

YEARBOOK

HUMAN RIGHTS PROTECTION

PROVINCIAL PROTECTOR
OF CITIZENS - OMBUDSMAN

FROM UNLAWFULNESS TO LEGALITY

ГОДИШЊАК
ЗАШТИТА ЛЉУДСКИХ ПРАВА
“ОД ПРОТИВПРАВНОСТИ ДО ЗАКОНИТОСТИ”

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Institute of Criminological and
Sociological Research



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MEDIA REPORTING ON NATIONAL MINORITIES IN SERBIA – THE ROLE OF INDEPENDENT INSTITUTIONS

This paper analyses public policies and legal framework of media reporting on national minorities in Serbia, the role and practice of independent bodies with regard to media reports which are not in line with legal and professional standards, and the impact of such reporting on the status of national minorities and the level of implementation of minority rights. We analysed public policies and legal framework and professional standards in media reporting on national minorities in Serbia, as well as their implementation by independent bodies. The legislation regulating media reporting on national minorities, primarily the Law on the Prohibition of Discrimination and a set of media laws proscribe the expression of ideas, information or opinions that instigate discrimination, hatred or violence against minorities. Journalists are bound by professional standards defined in the Serbia Journalists' Code of Ethics to oppose anyone who violates human rights or advocates any type of discrimination or hatred or instigates violence. The Code of Ethics requires journalists to be aware of the threats of discrimination the media can spread and to give their best to avoid discrimination. The practice of the Commissioner for the Protection of Equality with cases of discriminatory reporting on national minorities in the media, as well as the practice of the Press Council, as an independent self-regulatory body, indicates that the protection of the rights of national minorities in media needs improvement.

Keywords: national minorities, media, discrimination, hate speech, Commissioner for the Protection of Equality, Press Council

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Introduction

The media have an obligation to encourage equality and tolerance, to promote and protect minority rights and contribute to inclusion in a democratic society. To that end, a crucial role of the media is to raise awareness on respect and understanding of the other and the different, to develop tolerance and sensitivity to any discrimination and respect for national minorities' constitutional and legal rights. The media's strong criticism of those who are responsible for regulating the status and implementation of minority rights in a society is vital. (Matić, Valić Nedeljković 2014) The media are one of the societal factors with the strongest impact on opinion forming and, accordingly, on the state and level of discrimination in a society. Citizens also see the media as a factor contributing to the rise of discrimination, spreading of prejudice and negative perception of national minorities, but they also believe that the media could play a significant role in curbing discrimination and in improving the status of minorities.¹ The right to freedom of expression is one of the human rights guaranteed by international conventions and national media regulations. The right to freedom of expression is not absolute and may be limited to enable the preservation of other rights. One of the allowed limitations is hate speech.

This paper analyses the strategic and legal frameworks of media reporting on national minorities, as well as the practice of the Commissioner for the Protection of Equality and of the Press Council's Complaints Commission in cases of media reports on national minorities that were in contravention of the anti-discriminatory legislation and professional standards.

Strategic framework for media reporting on national minorities in Serbia

The public policies that regulate media reporting on national minorities in Serbia in most detail and most comprehensively were created in the process of European integrations. **The Action Plan for Realisation of the Rights of National Minorities,**² corresponding to the Action Plan for Chapter 23³ (hereinafter: AP CH 23), regulates media reporting in two fields: Prohibition of Discrimination (Field II) and Culture and the Media (Field III). Its activities in the context of prohibition of discrimination

¹ Rezultati istraživanja javnog mnjenja: *Odnos građana i građanki prema diskriminaciji u Srbiji*, Poverenik za zaštitu ravnopravnosti /Report on Public Opinion Survey: *Citizens' Attitudes on Discrimination in Serbia*, Commissioner for the Protection of Equality/, Belgrade, 2016.

² Adopted at the Government of Serbia session on 3 March 2016.

³ Adopted at the Government of Serbia session on 27 April 2016.

include: raising awareness among the general public, members of national minorities, and officials and employees in public authorities at all levels, on the existence of national minorities in the country, their rights, and the rights to affirmative measures where they are necessary (measure 2.2), suppressing hate speech in the media (measure 2.3), initiating the process of protection from hate speech at the initiative of national councils of national minorities (measure 2.4), reporting by public service broadcasters with the aim of strengthening awareness of citizens on the causes and consequences of hate crimes and zero tolerance for such crimes (measure 2.6).

