

**HOW CAN SERBIA BETTER PROMOTE MEDIA PLURALISM?  
LEARNING THE LESSONS FROM SWEDEN**

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LLM Capstone Thesis

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**[07 June 2020]**

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## 1. Introduction

The capstone thesis addresses media pluralism, an essential dimension of the human right to freedom of expression and a vital prerequisite for democracy. It spotlights the worrying situation of media pluralism in Serbia and drawing on Sweden's approach towards media pluralism, it offers recommendations for reform in Serbia. The research will be based on the question - How can media pluralism be strengthened in Serbia drawing from the example of Sweden?

Serbia has recently recorded sharp drop in the freedom of expression indexes of Reporters Without Borders and Freedom House, and certain indicators are showing that this trend will continue. In the 2020 World Press Freedom Index, Serbia was in 93<sup>rd</sup> place, a drop in 39 places, over the last five years. One of the identified reasons for this deterioration in freedom of expression in Serbia is a strong influence of the state on the media and the high concentration of media ownership. In other words, Serbia suffers from a glaring lack of media pluralism. Yet, as an EU candidate country, Serbia is required to protect freedom of the media as one of the prerequisites for EU membership.

In contrast, Sweden, a long-standing member of the EU, is traditionally presented as one of the leading positive examples of the protection of freedom of expression. In 2020, Sweden was in 4<sup>th</sup> place in the World Freedom Index and it kept its position among top ten places for the last seven years. Aside from having solid constitutional protection,

freedom of expression and media pluralism in Sweden are based on the principle of transparency and the principle of diversity which have strong roots in Swedish society.

Through the application of a comparative analysis of media pluralism in Sweden and Serbia, the capstone thesis will identify the shortfalls regarding media pluralism in Serbia and offer concrete recommendations on how they may be addressed. It will also focus on Sweden's approach towards media pluralism which can present a useful model for Serbia in strengthening its approach to media freedom.

I will seek to prove that Serbia's laws that are safeguarding independent regulatory bodies which are monitoring the state of media pluralism are weak, which leaves them susceptible to political pressure and enables the high media ownership concentration. Moreover, I will seek to prove that political influence through advertisement and lack of subsidies for smaller media outlets is damaging media pluralism in Serbia. Additionally, I will try to prove that the principle of transparency and the principle of diversity in one society are equally important for the protection of media pluralism. The capstone thesis will review the international, regional and domestic legal framework of Sweden and Serbia, as primary sources, supported by the reports of international and regional organizations, and reports and recommendations of international and regional NGOs, as secondary sources.

The result of the findings will be presented in the form of an Advocacy Strategy, that will fulfill the practical component of the capstone thesis. The Advocacy Strategy will be designed on behalf of the NGOs and media associations in Serbia that are working in the

field of human rights, freedom of expression and human rights. The Advocacy Strategy will show how the legislative framework of Sweden, which fosters an enabling environment for media pluralism, can guide the development of strategies to promote media pluralism in Serbia.

## 2. Why Media Pluralism needs protection?

Media pluralism is defined “a plurality of voices, of analyses, of expressed opinions and issues or a plurality of media outlets, of types of media and coexistence of private owned media and public service media”<sup>1</sup>. Some of the scholars also define it as “the overarching value on which all media freedoms are dependent”<sup>2</sup>, but also as an institutional guarantee of freedom of expression and freedom to impart information.<sup>3</sup>

Sometimes the terms ‘media pluralism’ and ‘media diversity’ are used interchangeably, but they can be understood differently.<sup>4</sup> The Recommendation of the Committee of Ministers of the Council of Europe to member states on media pluralism and diversity of media content made a distinction between two terms. The term ‘pluralism’ was used to describe a variety of media outlets and media owners on the media market, while the term ‘diversity’ was used to present a variety of content “capable of promoting a critical debate and a wider democratic participation of persons belonging to all communities and

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<sup>1</sup> “Contribution to the EU Public Consultation on Media Pluralism and Democracy” (*Reporters Without Borders* 2016) <[https://ec.europa.eu/information\\_society/newsroom/image/document/2016-44/reporterssansfrontiers\\_18792.pdf](https://ec.europa.eu/information_society/newsroom/image/document/2016-44/reporterssansfrontiers_18792.pdf)> accessed June 7, 2020, p.1.

<sup>2</sup> “Pluralism in the Media and the Internet” (*The OSCE Representative on Freedom of the Media* 2006), p. 5.

<sup>3</sup> Commissioner of Human Rights, The Council of Europe, *Media pluralism and Human Rights*, Strasbourg, 6 December 2011, p. 6.

<sup>4</sup> Valcke P, Sükösd Miklós and Picard RG, *Media Pluralism and Diversity: Concepts, Risks and Global Trends* (Palgrave Macmillan 2015), p. 26.

generations”<sup>5</sup>. Both media pluralism and content diversity are necessary for freedom of expression.

Freedom of expression has long been recognized as a value that needs to be protected in a democratic society.<sup>6</sup> It is protected under international human rights law, under Article 19 of the Universal Declaration on Human Rights and Article 19 of the International Covenant on Civil and Political Rights, and regional human rights law under Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights.

These treaty provisions allow the states to impose limitations on freedom of expression in limited circumstances – if the limitation is passing the “three-part test” of legality, legitimacy and proportionality. Nevertheless, it cannot be disputed that there is strong international and regional protection for freedom of expression, which is widely recognized as a condition *sine qua non* for a democratic society.<sup>7</sup> But how do the freedom of expression and media pluralism support the development of a democratic society and why it is considered as a value that needs protection?

