



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 issues the following:

**OPINION ON THE LAW ON THE NATIONAL PUBLIC BROADCASTER RADIO
AND TELEVISION OF MONTENEGRO ("OFFICIAL GAZETTE OF
MONTENEGRO" NO. 80/20)**

Having in mind that the National Public Broadcaster Radio and Television of Montenegro is a broadcaster with special responsibility to citizens with the mission to be a credible source of all important news, to provide high quality programming, to simultaneously nurture the educational and cultural role in society, and to ensure the trust of citizens through professional work and integrity, which implies transparency in the spending of public funds, it can rightly be called a medium of public benefit. In relation to the above, the Agency for the Prevention of Corruption has recognized the interest in reviewing the provisions of the Law on National Public Broadcaster Radio and Television of Montenegro (hereinafter: RTCG), the Statute of RTCG and the Rules of Procedure of the RTCG Council in order to improve the future processes of election and appointment of the governing and management body of RTCG, the Director General and the Council, as important holders of the independence of the public broadcaster.

In this regard, the Agency found that, unlike the procedure for appointing members of the RTCG Council (Articles 27 to 47) which is clearly elaborated in the Law, the procedure for electing and appointing the Director General of RTCG is insufficiently elaborated in Article 50 of the Law and Article 26 of the RTCG Statute. (No. 01-7250 dated 17.12.2020 and 01-5893 dated 27.08.2021).

In this regard, the Agency is of the opinion that it is necessary to define in the Law, i.e. the relevant bylaw, clear procedures regarding the appointment of the Director General of RTCG, which should include: establishment of an expert and independent commission for the evaluation of submitted applications according to the public competition, establishment of criteria for evaluation of candidates, as well as publication of appropriate documentation of candidates on the basis of which the procedure of evaluation of candidates was conducted.

This would provide more transparency of the election and appointment process, and thus reduce the space for arbitrary decision-making of the Council, as a suitable ground for various types of abuse, which causes the emergence of influence trading, which ultimately strongly affects the daily lives of citizens.

RATIONALE

I PROCEDURE

The Law on Prevention of Corruption regulates the competence of the Agency for Prevention of Corruption (hereinafter the Agency) to, pursuant to Article 78 paragraph 1 of the Law on Prevention of Corruption:

- "... takes 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";
- gives 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, on 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 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 terms of assessing constitutionality and legality, but in terms of applying and achieving the purpose of Article 79 of the Law on Prevention of Corruption. Also, in order to strengthen the mechanisms for the prevention of corruption, which are recognized by international conventions and documents, the Agency in its opinions seeks to point them out and act on recommendations to introduce and strengthen institutions for the prevention of corruption in Montenegrin legislation.

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

Having in mind that the National Public Broadcaster RTCG is a broadcaster that has an important role in informing the public in an impartial, timely and accurate manner, and in its work should develop high quality programming to meet different needs and tastes of the audience, it can rightly be called a media of public benefit.

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

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

As the Agency for the Prevention of Corruption issued an opinion on individual request no. 02-01-1565 / 2 from 19.07.2021 and in order to determine the possible conflict of interest in the process of electing the director of RTCG by public competition, and how the process of electing the director of RTCG caused great public attention, and having in mind the above importance and role of public broadcaster within society, the Agency recognized interest to conduct the ex officio procedure based on Articles 78 and 79 of the Law on Prevention of Corruption, and analyze the provisions of the Law on National Public Broadcaster RTCG, Statute of RTCG and Rules of Procedure of the Council of RTCG in order to improve the future processes of election and appointment of the governing and management bodies of RTCG, the Director General and the Council, as important holders of the independence of the public broadcaster.

II ANALYSIS OF THE LAW ON THE NATIONAL PUBLIC BROADCASTER RADIO AND TELEVISION OF MONTENEGRO ("OFFICIAL GAZETTE OF MONTENEGRO" NO. 80/20), THE STATUTE OF THE RTCG AND THE RULES OF PROCEDURE OF THE RTCG COUNCIL

The Law on the National Public Broadcaster RTCG ("Official Gazette of Montenegro" No. 80/20), provides institutional, i.e. editorial and financial independence of the public service, which are the basis for achieving stability, independence and transparency of RTCG's work.

Article 2, paragraph 3 of the Law defines the activity of RTCG as providing public audiovisual services that meet democratic, social, cultural, educational and other needs of public interest of all segments of Montenegrin society, ensures the realization of the rights and interests of citizens and other entities in the field of

informing, regardless of their political, religious, cultural, racial or sexual affiliation.

In addition, Article 7 of the same Law states that the RTCG, in accordance with the Law and the Statute of the RTCG, determines the internal organization and manner of work. Article 9 states that the realization of public interest, in terms of this Law, means independent and autonomous production, editing and transmission of programs and multimedia content that are not in the service of political, economic or other interests of power... that public services are program obligations of RTCG which fill out the democratic, social and cultural needs of Montenegrin society and guarantee pluralism, including cultural and linguistic diversity... that RTCG is obliged to, with the application of high standards of professional ethics and quality, without any form of discrimination, produce and broadcast programs...

