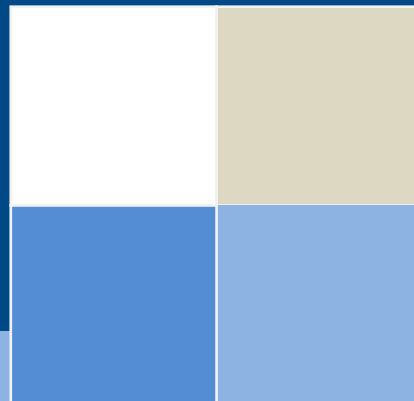
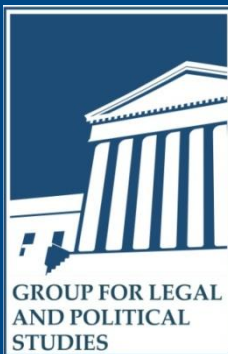


Policy Analysis - No. 05/2012

The Establishment of a Serbian-Language Public Broadcasting Channel in Kosovo:

A new approach to increasing the participation of
ethnic communities in public life



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The Establishment of a Serbian-Language Public Broadcasting Channel in Kosovo: A new approach to increasing the participation of ethnic communities in public life

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Summary Points:

- A. The Ahtisaari Plan and Constitution of the Republic of Kosovo requires the establishment of a nationally-broadcast Serbian-language television station in Kosovo.
- B. The *Law on Radio Television of Kosova* (April 2012) restructures Radio Televizione i Kosove (RTK) to consist of two channels: one channel in Albanian language (RTK) and one channel in Serbian-language (RTK-2).
- C. The creation of RTK-2 offers many potential improvements regarding the representation of minorities in the media and the incorporation of Kosovo Serbs into a Kosovar civil society.
- D. The Law on Radio Television of Kosova (hereafter, Law on RTK) offers editorial independence for RTK-2, with additional mechanisms to combat potential, undue, restrictions on RTK-2 and to support an open media scape for the Serbian community.
- E. However, there are divisions between the current management of RTK, the Kosovo Government, interest groups, the European Union, and the Serbian Community over the management, location, and legal support mechanisms for RTK-2.
- F. While the Law on RTK ensures the financial sustainability of RTK-2, as a function of RTK's overall budget, which stands as an improvement over the original Draft Law on Public Broadcasting, critical mechanisms that would ensure financial and managerial autonomy are absent from the April 2012 Law on RTK.
- G. As the Government of Kosovo works to implement an ethnically-diverse media scape and comprehensive agenda for the north that provides for greater communication with and incorporation of Kosovo Serbs and especially those in the north (in order to create a more peaceful and open Kosovar civil society and take steps towards European integration), the Government of Kosovo should take the aforementioned hurdles seriously and support the creation of a financially sustainable, editorially independent, and far-reaching RTK-2.
- H. RTK, the Government of Kosovo, and international organizations should also promote and support professional training for Kosovar journalists, at home and abroad, that meets European standards and can minimize the risks of biased and unprofessional journalism and can promote professional editorial analysis from both RTK and RTK-2.
- I. These challenges need to be addressed seriously by RTK, by the Government of Kosovo, by interest groups and organizations of media and journalism, and by the European community in order to support the successful creation of RTK-2 as a valued media alternative by Kosovo Serbs and as a medium that can combat the asymmetry of information in the north and provide a public space and medium through which Kosovar Serbs can share and receive information as a community and as part of a broadened Kosovar public/political sphere.

The Establishment of a Serbian-Language Public Broadcasting Channel in Kosovo: A new approach to increasing the participation of ethnic communities in public life

I. Stipulations of the Ahtisaari Plan and Kosovo's Constitution

A) The Ahtisaari Plan

The Comprehensive Proposal for the Kosovo Status Settlement, more commonly known as the Ahtisaari Plan, included many directives intended to steer Kosovo's government in the creation and development of a new democratic and autonomous state that could be representative and supportive of a thriving multi-ethnic polity. Key directives intending to reinforce the rights of communities and support the development of a multi-ethnic public sphere ordered for the development of a multi-ethnic media scape. More specifically, Article 3.1, k called for Kosovo to "take all measures necessary to secure an international frequency plan to allow the Kosovo Serb community access to a licensed Kosovo-wide independent Serbian-language television channel.