The first rationale for the protection of freedom of expression is self-fulfillment. It is said that unlimited speech is crucial for personal development, growth and happiness, but it is

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<sup>5</sup> Recommendation CM/Rec (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007, section II, para. 2.

<sup>6</sup> The US Constitution 1789, First Amendment.

<sup>7</sup> Human Rights Committee, *General comment No. 34 on Article 19: Freedoms of opinion and expression*, United Nations CCPR/C/GC/34, 12 September 2011, para. 2.

also the element which distinguishes human beings from animals.<sup>8</sup> The second rationale is political self-governance. For the people to be able to make informed decisions and actively participate in governing the society, they must know all facts and interests relevant to a certain problem.<sup>9</sup> The notion of a variety of voices as a value on which media pluralism is based is partially stemming from this idea. The third rationale can be found in the theory of the marketplace of ideas, developed by John Stuart Mill. The theory was applied in the case of *Abrams v. United States*<sup>10</sup>, in which Justice Holmes explained that “the best test of truth is the power of the thought to get itself accepted in the competition of the market”<sup>11</sup>. This idea that truth can be best reached by having multiple voices heard which will debate freely, and that way contributes to the development of the society, is one of the leading principles of democracy. However, to be able to respect and give access to a plurality of voices, the market needs to be regulated by law, otherwise, not many would be able to present their ideas.<sup>12</sup> This is one of the grounds for media pluralism.

Nowadays, media has a strong influence on shaping public opinion. Under the theory of the marketplace of ideas, the media serves as an arena for presenting different ideas and

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<sup>8</sup> Barendt EM, *Freedom of Speech - Why Protect Free Speech* (2nd edn Oxford University Press 2005), p. 13.

<sup>9</sup> Meiklejohn A, *Free Speech and Its Relation to Self-Government* (Digital Library of India 1948), p. 25.

<sup>10</sup> *Abrams v. United States*, 250 U.S. 616 (1919).

<sup>11</sup> *Idem*, p. 630.

<sup>12</sup> Barendt EM, *Freedom of Speech - Why Protect Free Speech* (2nd edn Oxford University Press 2005), p. 36.



opinions and promoting various values. It also functions as the fourth estate, acting as a watchdog of the governments' actions.<sup>13</sup>

Therefore, for the public to be able to hear the variety of opinions through media outlets and to be able to form a judgment and make decisions necessary for the functioning of a democratic society, it is important to have media pluralism. It could be concluded that media pluralism is an essential objective for achieving freedom of expression.

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<sup>13</sup> Francke W, *The Evolving Watchdog: The Media's Role in Government Ethics*, vol 537 (Ethics in American Public Service 1995), p. 110.

### 3. How is Media Pluralism protected?

Media pluralism is protected in international law by the UN Human Rights Committee's General Comment No. 34 on Article 19 - Freedoms of opinion and expression of the ICCPR. It states that “effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression”<sup>14</sup>. The Comment includes a provision on prevention of state monopoly over media, but also a positive obligation of the State to promote a plurality of the media.<sup>15</sup>

Since freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights, media pluralism falls under the scope of the Universal Periodic Review and it is being monitored by the UN Country Teams.

Media pluralism is explicitly protected by regional law through the Charter of Fundamental Rights of the European Union in 2000. Article 11 on Freedom of expression and information of the EU Charter states “the freedom and pluralism of the media shall be respected”<sup>16</sup>. The Commission of the European Communities in 2007 reiterated this position and stated that media pluralism “implies all measures that ensure citizens’ access

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<sup>14</sup> Human Rights Committee, *General comment No. 34 on Article 19: Freedoms of opinion and expression*, United Nations CCPR/C/GC/34, 12 September 2011, para. 40.

<sup>15</sup> Ibid.

<sup>16</sup> Charter of Fundamental Rights of the European Union OJ C 326, 26 October 2012, Art 11§2.

to a variety of information sources, opinion, voices, etc., in order to form their opinion without the undue influence of one dominant opinion-forming power"<sup>17</sup>.

The same year, the Committee of Ministers of the Council of Europe recognized the importance of media pluralism and adopted recommendations<sup>18</sup> for ensuring respect and promotion of diversity. The recommended measures include promoting structural pluralism through regulation of ownership and public and private media but also measures promoting content diversity through democratic participation and allocation of broadcasting licenses. In addition to this, the Committee of Ministers called for media transparency, and that way emphasized the positive obligation of the state to provide public access on media outlets.

The European Court on Human Rights has established case law regarding media pluralism. In numerous cases, the Court emphasized the importance of pluralism in democracy.<sup>19</sup> In the case of *Informationsverein Lentia and Others v. Austria*<sup>20</sup>, the Court pointed out that the state is the ultimate guarantor of pluralism and that freedom of expression cannot be successfully reached unless it is grounded in the principle of pluralism. ECtHR also emphasized that the state has the positive obligation to “guarantee

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<sup>17</sup> The Commission of the European Communities, Commission staff working document - Media pluralism in the Member States of the European Union (SEC/2007/0032), 16 January 2007, p. 5.

<sup>18</sup> Recommendation CM/Rec (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007.

<sup>19</sup> *Manole and Others v Moldova* App no 13936/02 (ECtHR, 17 September 2009), para. 95.