Article 23 of the Law states that the bodies of the RTCG are the RTCG Council and the Director General of the RTCG. The law determines the number of members of the Council (Article 27), criteria for appointment, competence of the Parliament to appoint members of the Council (Article 30), appointment procedure, reopening, termination of mandate, dismissal and appointment of a new member of the Council (Article 30 - Article 47).

Article 29 of the Law defines the criteria for incompatibility of functions when it comes to members of the RTCG Council, which more strictly provide restrictions for appointment compared to Article 15 of the Law on Prevention of Corruption, which is particularly good considering that the purpose of the mentioned criteria is to reduce the potential possibility that leads or may lead to the performance of the function in manner that may affect the private interests of these individuals or persons related to them, and the fact that Article 29 of the Law on the National Public Broadcaster of RTCG stipulates stricter conditions which provide for restrictions of 3 years from the termination of these functions, in the legal sense it further underlines the importance of the integrity of persons acting as members of the RTCG Council, as well as the function of the General Director (Article 50, paragraph 4 of the Law).

Another article of the Law which creates a normative precondition for independent performance of the function of a member of the RTCG Council is Article 34, which states that members of the Council do not represent institutions or organizations that proposed them, but perform their duties autonomously, independently and according to their own knowledge and conscience, in order to achieve the interests of the public, in accordance with the law, the Statute of RTCG and other general acts of RTCG.

One of the important competencies of the RTCG Council is to appoint and dismiss the General Director of RTCG, after a public competition and to conclude an employment contract with him.

Having in mind the authority of the Director General of the RTCG (Article 50) to, among other things, represent the RTCG; organizes and manages the work process and manages the business of RTCG,... takes care of the realization of program documents and professional standards in RTCG; appoints and dismisses the Director of the Radio of Montenegro, the director of the Television of Montenegro and other executives in the RTCG;...the question arises of the adequate elaboration of the procedure for the election, appointment and dismissal of the Director General by the Council.

Namely, the mentioned procedure is insufficiently elaborated in Article 50 of the Law and Article 26 of the Statute of RTCG (No. 01-7250 of 17.12.2020 and 01-5893 of 27.08.2021), and it is not foreseen especially in the part related to the mode of operation of the Council determined by the Rules of Procedure of the Council of RTCG (No. 01-7666 of 31.12.2020).

Article 50 paragraph 1 of the Law, when it comes to the conditions for appointment, provides that as the Director General of RTCG may be appointed a person who is a citizen of Montenegro, residing in Montenegro, who has at least VII-1 level of education and at least ten years of work experience. Having in mind the above, the competencies of the Director General pursuant to the Law, and in addition to Article 51 of the Law appointing and dismissing the Director of Radio of Montenegro and the Director of Television of Montenegro, the Agency is of the opinion that it is necessary to consider amending the Law on National Public anticipation of procedures that will make the election of the Director General of RTCG, as well as the Director of Radio of Montenegro and the Director of Television of Montenegro more transparent.

Decision from Article 50, paragraph 1 of the Law, according to which the condition for the appointment of the Director General of RTCG is VII-1 degree and 10 years of work experience, without specifying what kind of work experience it is (work experience in journalism; work experience in VII-1 degree, work experience in managerial positions, etc.), leaves room for arbitrary interpretation and decision-making of Council members, which can lead to disadvantage of those candidates for the election of Director General, who have gained work experience performing jobs in the journalistic profession, in VII-1 degree and/or in managerial positions, in relation to those candidates who had

10 years of work experience, regardless of the degree and type, or complexity of the jobs they performed.

In this regard, in the Law, i.e. the relevant bylaw, it is necessary to define clearer criteria than the existing ones, i.e. the procedures related to the appointment of the Director General of RTCG, which should include: establishment of an expert and independent commission for the evaluation of submitted applications according to the competition, definition of criteria for the evaluation of candidates as well as publishing the appropriate documentation of candidates on the basis of which the procedure of evaluating candidates was conducted. This would provide greater transparency of the election and appointment process, and thus reduce the space for arbitrary decision-making of the Council, as a suitable ground for various types of abuse, which causes the emergence of influence trading, which ultimately strongly affects the daily lives of citizens.

In addition, the Agency is of the opinion that Article 14 should be considered, which establishes the responsibility of the RTCG to the public through:

- 1) the procedure for appointing the RTCG Council, publicity of work and the obligation to represent and protect the interests of citizens in the field of informing;
- 2) informing the public about the activities of RTCG by publishing the Bulletin in printed and / or electronic form;
- 3) appointment of the RTCG Ombudsman and prescribing and implementing procedures that enable viewers and listeners to submit petitions and objections to the work of the RTCG.

