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# FACEBOOK LIVE IS OUR NEWS



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A project implemented by  
**The Center for Independent Journalism**

## South-East European Partnership for Media Development

SEE Partnership for Media Development is implemented by a consortium of media organizations from **Albania, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Bulgaria, Romania**. Media professionals from Kosovo and Turkey will also be involved.

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## 1. Introduction

The protection of the right to freedom of expression is at the core of democracy. Freedom of expression contributes to discussions on issues of public importance and encourages the overall development both of the society and of each individual. By contrast, arbitrary prohibition of the right to freedom of expression and other human rights is characteristic of totalitarian regimes where the political opposition is not tolerated and individual expression is considered dangerous to society. The rights protected by Article 10 of the European Convention include not only the right to express one's opinion on a certain issue, but also to receive information, and what is the presumption of forming an opinion on a dual basis, states **Rodoljub Šabić**, Commissioner for Information of Public Importance and Personal Data Protection, in an interview for this report.

According to the World Press Freedom Index 2017<sup>1</sup>, Serbia is the country with the biggest fall in 2017 and currently is on the 66<sup>th</sup> position, right after Bosnia and Herzegovina. In 2016 Serbia was on 59<sup>th</sup> place. As Reporters Without Borders state, **media freedom has declined ever since Aleksandar Vučić, Slobodan Milosević's former information minister, became Prime Minister in May 2014**. Now he is Serbia's new president, which may have an even more negative effect in the future.

A large student protest in Belgrade, Niš and Novi Sad started after the election in April 2017. Student protestors against the dictatorship of Aleksandar Vučić were later joined by the police, the army, University professors and other people and organizations. The demands<sup>2</sup> posted on social media by protesters against the so called *president-elect's authoritarian regime* included: dismissing the media regulator and sanctioning of all editors who breach media laws and the journalists' code, and removal of the top management of the public broadcaster RTS, and of the provincial broadcaster RTV, for "failing to facilitate a free and fair vote". Protesters also claimed they had not received widespread coverage due to a media blackout<sup>3</sup>. Some of the slogans protesters were carrying read: "(Facebook) LIVE is our news", "I am not HAPPY"<sup>4</sup>, "RTS – your right to know nothing"<sup>5</sup> and similar.

The World Press Freedom Index 2017 conclusion was that **the media and journalists in Serbia work under harsh financial and editorial pressure, and those that are most critical of the government are attacked publicly**. It was based on the analysis of the country's performance regarding pluralism, media independence, environment and self-censorship, legislative framework, transparency, infrastructure and level of abuses and violence<sup>6</sup>. The report emphasizes that investigative media groups BIRN and CINS, the investigative website

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<sup>1</sup> More at: <https://rsf.org/en/serbia> Visited: June 26, 2017

<sup>2</sup> More at: <http://www.balkaninsight.com/en/article/serbia-s-anti-vucic-protests-key-facts-04-12-2017> Visited: June 26, 2017

<sup>3</sup> More at: <http://www.independent.co.uk/news/world/europe/serbia-protests-media-aleksandar-vucic-prime-minister-police-a7673532.html> Visited: June 26, 2017

<sup>4</sup> "Happy" stands for TV Happy, which airs reality shows more than 58% of the time. Source: <https://www.cenzolovka.rs/mediologija/pravo-na-medije-kakva-je-uloga-komercijalnih-medija/> Visited: June 26, 2017

<sup>5</sup> The slogan of Serbian public broadcaster RTS is „Your right to know everything“ – available at: <https://www.youtube.com/watch?v=uGwOR2f265U> Visited: June 26, 2017

<sup>6</sup> More at: <https://rsf.org/en/detailed-methodology> Visited: June 26, 2017

KRIK, the daily Danas, and the weekly Vreme are often targeted, and are also subject to frequent arbitrary financial and administrative inspections. The media loyal to the regime go above and beyond to discredit journalists who criticize the government, and by doing so they put targets on their backs.

There was a case when the tabloid Informer had put a photo of the editor of the investigative journalism website KRIK, Stevan Dojčinović, on the front page on March 18, 2016, calling him the “Sado Maso French spy” (illustration 1). And another case involving Informer was publishing the photographs and names of editors from KRIK, CINS, and BIRN, and labeling them as foreign hirelings who want to take the Serbian Government down.



Illustration 1 - Front Page of the tabloid Informer<sup>7</sup>



Illustration 2 – The title of one article in the tabloid Informer<sup>8</sup>

These are not isolated cases, but common practice<sup>9</sup> in Serbian media scene. In this way, by endangering journalists and by authorities turning a blind eye, the level of freedom of expression constantly decreases. Tanja Maksić, **program coordinator at BIRN** thinks that this is one of the main mechanisms for limiting freedom of expression. She also adds that a group with a critical attitude towards the authorities is not allowed equal access to all the media.

