

CONTROLLED CHAOS IN REGULATION OF ELECTRONIC MEDIA

- work of Agency for Electronic Media -



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WHAT SHOULD BE DOING THE AGENCY FOR ELECTRONIC MEDIA?

The Agency for Electronic Media (AEM) is regulatory body in charge for the area of audio-visual media services and exercising public authorities as per Electronic Media Law¹.

The Law is positioning the AEM as independent from any organ of the public sector and from all legal and private entities dealing with production and broadcasting of radio and television programme or offering other audio-visual media services. It was established in 2003, after entry into force of the Broadcasting Law as the Agency for Broadcasting, and since 2010, i.e. since adoption of the Electronic Media Law, it continues to work under the name of Agency for Electronic Media.

The founder of the AEM is state, and the founding rights on behalf of the state are exercised by the Council, in accordance with the Law. In addition to Council, the governing organ is also Director of AEM.²

The AEM is regulator of electronic media market in Montenegro and by its work it should ensure public interest and application of determined principles in regulating relations within provision of audio-visual media (AVM) services, as follows:

- freedom, professionalism and independency;
- prohibition of any form of censorship;
- balanced development of public and commercial providers of AVM services;
- free and equal access to all AVM services;
- development of competition and pluralism;
- application of international standards;
- objectivity, prohibition of discrimination and transparency.

The Electronic Media Law prescribes the competences of AEM which shall:

1. propose the AVM services development programme;
2. in cooperation with the regulatory body responsible for electronic communications, draft background paper for developing a plan for the use of the radio-frequency band, in the section designated for terrestrial broadcasting;

1 Official Gazette of Montenegro, No. 046/10, 040/11, 053/11, 006/13, 055/16, 092/17

2 Abaz Beli Džafić was at the head of AEM from 2003 until 26 February 2019, when Goran Vuković was elected as Director



3. approve draft radio frequency allocation plan, as regards terrestrial broadcasting;
4. give opinion to the regulatory body for electronic communication on the need to designate an operator with significant market power if the analysis determines that relevant electronic communication services market, which constitutes grounds for provision of and/or access to the AVM services, is not competitive enough;
5. issue licences for provision of AVM services (broadcasting licence and on-demand AVM services provision licence);
6. determine the fee amount for issuance and use of AVM service provision licence;
7. keep a register of AVM service providers and electronic publications;
8. decide as per complaints of natural and legal persons regarding the operation of AVM service providers;
9. oversee the Law implementation;
10. adopt and implement secondary legislation accompanying this Law;
11. perform other tasks as well, as per the Law and the Statute of Agency³.

APPLICATION OF KEY PROVISIONS OF ELECTRONIC MEDIA LAW AND SINS OF THE AEM

Fees for broadcasting – in favour of privileged

For long time, the AEM is not applying consistently the Electronic Media Law and it is allowing the work of electronic media, even those which have the national license, despite the fact they are not fulfilling their legal obligations.

By such a conduct, the AEM is putting into unequal position number of smaller private media which are paying significant finances to the Agency on the basis of fees, and it is encouraging unfair competition. In this manner, it is eroding the public interest, basic principles upon which it should work, and it is also directly violating the Law.

More precisely, the Article 44 of the Electronic Media Law prescribes that electronic media (radio and television stations) are paying annual fee as per permission issued by

³ Article 12, Electronic Media Law, Official Gazette of Montenegro, No. 046/10, 040/11, 053/11, 006/13, 055/16, 092/17

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the AEM, in four annual instalments. However, financial reports of the AEM⁴ reveal large debts of commercial broadcasters as per these fees.

