



Montenegro
Agency for Prevention of Corruption

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Pursuant to Articles 78 and 79 of the Law on Prevention of Corruption ("Official Gazette of Montenegro", No. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, acting ex officio, the Agency for Prevention of Corruption adopts the following:

OPINION ON THE DECISION ON FOUNDING LOCAL PUBLIC BROADCASTER "RADIO AND TELEVISION NIKŠIĆ LTD ("OFFICIAL GAZETTE OF MONTENEGRO" NO. 21/11 and 26/12), STATUTE OF THE LOCAL PUBLIC BROADCASTER "RADIO AND TELEVISION NIKŠIĆ" Ltd. OF OCTOBER 28, 2021 AND RULES OF PROCEDURE OF THE RTV NK COUNCIL NUMBER 01-730/1 OF OCTOBER 28, 2011.

The Agency determined that the special conditions for the appointment of directors, which are provided for in Article 32 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of the Republic of Montenegro" No. 21/11 and 26/12) were inconsistently translated into by-laws, i.e., into the Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd. of October 28, 2021, adopted by the Council of Radio and Television Nikšić at the 63rd session held on October 28, 2021, Rulebook on the Internal Organization and Systematization of workplaces of the local public broadcaster "Radio and Television Nikšić" Ltd. of October 29, 2021, adopted at the same session of the RTNK Council, in such a way that they do not contain work experience lasting five years as one of the special conditions for the appointment of Director of "Radio and Television Nikšić".

Additionally, considering the conditions published on the website of the Employment Agency of Montenegro, for the position of Director of the Local Broadcaster Radio and Television Nikšić Ltd (<https://www.zzzcg.me/jobs/j201172100737/>), it was found that the condition related to work experience stated that the job application can be submitted regardless of work experience.

Bearing in mind that it is within the competence of the Council of Radio and Television Nikšić to adopt the Statute of "Radio and Television Nikšić" in accordance with Article 22 paragraph 1 item 1, to enact the Rulebook on the Internal Organization and Systematization of the workplaces of the

aforementioned Ltd in accordance with Article 40 paragraph 1 item b 3, and to announce and conduct a public competition for the election of the Director of "Radio and Television Nikšić" in accordance with Article 52 of the Statute, the Agency is of the opinion that the Council is responsible for the "overlook" of the special condition for the appointment of the Director of "Radio and Television Nikšić", which refers to the length of work experience of 5 years for the position in question, which leaves room for biased and arbitrary interpretation and decision-making by members of the Council.

Work experience, as a condition for selecting the Director of "Radio and Television Nikšić" is necessary, and specifying the type of work experience in terms of predicting the length of work experience in the journalism profession, that is, work experience in management positions, etc. would further improve the analyzed norm, and the said specification would leave no room for biased and arbitrary interpretation and decision-making by members of the Council, which may lead to putting in a disadvantageous position those candidates who gained work experience performing jobs in the journalistic profession or managing some other institutions.

In this regard, it is necessary to look at the bylaws in question, compare them with the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of Montenegro" no. 21/11 and 26/12), and consider whether, by announcing and conducting a competition for the position of Director of the Local Broadcaster Radio and Television Nikšić Ltd under reduced conditions, i.e. conditions that do not correspond to those provided for in Article 32 of the cited Decision, the public interest was violated, i.e. the legal and responsible implementation of entrusted duties of RTNK Council.

Bearing in mind everything stated in the Opinion in question, and along the lines of the recommendations from the Opinion on the Law on National Public Broadcaster Radio and Television of Montenegro ("Official Gazette of Montenegro" No. 80/20), the Agency for Prevention of Corruption recommends that, when reviewing the by-laws dealt with in this Opinion, clear procedures related to the appointment of the RTNK Director should be defined at the same time, which should include: predicting precise criteria for selection, while specifying the type of work experience in terms of predicting the length of work experience in the journalism profession, i.e. work experience in managerial positions, forming an expert and independent commission for the evaluation of submitted applications, establishing criteria for evaluating candidates, as well as publishing the appropriate candidate documentation on the basis of which the candidate evaluation procedure was carried out.