<sup>20</sup> *Informationsverein Lentia and Others v Austria* App no 13914/88; 15041/89; 15717/89; 15779/89; 17207/90 (ECtHR, 24 November 1993), para. 38.

diversity of overall program content, reflecting as far as possible the variety of opinions encountered in the society at which the programs are aimed”<sup>21</sup>. From the range of international and regional sources, one could argue that media pluralism as such, beyond media freedom, has gained the status of independent value.

But what is the role of the state in protecting media pluralism?

Media pluralism is based on various factors – economic, political and social, and the state plays a decisive role in its regulation and protection. The state can also abuse this role and damage media pluralism, if the law that regulates media pluralism and independent bodies that monitor the compliance with the law do not have good safeguards that will prevent media ownership concentration.

Creating an environment that will support and regulate plurality of media through proper legislation and establishing independent bodies that will monitor compliance with the law, free from any external pressure, but also support smaller and local media outlets to provide a necessary representation of the plurality of voices, should be one of the state’s objectives. In order to achieve this goal, the state should be committed to ensuring the principle of diversity.<sup>22</sup>

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<sup>21</sup> *Centro Europa 7 SRL and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012), para. 130.

<sup>22</sup> “World Trends in Freedom of Expression and Media Development: Global Report 2017/2018” (UNESCO 2018) <<https://unesdoc.unesco.org/ark:/48223/pf0000261370>> accessed June 7, 2020, p. 2.

The threats to providing media pluralism are numerous. One of the main factors is economic – media market functions on the principles of competition. The marketplace of ideas as one of the rationales for media pluralism lies in tension with the principle of competition. That is why the role of the state in regulating the competition in the media market in a way which enables the media pluralism is important. The concentration of ownership is a serious challenge to diversity, and it affects the entire media landscape, as it carries the presumption that one editorial policy can be applied to many media outlets. However, some scholars point out that increasing competition in the media market does not necessarily imply greater diversity or the better quality of media products.<sup>23</sup> Also, the editorial policy may not necessarily be oriented towards promoting a variety of voices. Based on the principles of competition, the editorial policy may also be directed on focusing on what is best for the economic gain.

The other factor undermining media pluralism is political. Governments can exert their influence onto media outlets to prevent them from publishing some of the information that is not in their political interest. States can also use their power to influence the media through advertising, which could potentially have serious repercussions for smaller media outlets. In combination with the media ownership concentration, governments can shape public opinion by putting the pressure on the media, censoring content that is not in line with government policy, and thus preventing any sort of criticism.

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<sup>23</sup> Karppinen K, *Rethinking Media Pluralism* (Fordham University Press 2013), pp. 95-96.

There are several measures to limit economic and political influence on the media and to prevent the undermining of media pluralism. Those measures were laid out in the previously mentioned Recommendations of the Committee of Ministers. Aside from providing a fertile ground for a variety of different types of media and transparency of ownership, the state should, from an economic perspective, apply different rules to limit horizontal and vertical ownership concentration.<sup>24</sup> As for political influence, the state should adopt sufficient safeguards to preserve editorial independence from political influence.<sup>25</sup> To limit that influence, the state should set independent bodies which will monitor the compliance with the recommendations and rules, and independent regulatory bodies should be exempt from any political and economic pressures.

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<sup>24</sup> Recommendation CM/Rec (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007, para. 2.4.

<sup>25</sup> *Idem*, para. 3.4.

## 4. Protection of media pluralism in Sweden – Transparency and Diversity

In 2020, Sweden is in 4<sup>th</sup> place in the World Press Freedom Index<sup>26</sup> and it kept its position among the top ten places for the last seven years. The Freedom House report from the same year marked Sweden as a free state, with one of the highest global freedom scores.<sup>27</sup> Those scores do not come as a surprise – Sweden is notable for its protection of freedom and democracy.

In 1766, Sweden brought the Freedom of the Press Act which is said to be the world's first freedom of the press act.<sup>28</sup> The Act forms one of the four laws of the Basic Laws of Sweden – Swedish Constitution. By granting the constitutional protection of the freedom of expression ever since 1766, Sweden established a good foundation for a democratic society which respects the freedoms of its citizens.

In 1949, the Act was revised, and it is still in force. The provisions of the Act are guaranteeing to every Swedish citizen “free exchange of opinion and availability of comprehensive information”<sup>29</sup>. In 1991, Sweden enacted one more law - The

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<sup>26</sup> “World Press Freedom Index - Sweden” (*Reporters Without Borders* 2020) <<https://rsf.org/en/sweden>> accessed June 7, 2020.

<sup>27</sup> “Nations in Transit 2020 - Dropping the Democratic Facade in Europe and Eurasia” (*Freedom House* 2020) <<https://freedomhouse.org/countries/freedom-world/scores>> accessed June 7, 2020.

<sup>28</sup> “20 Milestones of Swedish Press Freedom” <<https://sweden.se/society/20-milestones-of-swedish-press-freedom/>> accessed June 7, 2020.

<sup>29</sup> The Freedom of the Press Act (*Tryckfrihetsförordning*) (1949:105), Chapter 1, Art. 1.

Fundamental Law on Freedom of Expression, which also forms the Constitution of Sweden. Both acts are putting a strong emphasis on the public access to information – public bodies that are not authorized shall not “prevent the printing or publication of written matter, or its dissemination”<sup>30</sup>. In the following chapter, the Law states that “every Swedish citizen shall be entitled to have free access to official documents, in order to encourage the free exchange of opinion and the availability of comprehensive information”<sup>31</sup>.