Year	Debts from commercial broadcasters (on 31/12)	Debts from earlier providers of AVM services (on 31/12)	Total debts per year
2017	117.692,19€	271.160,85€	388.853,04€
2016	256.673,36€	363.363,64€	620.037,00€
2015	440.951,32€	224.862,74€	665.814,06€
2014	473.774,95€	209.677,39€	683.452,34€

Table 1: Overview of debts as per outstanding fees of broadcasters for the given year (source: Media Centre)

For example, the largest single debt in 2017 in the amount of 26.834,81€ was from TV Corona. In 2016, the AEM has had the largest debts as per fees for broadcasting from Radio Atlas - 52.643,70 €, whereas in 2015 the TV MBC had debt of 84.736,66 €, and in 2014, also, TV MBC had debt of 87.200,69 €.

'For the purpose of overcoming problems arisen due to delay in settling debts as per annual fee, the Agency for Electronic Media has offered signing of protocol on debt-rescheduling to certain number of holders of broadcasting license.'⁵

Protocol on debt-rescheduling has implied that electronic media which have not settled annual fees during calendar year, as prescribed by the Law, settle debts in longer period arranged by the protocol. Consequently, by this deliberate violation of Electronic Media Law, the AEM has created unfair competition on the electronic media market. Namely, AEM has 'pushed' into problems media which have been timely settling their obligations because it allowed those which have not settled their obligations to acquire incomes and to simultaneously not pay fees which they were legally obligated to.

Until 31/12/2017, by decisions of the Commercial Court of Montenegro, eight bankruptcy proceedings which were opened in 2017 and earlier were concluded, and by this several commercial entities from the Central Register of Commercial Subjects (CRCS)⁶ were deleted. Accordingly, the Agency has performed write-off of debts in the total amount of 205.186,24 €. These written-off funds are related to debt of the following commercial entities: „Orion“ LLC (TV Orion), „TV Elmag“ LLC (TV Elmag), „Ponta“ LLC (Radio Ponta), „TV Boka“ LLC (TV Boka), „IN CO“ LLC (TV IN and Radio IN), „Tripk Com“ LLC (Russkoe Radio), „Bradva Company“ PTP (TV Luna and Radio

⁴ <http://aemcg.org/obavjestenje/finansijski-planovi-i-izvjestaji/>

⁵ Report on financial operation of Agency for Electronic Media for 2017

⁶ Report on financial operation of Agency for Electronic Media for 2017.



Luna) and „Balkan Channel“ LLC (TV Balkan).“⁷

The significant part of debts that AEM has had, towards media which were not paying the fee, was never collected because these media have come to an end. Thus, for example, TV Elmag has remained in debt for 52.128.34 €, TV IN for 77.040,10 € prior to bankruptcy and deletion from CRCS, and their debts were written-off and represent a forever lost money both for AEM, and for budget of Montenegro as well.

AEM has not, in accordance with its legal obligation, collected annual fee for broadcasting from commercial broadcasters but has created a practice of multi-year accumulation of debt. When certain commercial broadcasters, which have not been paying the fee for broadcasting for years, have entered the bankruptcy proceeding, the budget of AEM was damaged for over 205 thousand euros (these funds cannot be used for new projects), as well as the budget of Montenegro because the surplus of incomes of AEM are as per law being paid into budget. No procedure was ever conducted for determining responsibility for these losses in AEM.

Additionally, as per procedures and experiences with broadcasters which have initiated the bankruptcy proceeding, it can be expected that non-performing funds and damage on budget of AEM will be larger. For example, the broadcaster which has not been settling obligations for years is TV MBC, from which the AEM was claiming 84.736,66 € as per fees for broadcasting. This broadcaster is in the procedure of reorganisation for years and it is not known why AEM has not launched procedure for foreclosure or bankruptcy proceeding. In 2017, AEM has launched bankruptcy proceeding towards Radio Atlas due to debt of 53.735,62€, while it started the procedure of foreclosure towards Radio Elmag due to debt of 69.713,80€.

To the objections of the interested public that law is not being respected and that damage is being exerted onto budget of AEM and the state of Montenegro, multi-decade Director of AEM, Abaz Beli Džafić, has responded laconically *'that broadcasters are deliberately being tolerated, because otherwise majority of media would be shut down'*.⁸ However, not a small number of media, towards which Džafić expressed empathy that was stronger than dedication to consistent respect of the law, have been shut down despite this lavish and illegal help.

