



AUTHORITIES ARE AGAIN FAVOURING **THEIR MEDIA MINIONS**



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COMMENT

**Balkan spring
and autumn of
enlargement policy**

BALKAN SPRING AND AUTUMN OF ENLARGEMENT POLICY



Photo: Vjesti



By: Vladan Žugić



Tens of thousands of citizens across the region - from Tirana and Belgrade to Banja Luka and Podgorica - went out on the streets requesting changes of the system and authorities.

All these peaceful protests are led by civil groups, except those in Albania where there has been also a conflict of opposition supporters and police.

In overall, analysts agree that responsibility for this situation is borne by local political systems that citizens consider autocratic, populist, corrupt, non-functional, and alienated from ordinary people and their basic needs.

However, they also note that a great deal of responsibility for this situation lies with the European Union, which has pushed the enlargement policy into a back corner. Hence, nowadays, the story about the membership of the Western Balkan countries in the EU seems as a tale of a better afterlife.

All in all, the EU has greatly godfathered the establishment of such political systems, guided by its own geo-strategic interests, and demonstrating exaggerated patience and tolerance towards the mischievous Balkan 'children'.

European Commissioner for European Neighbourhood Policy and Enlargement Negotiations, **Johannes Hahn**, who met with top state officials and opposition leaders in Podgorica, on 22 and 23 February, has stated that the Parliament is a place wherein all open issues should be resolved. He also added that Brussels is vigilantly following all the recent events that led to the peaceful mobilization of Montenegrin citizens.

'We expect the institutions to act effectively and quickly in relation to recent allegations of violation of law, that all cases should be investigated by the authorised bodies, especially the Special

State Prosecution and the Agency for Fight against Corruption,' Hahn said.

And citizens going out on the streets demonstrate that they are not satisfied with manner in which the institutions are reacting.

European Commission spokeswoman, **Maja Kocijančič**, in her review of the events in the Western Balkans, states: 'Peaceful demonstrations are fundamental right in all democratic countries. The European Union's position in this respect has always been clear, as well as the stand that violence must be avoided. EU expects the government and the opposition in the region to work constructively in their parliaments to respond to the demands of their citizens in accordance with their efforts to join the EU. The progress toward the EU is a social process which demands powerful and structural inclusion of the civil society'.

According to her assessment, the citizens of the region have legitimate expectations that their authorities will implement reforms within rule of law, fundamental rights and good governance. The ongoing protests are specific to each country, she specified.

If the large European media have dubbed the protests in the Balkans with the common name 'Balkan spring', then these occurrences are at the same time the autumn of EU enlargement policy.

Is it too late for this, rather pallid, composition of the European Commission, to change the image of the Balkans and restore new optimism in the next few months?



Foto: Private archive



By: Ana Ostojić

The author is journalist of the daily 'Dan'

NUMEROUS OBJECTIONS TO DRAFT MEDIA LAW

AUTHORITIES ARE AGAIN FAVOURING THEIR MEDIA MINIONS

Several years ago, the editor of one daily was requested by the prosecution to give a statement because he published information from a closed session of the parliamentary Supervisory Committee working on the affair 'Telecom'. Two reporters of another daily were interviewed in the police for more than a decade ago as witnesses, because they published a report of the National Security Agency (NSA) submitted to the parliamentary Security and Defence Committee.

The published information, according to the journalists' conviction, could not jeopardize either national security or the course of the 'Telecom' investigation, which in meantime proved to be true. None of the journalists gave up their sources, referring to the still valid Media Law and the Code of Ethics, nor did they suffer any consequences. However, if the provisions from the Draft Media Law are adopted, presented by the Government of Montenegro to public discussion, the courts could punish journalists - first with thousand euros, and then up to two months in prison should they refuse to give up the sources of their information.

Media representatives and experts are precisely warning that an

insufficiently clear provision on protection of sources of information in the Draft Media Law represents an attempt to limit journalistic freedoms and hinder investigative journalism. They find disputable also the proposed provision on the state financial support through the Fund for Promotion of Pluralism and Diversity of Media, which, as they state, opens up space for state interference in the editorial and financial independence of the media.

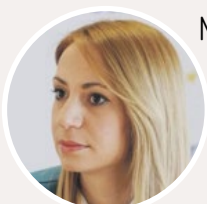
Public discussion on draft Media Law, that Ministry of Culture has launched on 3 January, has recently been completed and dozens of amendments to 86 articles of the suggested legal text were submitted to the Government.

The issue of media freedom in Montenegro has long ago been into the EU focus mostly due to numerous unresolved attacks on journalists and media property. Freedom of expression remains as one of the areas in which there was no progress in the last EC Report on Montenegro.