It is important to note that Sweden has several independent regulatory bodies which are monitoring different parts of the media sector, such as the Swedish Press Council and the Press Ombudsman. Both bodies are independent of political influence in the sense that their members are not being appointed and dissolved by any public authority.

Moreover, the principle of transparency when it comes to the work of public authorities has a strong foundation, not only in these laws, but also in Swedish society. Both principles of transparency and openness are strongly embedded in society, which makes the Swedish government one of the least corrupted in the world.<sup>32</sup> The Constitution itself is proclaiming that “Swedish democracy is founded on the free formation of opinion”<sup>33</sup>.

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<sup>30</sup> Idem.

<sup>31</sup> Idem, Ch. 2, Art. 1.

<sup>32</sup> “Corruption Index 2019 - Sweden” (*Transparency International* 2019)  
<<https://www.transparency.org/en/cpi/2019/results/swe#details>> accessed June 7, 2020.

<sup>33</sup> The Constitution of Sweden (*Sveriges grundlag*).



Not only does this principle make easier for the media to impart information and hold the public authorities accountable, but it is also important the other way around – the public can easily access the information on media ownership which is one of the key indicators for media pluralism. In addition to this, the media ownership is regulated by the Swedish Competition Act<sup>34</sup> and monitored by the Swedish Competition Authority - a state authority working to safeguard and increase competition. The transparency of media ownership together with the Swedish Competition Authority which is monitoring the vertical and horizontal concentration of media and the compliance with the competition policy is providing good safeguards for media pluralism. To prevent high media ownership concentration in the press market and to support smaller newspapers, the government is subsidizing print media and therefore promotes diversity of the ownership, but also of the content.<sup>35</sup> It is also important to note that the government is providing subsidies to the newspapers “regardless of their political affiliation”<sup>36</sup>.

In addition to the principle of transparency, the principle of diversity is also highly valued in society. Sweden’s diverse society composed of national minorities and the indigenous population is reflected in the Parliament.<sup>37</sup> Having a diverse society means that the state should take into account “validating different perspectives on matters of public

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<sup>34</sup> The Swedish Competition Act (*Sw. Konkurrenslag*) (2008:579).

<sup>35</sup> Noam EM and others, *Who Owns the Worlds Media? Media Concentration and Ownership around the World / Media Ownership and Concentration in Sweden* (Oxford University Press 2016), p. 339.

<sup>36</sup> “Freedom in the World 2019 - Sweden” (*Freedom House* 2019)  
<<https://freedomhouse.org/country/sweden/freedom-world/2019>> accessed June 7, 2020.

<sup>37</sup> Roth H-I and Hertzberg F, *Tolerance and Cultural Diversity in Sweden* (European University Institute / Robert Schuman Centre for Advanced Studies 2010), p. 3.

interests”<sup>38</sup>. This is one of the reasons why media pluralism in Sweden is an important value which needs protection. It allows the voices of different social and ethnic groups such as minorities, indigenous people, youth, etc. to be heard throughout the media, and allows them to present their opinions and challenges. The principle of diversity lies on “different forms of interaction and the representation of diverse values, viewpoints and roles”<sup>39</sup>. According to the 2017 Media Pluralism Monitor<sup>40</sup>, Sweden scored a low risk in the domain of social inclusiveness, which means that Swedish media are providing access to minorities, local and regional communities, people with disabilities, and other social groups.

Therefore, the freedom of expression and media pluralism have a strong protection in the domestic legal framework, but also a solid foundation in Swedish society, through practice and culture, and rely on the respect of the diversity and transparency. That protection comes also on the regional and international level, as Sweden is a signatory of numerous regional and international treaties, but also a member of the regional and international organizations.

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<sup>38</sup> Klimkiewicz B, “Pluralism in a Hybrid Media Environment from the User Perspective” (*European University Institute Research Repository 2019*)  
<[https://cadmus.eui.eu/bitstream/handle/1814/65604/CMPF\\_2019\\_02.pdf?sequence=4&isAllowed=y](https://cadmus.eui.eu/bitstream/handle/1814/65604/CMPF_2019_02.pdf?sequence=4&isAllowed=y)>  
accessed June 7, 2020, p. 4.

<sup>39</sup> “Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach” (*European Commission 2009*)  
<[https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/pfr\\_report.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf)> accessed June 7, 2020, p. 12.

<sup>40</sup> Färdigh MA, Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2017 in the European Union, FYROM, Serbia & Turkey - Country Report: Sweden (Media Pluralism Monitor 2018), p. 9.

## 4.1 Regional and International Protection of Media Pluralism

Sweden is a founder and a member of the Council of Europe, and the citizens are able to take the case to the European Court of Human Rights if they consider their freedom of expression, protected under Article 10 of the European Convention on Human Rights was violated. However, this option of international judicial supervision has not been used that much in the past. From 1959 to 2019 the Court found only two violations of Article 10.<sup>41</sup> This speaks in favor of good domestic legal protection of freedom of expression. Sweden is also following the Recommendation of the Committee of Ministers of the Council of Europe to member states on media pluralism and diversity of media content<sup>42</sup>, since the laws are completely aligned with the recommended measures. As a member of the OSCE, Sweden is also required to follow recommendations made by the OSCE Representative on Freedom of the Media which has a mandate to monitor, report and support states in promoting media pluralism.<sup>43</sup>

Since 1995, Sweden is a member of the European Union. As previously mentioned, media pluralism is protected by Article 11 of the EU Charter, which states “the freedom and pluralism of the media shall be respected”<sup>44</sup>. The Member States agreed on the

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<sup>41</sup> “Violations by Article and by State 1959-2019” (*European Court of Human Rights* 2019) <[https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2019_ENG.pdf)> accessed June 7, 2020.

