



Montenegro
Agency for Prevention of Corruption

Number: 03-02-120-22-12

Podgorica, November 14, 2022

Based on the Article 54 of the Law on Prevention of Corruption (“Official Gazette of Montenegro”, No. 53/14 and 42/2017), on August 25, 2022, the Agency for Prevention of Corruption initiated a procedure ex officio for determining the threatening to the public interest, which indicates the existence of corruption it hereby issues the following:

OPINION

It has been found that public interest has been threatened indicating the existence of corruption in the procedure of appointing Mr. Nikola Marković, first as acting Director, and then as Director of Radio and Television Nikšić.

Rationale

On August 25, 2022, the Agency for Prevention of Corruption (hereinafter: the Agency) in the sense of Article 54 of the Law on Prevention of Corruption (“Official Gazette of Montenegro”, No. 53/14 and 42/2017), and based on the Official Note of the Section for Verification of Reports on Income and Assets of Public Officials No. 02-02-1970-22 from August 22, 2022 initiated the procedure ex officio for determining the threatening to the public interest by Radio and Television Nikšić (hereinafter: RTV NK) in the procedure of appointing the Director of RTV NK contrary to Article 32 paragraph 2, i.e., Article 34 paragraph 1, and in connection with Article 27 paragraph 1 item 8 of the Decision on Founding Limited Liability Company Local public broadcaster RTV NK (“Official Gazette of Montenegro - municipal regulations”, no. 21/2011 and 26/2012).

INVESTIGATION

Acting ex officio and based on the Official Note of the Section for Verification of Reports on Income and Assets of Public Officials No. 02-02-1970-22 from August 22, 2022, on August 25, 2022, the Agency initiated a procedure to determine the threatening to the public interest, which indicates the existence of corruption no. 03-02-120-22. Along with the Official Note, the following were submitted: letter of the Secretariat-General of the Government of Montenegro No. 02-2910/2 dated June 21, 2022; Decision on the Formation of a Working Group of the Government of Montenegro - National Council for the Fight against High-Level Corruption No. 03-950/2 dated February 17, 2021; Decision on the Appointment of Members of the Working Group of the Government of Montenegro - National Council for the Fight against High-Level Corruption No. 03-2066 dated April 12, 2021; Decision on the Dismissal of the Expert Team of the National Council for the Fight against High-Level Corruption of the Government of Montenegro - National Council for the Fight against High-Level Corruption No. 01-519 dated February 22, 2022, from which it is determined that public official Vanja Čalović Marković performed the function of the head of the expert team of the National Council for the Fight against High-Level Corruption in the period from February 17, 2021 until January 25, 2022; as well as the Report on Income and Assets of public official Nikola Marković No. 02-02-4-6241/2 dated April 1, 2022.

On September 05, 2022, the Agency sent a request for submission of a statement with supporting documentation no. 03-02-120-22-3 to the Council of RTV NK, i.e., a request for submission of a statement no. 03-02-120-22-4 to the Director of RTV NK.

The Council of RTV NK, in a letter dated September 15, 2022, submitted the following documentation:

- Fixed-term employment contract No. 01-60 dated January 21, 2022. concluded between the Council of RTV NK and Nikola Marković;
- Decision on the Election and Appointment of the Director of RTV NK for a period of four years no. 01-59 dated January 21, 2022;
- Certificate of higher education of the University of Montenegro - Faculty of Philology No. 30/21 dated February 4, 2021;

- Work biography of Nikola Marković;
- Development and work program of RTV NK for the period from 2021 to 2023 of candidate for General Director Nikola Marković;
- Certificate of Montenegrin citizenship of Nikola Marković;
- Certificate of residence No. 03-UPI-206/21/2068/2 dated June 9, 2021;
- Medical certificate of Nikola Marković;
- Certificate of the Basic Court in Podgorica Ku 2021/4419 dated June 24, 2021 that no criminal proceedings are conducted against Nikola Marković;
- Decision on the appointment of the acting Director of RTV NK No. 01-815 dated 28 October 2021;
- Fixed-term employment contract No. 01-831 dated November 1, 2021 concluded between the Council of RTV NK and Nikola Marković;
- Competition for the election and appointment of the Director of RTV NK no. 01-1094 dated December 23, 2021;
- Excerpt from the “Pobjeda” daily paper from December 24, 2021 with the published Competition for the election and appointment of the Director of RTV NK;
- Rules of Procedure of the RTV NK Council No. 01-730/1 dated October 28, 2011;
- Statute of RTV NK No. 01-822 dated October 28, 2021;

Director of RTV NK Nikola Marković submitted two statements to the Agency, specifically:

- Statement No. 02-1074 dated September 08, 2022 and
- Statement No. 02-1093 dated September 13, 2022 with accompanying documentation

In statement No. 02-1074 dated September 08, 2022, Director of RTV NK Nikola Marković states, “in connection with the alleged appointment of my wife to the position of head of the expert team of the National Council for the Fight against High-Level Corruption” he cannot comment, since he is not in possession of the aforementioned decision of the Government, and as “it is not publicly available”.