Representatives of media community and NGO especially find disputable Article 40 of the Draft, which defines that an obligation of

journalist to disclose the source of information 'in cases of protection of interests of national security, territorial integrity, protection of health and disclosing criminal offense punishable by sentence of five or more years'.

Amendments submitted by the Media Centre, Montenegrin Media Institute, Society of Professional Journalists, Centre for Investigative Journalism, Centre for Civic Education (CCE) and journalists and editors **Mihailo Jovović**, **Nikola Marković** and **Vladan Mićunović**, have suggested the change of this article. Namely, they suggest that journalist or media would not be accountable should they acquire or publish information which represents state, military, official or business secret, if there is a justified interest of the public to be notified of it, and that they would not be obliged to disclose the source of information, which wishes to remain unknown, to the legislative, judiciary or executive branch of power or any other physical or legal entity. Submitters of amendments assess that, if this provision from the Draft is kept, the space for limitation of journalistic freedoms would be increased.



Member of the Working Group for drafting the Media Law and CCE Programme Coordinator, **Ana Nenezić** believes that Montenegrin society is currently not ready for the solution foreseen by this draft. 'Unfortunately, Montenegro has not yet reached the required level of democratic development that would

prevent abuse of these restrictions, which is why I, as a member of the Working Group, have opposed this provision', she stressed for *the European Pulse*, adding that she considers that it is justified concern of the media community that it can open up space for misuse and limitation of journalists to do their job professionally and investigate the most complex cases of abuse of power, corruption, human rights violations...

Expert of the Council of Europe, **Joan Barata**, has at recently organised roundtable, emphasized that a country cannot use general principles, such as national security, public order and peace, public health, in order to justify and limit the protection of sources. 'Only in those cases, when it is necessary to prevent act of criminal offense or to investigate criminal offense, when prosecutor or police have no other manner to do so, can the disclosure of source of information be sought', said Barata.

Aneta Spaić, member of the Working Group on behalf of the University of Montenegro, stated that the solution embedded in Draft Law is valid in many countries they have controlled, to which Barata pointed that there is always a tendency to understand that international standards are what other countries are doing. 'These are interesting parameters, but they are not standards.

Western European countries can be wrong, it does not mean that if they have this solution it is right', clarified the CoE's expert.

Director of the Media Directorate in the Ministry of Culture, **Željko Rutović**, has in previous media appearances stated that protection of journalistic sources is a rule, principle, precept and an international standard. 'Exception and limitation are only exceptions and only limitations, fitting to legitimate objective in democratic society and applicable international standards', said Rutović.

Photo: FOS media



AEM cannot be in charge of print and online media

Deputy Director of the Agency for Electronic Media (AEM), **Jadranka Vojvodić** deems 'unacceptable' the solution for AEM to be in jurisdiction of governing the Fund in the part relating to print and online media.

'While the role of Agency in governing this Fund in the part relating to electronic media could be justified, this would not be the case for other categories of media. Namely, Fund's management (planning, allocation, monitoring and evaluation of expenditure of allocated finances, ...) is comprehensive and represents an additional work which is not customary for regulatory bodies. It would request the increase of number of enforcers in the Agency, but it could be organized with appreciation for knowledge acquired from previous experiences with similar funds for electronic media, as well as the fact that Agency is already performing monitoring of programmes of electronic media. On the other hand, Agency is not monitoring the work of print and online media and lack of experience and practice on that field must be compensated by engagement of greater number of employees i.e. associates out of Agency (monitoring and evaluation)', emphasized Vojvodić.

She underlined that the revision of the Media Law, after more than 15 years from its adoption, is necessary due to various reasons and that the new law could be a backbone of new important phase in media development in Montenegro.

Nikola Marković, Deputy Editor-in-Chief of the daily 'Dan' and member of the Working Group, assessed for *the European Pulse* that the decision on protection of the source from the Draft Law can only be offered by the government which fears independent, professional and investigative journalism. No matter the fact that, as he says, there are similar institutes in European countries, one has to bear in mind the appropriate context and the society in which the law is brought.



Photo: L. Zeković

Although Prime Minister **Duško Marković** said that 'a comprehensive media strategy is needed to stimulate the analysis and change in the package of media laws' in his inaugural speech, such strategic document remained absent.

Journalist and media expert **Duško Vuković** is also pointing out to problematic nature of the approach to redesign the legislative framework. In the provisions envisaged by the Draft Law, he recognizes a 'narrow-gauge party-bureaucratic logic, which does not wish strategic objectives to be clearly defined, and legal regulations which will direct us towards these objectives to be thus adjusted'.