The part of the Action Plan concerning Culture and the Media, through the specific strategic aim *Improvement of the situation in the media and development of media content of importance for members of national minorities*, specifies the following activities: raising awareness on the rights of minorities and respect for cultural and linguistic diversity by supporting the production of media content (measure 3.5) and professional training of journalists and other media professionals with the aim of improving media reporting on minority issues and encouraging balanced and objective reporting (measure 3.12). Another measure included is to conduct a cost analysis of potential introduction of programmes in national minority languages translated into the Serbian language to improve access of all citizens to media content in national minority languages and the benefits of social integration and development of the multicultural society as a whole, to be implemented by the RTS and RTV (measure 3.13).

Following an analysis of all seven quarterly reports on the implementation of the Action Plan,⁴ it was concluded that according to the Government of the Republic of Serbia all of these activities are being successfully implemented, with the exception of measure 3.13 (cost analysis of translating programmes in national minority languages into the Serbian language), which the Government regards as partially realised. The Fourth Report on the Implementation of the Action Plan for Realisation of National Minority Rights 2017/2 contains a "rough" estimate by the RTS that translating some programmes in national minority languages into the Serbian language requires a minimum of EUR 100,000⁵ although the Republic of Serbia Budget for 2017, according

⁴ Government of Serbia's reports on the implementation of the Action Plan for the Realisation of Rights of National Minorities; accessible at <http://www.ljudskaprava.gov.rs/sh/node/21795>

⁵ See the Fourth Report on the Implementation of the Action Plan for Realisation of Rights of National Minorities (2017/2): "In order to realise plans and broadcast additional contents, primarily the News (Vesti) and Journal (Dnevnik) in minority languages, Radio Television of Serbia should additionally engage translators and announcers-presenters who are not employed in RTS. In a rough calculation, for implementation of the aforementioned project, RTS states that it would be necessary to provide a minimum of 100 thousand euros."

to the Action Plan, allocated EUR 8.642 for a more precise calculation of these costs. After monitoring the language structure of TV Vojvodina Channels One and Two in 2017 it was established that 55% of programmes were broadcast in Serbian, 11% in Hungarian, 3% in Romanian, Ruthenian and Slovak each, and about 5% of programmes in minority languages, subtitled in Serbian.⁶ In recent years, Channel One of TV Vojvodina has been broadcasting the programme called *Paleta*, which offers a review the most important content across television programmes in national minority languages with Serbian subtitles.⁷ The *Paleta* review is a unique programme in the region, affirming multiculturalism by informing the majority population on the events, phenomena and people from national minority communities (Veljanovski, Valić Nedeljković, 2016:10) Translation of national minority programmes into the Serbian languages makes national minority issues more accessible to the majority population, which undoubtedly represents good practice in a multicultural society.

Strategy of Prevention and Protection against Discrimination for the period from 2014 to 2018 and the Action Plan for Implementation⁸ also provide detailed descriptions of the activities concerning media reporting on national minorities. The General Section specifies the following activities: increasing the number of media reports promoting non-violence and tolerance for vulnerable social groups (measure 3.1.13), support to the production of media content enabling the realisation of equal rights (measure 3.2.1), taking measures to prevent the spreading of hate speech in the media and to reduce the incidence of hate speech spreading in the media, along with increased content condemning hate speech (measure 3.2.3). A separate part of the Action Plan – *Youth, Sport, Culture and the Media* (4.5) - has, as one of its aims, strengthening the culture of tolerance for vulnerable groups through media, i.e. improving the manner of media reporting by organising training for journalists and editors, and also introducing stimulating measures in reporting, such as open competitions, contests, funding for media projects and similar.

The Office for Human and Minority Rights, in its most recently published, Fifth Monitoring Report on the Realisation of the Action Plan for the Implementation of the Strategy of Anti-Discrimination,⁹ states that within the IPA 2013 Twinning Project

⁶ Annual Report on the Activities and Work of RTV for 2017, Radio-Television Vojvodina, Novi Sad, 2018.

⁷ Annual Report on the Activities and Work of RTV for 2015 and Annual Report on Activities and Work of RTV in 2016.

⁸ *Official Gazette of the Republic of Serbia*, no. 107/2014

⁹ Report for the first and second trimesters of 2017, p 139.