In the European Commission Country Report on Serbia<sup>10</sup> it is stated that **the number of recorded cases of threats, intimidation, and violence against journalists remains a concern**. Some criminal charges have been filed but final convictions are still rare, they explain, and add that prolonged police protection of several journalists and social media activists continues, with

<sup>7</sup> Source: <https://www.krik.rs/skrozza-mediji-kukavicki-cute-o-blacenju-novinara-u-reziji-informera-i-pinka/> Visited: June 26, 2017

<sup>8</sup> Source: <https://www.cenzolovka.rs/misljenja/ne-odgovaram-na-pitanja-radnika-informera-samo-novinara/> Visited: June 26, 2017

<sup>9</sup> More at: <http://birnsrbija.rs/hronologija-napada-na-birn/> Visited: June 26, 2017

<sup>10</sup> Available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf) Visited: June 17, 2017

no tangible action taken to remove the reasons for these security measures, which seriously hamper the exercise of their profession.

An illustrative example of the pressure on media freedom was the exhibition of the Serbian Progressive Party called *Uncensored Lies*<sup>11</sup>, where media content criticizing the ruling party was exposed. This kind of spin should have convinced the public that there was no censorship, discredit critically-minded media and journalists, and also minimize critical thought and freedom of expression.

However, media and journalists are not the only ones who face extreme pressure and whose right to freedom of expression is limited, nor is the state the only non-media actor that influence media freedom, and freedom of expression in general.

## 2. The law and freedom of expression

Every human right, as well as the right to freedom of expression, is harmed by the underdeveloped democratic culture, the disrespect of the principle of the separation of powers, the rule of law, and so on, says lawyer Miloš Stojković. **Human rights cannot be observed in nondemocratic systems, and our biggest problem is that in the political sense we did not make the necessary democratization of society, and the level of freedom of expression is a logical consequence of an unfinished transition from an authoritarian to a democratic system.**

Đorđe Krivokapić, director of Legal Practices of the Share Foundation and associate lecturer at Faculty of Organizational Sciences says that freedom of expression in Serbia is guaranteed, and at the moment we have no regulatory policy problems, nor other barriers to freely express ourselves and to receive information. There are no mechanisms of censorship that ex-ante regulate what could or could not be said, he states and adds that there is no filtering and blocking the information in general. But who is free enough to express himself/herself and who has the means to use freedom of expression in its full capacity is another question, and it concerns every individual, his/her emancipation, financial dependence on actors in the public sphere, and many other factors, he concludes.

The state, as the most powerful organization in society, is obliged to create a legal and political framework for the unhindered exercise of the right to freedom of expression, so it also carries the greatest responsibility for the "unsuitable social environment" for the development of freedom of expression, reminds Stojković. **For the purpose of creating this suitable social environment, the state must make it clear that it is pro right to freedom of expression, its representatives must in no way express any reservations about the protection of that freedom and it must make it clear to the public that it will uncompromisingly protect that freedom.** Respect for human rights cannot be relativized, so in the freedom of expression any "but" that comes from the representatives of the state as the most powerful organization in society can encourage the so-called "chilling" effect, that is, refraining from expressing due to the awareness that there might be consequences for expressing one's own opinion, concludes Stojković.

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<sup>11</sup> More at: <http://www.balkaninsight.com/en/article/government-making-exhibition-of-the-work-of-journalists-07-18-2016> Visited: June 27, 2017

When freedom of information is in question, in Serbia there are three laws complying with European standards, approved with the aim of facilitating admission to the EU - **Law on Public Information and Media**<sup>12</sup>, **Law on Electronic Media**<sup>13</sup> and **Law on Public Media Services**<sup>14</sup>. But, Reporters Without Borders conclude based on their report that **they were never put into effect**.

In the European Commission Country Report on Serbia from 2016, it is stated that the legal and institutional framework for the respect of fundamental rights is in place, but **no progress was made to improve conditions for the full exercise of freedom of expression**. Their assessment is that generally, the legal framework to uphold and protect minority and cultural rights is also in place, however, **consistent implementation across the whole country is needed**. The Report states that (1) conditions for the full exercise of freedom of expression continue to be lacking. More consistent efforts are needed to ensure full implementation of the media laws; (2) strong and visible political support is needed to protect the rights of the groups facing most discrimination, including lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, people with disabilities, people with HIV/AIDS and other vulnerable groups. Investigation, prosecution, and penalties for hate-motivated crimes need to be stepped up; (3) a comprehensive approach to the integration of national minorities is needed through full implementation of the action plan on national minorities across the country; and (4) full implementation of the new strategy for Roma inclusion needs to be ensured and the action plan needs to be adopted promptly.