In the mentioned article of the Law, it is necessary to add the procedure of election and appointment of the General Director of RTCG - having in mind the importance of this function for the functioning of the public broadcaster, and thus for the realization of the public interest of RTCG provided by Article 9 of the Law, and to consider the possibility of opening the sessions of the Council to the public at which the procedure of appointing the Director General is carried out.

The importance of the function of the General Director and members of the Council, and the importance of RTCG for the public interest, requires clearly defined criteria according to which the election of management and governing bodies will be made, so it is necessary to reduce the space for broad discretionary powers of Council members that currently exist in the procedure of election and appointment of the Director General, which directly causes non-transparency, arbitrariness in decision-making and opens the possibility of abuse and potential risks of threatening to the public interest.

V FINAL ASSESSMENT

Having in mind that the National Public Broadcaster RTCG is a broadcaster with special responsibility to citizens, with the mission to be a credible source of all important news, to provide high quality program content, to simultaneously nurture the educational and cultural role in society, and through the professional work and integrity ensure the trust of citizens, which includes transparency in spending public funds, it can rightly be called a medium of public benefit. In relation to the above, the Agency for Prevention of Corruption has recognized the interest in reviewing the provisions of the Law on National Public Broadcaster RTCG, the Statute of RTCG and the Rules of Procedure of the RTCG Council in order to improve the future processes of election and appointment of the management and governing bodies of RTCG, the General Director and the Council, as important holders of the independence of the public broadcaster.

Considering the overall legal framework, the Agency determined that Article 29 of the Law on the National Public Broadcaster RTCG defines criteria for incompatibility of functions when it comes to members of the RTCG Council, which more strictly define restrictions of 3 years for appointment in relation to Article 15 of the Law on Prevention of Corruption, which in the legal sense additionally underlines the importance of integrity of persons performing the function of members of the RTCG Council, as well as the function of General Director (Article 50 paragraph 4 of the Law).

The Agency stated that the Law clearly elaborates the procedure for appointing members of the RTCG Council (Articles 27 to 47), but that the procedure for electing and appointing the Director General of the RTCG is not sufficiently and precisely elaborated in Article 50 of the Law and Article 26 of the RTCG Statute (No. 01-7250 from 17.12.2020 and 01-5893 from 27.08.2021), especially if the competences of the General Director of RTCG (Article 50) are taken into account, to among other things, represent RTCG; organizes and manages the work process and manages the business of RTCG,... takes care of the realization of program documents and professional standards in RTCG; appoints and dismisses the director of Radio of Montenegro, the director of Television of Montenegro and other executives in RTCG ...

Decision from Article 50, paragraph 1 of the Law, according to which the condition for the appointment of the Director General of RTCG is VII-1 degree and 10 years of work experience, without specifying what kind of work experience it is (work experience in journalism; work experience in VII-1 degree, work experience in managerial positions, etc.), leaves room for arbitrary interpretation and decision-making of Council members, which can lead to

disadvantage of those candidates for the election of Director General, who have gained work experience performing jobs in the journalistic profession, in VII-1 degree and/or in managerial positions, in relation to those candidates who had 10 years of work experience, regardless of the degree and type, or complexity of the jobs they performed.

In this regard, the Agency is of the opinion that it is necessary to define clear and precise conditions and criteria in the Law, i.e. the relevant bylaw, as well as procedures related to the election and appointment of the Director General of RTCG, which should include: establishment of an expert and independent commission for the evaluation of submitted applications according to the competition, establishment of criteria for evaluation of candidates, as well as publication of appropriate documentation of candidates on the basis of which the procedure of evaluation of candidates was conducted.

This would ensure greater transparency of the election and appointment process, and thus reduce the space for arbitrary decision-making of the Council, as a suitable ground for various types of abuse, which causes the emergence of influence trading, which ultimately strongly affects the daily lives of citizens.

In addition, the Agency considers that Article 14 of the Law should be expanded, which defines the models for establishment of the responsibility of RTCG to the public, by including in the mentioned article the procedure for electing and appointing the Director General of RTCG, having in mind the importance of this function for the functioning of the public broadcaster, and thus for the realization of the public interest of RTCG provided by Article 9 of the Law, and that it is necessary to consider opening the sessions of the Council to the public at which the procedure of election and appointment of the Director General is being carried out.

The importance of the function of the General Director and members of the Council, and the importance of RTCG for the needs and interests of the public and public interest requires clearly defined criteria for the selection of management and governing bodies, so it is necessary to reduce the space for wide discretionary powers of Council members that currently exist in the procedure of election and appointment of the General Director, as due to insufficient legislative precision directly cause non-transparency and arbitrariness in decision-making, which opens the possibility of abuse and potential risks of threatening to the public interest.