⁷ Report on financial operation of Agency for Electronic Media for 2017.

⁸ <https://www.vijesti.me/vijesti/drustvo/dzafic-neka-trpe-oni-su-funkcioneri>

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Why would citizens of Montenegro be interested in events in Montenegro?

AEM has not even been implementing consistently the Article 59 of the Electronic Media Law for long time, in the part related to respect of broadcasting minimal percentage of information from the coverage zone⁹.

One number of broadcasters (among which are some with national frequency) did not fulfil their legal obligation for years, and AEM has only in 2012 started to monitor fulfilment of obligations by the broadcasters. As per results of the *Analysis of application of programme standards of TV broadcasters*¹⁰, conducted by AEM in May 2012, Prva TV has had only 1% of information from the coverage zone (i.e. Montenegro) in the monitored period, and TV Pink M has had only 7,8% although the Law prescribes minimum of 10%. In January 2016, four years after this first report on monitoring of compliance with legal obligation in the work of electronic media, the AEM published the new *Report on application of programme standards and standards in the area of commercial AV communications in electronic media for 2015*¹¹. In this report, the AEM notes that TV Pink M has had in the observed period 618 minutes of their own news programme at the weekly level, i.e. 89 minutes daily, while the legal obligation is minimum of 144 minutes daily (1008 minutes per week).

Absence of application of this legal provision by the AEM has been, also, consequently undermining the market of electronic media. It was allowed the work of media whose headquarters are in neighbouring countries, and who had minimal investments in human and technical capacities, but were getting significant income from marketing by violating legal obligations in Montenegro.

In December 2016, the AEM has published the new *Report on application of programme standards and standards in the area of commercial AV communications in electronic media*¹², with data as per which all commercial TV stations with national coverage are fulfilling obligations from the Article 59, i.e. broadcasting more than 10% of news from the coverage zone, i.e. Montenegro.

9 Paragraph 4 of Article 59 of Electronic Media Law prescribes: 'Broadcaster is obliged to dedicate at least 10% of total weekly programme to the publishing news and information from the coverage zone'.

10 <http://aemcg.org/wp-content/uploads/2018/06/Analiza-primjene-programskih-standarda-TV-emitera-u-Crnj-Gori.pdf>

11 <http://aemcg.org/wp-content/uploads/2018/06/Primjena-programskih-standarda-kod-nacionalnih-TV-emitera-za-2015.-godinu-05.01.2016.pdf>

12 <http://aemcg.org/wp-content/uploads/2018/06/Primjena-programskih-standarda-kod-nacionalnih-TV-emitera-za-2016.-godinu-23.01.2017.pdf>



Besides 'tolerating' violations of legal obligations by broadcasters whose headquarters are outside of Montenegro, AEM has applied similar approach for violation of the same legal obligations by Atlas TV which has been solely re-broadcasting its programme content for more than six months without broadcasting information from the coverage zone. The AEM has transferred license for broadcasting that Atlas TV has had onto another legal entity which is the owner of A1 television under insufficiently explained circumstances as well.¹³

AEM has, by its longstanding avoidance to apply the Electronic Media Law, enabled media whose headquarters are outside Montenegro to work with disrespect of legal regulations. Thereby the electronic media market has been distorted.

AEM has had all legal mechanisms (including also revocation of license for broadcasting) to compel broadcasters to respect the law earlier, but it had not been using them. AEM is producing periodical reports on structure of programmes of TV broadcasters, but there are no available recent data in regard to application of Article 59 Paragraph 4 of the Electronic Media Law. Therefore, it is hard to assess whether electronic media are respecting legal obligations in the part of broadcasting news from coverage zone. It is interesting that 'tolerance' referred to media which were in favour of the authorities, and some of them have been leading smear campaigns against those with different opinion as regards to ruling structure.