While this directive is the most commonly referenced in pointing to the obligation of the Kosovo government to create an independent public TV station that broadcasts in Serbian, also embedded in the Ahtisaari Plan are additional directives that speak to the aims of such a media scape, such as the creation a mechanism for the development of a thriving public sphere, which should orient the quality-development of RTK-2 and serve as a benchmark when evaluating its effectiveness as a supportive mechanism for intra and inter-ethnic information sharing and dialogue. Article 3 and the first two annexes of the Ahtisaari Plan emphasized the importance of media in ensuring the rights of communities and particularly in allowing minority communities to circulate information internally, to engage in public opinion exchange and formation, and also to become part of a larger Kosovar public sphere. Guaranteeing a financially and editorially stable and supported media where Serbs can create and share information freely is a critical mechanism through which Kosovo's government can begin to fulfill its duty to protect the following rights of communities as stipulated in Article 3 of the Ahtisaari Plan: a) the protection of national, ethnic, cultural, linguistic and religious identity b) establishing constitutional and legal mechanisms for the "representation and effective participation in political and decision-making processes" (3.2) c) the promotion of tolerance and intercultural and inter-religious dialogue among communities.

Kosovo's constitution includes Ahtisaari's Articles 1 – 3, ensuring the rights of communities, the Constitution of the Republic of Kosovo and also provides for the creation of a Kosovo-wide Serbian-language television station. As a multi-ethnic society with historic ethnic tensions and conflict, Kosovo has attempted to create a consociational democracy with constitutional mechanisms that ensure multi-ethnic power sharing, guarantee group representation, and provide for the rights of communities. Despite constitutional guarantees and the fact that both Albanian and Serbian stand as the Republic's two official languages, the Serbian-language and community and is heavily underrepresented in Kosovo's public media space. The creation and institutionalization of RTK-2 may serve to combat this asymmetry of information for Serbs in Kosovo and particularly for

those Serbs in the north of Kosovo, as long as the implementation of the new law for RTK adheres to the directives laid out in the law and internalizes the additional mechanisms of Ahtisaari that intended to support the rights of communities in order to account for the absence of certain legal mechanisms in the new law that can ensure that RTK-2 has enough financial, managerial, and editorially independence to ensure that the channel is in fact representative of Serbs and supportive of a multi-ethnic public sphere.

B) Constitutional Mechanisms

Articles 1 – 3 of the Ahtisaari Plan were re-codified in Kosovo's constitution. The two critical directives regarding opportunities in public broadcasting for minorities and the creation of an alternative national TV channel in the Serbian-language stand as such – “Members of communities shall have the right, individual or in community, to...”

- a) “have guaranteed access to, and special representation in, public broadcast media as well as programming in their language, in accordance with the law and international standards” (Article 59.10).
- b) “create and use their own media, including to provide information in their language through, among others, daily newspapers and wire services and the use of a reserved number of frequencies for electronic media in accordance with the law and international standards. The Republic of Kosovo shall take all measures necessary to secure an international frequency plan to allow the Kosovo Serb Community access to a licensed Kosovo-wide independent Serbian-language television channel” (Article 59.11).

While Kosovo's constitution came into effect in June 2008, Kosovo's parliament just recently in April 2012 passed the law on Radio Television of Kosova (RTK) re-codifying the terms and directives for the creation and implementation of RTK-2.

II. Law on Radio Television of Kosova

Implicit in the law on RTK is the realization of the constitutional rights of the Serb community regarding the public information and content offered by RTK.¹ Nearly four years after Kosovo's constitution came into effect, ordering the creation of a Serbian-language television channel that could parallel the current public broadcaster RTK, Kosovo's parliament finally passed the Law on RTK dictating that RTK shall consist of a TV channel in Albanian language and a TV channel in Serbian-language.² Those awaiting the alternative Serbian-language channel can now look forward to an operational RTK-2 by the end of April 2013 at the latest, as ordered by Article 8.7 of the Law on RTK. We will analyze each of the critical elements included in the Law on RTK that reference the creation of the Serbian-language television channel RTK-2, while also identifying gaps or elements in the current law that could restrict the financial, editorial, managerial independence and sustainability of RTK-2 and potential mechanisms to close such gaps given the current legal structure.

¹ Law on RTK. April 2012. Article 7, 1.8

² Law on RTK. April 2012. Article 8, 2.1.1 - 2.1.2

A) Financial Sustainability and Independence

While many criticized the Draft Law for Public Broadcasting for not accounting for the financial independence or financial sustainability of RTK-2, the Law on RTK which passed in April included multiple and extensive provisions for the financial sustainability of the Serbian-language television station. Article 21 of the Law on RTK dictates that 10 percent of RTK's overall budget received from all sources will go to RTK-2.³ While RTK continues to receive funds from the Budget of Kosovo and the Founder, ten percent of these funds will be transferred to RTK-2 within one week of receiving them.⁴ However, RTK must continue to allocate ten percent of its overall budget for RTK-2 even after financing is discontinued from the Budget of Kosovo and the Founder.⁵ Funds received by RTK from subscription and all other incomes must be transferred to RTK-2 no later than the end of each month in which they are received.⁶ The funding for RTK-2 should initially be used to acquire needed infrastructure, employment and staff. Once RTK-2 is functional, the funding for RTK-2 should only be used for the administrative, technical and editorial functioning of the channel including functional expenses and production and programming costs.⁷

These financial directives, which were all absent in the Draft Law on Public Broadcasting, go a long way in ensuring the financial sustainability of the Serbian-language TV channel RTK-2. However, questions and concerns remain regarding the financial independence of RTK-2 and the implications that the current financial structure may have on the managerial and editorial independence of the channel.

RTK-2 may suffer in two ways from a lack of financial independence. First, while the Law on RTK accounts for the consistent financing of the channel (as long as RTK itself is consistently financed), it does not make clear whether the management of RTK-2 will have autonomy over financial decisions, i.e. how to spend their allocated ten percent. The Law on RTK does stipulate that RTK's General Director will have the authority and duty to make decisions about the finances and salaries based on criteria set by the board.⁸ Nowhere in Article 21, on the financing of RTK, does the law assure autonomy for RTK-2's financial decision-making. As such, the worry is that "the director of the second channel cannot buy even a Dictaphone, nor change a handle on the door without the approval of the general director".⁹ While RTK-2 can legally use up to ten percent of RTK's overall budget, the approval over where, when and how that ten percent may be spent is under the authority of RTK's General Director, which threatens the autonomy and independence of the Serbian-language television channel. As such, it is critical that RTK institutionally codifies internal guidelines that grant RTK-2 a greater level of autonomy over their financial functioning.

³ Law on RTK. April 2012. Article 21, 4.1.

⁴ Law on RTK. April 2012. Article 21, 4.2.

⁵ Law on RTK. April 2012. Article 21, 4.1.

⁶ Law on RTK. April 2012. Article 21, 4.2.

⁷ Law on RTK. April 2012. Article 21, 4.3.

⁸ Law on RTK. April 2012. Article 33, 1.3.

⁹Budimir Nicic. 2 February 2012. Member of Association of Journalists in Kosovo and Metohija. Policy Roundtable: "Building a model of participation: Hopes and Realities in establishing a new Serbian (public) TV channel."

Second, the Law on RTK includes a three-year sunset clause for provisions on government support, from out of the Budget of Kosovo, for RTK. While the law prompts the privatization of RTK and calls for a financial plan that would root the financial sustainability of RTK on subscription fees and additional financial support mechanisms, the sunset clause opens RTK up to political interference due to financial reliance in the short-term if RTK cannot quickly establish a financial plan and support structure based on subscription fees. In the past, political and economic interference, wherein the Board of Directors had its “powers completely curbed,” led to the Director General Agim Zatriqi’s resignation in September 2009 said Reveillon, former head of the European Broadcasting Union.¹⁰ Reveillon spoke of the pressure from Thaci’s government, which influenced RTK’s turn from “being a balanced supplier of news into a media arm of the ruling party” and of the Prime Minister. She called RTK “an uncritical state broadcaster” who suppresses critical voices. This is all illustrative of a growing culture of self-censorship due to the political interference in RTK.