RATIONALE

I PROCEDURE

The Law on Prevention of Corruption regulates the competence of the Agency for Prevention of Corruption (hereinafter referred to as the Agency) to, in accordance with Article 78 paragraph 1 of the Law on Prevention of Corruption:

- "...Take the initiative to amend the laws, other regulations and general acts, in order to eliminate the possible risk of corruption or to bring them in line with international standards in the field of anti-corruption;
- Give opinions on draft laws and other regulations and general acts for the purpose of their alignment with international standards in the field of anti-corruption; ..."

Also, Article 79 of the same Law stipulates that the Agency may, at its own initiative or at the request of an authority, company, legal person, entrepreneur or natural person, give an opinion for the purpose of improving the prevention of corruption, reducing the risk of corruption and strengthening of ethics and integrity in the authorities and other legal persons, which includes an analysis of the risk of corruption, measures to eliminate the risk of corruption and corruption prevention.

In its Opinions, the Agency may refer to the provisions of the Constitution and relevant laws, but not in the sense of assessing constitutionality and legality, but in the sense of applying and accomplishing the purpose of Article 79 of the Law on Prevention of Corruption. Also, in order to strengthen the mechanisms of corruption prevention, which are recognized by international conventions and documents, the Agency strives to point them out in its opinions and, acting on recommendations, introduce and strengthen corruption prevention institutes in the Montenegrin legislation.

Article 6 paragraph 1 item 1 of the Law on Prevention of Corruption states that the public interest is a material and non-material interest for the good and prosperity of all citizens on equal terms.

The activity of the Local Public Broadcaster "Radio and Television Nikšić" is an activity of public interest, and it is partly financed from public funds, i.e. from the general revenues of the Budget of the Municipality of Nikšić, on the basis of a specially concluded contract, for exercising the rights of citizens to information guaranteed by the Constitution and the Law, without discrimination, based on the program content of Radio and Television Nikšić.

The public broadcaster has a responsibility towards the citizens to be a credible source of all important news, to simultaneously nurture an educational and cultural role in society, and to ensure the trust of the citizens through professional work and integrity, which also implies the transparency of public funds spending.

Additionally, the public broadcaster has a responsibility in the process of building a professional media community, setting the standards of the profession, defending media integrity, and thus the public interest.

On August 25, 2022, the Agency for Prevention of Corruption initiated a procedure in accordance with Article 54 of the Law on Prevention of Corruption ("Official Gazette of the Republic of Montenegro No. 53/14 and 42/17) to determine the existence of a threat to the public interest that points to the existence of corruption, due to the potential endangerment of public interest by members of the Council and the Director of Radio and Television Nikšić.

In this regard, and pursuant to Articles 78 and 79 of the Law on Prevention of Corruption (Official Gazette of Montenegro, No. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, acting ex officio, the Agency recognized the interest to carry out the procedure ex officio and review the provisions of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of Montenegro" no. 21/11 and 26/12), Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd adopted by the RTNK Council at the 63rd session held on October 28, 2021, and Rules of Procedure of the RTNK Council No. 01-730/1 of October 28, 2011 in the part of prescribing the criteria for the election and appointment of the Director of Radio and Television Nikšić.

II DECISION ON FOUNDING LOCAL PUBLIC BROADCASTER "RADIO AND TELEVISION NIKŠIĆ" Ltd ("OFFICIAL GAZETTE OF MONTENEGRO" NO. 21/11 AND 26/12), STATUTE OF THE LOCAL PUBLIC BROADCASTER "RADIO AND TELEVISION NIKŠIĆ" LTD ADOPTED BY THE RTNK COUNCIL AT THE 63RD SESSION HELD ON OCTOBER 28, 2021 AND THE PROCEEDINGS ON THE WORK OF THE RTNK COUNCIL NUMBER 01-730/1 OF OCTOBER 28, 2011, IN THE PART OF PRESCRIBING THE CRITERIA FOR THE ELECTION AND APPOINTMENT OF THE DIRECTOR OF RADIO AND TELEVISION NIKŠIĆ, AND OTHER RELEVANT DOCUMENTATION

In the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd. ("Official Gazette of Montenegro" no. 21/11 and 26/12), Article 5 of the Decision states that the activity of Radio and Television Nikšić is an activity of public interest.