Let's consume foreign, not the domestic

Special problem in application of the Electronic Media Law was also disrespect of license for work of certain commercial broadcasters which have national license in the part of their production. For example, certain televisions have had an obligation to produce at least 60% of their own programme. This promise of broadcasters was given during the process of acquisition of broadcasting license at the public call and was never achieved because the majority of programme content was taken over from the country in which television has had its headquarters.

AEM has obligation to perform monitoring of work of commercial broadcasters and respect of licenses for work (broadcasting). If the license for work is not respected, one of sanctions is abolition of licenses for work of commercial broadcaster. In public call for allocation of rights to broadcasting, criteria are contained for deciding upon

¹³ Owner of the Atlas TV and later of A1 television is Duško Knežević, businessman and longtime donor to the ruling party, against whom several criminal proceedings is started due to the doubt that he has committed several criminal acts. The license was not taken from Atlas TV that did not broadcast programme but transferred to A1 television for frequency of the Atlas TV that has bankrupted, and although this is the same owner. It is worth noting that the AEM has conducted this during the period when Knežević was not in public conflict with authorities in Montenegro.

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complaints, which is stipulated by Article 100 of Electronic Media Law. License for broadcasting, signed by the Director of Agency, must contain data on programme structure and other programme obligations in accordance with submitted application to the public call, as per Article 104 of the Law.

The Council of AEM has in February 2012 passed the *Rulebook on conditions for determining programme content deemed to be own production*¹⁴ by which broadcasters are obliged to at least 10% programme content of their own production. The Law has been practically derogated by this bylaw, although one of basic legal postulate is that no legal act of lower power than a law can change legal provision. But this was done precisely by this act and broadcasters were allowed to produce less than what they are obliged to produce according to license. It is clearly responsibility of until recently multi-decade long director of AEM that certain media, mostly those close to authorities when it comes to their editorial policies, have been receiving licenses on public calls on the basis of a promise of their own production but afterwards have unsanctioned overtaken content which under no rulebook can be qualified as their own production.

Additionally, AEM has never, within licenses for broadcasting, disclosed data for every broadcaster about programme structure and other undertaken programme commitments in accordance with the submitted application to public call or request for issuance of license, which represents violation of obligation prescribed in the Article 104 of the Electronic Media Law. Namely, licenses for broadcasting can be found on webpage of AEM, but without key data on programme structure and other undertaken programme commitments, as per which any interested person could have an insight and draw conclusion whether the broadcaster is fulfilling obligation of production of the scope of programme that was promised while applying to the call. Thus, the external monitoring of Electronic Media Law in this segment is also prevented.

AEM is conducting its own monitoring and analysis of programme structure of broadcasters, but findings of this monitoring were not brought into correlation with given promise on production of one's own content and programme structure. Only since 2017 has AEM started to monitor programme structures of broadcasters more regularly, but key findings are still not being publicly disclosed, which raises suspicion that someone is being protected as well, considering the history and practice of selective approach of AEM when it comes to respect of the law and relation towards media themselves.

¹⁴ <http://aemcg.org/wp-content/uploads/2018/06/Pravilnik-o-sopstvenoj-produkciji.pdf>



AEM loves pinkish, despite everything

AEM has not been applying sanctions towards media which have continuously violated programme principles and standards.

Article 140 of Electronic Media Law prescribes that 'for the purpose of removing identified irregularities the Agency may pronounce a warning measure to the provider of AVM services, and it can also, temporarily or permanently, revoke the license for broadcasting or license for provision of AVM service as per request in the manner determined by this law'. Furthermore, Article 142 of the Law specifies 'license for provision of AVM service shall be revoked temporarily, in the duration of 30 days, should provider of AVM violate provisions on programme standards envisaged by this law even after pronouncement of warning measure and fine'.