Nevertheless, the right to freedom of expression is not absolute and can be limited: (1) if the limit is prescribed by law; (2) if it is necessary for a democratic society; (3) for the protection of the legitimate interests of that society (for example, the protection of national security) and the rights and interests of others; and (4) if the restriction is proportionate to the goal it wants to achieve, explains Stojković.

He claims that it cannot be said with certainty that there is a widespread practice of compromising the freedom of expression with reference to the prohibition of hate speech, moral, religious feelings, privacy, and other justified interests, and not every reference to those has undue influence on freedom of expression. But Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić states **that public authorities often call for the protection of the right to privacy or the protection of confidentiality of information as reasons for denying or restricting the right to free access to information, failing to prove that such a restriction is necessary in a democratic society in order to protect serious violations of a predominant interest based on a Constitution or Law**. He explains that this leads to some "grotesque" attitudes of public authorities, and information relating to the professional biography of public officials or information on the income and property of officials get the protection which they should not have.

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<sup>12</sup> Available at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2511-14.pdf> Visited: June 27, 2017

<sup>13</sup> Available at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2512-14.pdf> Visited: June 27, 2017

<sup>14</sup> Available at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2513-14.pdf> Visited: June 27, 2017

To illustrate this Šabić mentions the case of the Youth Initiative for Human Rights against the Republic of Serbia before the European Court of Human Rights. The European Court of Human Rights delivered the verdict in the case of the Youth Initiative for Human Rights against the Republic of Serbia on June 25, and unanimously established a violation of Article 10 and the right to access information. This case dates back to 2005 when the Citizens' Association of the Youth Initiative for Human Rights filed a request to the Serbian Security and Information Agency (BIA) on the number of requests for wiretapping. As they did not receive the information, the organization filed a complaint with the Commissioner who made a decision to provide the BIA with the requested information. The BIA did not enforce the Commissioner's decision, nor did the Government of the Republic of Serbia take measures for enforced execution. In 2006, a case was brought before the European Court of Human Rights. The European Court of Human Rights found that a violation of Article 10 of the European Convention on Human Rights occurred in the present case. This judgment indicates that, **regardless of the need of some institutions to limit the publicity of their work, the specific limitation of the freedom of expression must be in accordance with the principles of human rights.**

Stojković also reminds that **there is a global trend of violating the right to freedom of expression by calling for the protection of copyright and related rights**, which was particularly striking in the case of a private agency KVZ that removed the satirical video Superman from Feketić<sup>15</sup> by calling for a violation of the copyright of RTS. The video is a parody on Serbian Prime Minister at that time Aleksandar Vučić rescuing a boy from the snowstorm<sup>16</sup>, edited by adding satirical comments. The withdrawal of the video was strongly condemned by the journalists' association NUNS, NDNV, and Share Foundation.



Illustration 3 - The main phantom from Sava Mala at the Uncensored Lies exhibition<sup>20</sup>

Stojković also points out the case of Nebojša Stefanović<sup>17</sup> versus Ringier. The first instance court awarded a compensation of 300,000 dinars for damages of honor and reputation because the weekly magazine NIN spoke about "the main phantom from Sava Mala"<sup>18</sup>. The front page in question was also displayed at the Uncensored Lies exhibition. The Appellate Court reversed the verdict<sup>19</sup>.

<sup>15</sup> Available at: <https://www.youtube.com/watch?v=yflnBjyGqF0> Visited: June 27, 2017

<sup>16</sup> More at: <http://www.balkaninsight.com/en/article/video-mocking-serbian-deputy-pm-disappears-from-internet-1> Visited: June 27, 2017

<sup>17</sup> Nebojša Stefanović is the Minister of Internal Affairs.

<sup>18</sup> Front page available at: <https://pbs.twimg.com/media/Ck9CG-GXIAAoAVU.jpg> Visited: June 27, 2017

<sup>19</sup> More at: <http://rs.n1info.com/a245293/Vesti/Vesti/Apelacioni-sud-preinacio-presudu-NIN-nije-kriv.html> Visited: June 27, 2017

<sup>20</sup> Source: <http://www.blic.rs/vesti/politika/sns-izlozba-necenzurisane-lazi-kao-dokaz-da-nema-cenzure/64k1sme> Visited June 29, 2017



The practice of the European Court of Human Rights has established certain standards relating to the privacy of public figures and their honor and reputation in relation to the right to freedom of expression. For example, the European Court of Human Rights rulings in the case of *Dichland and Others versus Austria* and *Oberhisch versus Austria* say that "**journalistic freedom also includes the possibility of resorting to expropriation or provocation**", and the ruling of the same court in *Karatas v. Turkey* even says that **the media and journalists are largely free to use hyperbole, satire, metaphor or another figurative expression when transmitting a particular message**. But of course, the condition is that there must be a public interest in reporting about a certain person.

