

MONITORING EU GUIDELINES IN KOSOVO

FINANCING FROM THE STATE BUDGET ENABLES POLITICAL PRESSURE AND CONTROL

by ISUF BERISHA

This report briefly assesses independence and transparency of the media regulator and public service media in Kosovo in 2014 and early 2015 taking into account the indicators in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020.

THIS REPORT WAS PRODUCED IN MAY 2015 by the SEE Media Observatory as a contribution to the 2015 assessment of two results – independent and professional regulators, and public service media – elaborated in the Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014–2020. The content of the assessment follows the indicators included in the EU Guidelines.

INDEPENDENT AND PROFESSIONAL REGULATORS

TRANSPARENCY AND EFFICIENCY OF THE REGULATOR

The Kosovo regulator in charge of the broadcasting media is the Independent Media Commission (IMC).

Both the Constitution of the Republic of Kosovo and the Law on Independent Media Commission (2012) contain provisions that guarantee the independence of IMC. According to the Constitution (Article 141) the IMC is an independent body. Consequently, the respective law provides that the IMC “shall be an independent body for regulation, management, and oversight of the broadcasting frequency spectrum”(Article 3). In addition, the Article 6 makes it clear that “members and staff of the IMC shall not receive instructions by any person or other entity, including the governmental entities. The independence of the IMC shall be respected at all times and no person or entity shall be permitted to influence on any of the members of the IMC in the course of exercising their duties.” The IMC law contains detailed provisions that provide transparent procedure for selection and appointment of IMC members by the Assembly of Kosovo (Article 11), while eventual political and economic conflict of interest of candidates/members of IMC is addressed in the Article 12. Despite this, the long procedure of appointing members of the IMC Council usually does not result with most prominent independent candidates that have best expertise in fields of



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IMC activities being appointed, but those who have affiliations with main political parties that dominate the Assembly and its Commission in charge of IMC.

Regarding transparency, IMC submits annual report to the Assembly of the Republic of Kosovo by 31 March of current year. It includes full data in relation to broadcasting policy, issuance of licenses and complains, sanctions, financial activities and the objectives for the next year. All meetings of IMC should be open to the public. Annual reports, documents on IMC decisions, sub-laws/regulations and all other documents/information related to the IMC activities are published on its website.

IMC is relatively efficient. It has been more or less successful in license issuance, monitoring of compliance of broadcasters by terms of licenses, addressing violations and deciding on sanctions and warnings. IMC has also been efficient in collecting license fees. Yet there are important issues that are left out of IMC attention/monitoring due to the lack of funds and capacities or a legal vacuum. Such cases are, for instance, monitoring of 'state advertising', sector analyses on economic pressure on independent reporting and other issues. IMC is also lacking regulations for number of important issues (media ownership concentration, for instance); these are still waiting to be drafted and adopted. Also, IMC has not been very successful with its leading role in the process of Kosovo preparations for digitalisation.

Still, IMC enjoys solid trust by media community. For example, the findings of the survey "Media indicators 2015" that was published on 3 May 2015 by Kosovo 2.0, Çohu and Kosovo Press Council reveal that majority of 175 journalists interviewed for the survey believe that IMC "functions effectively and without bias". According to that survey, 16 percent of the interviewed journalists believe that IMC functions "entirely" effectively and without bias, 53 percent "up to some level", 11 percent "not entirely" and 20 percent "not at all".

IMC was formally consulted in the process of drafting of IMC Law and other laws relevant to its activities. However, its recommendations were not always considered with adequate attention by the legislator. IMC organizes debates and consultations with broadcasters and the public in process of drafting new regulations. There are no registered cases of formal institutional interference/pressure of Government or Assembly of Kosovo on IMC. However, there are concerns that interference/pressure is exercised on individual basis directly to the members of IMC.