Convincingly the most complaints in relation to violation of professional principles and standards, in the period from 2015 to 2018, have been submitted against television Pink M, whose editorial policy was based on promotion of everything that government and ruling parties are doing, with the focus on the ruling Democratic Party of Socialists (DPS), and negative reporting i.e. usually leading smear campaigns against everyone who criticise this authority and the ruling party. In this period, AEM has pronounced 39 warnings for Pink M due to violation of programme principles and standards. Thereby, it should be emphasized that significant number of those who have been 'crucified' daily on television Pink M and have never even submitted complaint to the AEM assessing that AEM is under strong influence of the ruling party and that these complaints would not have proper outcome. Data of the Centre for Civic Education (CCE) that in period from 1/1/2015 to 8/6/2018, 60.58% of total of submitted complaints against all broadcasters in Montenegro were related precisely to Pink M proves that this is perhaps not without foundation. Even though the AEM has pronounced only 39 warnings for this television it has still positioned it as official champion when it comes to violation of professional principles and standards in Montenegro, and it is indisputable that even this number of pronounced warnings is far smaller than the number of pieces that deserved warnings of the AEM. Consequently, and in accordance with established practice of protection of the privileged media, the AEM has never reached out for application of more severe sanctions towards Pink M as a broadcaster which is continuously violating professional standards in its work, and which are determined by the law, such as temporal revocation of license for broadcasting.

That AEM has since ever demonstrated non-resistance to political influences, points also the illustrative example of TV Vijesti. This television, after its establishment in May 2008, has been waiting more than two years to receive frequency in order to broadcast its programme on entire territory of Montenegro. In this very case, the AEM has performed

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numerous bureaucratic crazy stunts to slow this process down thereby inflicting enormous material damage to this broadcaster. As opposed to that, there has been no example that conduct of the AEM has led to damage to any media house that was close to the ruling party, which have been even 'given' so much that they can violate regulations without any effective sanctions by the AEM.

WARNINGS OF THE AEM (2015, 2016, 2017, 2018)					
Television/Radio	2015	2016	2017	2018	TOTAL
TV PINK M	2	15	15	7	39
RTCG		1	8	6	15
TV VIJESTI	2	2	4	5	13
TV PRVA	1	3	4	3	11
TV SUN	1	2	2	5	10
TV NOVI	1	2	3	3	9
RADIO NIKŠIĆ	1	1	3	3	8
TV BOIN		1	4	2	7
SRPSKA TV		1	4	2	7
TV BALKAN	2	2	2		6
TV MBC		2	4		6
TV CORONA		2	4		6
TV ATLAS ¹⁵	3	1	1		5
RADIO ELMAG	1	1	1	2	5
RADIO SKADAR LAKE	1	1	2	1	5
RADIO CORONA		1	2	2	5
TV NIKŠIĆ		1	2	2	5
TV GLAS PLAVA		1	4		5
RADIO Z		1	2	2	5
RADIO STAR FM		1	3	1	5
RTV BUDVA		1	2	2	5
RADIO DRS			1	4	5
RADIO PRVA	1	1	1	1	4
RADIO MOJKOVAC		1	1	2	4
TV TEUTA		2	1	1	4
TV PLJEVLJA		1	2	1	4
LIFE AND HOLIDAY TV		1	3		4
RADIO TDI	2	1			3
TV BOKA ¹⁶	2	1			3
RADIO BUDVA	1		1	1	3
RADIO LUNA		1	2		3
RADIO S2			2	1	3
RADIO KRŠ			1	2	3
ROMSKI RADIO			1	2	3
ANTENA M				3	3
RADIO ATLAS	1	1			2
RADIO JUPOK	1			1	2
RADIO PONTA	1	1			2
RADIO RUSSKOE	1	1			2
RADIO ZETA	1			1	2
M-KABL D.O.O.	1	1			2