<sup>42</sup> Recommendation CM/Rec (2007) 2 of the Committee of Ministers to member states on media pluralism and diversity of media content, 31 January 2007.

<sup>43</sup> OSCE, Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media, PC.DEC/193, 5 November 1997.

<sup>44</sup> Charter of Fundamental Rights of the European Union OJ C 326, 26.10.2012, Art 11§2.

importance of media pluralism, not only for democracy and economic growth, but also for the EU to be perceived as a credible actor in international fora.<sup>45</sup> The compliance with the EU Fundamental Charter is monitored by the Media Pluralism Monitor of the Centre for Media Pluralism and Media Freedom, and any violation of media pluralism is being addressed by the European Centre for Press and Media Freedom, with both projects funded by the European Commission.

As a member of the UN, Sweden is going through the process of Universal Periodic Review. In the last UPR, Sweden did not receive any recommendation regarding media pluralism or media ownership.<sup>46</sup>

In conclusion, Sweden has a long tradition of respecting freedom of expression and media pluralism, but also the adequate legislation that provides a safe environment and enables media pluralism. The successful protection of freedom of expression and media pluralism in Sweden is based on the principle of transparency and the principle diversity which have strong roots in Swedish society. The Constitution - composed of two fundamental laws regarding freedom of the press and freedom of expression, is based on those principles which additionally make protection of freedom of expression stronger. Laws such as the Swedish Competition Act, joined with independent monitoring body – Swedish

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<sup>45</sup> Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on media freedom and pluralism in the digital environment, Official Journal of the European Union, C 32/6, 4 February 2012.

<sup>46</sup> UNGA, Human Rights Council, Report of the Working Group on the Universal Periodic Review – Sweden, A/HRC/44/12, 18 March 2020.

Competition Authority, the Swedish Press Council and the Press Ombudsman, are ensuring solid domestic protection and are safeguarding media pluralism. Therefore, putting any additional external pressure that could come from the regional and international bodies in a case of noncompliance with the regional or international treaties that are guaranteeing freedom of expression, is not necessary.

## 5. Media Pluralism challenges in Serbia

In 2020, Serbia is in 93<sup>rd</sup> place in the World Press Freedom Index<sup>47</sup>, which suggests a drop of 39 places over the last five years. One of the identified reasons for this deterioration in freedom of expression in Serbia is the strong influence of the State on the media and the high concentration of media ownership. In addition to the freedom of expression challenges, Serbia is facing political and civil rights issues, problems with the rule of law and corruption. According to the 2020 Freedom House report<sup>48</sup>, Serbia is no longer a democratic state.

Freedom of expression has constitutional protection as a “freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner”<sup>49</sup>. In addition to this, freedom of the media and the right to access information from public authorities is also recognized in the Constitution.<sup>50</sup> Moreover, constitutional protection is given to the principle of diversity as a positive obligation of the state to “promote understanding, recognition and respect of diversity arising from the specific ethnic,

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<sup>47</sup> “World Press Freedom Index - Serbia” (*Reporters Without Borders* 2020) <<https://rsf.org/en/serbia>> accessed June 7, 2020.

<sup>48</sup> “Freedom in the World 2019 - Serbia” (*Freedom House* 2019) <<https://freedomhouse.org/country/serbia/freedom-world/2020>> accessed June 7, 2020.

<sup>49</sup> The Constitution of the Republic of Serbia (*Ustav Republike Srbije*) 30 September 2006, Art. 46.

<sup>50</sup> Ibid, Art. 50§51.

cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information”<sup>51</sup>.

In addition to the constitutional protection, freedom of expression enjoys the protection of different laws. The Law on Public Information and Media<sup>52</sup> has a special chapter on the protection of media pluralism. Article 45 contains the provision on media ownership and mergers, while Article 46 is putting an emphasis on identifying threats to media pluralism. In the case of printed media, a potential threat “shall be identified by the Ministry responsible for information”<sup>53</sup>, while the threat in the domain of electronic media will be identified by the independent regulatory body. However, in both cases, the Ministry will initiate the proceedings.

In conclusion, the Constitution may provide enough guarantees for freedom of expression and the law may support and protect media pluralism, but when it comes to identifying and addressing violations of media pluralism, the power lies in the hands of the Government. Here, the role of an independent regulatory body – the Regulatory Authority for Electronic Media (REM) is to some extent diminished. And how independent is the REM? It is composed of nine members, all elected and dissolved by the Parliament. In a situation when one political party is having a majority in the Parliament and whose members are forming the Government, it is difficult to imagine that the independent body

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<sup>51</sup> Ibid, Art. 48.

<sup>52</sup> The Law on Public Information and Media of Serbia, Official Gazette of the Republic of Serbia No. 43/2003, 61/2005, 71/2009, 89/2010.

<sup>53</sup> Ibid, Art. 46.

will truly have its independence. With the lack of legal protection, the REM could suffer a strong political pressure.