FINANCIAL AUTONOMY OF THE REGULATOR

IMC doesn't have financial autonomy. Current law provides that the "IMC shall be funded by the Budget of the Republic of Kosovo" (Article 45). Although it is specified in the regulation that the "IMC shall have its own budget line which shall guarantee its independence, and these means shall be permitted to it for use after a plan drafted in advance for development of its regular activities" (Article 45), according to the IMC's representative, "the budget is defined

INDEPENDENT MEDIA COMMISSION (IMC) ENJOYS SOLID TRUST BY MEDIA COMMUNITY IN KOSOVO. RESULTS OF THE SURVEY "MEDIA INDICATORS 2015" REVEAL THAT MAJORITY OF 175 JOURNALISTS INTERVIEWED FOR THE SURVEY BELIEVES THAT IMC "FUNCTIONS EFFECTIVELY AND WITHOUT BIAS".

without paying much attention to the needs and requests of IMC.” In addition, despite the law allowing funding of IMC’s activities from other sources as well, since 2012 the regulator has not been able to use the collected licence fees’ fund. The 2014 budget was further downsized in April 2014 for 15 percent in some of the main budget lines. As a result, since July 2014, IMC carried out some of its activities at the expense of the next year’s budget. Last three months of 2014 the IMC could not afford even to pay its electricity bills. The current model of funding of IMC’s operations is therefore a main concern of this regulator as it remains the most effective way of pressure of the Government/Assembly on it.

IMC was established in 2006 as a result of transformation of the Office of the Temporary Media Commissioner (TMC) that until then was a responsible for both broadcasting and print media regulation. TMC that was created by OSCE Mission in Kosovo had established itself as an independent institution, at least in relation to the local authorities and political parties. Taking TMC’s achievements as starting point, IMC in general managed to consolidate its professional capacities by both enlarging its staff and advancing their professionalism. However, since its ‘kosovarisation’ this regulator became more vulnerable to the local financial and political pressure/influence.

TRANSPARENCY OF MEDIA OWNERSHIP AND ECONOMIC PERFORMANCE

All license applications that are submitted to the IMC must contain data on ownership. Directory of the licensed broadcasting media is published on the IMC website. It contains main data from the applications including the above mentioned data on ownership. However, this document doesn’t contain data on complete ownership structure, but just who is the main media owner or director.

All licensed media are obliged to submit annual financial reports to the IMC, but these statements are not available to the public. There is no legislation against media monopolies and dominant market positions.

IMC’s sanctions for various violations of the license conditions by broadcasters range from 1,000 to 100,000 EUR. In case of minor violations, IMC usually sends letters of warning. The media can submit complains to the IMC’s Appeal Board. This body can confirm, modify or rule over the IMC decision. The Appeal Board’s decisions are final and can be challenged only by the court. All records of sanctions on media are published on the IMC website.

The issue of ‘state advertising’ is not monitored by IMC due to the legal vacuum. Therefore there are no reliable data on this issue. No recent assessments have been conducted. However, the results of the older monitoring of distribution of state advertisements in the print media (conducted between 15 July and 15 August 2010) revealed that most of the Kosovo institutions did not respect principles of good governance when using public money for advertising. For instance, according to that monitoring (Circulation and Politicization of Print Media in Kosovo, OSCE Mission in Kosovo, March 2010), the office

IMC DOESN'T HAVE FINANCIAL AUTONOMY. THE CURRENT MODEL OF FUNDING OF IMC'S OPERATIONS IS A MAIN CONCERN OF THE REGULATOR AS IT REMAINS THE MOST EFFECTIVE WAY OF PRESSURE OF THE GOVERNMENT/ ASSEMBLY ON IT. THE 2014 BUDGET OF IMC WAS FURTHER DOWNSIZED FOR 15 PERCENT IN SOME OF THE MAIN BUDGET LINES. LAST THREE MONTHS OF 2014 THE IMC COULD NOT AFFORD EVEN TO PAY ITS ELECTRICITY BILLS.

of then Prime Minister Hashim Thaçi channeled all advertising funds to two newspapers that were close to his PDK party (*Infopress* 50 percent and *Epoka e Re* 50 percent). In the same way, municipalities governed by PDK dispatched more than 90 percent of advertisements in the newspapers close to that party, with *Infopress* taking even 60 percent, in contrast to main daily *Koha Ditore* left with only 3 percent. That report disclosed that only the Assembly of Kosovo submitted its advertisements to all newspapers without discrimination.

The issue of transparency in dispatching advertisements by big public companies is not monitored by IMC. Although this issue is raised by the media from time to time, the lack of legal clarity left it out of attention of institutions or agencies that could monitor it. There are no reliable data on the volume and share of advertising dispatched by public companies to the media. Due to the lack of funds, IMC doesn't perform regular periodic sector analyses. Only twice in recent years (in 2011 and 2013) IMC commissioned the research of media advertising market in Kosovo for the needs of digitalisation process.