In the statement no. 02-1093 dated September 13, 2022, Director of RTV NK Nikola Marković essentially states that, “the Agency's information does not

correspond to the factual situation... because there is no Decision of the Government of Montenegro No. 03-903 dated February 17, 2021 in which she (Vanja Čalović Marković) is appointed to that position”. The statement further states that the president of the National Council for the Fight against High-Level Corruption “hired” Vanja Čalović Marković “as an expert and appointed her the head of the expert team, based on the decision of the members of the National Council, and the Government of Montenegro did not decide on this”. Along with the mentioned statement, the following documentation was submitted:

- Decision of the Government of Montenegro - National Council for the Fight against High-Level Corruption No. 03-903 dated February 17, 2021;
- Unstamped and unsigned Minutes from the first session of the National Council for the Fight against High-Level Corruption;
- Rules of Procedure of the National Council for the Fight against High-Level Corruption from February 17, 2021;
- Decision on the National Council for the Fight against High-Level Corruption (“Official Gazette of Montenegro”, no. 125/20 dated December 23, 2020, no. 011/21 dated February 03, 2021, and no. 034/21 dated April 02, 2021).

On September 29, 2022, the Agency sent to the Secretariat General of the Government of Montenegro a request for submission of statement no. 03-02-120-22-9, as well as a request for submission of additional documentation to the Council of RTV NK no. 03-02-120-22-8.

The Secretariat General of the Government of Montenegro did not submit a statement within the deadline, while the Council of RTV NK by letter No. 01-1173 dated October 04, 2022 duly submitted the requested documentation, specifically:

- Rulebook on Internal Organization and Systematization of Jobs No. 01-863/1, dated December 28, 2020;
- Rulebook on Internal Organization and Systematization of Jobs No. 01-822/1 dated October 29, 2021.

An overview of the entire documentation submitted by the Council and the Director of RTV NK was carried out.

The Government of Montenegro, at the session on December 17, 2020 adopted the Decision on the National Council for the Fight against High-Level Corruption (“Official Gazette of Montenegro”, no. 125/20 and 11/21). With this Decision, the National Council was established as a temporary working body of the Government, and in accordance with Article 12 of the Decree of the Government of Montenegro (“Official Gazette of Montenegro”, no. 80/2008, 14/2017 and 28/2018), which, among other things, provides that the Government can form a temporary working body for the purpose of considering certain issues within its competence and giving opinions and proposals. The decision entered into force on December 23, 2020, with amendments from March 02, 2021, i.e., April 02, 2021.

When it comes to Article 7 of the Decision on the National Council for the Fight against High-Level Corruption, it states the following:

“The Council may, for the purpose of efficient and effective performance of its tasks, form permanent or temporary working groups from its composition. The President of the Council may engage experts and representatives of domestic or international organizations or institutions from areas related to the scope of work of the Council.”

The quoted Decision does not specify clear criteria on the basis of which experts and representatives of domestic or international organizations or institutions from areas related to the scope of work of the Council can be hired.¹

In statement no. 02-1093 from September 13, 2022, Director of RTV NK Nikola Marković states that his wife Vanja Čalović Marković was hired as an expert and appointed head of the expert team based on the decision of the members of the National Council.

The Decision on the Formation of the Working Group of the National Council for the Fight against High-Level Corruption No. 03-950/2 dated February 17, 2021, states (item 3): “Vanja Čalović Marković is appointed as the head of the Expert Team”.

¹https://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_o_odluci_o_nacionalnom_savjetu_za_borbu_protiv_korupcije_na_visokom__wBCbHiY.pdf

The Decision of the National Council for the Fight against High-Level Corruption No. 03-903 dated February 17, 2021, states (item 1): “Vanja Čalović Marković is appointed as the head of the Expert Team...”. This is particularly interesting, bearing in mind that the then valid Decision on the National Council for the Fight against High-Level Corruption (“Official Gazette of Montenegro”, No. 125/2020 dated December 23, 2020 and No. 11/2021 dated February 3, 2021) Article 7 paragraph 1 explicitly states that: “The Council may, for the purpose of efficient and effective performance of its tasks, form permanent or temporary working groups from its composition”, which leads to the conclusion that Vanja Čalović Marković must have been a member of the National Council before she was elected as a member, in this case the head, of the working group. The Government of Montenegro amended this article of the Decision, in such a way that the words “from its composition” were deleted from Article 7, paragraph 1 (the Decision on amending the Decision on the National Council for the Fight against High-Level Corruption was published in the Official Gazette No. 34/2021 from April 2, 2021).

Article 3 of the Law on Prevention of Corruption (“Official Gazette of Montenegro”, No. 53/14 and 42/2017) states that a public official, in the sense of this law, refers to the person elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local administration body, independent body, regulatory body, public institution, public enterprise or other business or legal person exercising public authority, i.e., activity of public interest or state-owned (hereinafter: authority), as well as the person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the duration of the office and remuneration.