But what about other indicators of media pluralism? Media Ownership Monitor Serbia reports that the high concentration of audience and readership across media platforms is putting media pluralism under high risk. Audience concentration in the printed media is the highest – 71 percent.<sup>54</sup> Cross-media ownership concentration is also said to have a high risk for media pluralism – “top 8 owners across all media sectors have an audience share of 74.88 percent”<sup>55</sup>. The third indicator that shows a high risk for media pluralism is said to be political control over media funding. The report states that the media can face discrimination through the allocation of advertisement – the state can favor one media which is supporting the work of the government while denying the advertisement for the media that is not in favor of the government policy.<sup>56</sup> The biggest issue is that “there is no official, centralized or fully public data on the allocation of state advertising budget”<sup>57</sup>.

Here, transparency and corruption are playing a significant role. Serbia is not ranking high on the corruption index either – according to the Transparency International index for

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<sup>54</sup> “Media Ownership Monitor Serbia” (*Reporters Without Borders* 2019) <<http://serbia.mom-rsf.org/en/findings/inidicators/#!9fed61067e34232006ff7dcd0ed479d0>> accessed June 7, 2020.

<sup>55</sup> “Media Ownership Monitor Serbia - Indicators” (*Reporters Without Borders* 2019) <<http://serbia.mom-rsf.org/en/findings/inidicators/#!c85a7e69a98fcab7add7050dab8786ef>> accessed June 7, 2020.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.



2019, Serbia held 91<sup>st</sup> position.<sup>58</sup> It could be said that principles of transparency and openness are not deeply rooted in Serbian society as in Swedish.

The Anticorruption Agency, also an independent body, has nine members who are elected by the Parliament. The same principle is applicable as for REM - when one political party is holding the majority in the Parliament, there cannot be enough of the guarantees for its independence from political pressure.

Overall, the Constitution and the laws are seemingly protecting freedom of expression and media pluralism, but when it comes to actual protection through independent bodies, the political pressure is present and high media ownership concentration is putting media pluralism at risk.

## 5.1 Regional and International Protection of Media Pluralism

Freedom of expression in Serbia is also protected through regional and international treaties. As a member of the Council of Europe, Serbia is implementing the European Convention on Human Rights. From 2005 to 2019 the European Court of Human Rights found seven violations of Article 10.<sup>59</sup>

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<sup>58</sup> "Corruption Index 2019 - Serbia" (*Transparency International* 2019)  
<<https://www.transparency.org/en/countries/serbia>> accessed June 7, 2020.

<sup>59</sup> "Violations by Article and by State 1959-2019" (European Court of Human Rights 2019)  
<[https://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2019\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_violation_1959_2019_ENG.pdf)> accessed June 7, 2020.

The Council of Europe and the European Union are combining their efforts in strengthening freedom of expression and media pluralism in Serbia. Last year they started the project “Horizontal Facility for the Western Balkans and Turkey 2019-2022”, which aims to provide legislative expertise and policy advice to the participating states in several areas, to improve the state of freedom of expression and freedom of the media. So far, the project did not provide results, taking into account the worsening state of freedom of expression in Serbia. This is just one of the many projects which are not providing expected results.

Article 2 of the Treaty on European Union stipulates that the EU is based on the values such as freedom, democracy, the rule of law, which are respected in a society in which pluralism prevails.<sup>60</sup> Article 49 of the same treaty states that any European state which respects and is committed to promoting those values may apply to become a member of the Union.<sup>61</sup>

In 2014, Serbia started accession negotiation with the European Union. Before becoming a full-fledged member, it has to fulfill the accession criteria known as the ‘Copenhagen criteria’ which were adopted by the European Council in 1993. These criteria include the requirement that the state must achieve the stability of institutions guaranteeing democracy, the rule of law and human rights.<sup>62</sup> Therefore, a state which aspires to join

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<sup>60</sup> *Consolidated version of the Treaty on European Union*, Official Journal C 326, 26/10/2012 P. 0001 – 0390, Art. 2.

<sup>61</sup> *Ibid*, Art. 49.

<sup>62</sup> European Council, *Conclusions of the Presidency*, (21-22 June 1993, Copenhagen), Art. 7/A/iii.

the EU, like Serbia, needs to fulfill those conditions. The importance of this lies in having an additional, external pressure on the state to comply with the requirements and respect democracy, rule of law and most importantly, human rights.

The European Commission in its 2019 Serbia Report noted that the lack of progress in the area of freedom of expression is “now a matter of serious concern”<sup>63</sup>. The progress is being assessed on the basis of the negotiating Chapter 23 - Judiciary and fundamental rights, which contains a requirement for harmonization of the laws regarding freedom of expression. The importance of media pluralism is also emphasized, and it remains “one of the key indicators of Serbia's readiness to become part of the EU”<sup>64</sup>. Therefore, the EU is regularly monitoring the developments in media pluralism and freedom of expression, and it is raising concerns every time the situation deteriorates.

Media pluralism is also being regularly monitored through the Universal Periodic Review. In the last UPR, Serbia received numerous recommendations regarding freedom of expression, media freedom and media pluralism. Some of them were that Serbia needs to “implement reforms on media ownership and revenues, with the aim of guaranteeing transparency and a level playing field for the media, regardless of ownership and

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<sup>63</sup> The European Commission, *2019 Serbia Report*, SWD (2019) 219 final, (25 May 2019), pp. 24-25.