Photo: L. Zeković

'Since the (media) strategy has been omitted, thus the objectives as well, and the work on laws has been initiated, some objectives needed to exist. They have not been publicly proclaimed, but can be

hinted through the offered solutions, by which, without argumentative explanation, some already established clientelist schemes are attempting to be favoured, such as budgetary financing of self-regulation, or hindrance of investigative journalism is attempted as well', emphasized Vuković.

Significant number of objections of journalistic associations and civil sector are related to articles of the Draft Law concerning encouragement of pluralism and diversity of media. They suggest that all allocations from this Fund are made as per same principles and same procedure, i.e. that no exceptions are made, and that at least 0,1 percent of GDP is financed, which is around 3,6 millions of Euros. The Government has in the Draft law suggested this amount to be 0,03 percent of GDP, which is around 1,3 millions of Euros.

It is suggested by amendments of the group of NGOs, media associations and journalists, that allocation of 60 percent of finances is performed by Council of the Agency for Electronic Media, which are directed into sub-fund for electronic commercial and non-profit media, and the other half by independent commission formed by a state organ authorised for media, which are directed to sub-fund for daily, weekly print media and online commercial and non-profit media. The Government proposal for all finances from the Fund to be allocated by the Council of Agency for Electronic Media – to electronic commercial and non-profit media, i.e. the independent commission, formed by AEM – for daily and weekly print media and online media, in relation of 60:40 percent of total amount of which 5 percent goes to the allocation-organ and certain percent to self-regulation. Submitters of amendments estimate that it is necessary to specify priorities in decisions of bodies which allocate money because finances that are at disposal are not sufficient for financing of all recognized areas of public interest.

Deletion of internal and external self-regulatory bodies as beneficiaries of these finances has also been proposed. As per the Government proposal, 10 percent of total finances would go to promotion of self-regulation. 'It is not clear who would be conducting the promotion of self-regulation, and it is also unclear why would finances intended to media be directed for other purposes. Self-regulation should rely on readiness of media to finance this process', the submitters of amendments estimate.

Ana Nenezić deems that the lack of vision and objective that the Ministry of Culture wishes to achieve by this act is best perceived in a manner in which the issue of Fund is regulated. 'Although this solution has, basically, unanimously been suggested by media community, the initial idea has been almost pilloried to its opposite. The amount of finances of only 0,03 percent of GDP is insufficient for any change or support, while simultaneously the criteria for allocation of money have not been specified and derived to its fullest', said Nenezić.

Submitters of amendments are warning that regardless of the fact that the current solution in the Draft enables citizens to know whom money is being directed to, the discretionary right of heads of institutions to allocate this money without clearly defined criteria still remains.

Nikola Marković says that the initial idea was to make aware the country that it is obliged to help Montenegrin media and protect

Heads of institutions still arbitrary decide which media will be funded

'Provision from the Draft Media Law enables citizens to know whom is money being given to, but the discretionary right of heads of institutions to allocate this money to media without clearly defined criteria has been kept, and thereby we are actually not achieving the essence', pointed Ana Nenezić.

The rejection, as she has highlighted, to consider the possibility of precise definition of criteria on the basis of which the heads of the institutions allocate this money indicates a lack of political will to change this in the manner that it is now imperatively sought by the EU.

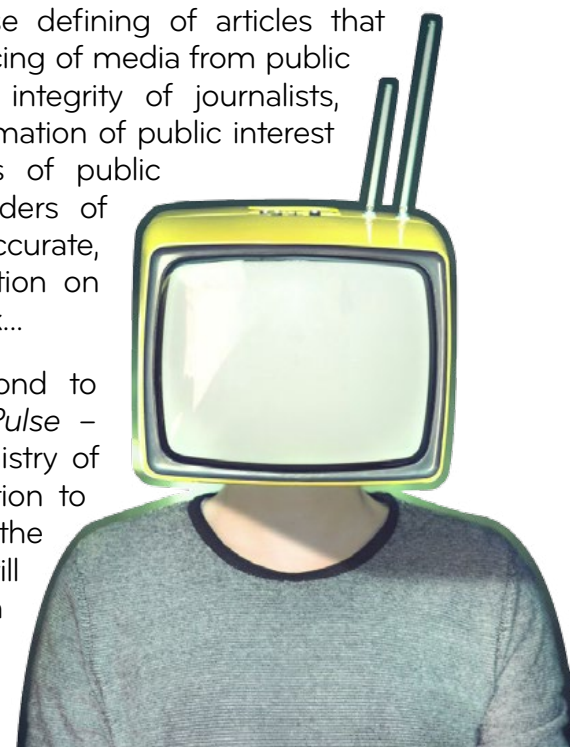
'In addition, decision of the authorised Ministry to entrust the keeping of the Media Register, as a mechanism which will provide full transparency, to the Central Register of Business Entities (CRBE), which also needs to prepare and publish annual reports, indicates how much it was attempted to render the proposed solution meaningless. It is clear that this must be responsibility and obligation of the Ministry of Culture, which in this manner refuses to deal with its tasks and to assume responsibility', says Nenezić.

