila 02. jula 2009; Nacrtu novog Zakona o autorskom i srodnim pravima, koji je prošao javnu raspravu i upućen je na dalje razmatranje nadležnim organima i Vladi; tekst o Izmenama Zakona o radiodifuziji, u kojem su posebno obrađene

poslednje izmene ovog Zakona, koje se odnose samo na izbor članova Saveta RRA; studije slučaja kršenja slobode izražavanja; preuzet tekst sa sajta Parlamentarne skupštine Saveta Evrope, o Indikatorima za medije u demokratiji, uz odobrenje Kancelarije Saveta Evrope u Beogradu. Publikacija će biti poslata na mailing liste ANEMa i dostupna na sajtu Asocijacije. Štampana verzija svakog broja biće promovisana na okruglim stolovima u Beogradu.

3. Najava drugog Izveštaja o pravnom monitoringu medijske scene u Srbiji - Ovim Monitoring Novostima, ANEM najavljuje drugi broj Izveštaja o pravnom monitoringu medijske scene u Srbiji, koji je u pripremi. On će sadržati najnovije informacije o uočenim problemima i pojavama koje su od značaja za položaj medija, u različitim oblastima koje su predmet monitoringa - sloboda izražavanja, regulatorni okvir, rad nadležnih organa i organizacija, tranzicioni procesi u medijskoj sferi i dr. Izveštaj će se odnositi na period - jul 2009. Njime će posebno biti obrađene nove tendencije odnosa vlasti prema medijima, koja pokazuje da je spremna i na brze promene zakona, ali samo kada to odgovara njenim interesima. Predlog Zakona o nacionalnim savetima nacionalnih manjina, koji je direktno suprotan medijskim zakonima, ukoliko bude usvojen, doprineće još većoj konfuziji regulatornog okvira i neravnoteži na medijskom tržištu. Predložene izmene Zakona o informisanju, koje su izazvale oštre kritike medijskih organizacija i šire javnosti, ozbiljno ugrožavaju dostignuti nivo slobode izražavanja i predstavljaju realnu osnovu za još veći politički uticaj na medije. O ovome i drugim važnim činjenicama, moći ćete uskoro da pročitate u novom monitoring izveštaju.

4. Monitoring aktivnosti na novom web sajtu ANEMa, uskoro – Planiranim restrukturiranjem i redizajnom web sajta, uz podršku USAIDa i IREXa, ANEM će imati mogućnost da sve svoje aktivnosti prezentira na bolji i povoljniji način za njegove posetioce. Monitoring projekat će imati posebnu sekciju, vidljivu na naslovnoj strani, u kojoj će se nalaziti sve najvažnije informacije o ovom projektu. Predviđena je i interakcija sa svim zainteresovanim, kojima će biti omogućeno da daju svoje komentare, sugestije i postavljaju pitanja na web sajtu.

U međuvremenu, ANEM poziva sve, koji žele da doprinesu nastavku medijskih reformi, da se svojim pitanjima ili predlozima, koji su u vezi sa monitoring projektom i njegovim rezultatima, obrate mailom Sekretarijatu ANEMa, na anem@anem.org.rs

Promotivne aktivnosti u okviru projekta: "Pravni monitoring medijske scene u Srbiji i prateće promotivne aktivnosti", sprovodi ANEM,



uz podršku USAIDa i IREX Serbia,



Ove Monitoring Novosti su realizovane zahvaljujući građanima SAD u okviru programa podrške medijima Američke agencije za međunarodni razvoj (USAID). Izneti stavovi pripadaju isključivo autorima i ne predstavljaju zvaničan stav USAID-a.