Article 20 of the Decision states that the bodies of Radio and Television Nikšić are the Council and the Director.

Furthermore, in article 22 paragraph 1 item 3 it is said that the Council of Radio and Television Nikšić appoints and dismisses the Director of Radio and Television Nikšić. Also, in Article 32 of the Decision, it is stated that the Director is appointed by the Council, based on a public competition, and that, in addition to the general conditions stipulated by law, a person who meets the following conditions is appointed as director:

- citizenship of Montenegro;
- residence in the territory of Montenegro;
- at least five years of work experience;
- university degree.

Article 13 of the Rules of Procedure of the RTNK Council No. 01-730/1 dated 28 October 2011 stipulates that the Council appoints and dismisses the Director of Radio and Television Nikšić in the manner and according to the procedure prescribed by the Statute, and article 40 item 1 of the Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd adopted by the RTNK Council of at the 63rd session held on October 28, 2021 stipulates that the Council appoints and dismisses the Director of Radio and Television Nikšić.

Furthermore, Article 51 of the Statute states the following:

"A person who is a citizen of Montenegro, has a residence in Montenegro, and has at least a university degree shall be elected as the Director of "Radio and Television Nikšić".

The term of the Director of "Radio and Television Nikšić" shall be four years, and the same person can be appointed Director a maximum of two times in a row.

A person who, according to the provisions of the Decision on Founding Local public broadcaster "Radio and Television Nikšić" Ltd cannot be a member of the Council of "Radio and Television Nikšić" cannot be appointed as the Director of "Radio and Television Nikšić" either.

Article 27 paragraph 1 item 2 of the Decision on Founding Local public broadcaster "Radio and Television Nikšić" Ltd shall not apply to the candidates for the election of the Director of "Radio and Television Nikšić".

Also, Article 52 of the Statute states that the public competition for the election of the Director of "Radio and Television Nikšić" is announced and conducted by the Council of "Radio and Television Nikšić", and that, in addition to the documents required by law, when applying for a public competition for the election of a Director, candidates are required to submit a Work Plan and Program for the first two years of the term of office.

Article 53 paragraph 2 of the Statute states that until the Director of "Radio and Television Nikšić" is selected, based on a repeated competition, the Council of "Radio and Television Nikšić" appoints an acting Director, but not for more than six months, and that the public competition procedure, election and dismissal of the Director of "Radio and Television Nikšić" is carried out by the Council in accordance with the Decision on Founding Local public broadcaster "Radio and Television Nikšić" Ltd., this statute and the Rules of Procedure of the RTNK Council.

Article 54 of the Statute regulates the competences, obligations and powers of the Director of "Radio and Television Nikšić". Additionally, Article 58 of the Statute states that the Director of Radio and Television Nikšić may be dismissed before the end of his term of office in accordance with Article 36 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd, that before the decision on the dismissal is made, the Director of Radio and Television Nikšić is given the opportunity to state the reasons for the dismissal, that an administrative dispute can be initiated against the decision on dismissal, in accordance with a special law, and that the Director of Radio and Television Nikšić is dismissed by the Council with a majority of votes from the total number of members of the RTNK Council.

When it comes to the legality of the work of "Radio and Television Nikšić" in Article 65, it is said that it is carried out in accordance with the Law on Electronic Media, the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd., other laws and regulations, this statute and other acts adopted on the basis of the law and the Statute, that the Council controls the work of "Radio and Television Nikšić" and is accountable to the public for the legality of work in "Radio and Television Nikšić", and that the Director of "Radio and Television Nikšić" is "responsible to the Council for the legality and success of the work of "Radio and Television Nikšić".