She reminded that precisely the long-standing practice of opaque allocation of public funds to media has undermined the media market and contributed to polarization of the media, by favouring those who report positively about the authorities and discriminating those who have critical stance.

media scene from non-legitimate and *dumping* influence from abroad. 'Unfortunately, the Government has abused this idea and is attempting to find modalities to, via the idea of the Fund, help financially the regime-media and to punish those who have critical relation towards authorities', assesses Marković.

By amendments of the group of NGOs, media associations and journalists, but also by independent CCE's amendments, it was proposed more precise defining of articles that relate to transparency of financing of media from public funds, greater protection of integrity of journalists, wider scope in access to information of public interest in the possession of organs of public sector and obligation of holders of public jurisdiction to provide accurate, complete and timely information on issues from their scope of work...

Željko Rutović did not respond to questions of *the European Pulse* – in which manner has the Ministry of Culture declared itself in relation to amendments submitted to the Draft Media Law and whether will it take them into consideration during establishing the law proposal.



Respect your competition for a win-win



Photo: M. Popović



By: Biljana Jakić

The author is the General Director of the Directorate for Internal Market and Competition at the Ministry of Economy of the Government of Montenegro and negotiator for Chapter 8.

Negotiation chapter *Competition* covers two areas – anti-trust and state aid control policies.

When it comes to anti-trust policy, it refers to three basic aspects: prohibition of abuse of dominant position in market, prohibition of signing agreements which prevent, limit or violate free market competition, and assessment of eligibility of stakeholders' concentration in market. Area of state aid control includes procedure of allocation and control of use of granted state aid, for the sake of competition protection.

Respect for competition represents pre-condition for enabling business environment in which all participants in market will operate under equal opportunities, thus contributing to creation of economically favorable environment for investment and safety of investments. As a result of healthy market match, consumers receive wider offer of goods and services, as well as more quality and cheaper products and services.

The importance of competition in Montenegro can be best supported with the fact that competition has the status of constitutional category. Pursuant to Article 139 of Constitution of Montenegro, it is prescribed that economic system shall be based on free and open market, freedom of entrepreneurship and competition, independence of the economic entities and their responsibility for the obligations accepted in the legal undertakings, protection and equality of all forms of property, while pursuant to Article 140, paragraph 3 of the Constitution, it is prohibited to obstruct and limit free competition and to encourage unequal, monopolistic or dominant position in market.

When it comes to the legal framework, the Law on Protection of Competition represents major regulation by which means, procedure and competition protection measures in

Montenegro are regulated. The state aid control aims not to distort competition on market by granted state aid, i.e. to ensure equal business rules for all participants in market. The conditions and procedure of assignment and control of the intended use of granted state aid are laid down in the Law on State Aid Control.

Pursuant to Article 73 of Stabilisation and Accession Agreement (SAA), Montenegro has committed itself to the harmonization with the competition rules applied within the European Union.

For Montenegro, the European Union has set up five benchmarks for opening negotiations in Chapter 8 – Competition. These benchmarks primarily refer to the compliance of national legislation in the state aid area with the EU legislation, development of functionally independent body for state aid control, alignment of fiscal aid schemes and comprehensive listing of state aid measures. In that respect, among other things, the Law on State Aid Control was adopted in 2018, and it includes all the necessary elements for effective state aid control. With the amendments to the Law on Protection of Competition, passed in 2018, jurisdiction of the Agency for Competition Protection has been expanded on state aid control area, which had previously been administered by the Commission for State Aid Control of the Government. It is important to emphasize that the Agency is institution with public authorization, which independently performs administrative and expert affairs within competition protection and state aid control areas.

Therefore, the activities that Montenegro is undertaking in this Chapter are indicator of readiness and dedication for fulfillment of obligations derived from the European agenda.

Per aspera ad astra: accession costs .vs benefits of EU membership



Author holds PhD from University of Cambridge, UK. She is reasearcher at the European University Institute in Italy.



By: Jelena Džankić, PhD

When I left Montenegro to pursue undergraduate studies in Bulgaria in August 2000, European Union (EU) integration was nowhere near the core political agenda or even political discourse. Europe, or the community of the 'wealthy', of those who lived happy lives, was something that existed only in the imagination of our citizens, tired of scarcity, conflict, and broken promises.