With this issue ANEM starts its new activity of creating and distributing Monitoring Newsletter to wider media public, with the aim to promote the activities implemented within the project „Legal Monitoring of Serbian Media Sector and Follow-up Activities“. ANEM implements this project in cooperation with „Zivković&Samardzic“Law Office, with the support of USAID and IREX Serbia. More about the Project, [here](#)

Highlights of the first issue of Monitoring Newsletter:

1. First Report on legal monitoring of media scene in Serbia – Monitoring of the Serbian media scene is conducted by the „Zivković&Samardzic“Law Office, ANEM Legal Department, specialized for media law. In addition to monitoring, the above project envisages submission of regular monthly reports which will be available at ANEM website. The first Report is for the period May - June 2009 and includes numerous data and facts collected during the performed monitoring and professional analysis, along with the assessment of the Serbian media sector status for that period. More about Report, [here](#)

The most important findings and opinions from this Report are presented below. You can see more details at the ANEM website:

- 1.1. Media freedoms and freedom of expression in Serbia** – During the observed period pressure on media, aimed at hindering their operation, occurred on a daily basis, with the absence of suitable public reaction. The judicial processes that are conducted because of the assaults on journalists last too long and are sometimes actively obstructed. Also, media conduct campaigns against each other in an organised and systematic manner. The media participating in these assaults have extremely non-transparent ownership structure as well as non-transparent financing, which make it still more difficult to see who is behind those campaigns. The court proceedings against journalists are usually conducted for slander or damages for tarnished honour and reputation. Regardless of the fact that legal framework is mostly harmonised with international standards, the practice of indigenous courts often diverges from that of the European Court of Human Rights when it comes to the application of the Article 10 of the European Convention. See further more, [here](#)
- 1.2. Monitoring of the implementation of existing legislation** – No major irregularities were observed in the implementation of the Broadcasting Law. However, the RBA Council is still incomplete since the Parliament has not yet elected new members for the vacant seats in this body, which surely casts a shadow on the Council’s activities. Compared to other media relevant regulations, the implementation of the Personal Data Protection Law is seriously lagging behind. On the other hand, responding to sharp criticism coming from media industry, the Government proposed amendments to the Personal Income Tax Law. These amendments that were adopted and came into force on June 8th 2009 reduced the tax on authors’ fees to a level that is much lower than the one previously in place. However, it failed to restore the prior tax level, the one before changes. Please, see [here](#)
- 1.3. Monitoring of the new laws adoption process** – The Draft Law on Illegal Media Concentration and Transparency of Media Ownership, prepared by the work group of the Ministry of Culture, has still not entered the parliamentary procedure. On the other

hand, alteration of the Broadcasting Law, the Law on Free Access to Information of Public Importance, the Advertising Law, the Criminal Code and the Law on Copyright and Related Rights, has been announced. However, it is still to be seen what versions of this legislation will be adopted. It is encouraging that public debates regarding the alterations of the laws are being held, and that requests by the media industry are duly taken into account, notably in the case of the Law on Copyright and Related Rights. The general conclusion is that changes to media regulations are inadequate and slow, even though in the past period more intense activity of relevant ministries on drafting the amendments to existing laws and preparation of the drafts of new laws is noticed. See more, [here](#)