Bearing in mind that the Statute of "Radio and Television Nikšić" was adopted on the basis of Article 22 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of Montenegro" no. 21/11 and 26/12), it is obvious that one of the special conditions for the appointment of the RTCG Director was "neglected", i.e. the condition requiring at least five years of work experience to perform the specified position in RTNK.

Also, the Rulebook on amending the Rulebook on Internal Organization and Systematization of workplaces no. 01-863/1, which was adopted by the RTNK Council at the 63rd session, held on October 28, 2021 in the Systematization Table (main overview of jobs), for the position of Director of Radio and

Television Nikšić, does not state any other conditions for the position except for the level of professional education, while for other jobs, work experience is one of the elements of the job description, and for most jobs, some of the conditions for performing the job in question are specified, among which are the knowledge of one world language, the possession of a driver's license in a certain category, or the length of the probationary period.

Additionally, considering the conditions from the competition published on the website of the Employment Agency of Montenegro, and for the position of Director of the local broadcaster Radio and Television Nikšić Ltd. (<https://www.zzzcg.me/jobs/j201172100737/>) it can be seen that the conditions related to work experience state that the job application can be submitted regardless of work experience, which is in direct contradiction to the special conditions provided for in Article 32 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd.

Labor Law ("Official Gazette of Montenegro", no. 74/19, 8/21, 59/21, 68/21 and 145/21) which regulates the rights and obligations of employees from employment, that is, on the basis of work, the method and procedure of their realization, in Article 5 paragraph 14 items 8 and 9 states:

"8) work experience means the time spent in employment and professional training in accordance with the law, in the qualification of the level of education, that is, in the professional qualification;

9) act on internal organization and systematization of workplaces is an act that determines the internal organization of the employer; working place; job description; number of executors; special conditions for establishing an employment relationship (competencies, knowledge, skills and work experience, education level qualification, i.e. professional qualification in the range of a maximum of two levels of education, i.e. professional qualification) ...".

Bearing in mind the definition of the above-mentioned expressions from the Labor Law, and Article 31 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić Ltd" ("Official Gazette of Montenegro" no. 21/11 and 26/12) and the provisions of the Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd adopted on October 28, 2021 by the RTNK Council at the 63rd session, i.e. the Rulebook on the Internal Organization and Systematization of workplaces of the local public broadcaster "Radio and Television Nikšić" Ltd. dated October 29, 2021, adopted at the same session of the RTNK Council, and conditions of the competition published on the website of

the Employment Agency of Montenegro, for the position of Director of the local broadcaster Radio and Television Nikšić Ltd (<https://www.zzzcg.me/jobs/j201172100737/>) it is unquestionable that by "omitting" a special condition, the election of the Director of the Local Public Broadcaster "Radio and Television Nikšić" Ltd was carried out in direct contradiction to the special conditions stipulated in Article 32 of the Decision on Founding Local public broadcaster "Radio and Television Nikšić" Ltd. In addition, it is evident that by omitting work experience as one of the special conditions for the election of Director provided for in Article 32 of the Decision, in other by-laws, and in other relevant documentation (rules, competition...) there is room for biased and arbitrary interpretation and decision-making by the members Council, as a suitable ground for various types of abuses, which condition the appearance of trade in influence, which can ultimately affect the exercise of the rights and interests of citizens in the field of information.

V FINAL ASSESSMENTS

Acting ex officio, and in accordance with Articles 78 and 79 of the Law on Prevention of Corruption (Official Gazette of Montenegro, No. 53/14 and 42/17) and Article 10 of the Statute of the Agency for Prevention of Corruption, the Agency recognized the interest in reviewing the provisions of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of Montenegro" no. 21/11 and 26/12), the Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd. adopted by the RTNK Council at the 63rd session held on October 28, 2021, and Rules of Procedure of the RTNK Council No. 01-730/1 of October 28, 2011 in the part of prescribing the criteria for the election and appointment of the Director of Radio and Television Nikšić.