“Support to the Advancement of Human Rights and Zero Tolerance for Discrimination” it organised a national media campaign titled “Together, We are Serbia” with the aim of promoting respect for diversity and raising awareness in the general public of the existence of national minorities (measure 3.1.12). A video clip produced in this project and published on the Office for Human and Minority Rights YouTube channel has had only about 1,100 views.¹⁰ Neither this nor other periodical reports contain information on the activities completed with regard to measures 3.2.1, 3.2.3 and 4.5, relating to reporting on national minorities, although they do point out that the Ministry of Culture and Information has not reported on the implementation of measures in this reporting period.

Based on the analysis of reports on the implementation of the aforementioned measures, a conclusion is drawn that in the first three years of the implementation of the Strategy of Anti-Discrimination, there were no significant activities or results in media reporting on national minorities and in the prevention and protection from discrimination of national minorities in the media. The sole activity that was realised resulted in a low-scale campaign.

Strategy for Social Inclusion of Roma in the Republic of Serbia for the period from 2016 to 2025¹¹ – through its operational aim number 4 (to create the conditions enabling the expression of identity, cultivating the language and culture, and exercise of all minority rights of the Roma in education), it provides a general framework for media reporting on national minorities: the media should promote the language and culture of the Roma, the Roma community's contribution to the cultural heritage of the Republic of Serbia as well as traditional and contemporary Roma cultural creations.

The **Strategy for the Development of the Public Information System from 2011 to 2016** protected minority rights in the media only in principle. It specified that it was in the public interest to provide varied and good quality media content for all individuals and social groups: professional, age, educational, including all minority groups: ethnic, religious, linguistic and sexual, special needs groups and other, and that it was in the public interest and of particular importance to produce and broadcast media content if, inter alia, it was of importance for the promotion of the rule of law and social justice, the principle of civil democracy, human and minority rights and freedoms and European

¹⁰ Video clip available at: <https://www.youtube.com/watch?v=Ay08ly62F7Y>; accessed on 10 September 2018.

¹¹ *Official Gazette of the RS*, no. 26/2016

principles and values. The Specific Stimulating Measures (Chapter 8.3) allowed for examining the possibility of introducing additional stimulating measures, in accordance with the regulations for allocating state assistance, one of which was assistance to the media and journalist and media associations for training programmes for journalists in a range of fields (economy, defence, minority rights, the interior, agriculture, new technologies, etc.) The Action Plan for the implementation of this Strategy did not envisage concrete measures regarding media reporting on national minorities.

Since the aforementioned Strategy was close to expiration, the AP CH 23 stipulated that the new **Strategy of the Development of the Public Information System** (hereinafter: media strategy) would be drafted in 2015.¹² The first draft of the new media strategy was drawn up, only to be abandoned in the meantime. The draft did not deal with this area in more detail. Rather, it only focused on the provision of information in national minority languages. Following this unsuccessful attempt at creating a new media strategy, it was announced that it would finally be adopted by the end of 2018. This means that Serbia has not had a strategic document in the field of media for two whole years.

The question remains open whether the new media strategy will regulate this area in more detail or whether its regulation will be left entirely to the strategies in the area of human rights, anti-discrimination and national minority rights. Likewise, another question remains – to what extent is it necessary for media strategies to regulate media reporting on national minorities and to what extent should this be a part of strategies on human rights, and how to determine an effective balance in this relation. In the process of drafting a new media strategy, the aforementioned measures from the field of national minority protection should be considered, also taking into account that so far, their realisation has not been successful, and that a new media strategy will be a new chance for the status of national minorities in the media to be regulated.

Legal Framework in Serbia – Regulations in the domain of human rights and the media

Media reporting on national minorities is regulated by the **Constitution of the Republic of Serbia**,¹³ laws on human rights and those protecting national minority rights and proscribing discrimination, as well as the laws in the domain of media rights. The

¹² Official Gazette of the RS, no. 75/2011

¹³ Official Gazette of the RS, no. 98/2006

Constitution guarantees the right to freedom of thought and expression (Article 45) and freedom of the media (Article 50, but also defines their limitations, which can be imposed, inter alia, to prevent the incitement of racial, national or religious hatred (Article 50). The Constitution protects the rights of national minorities quite exhaustively and guarantees special protection to enable full equality and preservation of their identities. (Krstić, Stjelja etc. 2015:10)

The Constitution prohibits discrimination (Article 21) and incitement of racial, national and religious hatred (Article 49) protects the rights of national minorities and guarantees special protection of national minorities to enable full equality and preservation of their identities (Article 14). In addition, in the Constitution, through measures concerning public information, the state is committed to encouraging understanding, consideration and respect of differences resulting from the specificities of ethnic, cultural, linguistic or religious identity of its citizens (Article 48), and to ensuring that members of national minorities are entitled to the right to: express, preserve, cultivate, develop and express in public their national, ethnic, cultural and religious specificities; to being fully, timely and impartially informed in their language, including the right to express, receive, send and exchange information and ideas; to establish their own media, in accordance with the law (Article 79), while municipalities are responsible for the realisation, protection and improvement of human and minority rights and public information in their territories (Article 190).