RADIO F		1		1	2
BEST RADIO		1	1		2
M-TEL		2			2
TV 777			1	1	2
RADIO ROŽAJE			1	1	2
RADIO S			1	1	2
RADIO ULCINJ			1	1	2
RADIO SVETIGORA			1	1	2
TOTAL TV MNE			2		2
RADIO TEUTA			1	1	2
RADIO RDC TV ZA SVE				2	2
TELEMACH A.D.	1				1
RADIO HIT FM		1			1
RADIO GUSINJE		1			1
CRNOGORSKI TELEKOM		1			1
AGRO RADIO			1		1
CHANNEL1			1		1
RADIO LAKI			1		1
RADIO MAG			1		1
RADIO CITY			1		1
RADIO GLAS PLAVA			1		1
RADIO COOL			1		1
RADIO D				1	1
RADIO ANDRIJEVICA				1	1
RADIO BERANE				1	1
RADIO DANILOVGRAD				1	1
RADIO TIVAT				1	1
SKALA RADIO				1	1
RADIO PLAY MONTENEGRO				1	1
SRPSKI RADIO				1	1
TV NOVA M ¹⁷				1	1
RADIO HOMER				1	1
RADIO 083				1	1
RADIO FAITH				1	1
TOTAL	28	63	108	89	288

Table 2: Overview of number of warnings pronounced by the AEM to broadcasters (Source: CCE)

The AEM has in 2011 adopted *Rulebook on conditions and procedure of issuance of license for provision of audio-visual media services as per request*¹⁸ that until February 2019 has not prescribed protection of minors against inappropriate content for providers of audio-visual media services as per request (cable operators). Direct consequence

15 TV Atlas je prestala sa emitovanjem sopstvenog programa zbog stečaja u martu 2017. godine

16 TV Boka je prestala sa emitovanjem programa zbog postupka stečaja

17 TV NOVA M je pravni nasljednik Pink M a počela je sa radom pod tim imenom 25.09.2018.godine

18 <http://aemcg.org/wp-content/uploads/2018/05/Pravilnik-o-izdavanju-odobrenja-za-pruzanje-AVM-usluga-na-zahtjev.pdf>

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of limitation of application for this act only on broadcasters from Montenegro that use radio-broadcasting transmission system was that reality programmes were broadcasted during the entire day via cable operators, thus hampering the system of protection of minors against inappropriate content. On 1 February 2019, the AEM accepted initiative of non-governmental organisation Media Centre¹⁹ for amendment of the Rulebook in this part and broadened the application of programme standards in electronic media to providers of AVM services as per request, thereby enabling abolition of broadcasting of 'reality' content in the threshold period (06-23h). Thus, the AEM has after almost eight years of avoidance to ensure application of Article 82 of the Electronic Media Law²⁰, expanded the scope of the Rulebook and created normative framework for the comprehensive protection of minors from inappropriate contents, and the application of this in practice remains to be monitored.

AEM in the role of sponsor and humanitarian

Budget of the AEM is 942.510 € in 2019, and it was 919.553 € in 2018. Part of this budget, in accordance with the Rulebook on allocation of funds from the Fund of Agency for aid to commercial radio broadcasters, the AEM has been allocating via public calls. Hence, in 2018 the total of 264.280,78€ has been allocated for 18 broadcasters which 65 programme contents has been financed.

For 2017, the allocation has been annulled against the law²¹. Namely, the Constitutional Court of Montenegro²² annulled the provision of the Law on Road Transport Safety which prescribed (Article 270a) that every vehicle owner in Montenegro who has built-in radio receiver is obligated to pay the compensation for using radio in the amount of two euros during registration of the vehicle. Based on this decision of the Constitutional Court, the allocation of funds to commercial radio broadcasters has stopped.

However, it should be noted that while on one hand, the AEM has accumulated uncollected debts as result of continuous violation of the Electronic Media Law, depriving thus also the media which have the right to using funds from the Fund of Agency, simultaneously

19 <https://www.vijesti.me/vijesti/drustvo/media-centar-pozvao-aem-zaustavite-zaglupljivanje-javnosti-govor-mrznje-i-nasilje-u-reality-programima>

20 '(1) An on-demand AVM service provider is obliged to make available a service which may impair the physical, mental or moral development of minors only in the manner ensuring that minors will not normally hear or see such broadcasts. (2) The modalities for actions by AVM service providers from paragraph 1 above shall be set by Council.'