Obviously if RTK’s managerial and editorial independence is at risk due to financial reliance on government funds, RTK-2, as a subset of the original, is in the same boat. The most effective step that RTK can take to curb political interference is to follow the Law on RTK’s order to develop a long-term and sustainable financial plan based on subscription fees and alternative sources of funding rather than on short-term government subsidies. Alternatively, when the three-year sunset clause does take effect, RTK should push for longer-term financial support from the government that is stipulated by law. The best way to curb the potential for political interference in RTK’s media broadcasting is to establish long-term channels of funding that do not require RTK to appeal to the state and the majority party for large-fee operating costs.

B) Institutional, Editorial, and Managerial Independence

Some Serb journalists and community members have criticized the lack of institutional independence for the Serbian-language TV channel, legitimately pointing out that while the Ahtisaari Plan and Kosovo’s constitution call for a new independent Serbian-language TV station, RTK-2 will fall under the umbrella of its parent public broadcasting agency RTK. Many Serbs have additionally called for the headquarters of the Serbian-language TV channel to be located in the primarily Serb municipality of Gracanica rather than in Pristina.¹¹ However, the obvious hurdle in creating a completely separate and institutionally independent Serbian-language TV channel would be the excessive financial burden of purchasing or creating entirely new infrastructure and staffing for the channel. Undoubtedly, while RTK is already struggling financially and finds it challenging to garner long-term financial support from Kosovo’s government, it would be excessively challenging to push the government to provide RTK with the start-up costs needed to institutionalize a new channel with new infrastructure. Nor would Serb communities have the financial weight to support the creation, development and institutionalization of a new channel outside of RTK. However, concerns over whether RTK-2 can be ensured true editorial and managerial independence without securing institutional independence are legitimate.

¹⁰ Balkan Insight. October 2009. “EBU: “Kosovo’s RTK is Media Arm of PM.” Retrieved from <http://www.balkaninsight.com/en/article/ebu-kosovo-s-rtk-is-media-arm-of-pm>

¹¹ Balkan Insight. 17 August 2011. Retrieved from <http://www.balkaninsight.com/en/article/independence-fears-over-kosovo-s-new-serbian-channel>.

The Board

The Law on RTK will add a minimum of 2 Serbs to the RTK Board of eleven; all Board members are appointed by the Kosovo Assembly.¹² While this is an improvement over the current situation, this does not give Serbs an opportunity to construct a majority that could legitimately challenge the primarily-Albanian RTK Board (although one member will be from another minority community). As the RTK Board will have influence over the management, approval of staff, election of the General Director and Chairperson of the Board, and influence over selection of programming, the Serb minority that sits on the Board will have little opportunity to influence decision-making if there is an ideological split between the Albanian members of the Board and the Serb members of the Board.

More importantly, the RTK Board will elect the Director of the Serbian-language Television Channel. While the selection of RTK-2's Director will be "based on professional qualifications following an open and transparent recruitment process, upon the recommendation of the Working Group for the selection of the Director" of RTK-2, this does not allow for a Serb-majority internal electoral body (or the community that they represent) to have final say over the selection of their own director.¹³

However, the law does make amends for this in part by constructing a Serb-majority on the Working Group that will offer their recommendation for the appointment of the Director for RTK-2. While the RTK Board of Albanian-majority will establish the Working Group that will report back to them with a recommendation (thus, removing some authority and autonomy from the Serb community within RTK), the Working Group will seat seven members of which four are from the Serbian community (allowing for a Serb-majority on the Working Group), two are from the Albanian community, and one is from a non-majority community other than the Serbian community.¹⁴

The Working Group will propose two candidates for Director of RTK-2.¹⁵ However, the RTK Board will either select between those two candidates or send request for the proposal of another two candidates. If the Working Group does not propose another two candidates within 30 days, then the Board may appoint a candidate. However, with receipt of a second two candidates, the Board *must* select a candidate from the second list.¹⁶

While these new directives from the April Law on RTK undoubtedly increase the Serbian influence by adding two members to the Board, the autonomy of selection of the RTK-2 Director and in turn that Director's autonomy from RTK and the General Director is not as empowering for the Serbian Community as the law makes it appear. While the Working Group consists of a Serb-majority who will recommend their two top, potentially top four, candidates for Director of RTK-2, the authority of the Serb community over the management and direction of RTK-2 is sacrificed in the following number of ways:

- 1) The Albanian-majority Board selects the Serb-majority Working Group
- 2) The Albanian-majority Board can refuse the top three candidates for Director of RTK-2 who were selected by the Serb-majority Working Group;

¹² Law on RTK. April 2012. Article 25, 6.1; Article 26, 1.