The **Law on the Prohibition of Discrimination**¹⁴ defines what hate speech is (Article 11), prohibits the expression of ideas, information and opinions inciting discrimination, hatred or violence against individuals or groups of individuals based on their personal characteristics, in the media and other publications, in gatherings and places accessible to the public, by writing out or displaying messages or symbols in other manners. This law defines causing and inciting inequality, hatred and intolerance based on national, racial or religious affiliation and advocating discrimination through media as severe forms of discrimination (Article 13).

The **Law on the Protection of Rights and Freedoms of National Minorities**¹⁵ stipulates that members of national minorities have the right to be “fully and impartially informed in their own language, and the right to express, receive, send and exchange

¹⁴ Official Gazette of the RS, no. 22/2009

¹⁵ Official Gazette of the FRY, no. 11/2002, Official Gazette of Serbia and Montenegro, no. 1/2003 – Constitutional Charter and the Official Gazette of the RS, no. 72/2009 – other law, 97/2013 – Decision by the Constitutional Court and 47/2018

information and ideas through printed media and other means of public information” and the right to “establish and maintain media in their own language” (Article 17, paras 1 and 3). The same Article requires that the state to provide informative, cultural and educational content in national minority languages in radio and television public service broadcaster programmes. Article 19 of this Law stipulates that the national council for national minorities, as a self-governing body, is in charge of issues relating to informing national minority members.

The **Law on National Councils of National Minorities**¹⁶ regulates in detail the councils' powers in the domain of informing (Articles 19 – 22). Councils are entitled to founder's rights in the domain of public information because they are allowed to establish institutions and companies with the aim of exercising the right to public information in a minority language or foundations, with the aim of realising common-good aims of improving public information in a national minority language. At the National Assembly, based on agreements, national councils nominate two candidates to the Council of the Regulatory Body for Electronic Media. In addition, they have broad authorities in the field of national minority informing: they adopt strategies of informing in a national minority language; issue approvals of project proposals in the field of information in national minority languages delivered by public institutions; submit proposals to managing boards and programme councils of public media services with regard to information in national minority languages; issue opinions on candidate editors of programmes in national minority languages in public service broadcasters; issue opinions on reports by programme councils on the content of programmes in national minority languages.

The **Law on Self-Government**¹⁷ stipulates that one of the responsibilities of the municipality is to look after the realisation, protection and improvement of human and minority rights, gender equality and public information in its territory (Article 20).

The legal system allows for criminal-legal protection of national minorities from unlawful reporting by the media. The **Criminal Code**¹⁸ defines several crimes that could be relevant in this event, i.e. those that could be committed through media and against members of national minorities. These crimes are: inciting national, racial and

¹⁶ *Official Gazette of the RS*, nos. 72/09, 20/14 – US and 55/14

¹⁷ *Official Gazette of the RS*, nos. 129/2007, 83/2014 – other laws, 101/2016 – other laws and 47/2018

¹⁸ *Official Gazette of the RS*, nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

religious hatred and intolerance (Article 137), infringement of equality (Article 128), racial and other discrimination (Article 387) and defamation of reputation based on racial, religious, national or other affiliation (Article 174). Judicial practice has not been developed with regard to some of these crimes. Criminal defamation (Article 170) is an insult through the media and punishable by fines, and should therefore be included in the context of media reporting on national minorities. Here, criminal defamation should be viewed in relation to Article 54a (the so-called hate crime), which was included in the Criminal Code in 2013. This Article actually defines hatred or discrimination as a motive for a crime as an aggravating circumstance which must be included in sentence determination. This aggravating circumstance has not been used in practice so far, but it would be of significance if its application were considered in theory in relation to the crime of defamation.

A set of media laws adopted in 2014 contains provisions aiming to prevent and punish the use of hate speech. The **Law on Public Information and Media**¹⁹ prohibits hate speech (Article 75), specifying that ideas, opinions or information published in the media must not incite discrimination, hate or violence against an individual or a group of individuals on grounds of their race, religion, nationality, (...) or other personal inclination, notwithstanding whether a criminal offence has been committed by such publication. The **Law on Electronic Media**²⁰ also prohibits hate speech (Article 51), specifying that "the Regulator shall ensure that the programme content of the media service provider does not contain information which overtly or covertly encourages discrimination, hatred or violence based on race, colour, ancestry, citizenship, national origin, language, (...) and other actual or presumed personal characteristics." The **Law on Public Service Broadcasting**²¹ specifies that the main activity of the public service broadcaster has the function of realising the public interest as defined by this law, and entails publishing content (...) aimed at realising human rights and freedoms, exchanging ideas and opinions, nurturing the values of democratic society, advancing political, gender, international and religious tolerance and understanding, as well as preserving the national identity of the Serbian people and national minorities (...).

The protection of national minorities in media reporting is primarily regulated by anti-discriminatory legislation, while the laws that directly protect the rights of national minorities do not regulate this area and rather deal solely with information in minority

¹⁹ Official Gazette of the RS, no. 83/14

²⁰ Official Gazette of the RS, no. 83/14

²¹ Official Gazette of the RS, no. 83/14

languages. Criminal legal protection of national minorities from unlawful reporting is possible, but has not been developed in court practice. A set of media laws established a framework for the protection from discrimination in the media, with the aim of preventing and punishing the use of hate speech in the media, presenting additional guarantees for the protection of national minority rights in the media.

Practice of the Commissioner for the Protection of Equality in cases involving discrimination of national minorities in the media

The Commissioner for the Protection of Equality has acted in several procedures raised by complaints dealing with discrimination of national minorities in the media, mostly filed by civil society organisations. The Commissioner's annual reports contain statistical data on the number of complaints in different fields, including a significant number of complaints in the area of public information and media. According to the 2017 Annual Report, the number of complaints filed in the area of public information and media is the third largest group, i.e. about 7% of all complaints were filed in response to discrimination in this field (preceded by discrimination in the provision of public services and use of public buildings and spaces – 12% and in education and professional training – 8%).²²

The total number of complaints filed in the area of public information and media in 2017 was 53; the largest number of them concerned discrimination based on sexual orientation and gender identity (33) and all were filed by civil society organisations, while only three complaints were filed for discrimination based on national affiliation and ethnic origin – one by an individual and two by civil society organisations.²³ The total number of complaints filed in the area of public information and media in 2016 was 28, with the largest number concerning discrimination based on sexual orientation (15), again, all filed by civil society organisations, while those filed for discrimination based on nationality and ethnic origin were only five – two by individuals and three by organisations.²⁴ The total number of complaints filed in the area of public information and media in 2015 was 69, with the largest number, again, for discrimination based on sexual orientation (21), while those for discrimination based on nationality and ethnic

²² Regular Annual Report of the Commissioner for the Protection of Equality for 2017.

²³ *Ibid.*

²⁴ Regular Annual Report of the Commissioner for the Protection of Equality for 2016.

origin included 11 complaints, three of which were filed by legal entities, two by individuals and six by organisations.²⁵

The role of civil society organisations in combating discrimination in public information systems and the media is very important – as confirmed by the fact that a majority of complaints were filed by them. One of the reasons for this situation is the fact that hate speech is easily perceivable in the media, it is easy to identify those responsible and is easily provable: no requirement for witnesses, procedures for taking statements or testifying.

A conclusion drawn from the practice of the Commissioner is that when reporting about national minority rights is concerned, the media with national coverage dealt with these issues to a lesser extent, while local and regional media published more articles and reports, primarily focused on the improvement of the status of the Roma community. The media were also interested in subjects concerning the inclusion of Roma children in the education system and Roma employment.²⁶ The Commissioner's practice indicates that the victims of hate speech in the media were the most vulnerable social groups, including LGBT and national minorities, Roma in particular, while some procedures concerned discrimination against Albanians in the media.

As mentioned earlier, the largest number of complaints against discrimination in the media and public information based on nationality involves members of the Roma minority. In procedures where discrimination in media and public information against Roma nationals was identified,²⁷ the Commissioner issued recommendations that reports violating the dignity of this national minority be not broadcast and that programmes and reports should contribute to changing the pattern, customs and practices that create stereotypes, prejudice and discrimination against members of this national minority. A frequent form of violation of the Law on the Prohibition of Discrimination is disclosing the nationality of crime suspects in situations when their nationality is of no relevance to the crime committed and where disclosing this information does not contribute to better understanding of the incident. Such reporting

²⁵ Regular Annual Report of the Commissioner for the Protection of Equality for 2015.

²⁶ Regular Annual Report of the Commissioner for the Protection of Equality for 2017.

²⁷ Reference procedures: Commissioner's Opinion no. 07-00-337/2016-02, issued in the procedure following a complaint filed by R.Ž.C.B against the daily paper K; Commissioner's Opinion no. 07-00-688/2015-02, issued in the procedure following a complaint filed by Educational and Cultural Community R.R. against author of a TV programme Ž.P; Commissioner's Opinion no.07-00-147/15-02, issued in the procedure following a complaint filed by organisation P. against V.N., etc.

practice draws attention to members of this national minority (in practice, it is the Roma national minority that is mentioned most often); they are labelled as prone to committing crimes, which, in turn, strengthens the negative stereotypes and discriminatory treatment.²⁸ This situation is consistent with the findings of the survey on "Citizens' Attitudes towards Discrimination in Serbia"²⁹ conducted in 2016. According to the results, as much as 36% of the participants believe that Roma are the most discriminated social group.

With regard to media reporting on national minorities in Serbia, the cases before the Commissioner concerning referring to Albanians as "Shiptars" in texts printed on cover pages in two publications in 2015 present important examples. A civil society organisation filed complaints in these cases.³⁰ During the procedure it was established that for almost half a century, referring to the Albanian people as "Shiptars" has been considered offensive and insulting to members of this national minority, and that the use of this term may, particularly in conflict situations, encourage intolerance towards the Albanian people and members of the Albanian national minority. The Commissioner for the Protection of Equality analysed expert texts on the origin of the word "Shiptar", its meaning in the contemporary context and the feelings it provokes in members of the Albanian national minority living in Serbia. This type of reporting, using a colloquial and derogatory term for a specific ethnic group deepens the gap between members of the Albanian national minority and the majority population, inducing aversion in the majority population against Albanians and the feeling of insecurity in the Albanian population as well as labelling their entire community. The Commissioner's opinion stated that the use of the term "Shiptar" violates the dignity of members of the Albanian national minority, thus violating the provisions of the Law on the Prohibition of Discrimination. For this reason, a recommendation was issued to these daily newspapers that in the future they not publish articles violating the dignity of members of the Albanian national minority and that, through their articles, they should contribute to changes in patterns, customs and practices that create stereotypes, prejudice and

²⁸ Regular Annual Report of the Commissioner for the Protection of Equality for 2016.

²⁹ Report on a public opinion survey: *Citizens' Attitude towards Discrimination in Serbia*, Commissioner for the Protection of Equality, Belgrade, 2016.

³⁰ In 2015, the daily paper *Informer* and *Telegraf* portal published articles with the following titles: "Spider Shiptar Arrested", "Edi Rama – A Shameless Shiptar", "Chaos on the Way: Shiptars Already in Knez Mihailova, a war of football fans looming?", "Exclusive Video: Here's How Shiptars Smuggled the Flag of Greater Albania into Belgrade!", etc. See: Commissioner's Opinion no. 07-00-90/2015-02 issued in the procedure following a complaint filed by organisation P. against media portal T. and Commissioner's Opinion no. 07-00-88/2015-02, issued in the procedure following a complaint filed by organisation P. against the daily paper I.

discrimination against members of the Albanian national minority, and to make sure that in the future they not violate legal regulations on the prohibition of discrimination.

The same media content was the subject of a procedure conducted before the Complaints Commission of the Press Council, which likewise established discrimination and infringement of the relevant provisions of the Serbian Journalists' Code of Ethics. The decision of the Press Council's Complaints Commission was successfully used as evidence in the complaint procedure before the Commissioner and the decision of this self-regulatory body was reviewed in the statement of reasons of the Commissioner's decision which ascertained that this was a case of discrimination.