The IMC does not perform monitoring on informal economic pressures on independent reporting. The Anticorruption Agency can act if such case is submitted, but it does not perform sector analyses nor monitor this issue. Although economic pressures have been reported by the media, there are no legal checks in place on this issue.

Media privatisation is not an issue in Kosovo. Privatisation of state owned media didn't take place.

PUBLIC SERVICE MEDIA

PSB: TRANSPARENCY AND INDEPENDENCE

Public service broadcaster in Kosovo that is a subject of this report is Radio Television of Kosovo (RTK). The RTK law (2012) requires content pluralism from the public broadcaster, taking into account the needs of all segments of the public for news, cultural, educational, sport and entertainment programs as it is provisioned by Article 7 of the above mentioned law.

The Article 7 specifies that "obligations of the public service of RTK regarding the content, channels and services offered by it specifically should include the following: 1.1. promoting a culture of civic dialogue and providing a wide arena for public discussion; 1.2. providing a content of high quality that offers information on events in the country, in cross-border areas, in Europe and in the world; 1.3. providing educational content of a high quality; 1.4. providing cultural content of a high quality; 1.5. production of drama programs; 1.6. providing domestic television products of high quality for children, teenagers and elders; 1.7. providing entertaining content of high quality for all ages; 1.8. realization of constitutional rights of Serb community and other national

THE LAW STIPULATES THAT EDITORIAL POLICY OF RTK "SHALL BE INDEPENDENT, FAIR, PROFESSIONAL, OBJECTIVE, BALANCED AND IMPARTIAL" (ARTICLE 18). HOWEVER, THERE IS WIDESPREAD PERCEPTION BOTH IN GENERAL PUBLIC AND IN MEDIA COMMUNITY THAT RTK IS FAR FROM INDEPENDENT.

communities regarding the provision of public information and distribution of the content offered by RTK; 1.9. inclusion of cultural achievements and other achievements of Serb community and other communities in national radio channels and national television contents in Albanian language; 1.10. in accordance with international treaties and in cooperation with radio television broadcastings corporations of other countries, provides support for creation and development of cross border projects for radio, television and other projects; 1.11. providing content for sense disabled persons, by using adaptable technologies for their needs; 1.12. particular attention shall be paid to the persons with disabilities in terms of programs and information delivery; 6 1.13. particular attention shall be paid to the children and family; 1.14. presentation and promotion of Kosovo culture, cultural creativity and free artistic expression; 1.15. presentation and promotion of science; 1.16. particular attention should be paid to the social position and activities of the registered religious communities; 1.17. particular attention should be paid to the history and identity of Kosovo and its place in international arena, and promotion of universal cooperation, understanding and knowledge of histories, cultures and identities;” etc.

The section 2 of the Article 7 specifies that “within the structure of content, channels and services provided by RTK as a part of public service performance, RTK should dedicate a large proportion of time of weekly broadcasting in every channel or other service for cultural, artistic, information, documentary or educational content.” It is fair to say that RTK has made significant efforts to fulfill these obligations regarding content pluralism. Special attention was paid to the needs of the Serbian and other ethnic minorities in Kosovo. RTK2 is a Serbian language channel.

The law stipulates that editorial policy of RTK “shall be independent, fair, professional, objective, balanced and impartial” (Article 18). However, there is widespread perception both in general public and in media community that RTK is far from being independent. For example, the findings of the survey “Media indicators 2015” reveal that the overwhelming majority of 175 journalists interviewed for that project believe that “the public broadcaster is not independent or unbiased from political interventions.” In total, 75 percent of them believe that RTK is not independent, with 55 percent thinking that “the public broadcaster is ‘not at all’ independent” and 20 percent believe it is “not independent up to certain level“.

Furthermore, during the first four months of 2015, dozens of RTK journalists and editors have been voicing their dissatisfaction and protest against the situation in public broadcaster. The Independent Trade Union of RTK (SPRTK) organized public protest in front of the RTK building, while 60 journalists and editors in the letter of 3 March 2015 sent to the RTK Board and also to the Reporters Without Borders accused RTK management for censorship, propaganda and bias in favour of the ruling party (PDK) and for making news according to orders by leaders of that party. In support to their claims these editors

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and journalists listed several cases of censorship of stories that were seen as anti-PDK by RTK management.