¹³ Law on RTK, April 2012, Article 35, 1.1.

¹⁴ Law on RTK. April 2012. Article 35, 1.2.

¹⁵ Law on RTK. April 2012. Article 35, 1.3.

¹⁶ Law on RTK. April 2012. Article 35, 1.3.

- 3) The Director of RTK-2 will be fully accountable to the General Director of RTK and Deputy General Directors of RTK for their work and finances;¹⁷

While RTK-2 loses some autonomy and authority in regards to the selection of their own management and maintaining independent authority of that management from under the RTK General and Deputy General Directors, RTK can avoid potential conflicts and support the autonomy and authority of the Serb-community over the management and editorial-independence of RTK-2 by selecting a Working Group that is truly representative of the Serb-community rather than a Working Group that may merely select candidates preferred by the Albanian-majority Board, by selecting the Working Group's top candidate for RTK-2 Director unless the candidate is absolutely lacking in professionalism or would seriously harm the character and products of RTK, and by granting financial autonomy to the RTK-2 Director and not using the General Director's authority over finances to gain leverage over the managerial and editorial nature of RTK-2.

C) Combating the Asymmetry of Information

According to Anamari Repic, some Serbs and Serbian cable providers in the north refuse to include RTK in their cable packages and some cable providers in the north choose to provide RTS instead of RTK in their cable packages.¹⁸ This refusal to comply with the law that requires the inclusion of RTK in all cable packages, and the replacement of such with RTS, heavily contributes to the asymmetry of information in the north. However, the creation of RTK-2 provides an opportunity to counteract both of these current challenges and to establish an open, accurate, and representative channel of communication that can combat the asymmetry of information by connecting northern Serbs with Pristina and can open an alternative public sphere for information sharing and political opinion formation by connecting northern Kosovo Serbs to other Serb communities throughout Kosovo.

First, RTK-2 has the capacity to overcome the current challenges of linguistics and restricted dissemination in the north. RTK-2, while allotting 15 percent of its broadcast time for other ethnic minorities in Kosovo, will broadcast primarily in Serbian-language.^{19,20} Ideally, broadcasting in Serbian and using both Serb sources and sources from Pristina will convince cable providers in the north to open their programming to include RTK-2.

Second, if these challenges can be overcome, RTK-2 may be able to combat the asymmetry of information in the north by providing an alternative channel to RTS through which information from Pristina and other provinces can reach the northern municipalities. As early as 2005, the International Crisis Group suggested the immediate development of RTK-2 as a mechanism for bridging the "Mitrovica divide".²¹ The function of RTK-2 as a televised channel of communication and information is particularly important for effective communication because television is the primary medium through which Serbs in the north receive information. According to the September ICO

¹⁷ Law on RTK. April 2012. Article 35, 2.

¹⁸ Repic, Anamari. Personal communication. December 2011.

¹⁹ Repic, Anamari. Personal Communication. December 2011.

²⁰ Karadaku, Linda. 12 September 2011. "Kosovo Serbs unhappy with plans for RTK-2." *Southeast European Times*. Retrieved from

http://setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/09/12/feature-03

²¹ International Crisis Group. 13 September 2005. "Bridging Kosovo's Mitrovica Divide." Retrieved from <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/165-bridging-kosovos-mitrovica-divide.aspx>.

survey, 95 percent of those surveyed in Mitrovica reported television as their primary source of information.²² As such, providing Serbian-language public broadcasts with material originating from various municipalities and transmitted via Pristina, as a televised alternative to RTS, should be the first priority for developing an effective communication plan as part of the comprehensive agenda for the north. The required establishment of RTK-2 as stipulated in the Ahtisaari Plan and Kosovo's constitution should be implemented full-force as part of Pristina's comprehensive agenda for the north. A timely unveiling of RTK-2 provides Pristina with an opportunity to fight the asymmetry of information for Kosovo Serbs and particularly those in the north, who currently receive little to no information from Pristina.