Procedures initiated by civil society organisations against media reports on migrants during the migrant crisis in 2015 were also significant. However, in a large number of procedures initiated in these cases, discrimination was not identified. Rather, it was established that the media reported within the boundaries of freedom of expression. The Commissioner found that the complainant should have borne in mind that one cannot assume the existence of freedom of speech if we expect that anything stated by anybody else must be in accordance with our own personal values, that the essence of the freedom of speech is our entitlement to have a personal opinion and to express it, and that the others can also express their opinions and dilemmas. Freedom of expression is very important in any democratic society and includes, above all, the freedom to have one's own opinion, freedom to express information and ideas, but also the freedom to receive information and ideas. This type of freedom is protected and may be restricted only in exceptional cases – this can either be in the interest of national security, territorial integrity or public security, for the purpose of preventing unrests or crimes, protection of health or morals, protection of the reputation or rights of others, preventing disclosure of intelligence obtained confidentially or for the preservation of authority and neutrality of the judiciary. The Committee of Ministers of the Council of Europe states that “all restrictions of this law are considered incompatible with the nature of a democratic society”. Also, according to the opinion of the European Court of Human Rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms does not protect only information or ideas that are favourably received or regarded as inoffensive or something that does not cause reactions, but also those that offend, shock or disturb, because such are the demands of

that pluralism, tolerance and broadmindedness without which there is no democratic society.³¹

The Commissioner for the Protection of Equality and civil society organisations have a very important role in suppressing hate speech. Given that civil society organisations are the ones that initiate proceedings against discrimination of national minorities most often, they should be encouraged to continue to call attention to the use of hate speech or other irregularities in media reports on national minorities. Experience shows that organisations need training on freedom of expression and its boundaries. This is indicated by a large number of unsuccessful complaints filed by civil society organisations in the alleged cases of discrimination of migrants in the media in 2015,³² where some organisations failed to understand that there can be no freedom of speech if one expects that anything said by anybody else must be in accordance with our own values.

The role of the Commissioner in the implementation of preventative measures, and in improving media reporting on national minorities and suppressing hate speech was recognised by the Council of Europe's European Commission against Racism and Intolerance (ECRI), which issued a recommendation to Serbia to organise intensive training for journalists on the Journalists' Code of Ethics, suggesting that it be carried out by the institution of the Commissioner, together with the Press Council and the Regulatory Body for Electronic Media.³³

The Role of the Press Council's Complaints Commission

The Press Council is an independent, self-regulatory body that brings together publishers, owners of printed and online media, news agencies and professional journalists. It was established to monitor the implementation of the Serbia Journalists' Code of Ethics³⁴ in printed and online media and news agencies, and address complaints

³¹ Regular Annual Report of the Commissioner for the Protection of Equality for 2015.

³² See more on these cases in the Regular Annual Report of the Commissioner for the Protection of Equality for 2015, p 186 and at: <https://www.praxis.org.rs/index.php/sr/praxis-watch/item/1093-the-commissioner-for-protection-of-equality-established-that-vecernje-novosti-daily-did-not-discriminated-against-asylum-seekers-refugees-and-migrants> and <https://www.praxis.org.rs/index.php/sr/praxis-watch/item/1095-the-commissioner-for-protection-of-equality-established-that-kurir-daily-did-not-discriminated-against-refugees-and-migrants>

³³ ECRI Report on Serbia, 5th Monitoring Cycle, Council of Europe, 2017; available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4>.

³⁴ Serbian Journalists' Code of Ethics, available at: <http://www.savetzastampu.rs/english/serbian-journalists-code-of-ethics>.

on the content published by these media, filed by individuals and institutions. The Council is also responsible for mediating between complainants – individuals or institutions – and editorial staff, as well as for issuing warnings for violations of ethical standards as defined by the Serbia Journalists' Code of Ethics. The Press Council also organises training on the Journalists' Code of Ethics and works to strengthen the role of the media in Serbia.³⁵ The Serbian Journalists' Code of Ethics was adopted in 2006 by the Independent Journalists' Association of Serbia and Journalists' Association of Serbia and was amended in 2013. Serbia Journalists' Code of Ethics also protects the rights of national minorities in two chapters: Chapter IV – Journalists' Responsibilities and Chapter V – Journalists' Attention.

Article 1 of Chapter IV specifies that “A journalist is primarily responsible to their readers, listeners and viewers. This responsibility must not be subordinate to the interests of others, particularly the interest of publishers, government and other state institutions. A journalist must oppose all those who violate human rights or promote any kind of discrimination, hate speech and incitement to violence.” Articles of the Code of Ethics are put to operation by guidelines for their implementation and the guidelines for this Article are as follows: journalism as a profession is incompatible with the spreading of any kind of sexual, gender, ethnic, racial, social, or religious stereotypes. Prejudices that journalists have privately must not be broadcast / published in any context, neither openly nor covertly; it is unacceptable to name specific groups colloquially, in a derogatory manner and imprecisely; in reporting on crimes, national, racial, religious, ideological and political affiliation, as well as sexual orientation, social and marital status of suspects or victims, should be mentioned only if the orientation, affiliation or status are directly related to the type and nature of the crime committed.