In the two decades that ensued, I've seen post-communist countries, including Bulgaria where I spent four years of my life, as well as two former Yugoslav republics - Slovenia and Croatia, become EU Member States. I've also seen the EU accession rise on the political agenda, often morphing into a buzzword of political discourse. Sadly, very little is known among the Montenegrin public about what the accession negotiations entail, and what the country's citizens will eventually gain if and when the country becomes an EU Member State.

The process of EU accession presumes that the aspiring member will adopt and implement the vast body of EU legislation, divided into 35 chapters. A candidate country does not negotiate the aspects of the EU law that it wants to adopt or not, but rather the time it needs to enforce the legislation. Once it has been agreed that the country meets all the conditions in one domain, the respective negotiation chapter is 'provisionally closed'. This however means that it may be reopened at any time before the country actually signs its accession treaty. In other words, compliance is essential.

Compliance with EU legislation also means adopting new rules and practices and changing 'the way we do things'. To give you an example - a few years ago, I bought a faulty shirt in a store in Podgorica and the storeowner was reluctant to

return or exchange the good. In the EU, legislation protects consumers. They, compared to sellers, are in a vulnerable position: consumers make choices on the basis of imperfect or incomplete information. Changing from what we are accustomed to - to what is required from us bears a lot of effort and significant financial and social costs; and it does not pay off immediately. For this reason, a few years into the accession process the excitement about the EU among the public and policy-makers fades away reducing the public support for accession. This is normal and has occurred in many former communist countries that are now EU members.

One may wonder, if there are large social, economic and political costs of domestic adaptation to the EU's demands, are we not better on our own? As a person who has lived in the EU as third country national for quite some time now - I would say - not really.

There are many political, economic and social reasons as to why a country benefits from membership, and it would be impossible to do justice to all of them here. EU citizenship, as the lifeblood to a democratic union of citizens, makes a major difference to the lives of ordinary citizens. It enhances life opportunities through free movement, offers protection through other Member States while abroad, and enables the Union's citizens to vote in local and European Parliament elections.

And, if this has not convinced you, remember - there are no roaming charges among the Member States. My 'pocket' feels this when I use my gigabytes for free in Finland or Germany, but pay €19.32 for a single megabyte of data when in Montenegro.

SELF-REGULATION OF THE MEDIA IN MONTENEGRO

FOURTH ESTATE
CONSCIENCE

Prepared by: Milica Zindović

All media and journalists in Montenegro have unique Code of ethics, adopted in 2002. However, there is no unique self-regulatory body at the level of the entire media community that takes care of respect of journalistic ethics, nor the indication that it could be established soon. Furthermore, the trend of violation of professional standards and ethics has significantly marked recent years. This was, amongst other things, assessed in the study of the Centre for Civic Education (CCE) - [Fourth Estate Conscience](#), produced with the support by the Embassy of the Kingdom of the Netherlands.

In the period from 2002 to 2010, unique journalistic self-regulatory body used to exist but it fell apart. Part of the media in 2012 formed two collective self-regulatory bodies - Media Council for Self-Regulation and Self-Regulatory Local Press Council. Dailies 'Vijesti' and 'Dan', as well as weekly 'Monitor' have chosen protectors of their readers - ombudsmen.

The study assesses that regulators are often in self-regulatory ban. That, above all, refers to the Agency for Electronic Media (AEM), which is legally positioned as an independent regulator. Furthermore, RTCG, as public broadcaster, has its internal regulator - Commission for Applications and Complaints, which considers ethical questions as well.

The recommendations of the study towards the establishment of self-regulation of media in Montenegro are based on the balance between what should be the ideal state i.e. the establishment of ethical standards that will improve both the overall quality of reporting and constraints and opportunities identified in the Montenegrin context.

Also, it is recommended to give up on lasting and counterproductive insisting on one self-regulatory body or on considering its non-existence as insurmountable disadvantage, with the

explanation that is more important to strengthen functionality, transparency, professionalism and cooperation among existing self-regulatory bodies than uniting them artificially. In addition, it is stated that sustainable sources of income for the effective functioning of self-regulatory bodies have to be secured, while thereupon safeguarding the independence of those bodies. It is especially emphasized as unacceptable that the state prescribes the obligation of media self-regulation, or to favours some of the self-regulatory models and practices through financial support or otherwise, because that would be dangerous entry of the authorities into banned zone and collapse of the concept of media self-regulation. Finally, it is recommended that regulation and self-regulation must be clearly separated, and their synergy must suit to the Montenegrin context.



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