D) Professionalism

While a communication strategy "should be aimed at fighting the asymmetry of information that local Serbs in the north are being served with," it should also aim to diversify and professionalize the sources of information therein.²³ The Kosovo Government and RTK-2 should work to professionalize the standards of journalists working in Kosovo by enforcing objectivity and encouraging journalists to engage in training programs abroad. Increased objectivity and professionalism of RTK-2 journalists will contribute to the creation of an open and free public media space where real public and political opinion formation can take place. Currently, Serbs in Kosovo have an infinitesimal public media space for political opinion formation. Ultimately, such media coverage may "facilitate their establishment as a new legitimate political class for representing the interests of local Serbs".²⁴

For example, under Jeta Xharra's supervision, Kosovo was the first office in the IVPR Balkan project to develop a three-month journalism training programme, which attracted over 200 people for 20 places.²⁵ Improving mechanisms for supporting the professionalization of journalism and news media in Kosovo in critical in lieu of past experiences where unprofessional journalism has incited violent responses to what was broadcast as ethnic conflict (such as was the case regarding the March riots of 2004). Whereas the Ahtisaari Plan (in Annex 2) prompts the Kosovo government to take measures to protect persons that may be subject to threats, violence, or discrimination, the Kosovo government has been hard-handed regarding what could be seen as the promotion of ethnic tension or religious and ethnic propaganda in the media. This has prompted a culture of self-censorship among news media outlets in Kosovo looking to avoid another event like 2004 as well as to avoid the backlash, punishment, and the removal of financial support from the government.

While the avoidance of broadcasting news and information that could incite already heated ethnic tensions is positive on the one-hand, media outlets and civil society should avoid breeding a culture of self-censorship that allows no room for journalists and media outlets to provide additional framing and analysis when sharing information (and particularly political information) with the public. In preventing unprofessional journalism that could incite antagonistic relations, the government must be careful (and civil society should monitor) that self-censorship or censorship does not prevent

²²ICO Opinion Poll from Northern Kosovo. September 2011. "Reciprocity and Roadblocks."

²³Policy Note by Group for Legal and Political Studies. October 2011. "A Comprehensive Agenda for the North: The New European Approach." Page 6.

²⁴Ibid

²⁵ BIRN Kosovo. November 2006. Retrieved from <http://kosovo.birn.eu.com/en/1/100/1456/>.

valuable analysis by the media. The media scape should be a place where public and political opinion formation can take place within and between Communities.

E) Developing a Multi-Ethnic Public/Political Sphere

Ideally, RTK-2 will provide stories and specials illustrating the lives of Serbs through Kosovo (like small Serb families who are producing wine in Kosovo suggested Repic). Through greater civic representation of Kosovar Serbs and the generation of enough sources to organize news editions “according to needs that Serbs have in Kosovo”, RTK-2 may ultimately establish itself as “their address [where] they can debate, analyze, [and] give their opinions”.²⁶ With the development of a new socio-political sphere provided through debates and “through media, you provide a channel for them to express their views” and engage politically.²⁷ While the integration of Serbs into Kosovo civil society and the rights and representation of minorities in Kosovo’s media remains seriously lacking, the creation of a financially-sustainable and editorially independent Serbian-language television station can improve the media representation of the Serb community and serve integration aims.

²⁶ Repic, Anamari. Personal Communication. December 2011.

²⁷ Abazi, Haki. Personal Communication. December 2011.

Policy Analysis

Policy Analysis in general is a policy advice paper which particularly aims to influence the key means through which policy decisions are made in both local and central levels of government. The purpose of Policy Analysis is to address, more in-depth, a particular problem, to examine the arguments related to a concerned policy, and to analyze the implementation of the policy. Through Policy Analysis, Group for Legal and Political studies seeks to stimulate wider comprehensive debate on the given issue via presenting informed policy-relevant choices and recommendations to the key stakeholders and parties of interest.