### 3. Non-media actors influencing the Serbian media scene

When it comes to non-media actors who influence the media and reporting, **Tanja Maksić** says that the largest control comes from the centers in political parties, mostly from Serbian President Aleksandar Vučić and his Serbian Progressive Party. She explains that the influence on editorial policies is carried out in several ways: (1) **by the abolition of certain, primarily debatable, political broadcasts** (for example *Utisak nedelje*<sup>21</sup>, *Jedan na jedan*, etc.), (2) **by setting up editorial and journalistic staff who are prone to the party in power** (for example RTV or Studio B), as well as (3) **arbitrary division or access to public money**, where access to funds makes it easier for the media close to the government, but it is unattainable for those who critically report.

Miloš Stojković states that the biggest opponent of the freedom of expression, in general, is **self-censorship**, and when media freedom is in question, **a great problem is the non-separation of ownership and editorial function in the media**. There is no complicated mechanism of pressure, says Stojković, but a simple mechanism of influence on the freedom of expression through property-legal relations. He suggests that the only right way to overcome this problem is: (1) separating proprietary from an editorial function inside media; and (2) creating clear guarantees of editorial and journalistic independence.

Beside the government and mentioned mechanisms, there are many non-media gatekeepers, that limit the freedom of expression, such as private companies, Internet providers and cable operators, the church, extremist groups, etc.

#### 3.1. The Church, the media and freedom of expression

The Serbian Orthodox Church is an important actor that has in many cases limited freedom of expression. For example, Patriarch Irinej sent a decree to the Orthodox Theological Faculty after some members of this institution publicly stood "in defense of "Darwin's theory of evolution", saying that the theologians are prohibited from participating in television, radio or other media content, without a special prior archbishop blessing<sup>22</sup>. And he also threatened the

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<sup>21</sup> More at: <http://www.blic.rs/vesti/drustvo/olja-beckovic-utisak-nedelje-je-zabranio-vucic/rvypvlc> Visited: June 27, 2017

<sup>22</sup> More at: <https://www.cenzolovka.rs/pritisci-i-napadi/spc-ogranicava-slobodu-izrazavanja/> Visited: June 27, 2017

ones who did it with a church disciplinary procedure. Because of this, a group of professors from the Faculty of Philosophy reacted. They reminded that **the freedom of thought and expression is guaranteed by the Constitution of Serbia, which prescribes that these rights are applied without any conditions, and thus can not be challenged by the Constitution of the Serbian Orthodox Church.**

There are also many cases when Serbian Orthodox Church promoted discriminatory policies against the LGBT. In September 2016 the Serbian Orthodox Church organized a week of family unity, which only declaratively stands for family values, and in fact directly discriminates the LGBT population, as investigative website Insajder reported<sup>23</sup>. From the poster hanging at the church door, believers can be informed of the "civil code" that allegedly allows the legalization of the homosexual community and LGBT persons to adopt children, as well as the introduction of "the promotion of homosexuality in the education system". Reporting on this subject Insajder also states that in previous years, Patriarch Irinej made comments that the Pride is "as black as it could possibly be", "a set of all the faults and vices", told participants of the Parade that "what smart is ashamed of, the fool is proud of" and that homosexuality is "disorder and deviation of human nature". The most direct messages that can only be read as hate speech, reminds Insajder, were said by Metropolitan Amphilohia in 2009 such as the Pride is "the parade of Sodom and Gomorrah" or even more explicitly "the tree that does not grow fruits is cut and thrown into the fire". He gave a statement to the media that homosexuals are the same as pedophiles<sup>24</sup>, and the same statement was given by Irinej too<sup>25</sup>.

But with Aleksandar Vucic as president, the new prime minister of Serbia is Ana Brnabić, who is openly gay. Many hope that this will have a positive effect on freedom of expression. However, the reaction of the Church was more than interesting. After daily Blic reported that Serbian Orthodox Church does not want Ana Brnabić to become PM because she is gay<sup>26</sup> and is doing everything in its power to stop it, The Serbian Orthodox Church stated that it doesn't actually oppose it<sup>27</sup>. They said: "The Serbian Orthodox Church does not look through other people's windows and does not deal with the private life of state officials, and it is utterly irresponsible to subject the disgruntled details or some personal temptations to the media and thus expose people to potential danger." The Church condemns no one, it condemns only the sin, and for the people we show compassion".