Article 4 of Chapter V stipulates that “a journalist must be aware of the danger of discrimination being spread by media and will do everything to avoid discrimination based, among other things, on race, gender, age, sexual orientation, language, religion, political or other opinion, national or social affiliation.” The guidelines for this Article elaborate as follows: belonging to a particular ethnic, political, ideological, or other group, as well as their marital status, religious beliefs, social belonging, is indicated only in such cases when the information is necessary for complete understanding of the context of events being reported on; journalists should avoid phrases that are chauvinist, sexist, or other discriminatory connotations (e.g.: “the fairer sex”, “member of the stronger sex”, “Montenegrin laziness” and the alike).

³⁵ Press Council, <http://www.savetzastampu.rs/english/>.

According to the practice of the Press Council, the most frequent infringements of the Code of Ethics involve disclosure of national identities of crime perpetrators and, most frequently, this affects the Roma. The Commission has issued a number of decisions establishing that such reporting is not in accordance with the professional standards and that it can provoke fear and animosity of the majority population towards the entire minority group to which the suspect belongs. In its decisions, the Commission noted that such media reporting gives excuses to individuals or groups to intensify their discriminatory activities, also providing legitimacy for further discriminatory action so that anything done to members of the Roma nationality becomes acceptable for the majority population precisely because "An underage girl was raped by a Roma man" or because "An underage Roma boy killed for money" or because "Migrants were mugged by Roma".³⁶ In practice, other frequent complaints filed with the Commission concern derogatory or colloquial terms for national minorities, mostly affecting the Roma and Albanian nationality members.

The role of civil society organisations is important in these procedures too because, as with procedures before the Commissioner for the Protection of Equality, most of them are initiated by civil society organisations. Likewise, activities should be undertaken to strengthen this institution and protection mechanism, which is consistent with recommendations of the European Commission against Racism and Intolerance (ECRI)³⁷ and with the opinion of the European Commission, which stated in its Serbia 2018 Report that Serbian authorities need to provide active support to independent bodies, human rights defenders and independent journalists, and promptly react to and publicly condemn hate speech and threats.³⁸

Concluding remarks

The strategic and legal documents of relevance for media reporting about national minorities include those from the field of human and minority rights and those regulating the media. The strategic measures envisaged in Serbia's public policies in the field of human and minority rights have largely remained unrealised. For instance, in the first three years of the implementation of the Anti-discrimination Strategy, there have been no significant activities or results in the prevention and protection from

³⁶ See more on these procedures at: www.savetzastampu.rs/latinica/zalbeni-postupci/2502 and www.savetzastampu.rs/latinica/zalbeni-postupci/3408 i www.savetzastampu.rs/latinica/zalbeni-postupci/2179

³⁷ ECRI Report on Serbia, Fifth Monitoring Cycle, Council of Europe, 2017 available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4>.

³⁸ Serbia 2018 Report, European Commission.

discrimination of national minorities in the media despite the fact that a large number of measures have been envisaged with this aim.

As for legal protection, it is primarily regulated by anti-discrimination legislation, while the laws specifically dealing with the protection of the rights of national minorities, rather than regulating this area, focus solely on information in minority languages. The criminal legal protection of national minorities from unlawful media reporting is possible, but has not developed in court practice. It is important to note that a set of media laws adopted in 2014 provides a framework for protection from discrimination in the media, with the aim of preventing and penalising hate speech in the media. This provides additional guarantees for the rights of national minorities in the media.

The Commissioner for the Protection of Equality has acted in a number of procedures following complaints for discrimination of national minorities in the media, mostly filed by civil society organisations. According to the Commissioner's and Press Council's Complaints Commission practice, legal norms and professional standards were infringed by disclosing the nationalities of crime perpetrators and by the use of derogatory or colloquial terms for minorities. The Commission has also dealt with a large number of complaints filed by civil society organisations in cases where minorities were discriminated. The role of the civil sector in the protection of these rights is key, but in some cases it transpired that civil society organisations sometimes do not understand the boundaries of the freedom of speech and tend to interpret them rather extensively, which resulted in a number of rejected complaints. Bearing in mind the shortcomings identified in the implementation of public policies, along with the chronic problem of incomplete application of the legislation, the role of independent institutions is very important in the regulation of media reporting on minorities and their protection and prevention from discrimination.

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