Provisions of the RTK law require transparent and democratic process of selection of the RTK Board. In practice, independent candidates, although proposed by civil society organizations, never get selected. The board is selected by those who dominate the parliament. During the last several years PDK, as a ruling party, used every opportunity to install its people in boards of public companies and independent institutions. RTK is not an exception. Its board also seems to be dominated by people affiliated to PDK.

FINANCING IN TRANSITION

RTK is currently funded by the Kosovo budget. According to the Law on Radio Television of Kosovo, “for the transitional three-year period, until the solution of funding through subscription, RTK will be allocated 0.7 percent of income from the Kosovo budget annually”. Having in mind that the RTK law entered into force in March 2012, the three year transitional period has already expired, while efforts to find adequate solution for funding of PSB are still going on. In 2014, the state funding was 9.348 million EUR. With more than 2 million EUR from advertising and other income, the RTK total budget in 2014 was 11.676 million EUR.

It seems that funding through subscription/licence fee paid by households is not an option for the time being since there isn't efficient solution for collection of such a fee. Therefore, continuation of funding of RTK from the Kosovo budget remains a pragmatic and acceptable option for both – the present RTK management and the Government/Assembly of Kosovo. In the comment to the draft version of the new law, the RTK management is requiring 1.5 percent of Kosovo budget to be allocated to the public broadcaster annually. This proposal is justified by the enlargement of the RTK operations to three new channels (Serbian language RTK2, news channel RTK3 and education, culture and sports channel RTK4) and by the needs for investments for digitalisation.

Present way of funding from the Kosovo budget (that might continue in future if reinforced by the expected changes of the RTK law) is providing financial sustainability for RTK. However, from the perspective of independent editorial policy of PSB, it is not the best solution. Having in mind political and financial pressures that RTK has been experiencing during last several years, it is expected that continuing funding from Kosovo budget will be further used for political instrumentalisation of the public broadcaster in Kosovo.

Every year RTK submits its annual report together with financial report to the Assembly of Kosovo. Also, internal and external auditing of its financial activities are conducted yearly. RTK is obliged to publish its annual reports and other relevant documents on its activities. However, the last annual report published on its website is for 2010. Annual reports for 2013 and 2014 have not been approved by Assembly of Kosovo yet.

RTK IS STILL FUNDED BY THE KOSOVO BUDGET DESPITE THE LAW INTRODUCED THAT SOLUTION (TO ALLOCATE 0.7 PERCENT FROM THE STATE BUDGET TO PSB) AS A TEMPORARY ONE. IN THE COMMENT TO THE DRAFT VERSION OF THE NEW LAW, THE RTK MANAGEMENT IS REQUIRING 1.5 PERCENT OF KOSOVO BUDGET TO BE ALLOCATED TO THE PUBLIC BROADCASTER ANNUALLY.

RTK has its own code of ethics – Professional and Ethical Standards. Journalists are obliged to respect provisions of this document. However, according to the journalists’ complaints and protests, the present RTK management doesn’t pay much attention to these professional and ethical standards. In 2015, RTK has started with regular periodic measurement of public trust. These surveys are commissioned by RTK for its internal needs. Although according to the law RTK should also have the Public Advisory Group in its governing and supervising structure (Article 36), this body representing the public has not been appointed by the RTK Board yet.

DELAYED DIGITALISATION

Digitalisation of RTK and other broadcasters was initially planned for June 2015. However, the process of technological preparations and drafting of the legislation have been lagging. Lack of sufficient funds, capacities and expertise on the side of broadcasters as well as lack of adequate understanding and attention by the state bodies made this process quite controversial and problematic. In 2008, IMC initiated public discussion for preparing the Kosovo strategy on digitalisation, including organisation of two international conferences in Pristina on this issue (in 2009 and 2012). In 2012, a draft of Kosovo strategy on digitalisation was submitted to the Government. In 2013, the Kosovo Government returned it to the IMC for improvements. The last version of the Kosovo strategy on digitalisation was submitted to Government in March 2015. Simultaneously, the process of drafting the law on digitalisation has been ongoing. Since work on the law has been organised without having the approved strategy on digitalisation, these two processes (drafting of the strategy and the law) have been going on without sufficient coordination.

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