### 3.2. Private companies and freedom of expression

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<sup>23</sup> More at: <https://insajder.net/sr/sajt/tema/1478/> Visited: June 27, 2017

<sup>24</sup> Available at: <http://arhiva.alo.rs/vesti/aktuelno/amfilohije-homoseksualci-i-pedofili-su-isto/23204> Visited: June 27, 2017

<sup>25</sup> Available at: <http://www.kurir.rs/vesti/drustvo/1568369/patrijarh-irinej-gejevi-su-isto-sto-i-pedofili> Visited: June 27, 2017

<sup>26</sup> Available at: [http://www.b92.net/info/vesti/index.php?yyyy=2017&mm=05&dd=12&nav\\_category=206&nav\\_id=1259477](http://www.b92.net/info/vesti/index.php?yyyy=2017&mm=05&dd=12&nav_category=206&nav_id=1259477) Visited June 27, 2017

<sup>27</sup> Available at: [http://www.b92.net/info/vesti/index.php?yyyy=2017&mm=05&dd=15&nav\\_id=1260640](http://www.b92.net/info/vesti/index.php?yyyy=2017&mm=05&dd=15&nav_id=1260640) Visited June 28, 2017

When it comes to private companies in Serbia and the freedom of expression, there are two fields of action which are important to be pointed out. The first one considers private companies influencing freedom of expression of its employees, and the other one is about private companies influencing media freedom and freedom of information by advertising.

Stojković thinks that every company is free to prescribe rules of expressing certain attitudes through social networks and to sanction non-compliance with these rules. **Whether this is treated as a violation of the right to freedom of expression depends on the circumstances of the particular case.** For example, whether in an internal company document, each employee was informed in advance that the filing of negative claims about the company's operations would be treated as a violation of working discipline and agreed to such an effect. Stojković also adds that the application of general rules on the proportionality of the restriction measure can also be taken into account, and explains - If someone gets fired because of a Facebook announcement that the heating system does not work at his workplace, it would be possible to talk about compromising the freedom of expression. On the other hand, if an employer reduces the employee's salary because he has published false claims that the company has not paid taxes and contributions for employees for three years, it is difficult to talk about the illegal restriction of freedom of expression.

This problem complicates even more when private media companies are in question because as Stojković states, it is difficult to separate the private attitude of journalists from his or her statement, which he or she gives as a professional duty. He adds that this problem is still insufficiently explored, and he recommends addressing it through the Code of Conduct related to employee behavior and ethical rules of journalism. Tanja Maksić adds that this is the case with BIRN, that respects The Code of Ethics developed by the Association of online media which recommends special journalistic attention to the use of social networks, and in cases when journalists use sources from these platforms. She also adds that her opinion is that in essence, **the company should not prevent journalists or any employee to freely express their opinion on private accounts on social networks, while corporate accounts should follow the basic ethical and professional standards that apply in reporting.** Nevertheless, the Share foundation Monitoring on digital Rights and Freedoms in Serbia<sup>28</sup> recorded a couple of sanctions in the field of disciplinary and labor responsibility for journalists because of their freedom of expression, which usually led to termination of the employment contract.

When it comes to freedom of information, **companies influence the work of the media indirectly, states Tanja Maksić, through the placement of advertising or through cooperation with marketing agencies that are in close relations with those who govern.** There is a known case of the agency, that had a monopoly on the media buying market, which was close to Dragan Đilas, the Mayor of Belgrade, and which began losing contracts with the change of power in 2012. Since then, the agency led by Goran Veselinović, who is close to Aleksandar Vučić, has dominated the market. Miloš Stojković agrees with Maksić, and adds that the **specificity of situation in Serbia is that the state is still the biggest advertiser** and the problem is additionally complicated because advertising (or lack of advertising) in these situations is most often related to the manner of reporting of a particular media, or whether a media is

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<sup>28</sup> Available at: [https://labs.rs/Documents/Monitoring\\_digitalnih\\_prava\\_i\\_sloboda\\_izvestajza\\_2016\\_srb.pdf](https://labs.rs/Documents/Monitoring_digitalnih_prava_i_sloboda_izvestajza_2016_srb.pdf)  
Visited: June 30, 2017

critical or not towards the government. So, the question of media freedom is in direct connection to a very complex problem of media financing, or media business models. Due to internet and „free“ news and the digitalization of the media sphere consumer policy changed. Krivokapić explains that individuals who were financing the media by buying a newspaper and being subscribed now entered the world of mass media, which means that in a way they have given up on financing the media. Because of that new business model was established – an advertising business model, which is being financed by audience’s attention. In this business model, media consumers become media product who media and intermediaries sell to advertising companies, he adds. **So when we are talking about the ones who influence the freedom of expression, it is important to emphasize, says Krivokapić, that those are not owners of the media anymore because income from the audience is limited, but advertisers both public and corporate, who are in fact funding media production and therefore strongly influencing "public interest".** The third financer is also government through project co-financing, which has its own specificities. „Anyhow, those that give money to the media have the influence on editorial policies“, he states, and adds that it is also important to understand that except this legal money flow in advertising, there is also the gray area of trade in influence, which in Serbia is very poorly regulated and implemented.