<sup>64</sup> The European Union Common Position - Chapter 23: Judiciary and fundamental rights, Conference on Accession to the European Union – Serbia, Brussels, CONF-RS 5/16, 8 July 2016, p. 16.

affiliations”<sup>65</sup>, “support the independence and pluralism of the media, including by creating transparency regarding the financing of media and media ownership”<sup>66</sup>, “ensure that the media regulator can operate effectively and in complete independence”<sup>67</sup>, and to ensure “an equal opportunity for all media to access funding available from government sources”<sup>68</sup>. This means that the challenges of media pluralism in Serbia are being recognized beyond the borders.

In conclusion, media pluralism challenges in Serbia are worrisome. Even though the Constitution is seemingly providing enough of guarantees for freedom of expression and diversity, and the laws on media are promising detailed protection of the media pluralism, they are falling short when it comes to the actual protection that lies in the hands of independent bodies. However, their independence is questionable when the mandate of their members is vested in the Parliament. In addition to this, the pressure coming from the regional and international institutions is present and the freedom of expression challenges are noted, but that might not be sufficient for improving the current state of media pluralism in Serbia.

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<sup>65</sup> UNGA, Human Rights Council, Report of the Working Group on the Universal Periodic Review – Serbia, A/HRC/38/17, 18 April 2018, para. 114.59.

<sup>66</sup> Idem, para. 114.62.

<sup>67</sup> Idem, para. 114.63.

<sup>68</sup> Idem, para. 114.75.

## 6. Conclusion

Media pluralism is an essential value for a democratic society. It has been recognized as an independent value and it enjoys regional and international protection. In addition to this, it is also protected in the domestic legal framework. In Sweden, that protection is explicitly granted by the Constitution, while in Serbia the constitutional provisions are referring to the freedom of the media and the principle of diversity. Regardless of the seemingly equal protection in both states, Serbia is suffering from a glaring lack of media pluralism. Deficiency of Serbia's protection of media pluralism can be addressed on several levels.

First, the Law on Public Information and Media in Serbia has certain weaknesses that are damaging the state of the media pluralism. While the Law on Public Information and Media contains more detailed provisions on media ownership, mergers and identification of potential threats than it is the case in Sweden, it lacks substantial protection. Namely, Article 46 that states that in a case of any potential threat to media pluralism the Ministry will initiate the proceedings, is paving the road for political influence on the media pluralism.

Second, the independence of the Regulatory Authority for Electronic Media (REM) is questionable. Similarly to the first point, the political influence on the media pluralism is present. When the independent regulatory body is composed of the members whose appointment and dissolution depends solely on the Parliament, its autonomy is moot,

especially when it comes to monitoring the media pluralism. In contrast to this, the Swedish Press Council and the Press Ombudsman are independent of political influence in the sense that their members are not being appointed and dissolved by any governmental authority. Therefore, Sweden is not supporting any political influence on these independent bodies which are entrusted to safeguard media pluralism.

Third, political influence on the media can also be exerted through advertising. Since there is no official public data on the allocation of state's advertising budget, the media is susceptible to political influence. By favorizing the pro-government media and supporting their work through the allocation of the advertisement funds, while restricting the funds for media outlets that are not supporting the work of the government, the State undermines the media pluralism. Due to the lack of transparency, political influence is easily exerted, especially with the lack of independence of the Anticorruption Agency which is supposed to monitor the allocation of public resources. In contrast to this, in Sweden the principle of transparency can be found in the Law on the Freedom of the Press which is granting every citizen free access to official documents.

Forth, even though the regional and international norms are protecting media pluralism, the regional and international organizations are not putting sufficient pressure on Serbia to comply with them. As the EU candidate state for membership, Serbia has to fulfill the Copenhagen Criteria and provide harmonization with the EU legislation in order to advance on its path towards the EU membership. So far, these criteria have proven to be toothless, and together with the many projects that are being designed to strengthen media pluralism and freedom of expression in Serbia, not much has been done. A tougher

stance by EU bodies and the more rigorous application of the Copenhagen Criteria is necessary to address the issues of the media pluralism. The challenges of media pluralism have been recognized by the international community but the proper reaction except raising recommendations through the Universal Periodic Review is missing. The international community should explore better options than the “carrot and stick” policy if it wishes to strengthen media pluralism in Serbia.

Finally, the principles of transparency and the principle of diversity are not sufficiently respected in Serbian society. The principle of transparency is highly necessary for holding public authorities accountable, but also in the case of exerting political influence through advertising. Even though the principle of diversity has its provision in the Constitution of Serbia, it is not a value that is being respected. High media ownership concentration and the lack of independent bodies to prevent it is also one of the factors that are damaging the diversity of the content. In contrast to this, in Sweden the principles of transparency and diversity are strongly rooted in society. To promote diversity of media content, Sweden is subsidizing smaller media outlets regardless of their political affiliation, which cannot be said for Serbia.

In conclusion, there are numerous challenges to media pluralism in Serbia. Determination and concrete steps taken to reform the laws, combined with empowerment of the independent institutions, protecting them from political influence, joined with the external regional and international incentives and pressure, while focusing on gradually changing the mindset of Serbian society on the transparency and diversity, could provide necessary support to media pluralism in Serbia.

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## **Annex 1. Advocacy Strategy – Strengthening Media Pluralism in Serbia**

### **1.1 Assessment of the media pluralism challenges in Serbia**

In 2020, Serbia is in 93<sup>rd</sup> place in the World Press Freedom Index, which suggests a drop of 39 places over the last five years. One of the identified reasons for this deterioration in freedom of expression in Serbia is the strong influence of the State on the media, the high concentration of media ownership, as well as the lack of respect for the principles of transparency and diversity. In addition to the freedom of expression challenges, Serbia is facing political and civil rights issues, problems with the rule of law and corruption. According to the 2020 Freedom House report, Serbia is no longer a democratic state.