21 By decision of the Administrative Court of Montenegro (U. No. 6391/17 from 15/12/2017), a decision of the Council of Agency for Electronic Media on cessation of public call was annulled, because it does not contain explanation as per Article 203 Paragraph 2 of the Law on General Administrative Procedure.

22 U-I No. 3/16 from 29/12/2016



the Director of the AEM has generously, and again against regulations, allocated funds for humanitarian aid and donations from the budget of the AEM. For the period of 2015 until 2018, this has amounted in total of 130.265,56 €²³.

AEM is neither an institution of social protection nor the one of humanitarian character, but it is obviously necessary to additionally reduce any space that could be used for various manipulations regardless of possible noble intentions. And allocations for sponsorships and donations, conducted contrary to law, create suspicion into presence of corruption as well.

Article 43 of the Electronic Media Law prescribes:

'The Agency shall be funded in accordance with the financial plan, which is adopted by the Council for each year, not later than three months before the beginning of the fiscal year.

Overall costs of Agency's work covered by the Financial Plan, including reserves for contingencies, shall reflect realistic Agency's costs needed for successful attainment of its role.

All Agency's revenues and expenditures shall be subject to annual audit by an independent authorised auditor.'

Paragraph 2 of this Article of the Law indisputably stipulates that only expenses of work of the Agency and reserves for contingencies can be enlisted into financial plan, and there are no mentions of possible planning of sponsorships or humanitarian aid because it simply has nothing to do with AEM's functions. The so far practice points also to irresponsible expenditure of AEM's funds by the director of AEM in that part.

PARTY ABOVE THE LAW

The Council of the AEM has five members appointed by universities, non-governmental organisations dealing with protection of human rights and freedoms, non-governmental organisation from the media area, Montenegrin P.E.N. Centre, associations of commercial broadcasters.

The process of appointment of members of the Council of the AEM has in more than one occasion been conducted contrary to the Electronic Media Law, which has

23 As per years - 51.750,00 € in 2018, 30.630,00 € in 2017, 25.969,28 € in 2016, and 21.916,28 € in 2015. Source: CCE.

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directly affected legitimacy and quality of work of the AEM.

As per the valid Law, appointment of members of the Council of the AEM is performed by the Parliament of Montenegro by declaring itself about the joint list of candidates. Administrative Committee is tasked with administrative assessment of candidates' documentation, drafting of proposal list for appointment that is to be confirmed by the MPs in plenary session.

Article 28 of the Electronic Media Law prescribes that if nominators from the category of non-governmental organisations submit more separate nominations, the draft list shall include the nomination meeting the criteria as follows: '1) support of the largest number of authorised nominators; 2) the nominee has more years of experience relevant for Agency's scope of activities.'

The Administrative Committee has ignored the legal norm in the procedure of appointment of members of the Council in December 2014 and did not allow the candidate with the largest support of non-governmental organisations and longest work experience to be appointed as member of the Council of the AEM²⁴. MPs in the Administrative Committee have followed their party interests and not the legal norm, thus the elected candidate was not an expression of the will of non-governmental organisations as authorised proposers, but actually of political parties which is substantially contrary to the law²⁵.

The same situation repeated in June 2016. Candidate with twice as high support of qualified non-governmental organisations and significantly greater work record was not appointed for member of the Council of the AEM²⁶, but the will of political parties i.e. MPs has rendered another candidate to be more suitable to them, and thus to be elected as member of the Council of the AEM²⁷.

Hence, the Administrative Committee in more than one occasion revoked the right guaranteed by the law to the non-governmental organisations to delegate their representatives and created legal uncertainty that can have consequences to all future similar processes. Rendering meaningless the will of non-governmental organisations and introduction of will of political parties as the only criterion represent dangerous political message that is

24 Slavica Striković, Executive Director of the Women's Action

25 Darko M. Ivanović, the then Secretary General of the Civic Alliance was elected as member of the Council of the AEM although Slavica Striković has had greater support of NGOs and longer work record

26 Marina Vujačić, the then Executive Director of the Association of Youth with Disabilities of Montenegro

27 Edin Koljenović, the then Programme Coordinator in the Civic Alliance



contrary to the law, declarative commitment of all political subjects on establishment of rule of law system, and especially when this comes from the very Parliament.