**Also, when companies are in question there is an issue of illegal data collecting and processing.** In 2013, the Commissioner for Information of Public Importance and Personal Data Protection sent a letter to the Ministry of Labor, Employment and Social Policy, in which he pointed out in detail the various problems in the processing of personal data of employees and urged them to react. In his letter, among other things, he stated: "Employers often perform full and continuous supervision of the oral and electronic on-line communication of their employees (use of mobile phones, electronic correspondence, visited pages on the Internet, etc.) without prior notification of employees about such measures and without any rules. In the jurisprudence of the European Court of Human Rights, the concept of "reasonable expectation of privacy" has been developed, which implies that the employer's interference with the employee's private life is assessed on the basis of the criteria of reasonably expected privacy. It is therefore necessary to prescribe the rules when and under which conditions the employer can monitor the employee (by monitoring GPS systems, using video surveillance, surveilling oral and electronic communication, etc.), taking into account that a worker expects certain privacy in his/her workplace and that he/she must have it. Šabić explains that employers are permitted to collect data that is of direct relevance to the performance and are necessary for assessing the professional competence of the candidates for employment, or for exercising and assuming obligations and responsibilities arising from the employment relationship. This is expressed in the Code of the International Labor Organization in the request that the type and number of personal data collecting be reduced as much as possible. But, as Šabić says, he has not received even a polite response to this letter to this day.

### 3.3. Privatization of online Freedom of Expression

Internet providers are a type of operator whose obligations are defined by the Law on Electronic Communications, especially in Article 37, which regulates the general conditions for performing activities. The most interesting for this topic, states Miloš Stojković, are the following obligations: (1) protection of personal and privacy data in the field of electronic communications; (2) the application of measures to prevent and combat abuse and fraud related to the use of electronic communications networks and services; (3) the application of measures to preserve the security and integrity of public communications networks and to prevent electromagnetic interference between electronic communications networks and services; (4) enabling the lawful interception of electronic communications and access to retained data.

But **there are many cases of conflict of interest of internet providers and broadcasting networks**. For example, Telekom Serbia, partly state-owned, as well as SBB, which is a monopolist on the cable television market, also provide Internet access services and produce content. Telekom has 5 channels Arena Sport, while SBB has TV N1 and 6 Sport Club channels, Grand, IDJ and is in the process of buying TV Ultra. Consequences are favoring the Telekom channel operator (sports channels Arena) in relation to others within the framework of the MTS Antena service, which represents a joint business venture of JP Emission Technology and Communications and Telekom Serbia, and change of a logical channel numeration made by SBB in favor of its channels on its network. The reaction of the RTS director Dragan Bujošević about RTS not being the number one in channel numeration was: "It is not important what the damage will be to the public service, but what is important to a country, what is the priority, and who determines the rules of the game - institutions or powerful individuals"<sup>29</sup>.

It is not the ideal situation when ones who distribute the news also create them, because of the protection of competition and the prevention of concentration, says Djordje Krivokapic, and explains that if the case was a bit different, if N1 would be pro-regime media, he thinks that everyone would rebel and advocate that such kind of concentration should not be allowed by no means. But, actually, this case of SBB and N1 allows the government to say that they actually allow different political options and do not interfere with freedom of expression, he concludes. **Such a situation could be the subject of regulators' work in terms of vertical concentration, but the Public Information and Media Law gives sturdy explanations about this type of concentration as well as about reacting if this concentration happens**, says Maksić. Stojković adds that in these situations, the state should react primarily through the Electronic Media Regulatory Authority, which oversees whether operators discriminate certain providers of media services (Article 100 of the Law on Electronic Media). Also, if there is a suspicion that free competition is endangered by this behavior, then the Commission for Protection of Competition, according to the Law on Protection of Competition, should also react. Also, the Law on Public Information and Media prescribes the restriction that a media service distributor who also provides a media service must do so through a related person (not directly), so it also can be supervised by the competent ministry - the Ministry of Culture and Information. As far as I know, the regulators have never responded to the violation of media pluralism on the basis of concentration, concludes **Tanja Maksić**.

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<sup>29</sup> <http://www.nuns.rs/info/news/30389/rem-jos-bez-odgovora-o-odluci-sbb-a-da-n1-bude-kanal-broj-1.html?print=true>

During 2013 and 2014, the Commissioner conducted systematic and comprehensive supervision over the implementation of the Law on Personal Data Protection and the Law on Electronic Communications of over 184 operators providing Internet services. Conclusions and recommendations regarding this supervision were presented by the Commissioner in his special report, which he sent to the Government and the National Assembly of the Republic of Serbia, and which is available online<sup>30</sup>.

Also, there is an issue of “blocking” the particular content on the Internet, which is engaged in situations when it is necessary in a democratic society, in order to protect the core values of that society, with the proportionality of the measure and the goal that the blocking aims to achieve. Stojković emphasizes that general blocking of certain content is not legally defined nowhere specifically. There were attempts to introduce such a provision into a law regulating gambling, but that attempt failed, precisely because of the implications for freedom of expression.

Dušan Pavlović, doctoral candidate, Joint International Doctoral (Ph.D.) Degree in Law, Science and Technology, states that in the Republic of Serbia, **the public discussion about gambling-related issues has not been well developed**. As a consequence, it is almost impossible to indicate the shape of gambling legitimacy. The main reason for a situation is a lack of appropriate capacities. Lack of finances and scientific institutions as well as poor human capital in the field of gambling studies influence incapability for carrying out the research that would reliably reveal various psychological, social and financial issues related to gambling service providing and the state of national gambling market. Moreover, he explains, despite omnipresent gambling facilities and opportunities in Serbia (there are around 65 companies that provide gambling services, 2500 slot machines, 1800 betting shops and ten online gambling service providers), gambling mainly does not attract the considerable attention of subjects that might shape its’ ethical discourse. **Professional health organizations, educational institutions, chambers of commerce, political parties, civil society organizations and religious organizations have not expressed substantial interests for gambling-related problems and challenges. For that reason, it could be claimed that currently, valid gambling legislation in Serbia is rather to be an assumption based than evidenced based regulation**, he concludes.

Pavlović also emphasizes that considering that accession of Serbia to the European Union as one of the most important political goals declared at a national level, the country has to harmonize national legislation with the EU Law. Nevertheless, there is the absence of harmonized standards over gambling activities at the Union level. Therefore, regulatory landscape in gambling domain in the EU is depicted by 28 different national legislations and the variety of relevant national policies (gambling policies, health policies, youth policies, consumer protection policies), says Pavlović. It seems that lack of gambling-related standards determined by the EU regulator has made even more problems for Serbian regulators when they have created the gambling law, he concludes.

### 3.4. Extremist Groups and Freedom of Expression

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<sup>30</sup> <http://www.poverenik.rs/en/press-releases-and-publications/2128-nuzno-je-popravljati-nivo-zastite-licnih-podataka-u-oblasti-elektronskih-komunikacija.html>

Freedom of expression in Serbia is also threatened by both formal and non-formal extremist groups and organizations, and there are many cases of those subjects limiting freedom of expression, without any further reactions of the state and competent authorities, which do not put much effort into preventing extreme and hate speech. **Very often these attacks happen in digital environment, and Đorđe Krivokapić explains that the reason for that is that social media users feel that they are not fully responsible for the things they post online.** Many cases involving this type of hampering basic human rights concern minorities, but also media and journalists.

As earlier mentioned, journalists have the privilege to be threatened on a daily basis. The most recent case was that of a group of nationalists, including members of the constitutionally banned far-right group *Obraz*, prevented the screening of a movie 'Albanian Women Are Our Sisters' in Niš, after which the Serbian and Albanian relation was about to be discussed<sup>31</sup>. The organizers, filmmakers and journalists were threatened with "slaughter" and "beatings". The flag of Kosovo was set on fire in the presence of the police, and the journalists who were on the terrace of the Media and the Reform Center Nis, in order to cover the event, were thrown rocks and dirt at. Because of the report on this event journalist Marija Vučić received a threat on Facebook from a fake profile - "You will go under the sword very soon."<sup>32</sup> Far-right groups also reacted when this documentary was about to be shown in Belgrade, Novi Sad and Kraljevo.

An interesting fact is that in October 2016, a business forum Serbia-Albania was held in Niš, where more than 300 representatives of companies and businessmen from both countries took part. The meeting was opened by the prime ministers of Serbia and Albania at the time, Aleksandar Vučić and Edi Rama. There was no incident, nor did any extremist and right-wing group attempt to prevent the event. Sociologist Jovo Bakić said that right-wing extremists in Serbia "are working on a button" and accused the current government that it is the one who uses them as needed<sup>33</sup>. He explained that behavior towards the Pride is the best indicator of cooperation between extreme right-wing organizations and authorities, and reminded that when attempting to organize it before 2012, there was always a state of emergency, and now, when the parade is organized by this government, there are no extremists on the streets at all.

#### 4. Conclusion

Freedom of thought and expression is one of the basic freedoms and rights, guaranteed by the Constitution of the Republic of Serbia, and by the European Convention on Human Rights. According to Article 10 of the European Convention on Human Rights, everyone has the right to freedom of expression. This right includes the freedom of opinions, receiving and communicating information and ideas without interference by public authorities and regardless

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<sup>31</sup> More at: <https://www.balkaninsight.com/en/article/protesters-interrupt-movie-about-serb-albanian-relations-06-23-2017-1> Visited: June 29, 2017; <http://mediareform.rs/reakcije-niskih-politicara-na-incident-povodom-projekcije-filma-albanke-su-nase-sestre/> Visited: June 29, 2017

<sup>32</sup> More at: <https://www.cenzolovka.rs/pritisci-i-napadi/mariji-vucic-zbog-teksta-o-desnicarima-prete-smrcu/> Visited: June 29, 2017

<sup>33</sup> More at: <http://rs.n1info.com/a279490/Vesti/Vesti/Bakic-Ekstremni-desnicari-rade-na-dugme-vlast-ih-koristi.html> Visited June 29, 2017

of frontiers. But, as Rodoljub Šabić, Commissioner for Information of Public Importance and Personal Data Protection, explains since the exercise of these freedoms entails duties and responsibilities, it may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public security, to prevent disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, the prevention of disclosure of information received in confidence, or for the preservation of the authority and impartiality of the judiciary.