The Agency determined that the special conditions for the appointment of Directors, which are provided for in Article 32 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of the Republic of Montenegro" No. 21/11 and 26/12) were inconsistently translated into by-laws, i.e., into the Statute of the Local Public Broadcaster "Radio and Television Nikšić" Ltd. of October 28, 2021, adopted by the Council of Radio and Television Nikšić at the 63rd session held on October 28, 2021, Rulebook on the Internal Organization and Systematization of workplaces of the local public broadcaster "Radio and Television Nikšić" Ltd. of October 29, 2021, adopted at the same session of the RTNK Council, in such a way that they do not contain work experience lasting five years as one of the special conditions for the appointment of Director of "Radio and Television Nikšić".

Additionally, considering the conditions published on the website of the Employment Agency of Montenegro, for the position of Director of the local broadcaster Radio and Television Nikšić Ltd (<https://www.zzzcg.me/jobs/j201172100737/>) it was found that the condition related to work experience stated that the job application can be submitted regardless of work experience.

Bearing in mind that it is within the competence of the Council of Radio and Television Nikšić to adopt the Statute of "Radio and Television Nikšić" in accordance with Article 22 paragraph 1 item 1, to enact the Rulebook on the Internal Organization and Systematization of the workplaces of the aforementioned Ltd in accordance with Article 40 paragraph 1 item b 3, and to announce and conduct a public competition for the election of the Director of "Radio and Television Nikšić" in accordance with Article 52 of the Statute, the Agency is of the opinion that the Council is responsible for the "overlook" of the special condition for the appointment of the Director of "Radio and Television Nikšić", which refers to the length of work experience of 5 years for the position in question. By "omitting" the special condition for the election of the Director of RTNK, the election of the Director of the Local Public Broadcaster "Radio and Television Nikšić" Ltd is in direct contradiction to the special conditions provided for in Article 32 of the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd, and the same leaves room for biased and arbitrary interpretation and decision-making by members of the Council.

In this regard, it is necessary to look at the bylaws in question, compare them with the Decision on Founding Local Public Broadcaster "Radio and Television Nikšić" Ltd ("Official Gazette of Montenegro" no. 21/11 and 26/12), and consider whether, by announcing and conducting a competition for the position of Director of the Local Broadcaster Radio and Television Nikšić Ltd under reduced conditions, i.e. conditions that do not correspond to those provided for in Article 32 of the cited Decision, the public interest was violated, i.e. the legal and responsible implementation of entrusted duties of RTNK Council.

Additionally, bearing in mind the Opinion on the Law on National Public Broadcaster Radio and Television of Montenegro ("Official Gazette of Montenegro" No. 80/20), the Agency for Prevention of Corruption recommends that, when reviewing the by-laws dealt with in this Opinion, clear procedures related to the appointment of the RTNK Director should be defined at the same time, which should include: predicting precise criteria for selection, while specifying the type of work experience in terms of predicting the length of work experience in the journalism profession, i.e. work experience in managerial positions, forming an expert and independent commission for the evaluation of submitted applications, establishing criteria for evaluating candidates, as well as

publishing the appropriate candidate documentation on the basis of which the candidate evaluation procedure was carried out.

The aforementioned would ensure greater transparency of the election and appointment process itself, and thus would reduce the space for biased and potentially arbitrary decision-making by the Council, as a suitable ground for various types of abuse, which condition the appearance of trade in influence, which can ultimately affect the exercise of rights and interests of citizens in the field of information.

DIRECTOR
Jelena Perović

HEAD
Milica Popović

ACTING DEPUTY DIRECTOR
Boris Vukašinović

Submitted to:

- The Parliament of Montenegro
- The Government of Montenegro
- Council of the Agency for Prevention of Corruption
- Ministry of Culture and Media
- RTNK Council
- Director of Radio and Television Nikšić
- a/a

Expedited on:

Administrative Officer: