

## Interim Supervisory Body for Monitoring the Media in the Illegal Space

*So much about transparency*

The Government of Serbia passed the **Decision on forming the Interim Supervisory Body for Media Monitoring during the election campaign** on October 14<sup>th</sup> 2021, but [did not publish](#) that Decision on its website within the information about the session held that day. The Decision was published in the ["Official Gazette" on October 16th 2021](#), but its text is available only to subscribers. Transparency Serbia [made it available on its website](#).

*Without legal basis*

The only stated legal basis for this Decision is Article 43, paragraph 1 of the [Law on the Government](#), reading that the Government establishes public enterprises, institutions and other organizations, takes measures and regulates issues of general importance and decides on other matters for which the Law or decree stipulates that the Government regulates them by Decision. However, the authority to make this Decision cannot be derived from that provision of the Law. The "Interim Supervisory Body" (hereinafter: ISB) is neither a public company, nor an institution, nor an "other organization" (ISB does not even have the status of a legal entity), and no law or regulation provides for the formation of ISB. If so, that would be the legal basis for this Decision.

*Parallel (semi) REM*

The Interim Supervisory Body is in charge of monitoring the media, consulting, reporting on the implementation of the RTS and RTV regulations, giving opinions on the work of independent institutions and their decisions, informing the public about their assessment and work, monitoring the implementation of recommendations for private broadcasters and organizing regular press conferences.

Supervision over the implementation of regulations issued for RTS and RTV, as well as recommendations issued for private broadcasters with national coverage, is legally defined as [the competence of the Regulatory Body for Electronic Media](#) (inter alia, pursuant to Articles 22, 25, 47 and 60 of the Law on electronic media). Therefore, these tasks cannot be at the same time in the competence of the Government of Serbia, and therefore of any temporary working body that the Government would form.

The matter can be set differently - **that everyone can** "follow" and prepare "reports" on how the rules and recommendations of REM are implemented, "inform the public" about it, "give opinions on the work of independent institutions and their decisions" or to be "consulted" on these issues, so why then it could not be the Government of Serbia.

If looking at it that way, we could say that ISB can also deal with all these jobs but with one crucial remark – the opinion of the ISB has no greater legal force than what about the same issues will be reported, for example, by NGOs that monitor the media during the election campaign.

However, unlike the freedom of expression exercised by citizens and associations when giving an opinion on how independent state bodies and regulatory bodies work, such actions by the Government are controversial. The issues that the Government is allowed to deal with are determined and limited by its constitutional and legal powers. The Government does not have

the authority to give opinions on the work of independent institutions, not only because it is not explicitly authorized to do so but also because the Law prescribes that these bodies [are accountable](#) to the National Assembly for their work.

It is also unclear which "independent institutions" the Interim Supervisory Body would give opinions except for the Regulatory Body for Electronic Media (REM). In other words, it is unclear why plural (institutions) is used. It is possible to envisage the introduction of this supervision mechanism over another body, unclear legal status and fluid powers, which should only be supervised by the Supervisory Board, based on Article 99 of the Law on Election of Deputies. The Supervisory Board was [formed](#) for the first time in 20 years last year but [did nothing](#) to improve the elections environment, denying its modest competencies even when they existed. Legally specifying the powers of the Supervisory Board, along with changing the way its members are elected, was [one of the TS's proposals](#) during the dialogue on election conditions in 2019, and recently [BIRODI](#) published a proposal in that direction.

Finally, bearing in mind that REM proposes a half of the members of the Interim Supervisory Body and that there is no limit to ISB members being officials and employees of REM, unequivocally concludes that ISB does not meet an essential condition for impartial conduct, as at least half of its members will be in a conflict of interest in performing what is defined as the work of that body.

#### *"Consultants"*

The Decision further states that "The Interim Supervisory Body participates, as a consultant, in the process of 1) adopting bylaws for the Public Media Service (RTS and RTV) regulating election campaign coverage, 2) making recommendations for private broadcasters with national coverage, terrestrial and cable, which refer to the presentation of candidate programs and electoral lists during the election campaign and 3) defining the methodology of monitoring the media during the election campaign."

This provision is unclear, primarily due to the term "consultant". This term is not unknown, but it is usually used for companies or individuals, external associates of state institutions, who are engaged based on public procurement or within the framework of international assistance programs to help draft regulations. All three of the listed jobs in which ISB would be engaged as a consultant are in the exclusive competence of REM. Therefore, the Government of Serbia is not authorized to appoint consultants to REM in performing its tasks, REM could do so by its own Decision. As already mentioned, the implementation of the Decision could result in the members of the REM Council and employees in this institution consulting [themselves](#), or at least their colleagues from REM, only in another capacity.

#### *Composition of the Interim Supervisory Body*

Article 3 of the Decision stipulates that the Interim Supervisory Body has 12 members, "and its composition should ensure political pluralism and professional expertise." The REM proposes six members of the ISB, and the remaining six members (in 3 + 3 format), in accordance with the [Final Document of the Inter-Party Dialogue on Electoral Conditions with the mediation of the European Parliament of September 18th 2021](#), are proposed by the President of the National Assembly after consultations with the co-facilitators of the Inter-Party Election Dialogue conditions mediated by the European Parliament." It goes on to say that "no one who is a candidate on any electoral list may be a member of the Interim Supervisory Body." The

Minister of Culture and Information makes the Decision on the appointment of ISB members within 15 days from the day this Decision enters into force, and the members of the Interim Supervisory Body (ISB) elect the President of the ISB by secret ballot.

The mentioned document from the dialogue is titled "Working document", which is said to have been drafted by the Speaker of the National Assembly Ivica Dacic, MEPs Tanja Fajon and Vladimir Bilcic, as well as former MEPs Eduard Kukan and Knut Fleckenstein. It does not constitute a regulation or an international agreement and cannot be a legal basis for the Government to act. As a political agreement, this document could have served the National Assembly to ensure, through amendments to the Law, that what was agreed was translated into regulations and that the existing regulations were not violated. By the way, the document's content has already been criticized for the lack of measures, which were presented by [TS](#), [CRTA](#), [BIRODI](#) and numerous actors on the political scene.

The provision according to which an ISB member cannot be a candidate on any electoral list can be implemented only by electing the members when all electoral lists are announced. This also makes it impossible to implement the second part of the provision, according to which the Minister of Culture should make the appointment within 15 days from the entry into force of the Decision (that is, until November 2<sup>nd</sup>, 2021). The candidates in the elections are not known, and the polls have not been called yet.

The Government's Decision stipulates that the composition of the ISB should ensure political pluralism and professional expertise. The guarantee for realizing the first criterion should be that the President of the National Assembly will propose the candidates after consultations with the EU parliamentarians. If he did not do that, paradoxical and legal an impermissible situation would happen again, that the Government of Serbia (or rather one of the members of the Government, the Minister culture and information) assesses whether the President of the institution of another branch of Government - National Assembly – properly fulfilled the assigned task. Moreover, the legally inadmissible situation already arose when the Government of Serbia assigned any obligation to the President of the National Assembly.

The particular problem is that the Decision requires that the body members be candidates with "professional expertise", but the required expertise is not defined!

According to Article 4 of the Decision, and having in mind the prescribed deadlines, the first session of the ISB will have to be held no later than November 5<sup>th</sup> 2021.

#### *ISB as a working body of the Government and violation of the Rules of Procedure*

Article 5 is the least controversial – "The provisions of the Rules of Procedure of the Government on the work of temporary working bodies shall apply accordingly to the manner of work of the Interim Supervisory Body." Since the ISB can legally be only an occasional working body of the Government of Serbia, the provision is unnecessary since those rules would certainly be applied.

That is why this is the right time to remind everyone of what the [Rules of Procedure](#) say. There is a very good reason why the Government did not refer to this act when it passed the Decision on ISB because the Decision violated both the laws and the internal procedures of the Government prescribed by this act.

Article 22 of the Rules of Procedure stipulates that the Government may, by a decision, establish an occasional working body "in order to consider certain issues within its competence and provide proposals, opinions and expert explanations". It is further specified that the Government appoints the President and members of the temporary working body (therefore, one of the ministers cannot do that) by a decision on the formation of the body and to replace the members by a special decision.

The Decision on the formation of a temporary working body determines the jobs for which the body is formed, the time for which it is formed, the deadlines within which it submits a report on its work and other issues related to its work. As we can see, the ISB Decision does not provide for reporting deadlines. However, a deadline for reporting to the Government Committee (every 60 days) and the Government as a whole (90 days) has already been set by the Rules of Procedure. By the Rules of Procedure, ISB will have to send its "proposals, opinions and expert explanations" to the Ministry of Culture and Information ("state administration body in whose scope is the majority of the work for which it is educated"), so that this Ministry that it is necessary", as his own, prepared for the Government.

#### *Professional support and fees*

Per these provisions of the Rules of Procedure, it is stipulated that "the Ministry of Culture and Information shall provide professional and administrative-technical support to the Interim Supervisory Body." On the other hand, compliance with this provision raises many questions, especially since it is not explicitly envisaged that the ISB will have the means to engage external associates. Thus, it turns out that the ISB members will receive "professional support" (the term "professional support" is commonly used in the regulations) from the Ministry of Culture, for example, during the consultations on the methodology for monitoring the media and bylaws within the competence of REM, and in order for the ISB to provide "consultations" to REM. How absurd that is can be seen from the fact that [REM itself currently has](#) 80 employees, while the Sector for Public Information and Media has [ten times fewer employees](#).

Another innovative solution is the provision according to which the remuneration for the President and members of the ISB is "mutually determined by the Minister of Culture and Information and the Minister of Finance, taking into account the balance possibilities of the budget", and that the funds for the work of the Interim Supervisory Body are provided in the budget of the Republic of Serbia in accordance with the Law. For benefits to be paid, they would have to be budgeted. When suddenly there is an expense for the budget during the year, as is the case now, it is financed from the budget reserve, and, practically, the Government as a whole will have the opportunity to approve that expense, not only these two ministers.

When determining the fees, the provision that "the balance possibilities of the budget are taken into account" probably wanted to emphasize the concern for public money, but the effect is the opposite. If the only factor affecting the amount of compensation is how much money can be found in the budget, then compensations could be substantial. If the Decision has to deal with this topic, it should state that the compensations should be appropriate to the work of the ISB. Here we come to one fact that has already been mentioned - half of the members of ISB are in fact more or less already paid for the jobs they will deal with in this body because they come from the Regulatory Body for Electronic Media, which should otherwise deal with jobs which are now in charge of the ISB.

*Start of application before publication*

Surprisingly, even the final provision on the entry into force of the Decision deserves comment. It was passed on October 14<sup>th</sup> 2021, published two days later (October 16<sup>th</sup>) and came into force on Sunday, October 17<sup>th</sup> 2021. However, REM [proposed](#) six members of this body, saying that it is based on the Government's Decision from its emergency session on October 15<sup>th</sup> 2021, the **day before** the Decision was made official and **two days before** it entered into force. In other words, this proposal was made without a legal basis, so the REM Council will have to meet again urgently to renew this proposal.

Of course, if REM wants to show that it is an "independent and autonomous regulatory agency", it should call on the Assembly and the Government to implement the political agreement based on laws or at least to change those laws instead of convening a new emergency session to nominate candidates for members of an illegal body of the Government of Serbia.