On the other hand, it should be reminded that the Council of AEM itself has initiated procedure for dismissal of one of its members due to conflict of interest in accordance with the Article 34 of the Electronic Media Law on 30 January 2015. Namely, one member of the Council of AEM has been an owner of commercial entity that has together with RTCG produced shows within news programme. The Electronic Media Law prohibits members of the Council of the AEM to be 'persons having part, shareholders, members of management, employees, contracted persons, etc, having interest in legal entities engaged in production, broadcasting and/or distribution of radio and/or television programmes or other AVM services and related activities (advertising, electronic communications, etc.)'.

As it was undoubtedly determined, based on contract of commercial entity and RTCG, that the aforementioned shows are being produced jointly by these two legal subjects, the Council of the AEM has initiated dismissal procedure. In accordance to the Article 33 of the Law, Administrative Committee of the Parliament of Montenegro was obligated to act upon this initiative of the Council of AEM and to dismiss this member of the Council. Administrative Committee has considered this initiative but has never passed decision as per request of the Council of the AEM thereby rendering the law meaningless and the stated member of Council of AEM was then protected by this parliamentary committee²⁸.

CONTROLLED CHAOS IN REGULATION OF ELECTRONIC MEDIA

TIME FOR URGENT ACTION

The AEM has not in the so far work respected the Electronic Media Law consistently, and the management of AEM has most often violated articles 43, 44, 59 and 104 of the Electronic Media Law. Electronic Media Law does not anticipate situations when director of AEM can be dismissed from function, which is a kind of precedent.

The consequence of the fact that AEM has not being applying legal provisions, i.e. that proper measures were not being undertaken, including the ultimate measure – revocation of license for work, which has led to unfair competition on the electronic media market, but also to significant contamination of media space with unprofessional and unethical contents.

Furthermore, due to illegal work of the AEM, there still exists unfair competition on market and incomes from marketing, which in overall are not large on Montenegrin market, and these are transferred to broadcasters which do not produce significant scope of programme in Montenegro that they have committed themselves during acquiring broadcasting permission, or the production of that programme is minimal, i.e. it is disputable whether it is even within the framework of the received licenses for work.

Public interest was jeopardized by work of the AEM, and broadcasters working in accordance with the law, as well as public broadcasters, are suffering consequences through reduction of incomes from marketing.

Additionally, tolerating violations of programme principles and standards when it comes to media that are close to authorities has significantly contributed to disruption of not only media market but of ethical norms as well. And the AEM, instead of being bastion for principles that regulate relations in provision of audio-visual media (AVM) services, has often actually been an ally in its violation via omission to consistently apply the law to all media.

In order to start resolving the previously identified problems:

- It is necessary to ensure an equal application of the Electronic Media Law towards all broadcasters with broadcasting permission, in order to protect the public interest in informing citizens on issues important for them for the purpose of satisfying everyday life-needs;



- It is necessary to stipulate also the issue of dismissal of AEM's director by the Electronic Media Law, and to specify limitation of director's mandate in order to eliminate the existing possibility of different interpretations;
- It is necessary, through amendments to the Law, to increase the minimal percentage of self-production for broadcasters, that must be in relation to news contents, contents from the area of culture and education, and which would ensure better achievement of public interest;
- AEM shall regularly produce and publicly disclose periodical reports on programme structures of TV broadcasters, with the focus on checking whether electronic media are respecting their legal obligation in the part of broadcasting news from the coverage zone, but also with the correlation to licenses for work;
- The appointment procedure of members of the Council of the AEM should be fully protected, by legal provisions, from undue influence of political parties;

The state of Montenegro shall adopt media strategy that will determine objectives and priorities within the area of improvement of environment for work of media, including those which provide audio-visual contents.