When freedom of information is in question, in Serbia there are three laws complying with European standards, approved with the aim of facilitating admission to the EU – the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Media Services. But, Reporters Without Borders conclude based on their report that they have never been put into effect, and in the 2016 European Commission Country Report on Serbia it is also stated that the legal and institutional framework for the respect of fundamental rights is in place, but no progress was made to improve conditions for the full exercise of freedom of expression.

The biggest threat to the freedom of expression is the lack of freedom of the media, which was created as a result of strict control carried out by the current government led by the Serbian Progressive Party, concludes Tanja Maksić and adds: without free media there is no room for a public debate on all important social issues, nor for the possibility of critical review of the work of the government and other state bodies. She concludes that the largest control comes from the centers in political parties, and as Stojković points out the great problem is also the non-separation of ownership and editorial function in the media.

As a country in a transition period, Serbia has many issues with guaranteeing freedom of expression. According to the World Press Freedom Index 2017, Serbia is the country with the biggest fall in 2017 and currently is in the 66th position - the media and journalists in Serbia work under harsh financial and editorial pressure, and those that are most critical of the government are attacked publicly. In the European Commission Country Report on Serbia, it is stated that the number of recorded cases of threats, intimidation, and violence against journalists remains a concern.

In close relation to media freedom is the freedom of information, and the right to obtain information of public interest, which is another problem in Serbia. Rodoljub Šabić warns that public authorities often call for the protection of the right to privacy or the protection of confidentiality of information as reasons for denying or restricting the right to free access to information, failing to prove that such a restriction is necessary for a democratic society, and Miloš Stojković adds that there is a global trend of violating the right to freedom of expression by calling for the protection of copyright and related rights.

Besides the government and mentioned mechanisms, there are many non-media gatekeepers, that limit the freedom of expression, such as private companies, Internet providers, and cable operators, the church, extremist groups, etc.

The Serbian Orthodox Church in most cases promotes discriminatory policies against the LGBT, but limiting freedom of expression in the church itself is in effect.

The problem with private companies and freedom of expression goes in two directions – first it concerns companies influencing freedom of expression of their employees, and the other



one is about private companies influencing freedom of information by advertising, which is a widespread practice on the Serbian media scene.

The problem of private companies influencing freedom of expression complicates even more when private media companies are in question because there is no generally accepted regulation on how journalists should, for example, use social media.

When it comes to advertising influencing freedom of speech, it is important to emphasize, says Krivokapić, that owners do not control media anymore because income from the audience is limited, but advertisers do, both public and corporate, and they are in fact funding media production and therefore strongly influence "public interest". The third financier of media is also government through project co-financing. And there is also the problem of gray area of trade in influence, which is very poorly regulated and implemented.

Also, the issue of illegal data collecting and processing is equally concerning when it comes to private companies and corporations .

When talking about freedom of information and public interest in general, there are many cases of conflict of interest of internet providers and broadcasting networks – when distributors are also content creators. Such situations should be the subject of regulators' work in terms of vertical concentration, but the Public Information and Media Law gives sturdy explanations about this type of concentration as well as about reacting if this concentration happens, says Maksić.

Blocking content and websites is possible, and there were noted cases of this type, but Stojković emphasizes that general blocking of certain content is not legally defined anywhere specifically. There have been attempts to introduce such a provision into a law regulating gambling, but they failed, precisely because of the implications for freedom of expression, he says. Dušan Pavlović adds that the public discussion about gambling-related issues has not been well developed in Serbia, and currently, valid gambling legislation in Serbia is rather to be an assumption based than evidenced based regulation.

Another concern for freedom of expression is both formal and non-formal extremist groups and organizations. In many cases, they limit freedom of expression with threats or even physical violence, often without any further reactions of the state and competent authorities.

The conclusion that can be drawn considering all mentioned is that in Serbia the legislation is at European standards, but the law is often not respected so full exercise of freedom of expression is impossible. There are no mechanisms of censorship ex-ante, but public discrediting of journalists and activists who speak their mind, threats and intimidation are in place. Many non-media actors influence editorial policies, and the extension of freedom of information in Serbia is shaped by a number of actors. Freedom of speech is limited, but on the other hand, hate speech is increasingly present, especially on social media, as online communication has yet to be fully regulated in Serbia.