- 1.4. Monitoring of regulatory bodies, public authorities and collective organizations for protection of copyright and related rights** - The main conclusion is that competent authorities and organizations have not yet managed to provide the favourable environment for functioning of electronic media. Inefficiency of regulatory bodies in closing the stations broadcasting illegally, the same as the too high mandatory fees contributes to worsening the position of electronic media. Even though RBA has decreased its broadcasting fees in certain amount, the effect of this reduction is not identical for all broadcasters and it does not sufficiently affect on the improvement of economic situation of broadcasters. By amending the Personal Income Tax Law the parliamentary majority displayed a lack of understanding for the position of media and by amending the Broadcasting Law, it also managed to provide the mechanisms of absolute control over the election of RBA Council members, the sectoral regulatory body. At the proposal of the Ministry of Culture, on June 25 the Government adopted the regulatory measures to assist the media in crisis. Media experts judged these measures as insufficient and belated. It would be possible to assess the effect of these measures only after they are specified and put into practice. Collective societies did not reduce their rates, but Organization of Phonogram Producers of Serbia (OFPS) provided some payment reliefs. It is expected that both organizations will meet the demands of broadcasters and reduce the fees, in line with the recommendation of the Government. More information can be seen [here](#)
- 1.5. Monitoring of privatization and digitalization processes** – No progress in media privatization was reported in the observed period. Since the laws relevant for this issue remain unchanged even though they are in a mutual collision and suspended media privatization processes were not resumed, the not yet privatized media are still in legal vacuum. The Ministry of Culture unofficially announced that a media sector strategy will be adopted and it would include the privatization issue. Also, at some public meetings representatives of competent ministries expressed the willingness to harmonise the colliding provisions and continue the media privatization process. On the other hand nothing of this was put into practice in the observed period. Still, the engagement of competent authorities in adoption of Digitalization Strategy is a step forward, as is, the transparency of this process and the participation of media industry in it. At the proposal of the Ministry for Telecommunications and Information Society, on July 2nd the Government adopted the Draft Digitalization Strategy and with this Serbia started preparations for this very important transition process. More about this, [here](#)

2. Soon – First Monitoring Publication – Within its activities on promotion of the results of legal monitoring, ANEM has envisaged quarterly issues of the specialized Publication, in electronic and printed format. Besides an introduction with a short review of the previously conducted three-monthly monitoring, the Publication will include professional papers on the topics which were assessed as significant for the media in the observed period. The first issue of the Publication will cover the period May – July 2009. This Publication will contain

the texts about: Digitalization Strategy which the Government adopted on July 02, 2009; draft of the new Law on Copyright and Related Rights which has gone through the public debate and was forwarded to the competent authorities and the Government for further consideration; a text about the amendments to the Broadcasting Law which specifically focuses on the latest amendments to this Law exclusively addressing the election of members to the RBA Council; case studies on infringements of freedom of expression; a text about the indicators for media in democracy that was, upon approval of the Council of Europe Office in Belgrade, taken over from the CoE Parliamentary Assembly web site. The Publication will be sent via ANEM mailing lists and will be available at the Association's website. Printed editions of each issue will be promoted at round tables to be held in Belgrade.

3. Announcement of the Second Report on legal monitoring of Serbian media scene –

With this Monitoring Newsletter, ANEM announces the second issue of the Report on legal monitoring of the Serbian media scene which is now being prepared. It will include the latest information about the problems and developments relevant for the position of media that were noted in the fields subject to monitoring – freedom of expression, regulatory framework, operation of competent authorities and organizations, transition processes in the media sector, etc. This Report will cover July 2009. It specifically deals with new trends in the attitude of the government towards media, which indicates that it is ready for fast changes of legislation, but only when it suits its interests. If it is adopted in the proposed text, which is directly opposite to media laws, the new Law on National Minority Councils will contribute to even greater confusion of regulatory framework and imbalance in the media market. Proposed amendments to the Information Law, which have provoked severe criticism of media organizations and broader public, seriously affect the already achieved level of the freedom of expression and create possibility for even greater political influence on media. You will be able to read about this and other important facts in the new monitoring report, shortly.

4. Monitoring activities on new ANEM website, soon – By restructuring and redesign of the website, with the support of USAID and IREX, ANEM will have the opportunity to present all its activities in a way that would be better and friendlier for the site visitors. Project monitoring will have a separate section, visible at the home page, which will contain all the most important information about this Project. Moreover, interaction with all interested parties will be ensured. Namely, they will be given opportunity to place their comments and suggestions and to ask questions on the website.

In the meantime, ANEM invites all who wish to contribute to the continuation of media reforms to contact the ANEM Secretariat at anem@anem.org.rs with their questions or suggestions regards to monitoring project and its results.

The follow-up activities, within the project: "Legal Monitoring of Serbian Media Sector and Follow-up Activities", are conducted by



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