The laws that are safeguarding independent regulatory bodies which are monitoring the state of media pluralism are weak. This leaves them susceptible to political pressure and enables high media ownership concentration. Moreover, political influence through advertisement and lack of subsidies for smaller media outlets is damaging media pluralism in Serbia. While the domestic legal framework is enabling this environment, the regional and international organizations are not putting sufficient pressure on Serbia to comply with the regional and international norms. Additionally, the principle of transparency and the principle of diversity in one society are equally important for the protection of media pluralism. Even though those principles are protected by constitutional provisions, they lack respect in society.

The Strategy will be based on the theoretical component of the Capstone Thesis - the rationales on why the media pluralism needs protection<sup>69</sup> and how it is protected<sup>70</sup>, the good examples from Sweden<sup>71</sup>, the current challenges of the media pluralism in Serbia<sup>72</sup>, and the final comparative component of the thesis<sup>73</sup>.

## 1.2 What is the goal and what are the objectives of the Advocacy Strategy?

The Advocacy Strategy has a goal to strengthen media pluralism in Serbia using various activities according to the findings presented in the Capstone Thesis. **The objectives** are:

- **amending the Law on Public Information and Media**<sup>74</sup> – namely the articles that are vesting the powers in the Ministry to initiate the proceedings when it comes to the violation of media pluralism;
- strengthening **the independence of the Regulatory Authority for Electronic Media**<sup>75</sup>, by eliminating the political influence exerted through appointment and dissolution of its members by the Parliament

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<sup>69</sup> See p. 7.

<sup>70</sup> See p. 11.

<sup>71</sup> See p. 15.

<sup>72</sup> See p. 22.

<sup>73</sup> See p. 29.

<sup>74</sup> See p. 23.

<sup>75</sup> See p. 29.

- **increasing the transparency of the allocation of the state's advertising budget<sup>76</sup>**, by making accessible, centralized and transparent public data
- **raising the awareness of the importance of media pluralism for the society<sup>77</sup>**, by promoting transparency of media ownership and diversity of media content through state subsidies

### 1.3 Who is participating – participants, partners and addressees?

The lack of media pluralism is having a negative impact on the smaller media outlets, especially the ones whose budget is relying on the advertisement funds from the state. It is also producing a negative impact on the independent media outlets whose editorial policy is not in line with the current regime and that are actively and openly criticizing the work of the government. Disregarding the importance of the media pluralism and namely, the principle of transparency and the principle of diversity is negatively affecting the entire society. Therefore, on the domestic level, **the participants** (the main users of the Strategy) – will be:

- **smaller media outlets**
- **independent media outlets**
- **media associations**

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<sup>76</sup> See p. 30.

<sup>77</sup> See p. 31.

- **independent journalists**
- **NGOs** that are working in the field of media freedom, freedom of expression and human rights
- **activists** interested in promoting and strengthening media pluralism

They will use their influence and resources to achieve the objectives.

On the international level, **the partners** that will help the participants in achieving the objectives will be:

- **media outlets**
- **media associations**
- **NGOs** that are working in the field of media freedom, freedom of expression and human rights
- **regional and international organizations**, interested in the promotion of media pluralism in Serbia
- **states that are members of the UN, the Council of Europe and the EU**
- **The UN, the Council of Europe and the EU**

**The addressees** of the Strategy will be:

- **the Parliament**, which is the main legislative body
- **the citizens**



## 1.4 What tactics they should rely on?

The objectives of the Strategy will be achieved by putting both domestic and international pressure on the addressees to strengthen the media pluralism in Serbia. The participants should form an umbrella organization – *the Partnership for Media Pluralism* (the Partnership) which will gather all the participants and provide them with the necessary structure and amplify their voices on the domestic and international level.

In order to **amend the Law on Public Information and Media, strengthen the independence of the Regulatory Authority for Electronic Media, increase the transparency of the allocation of the state's advertising budget, and promote transparency of media ownership and diversity of media content**, the participants and partners should use different tactics in coordination with other members of the Partnership.

Some of **the activities** will be:

- to raise the awareness of the media pluralism challenges on the domestic level, and on international, through the publication of the articles and policy briefs on the state of media pluralism and the importance for its protection
- lobbying in the Parliament and seek support for amending the Law on Public Information and Media and for strengthening the independence of the Regulatory Authority for Electronic Media
- the participants will seek the establishment of the transparent and centralized data on media ownership, but also the allocation of the state's fund for advertising

- the participants will also seek the establishment of the subsidies fund for promoting media pluralism and content diversity
- the participants, together with the international partners, will work on raising awareness of the challenges of media pluralism in Serbia in various international fora
- for their activities, the participants will apply for grants from regional and international organizations, such as the UN, the Council of Europe and the EU, as well as from the states that are interested in the promotion of media pluralism in Serbia
- the participants, together with the partners, will lobby to put the protection of the media pluralism in Serbia on the agenda of the UN, the Council of Europe and the EU

## 1.5 Outcome

The Advocacy Strategy has achieved its goal – the media pluralism in Serbia is strengthened and the Regulatory Authority for Electronic Media is independent of any political influence. Media ownership and the allocation of the state's advertising budget is transparent, which also prevents the influence on media outlets. The citizens are aware of the importance of the protection of media pluralism and content diversity.