Upon reviewing the Decision on the Dismissal of the Expert Team of the National Council for the Fight against High-Level Corruption No. 01-519 dated February 22, 2022, it was determined that on January 25, 2022 Vanja Čalović Marković resigned from the position of the head of the Expert Team for the Fight against High-Level Corruption.

Upon reviewing the quoted Decisions, it was determined that Vanja Čalović Marković was not appointed, or assigned, as the head of the Expert Team of the National Council for the Fight against High-Level Corruption, by the Government of Montenegro, but by the National Council for the Fight against High-Level

Corruption, which is in accordance with the statement no. 02-1093 from September 13, 2022 of Director of RTV NK Nikola Marković, who stated that his wife Vanja Čalović Marković was hired as an expert and appointed head of the expert team based on the decision of the members of the National Council, so it is stated that there were no obstacles to his appointment to the position of Director of RTV NK in relation to Article 34 paragraph 1, and in connection with Article 27 paragraph 1 item 8 of the Decision on Founding Limited Liability Company Local public broadcaster RTV NK, which stipulates that a person from the following categories cannot be elected as Director of RTV NK:

1. MPs and councilors;
2. Persons elected, appointed or assigned by the President of Montenegro, the Parliament of Montenegro or the Government;
3. Persons elected, appointed or assigned in local self-government bodies;
4. Officials of political parties (presidents of parties, members of the presidency, their deputies, members of executive and main committees, members of municipal committees and municipal executive committees, as well as other party officials);
5. Persons who, as share owners, stockholders, members of management bodies, members of supervisory bodies, employees, etc., have interests in legal entities engaged in the production of radio and television programs, so membership in the Council could lead to a conflict of interest;
6. Persons who have been legally sentenced for the criminal offense of abuse of official duty, corruption, fraud, theft or other criminal offense that makes them unworthy to perform public office, regardless of the imposed sanction, or who have been legally sentenced for some other criminal offense to a prison sentence for a duration longer than six months, during the period while the consequences of the conviction last;
7. Persons who are spouses of the persons mentioned in items 1 to 5 of this article or are related to them in the direct line, regardless of the degree of kinship, in the collateral line up to the second degree of kinship and the second degree of kinship by in-laws;

Upon reviewing the Decision on the appointment of the acting Director of RTV NK No. 01-815 dated October 28, 2021, Fixed-term employment contract No. 01-831 dated November 1, 2021 concluded between the Council of RTV NK and Nikola Marković, it was established that the Council of RTV NK at the 63rd

session held on October 28, 2021 adopted the Decision on the appointment of Nikola Marković as the acting Director of RTV NK contrary to Article 32 paragraph 2 of the Decision on Founding Limited Liability Company Local public broadcaster RTV NK, which, among other things, states that a person with at least five years of work experience can be appointed as a Director.

Upon reviewing the Rulebook on Internal Organization and Systematization of Jobs no. 01-863/1, dated December 28, 2020 (which was valid at the time of the appointment of Nikola Marković as the acting Director of RTV NK), it was established that Nikola Marković was appointed as the acting Director of RTV NK contrary to the valid Rulebook on Internal Organization and Systematization of Jobs, which states that the Director of RTV NK must meet the following requirements regarding professional qualifications: VSS/VII, 5 years of work experience, knowledge of one world language.

Upon reviewing the Certificate of Higher Education of the University of Montenegro - Faculty of Philology No. 30/21 dated February 4, 2021 of Nikola Marković, it was determined that he did not meet the requirements for appointment as acting Director of RTV NK, in relation to Article 32 paragraph 2 of the Decision on Founding Limited Liability Company Local public broadcaster RTV NK, i.e., Rulebook on Internal Organization and Systematization of Jobs no. 01-863/1 dated December 28, 2020 since he did not meet the requirements regarding the required years of work experience in the required degree.

The Agency concludes that the members of the Council of RTV NK must have known that Nikola Marković does not meet the requirements for appointment as acting Director of RTV NK, especially bearing in mind the fact that on the day of his appointment as acting Director, at the 63rd session, they adopted the Rulebook on amending the Rulebook on Internal Organization and Systematization of Jobs no. 01-863/1 dated December 28, 2020 (which entered into force a day later, on October 29, 2021), in such a way that they amended the conditions for the appointment of the Director of RTV NK in terms of professional qualifications, deleting the required years of work experience and knowledge of a foreign language, which is contrary to the founding act of RTV NK (Decision on Founding Limited Liability Company Local public broadcaster “Radio and Television Nikšić”). At the same time, the Statute on amendments to the Statute No. 01-64/1

dated January 26, 2018 was adopted in the Local public broadcaster RTV NK, in which Article 51 paragraph 1 states that a person who is a citizen of Montenegro, has residence in Montenegro and has at least a university degree is elected as a Director, which is also in contradiction with Article 32 paragraph 2 of the founding act of RTV NK (*Decision on Founding Limited Liability Company Local public broadcaster "Radio and Television Nikšić"*), which expressly states that a person with citizenship of Montenegro, residence in Montenegro, a university degree and **at least five years of work experience**.

Upon reviewing the text of the Competition for the election and appointment of the Director of RTV NK no. 01-1094 dated December 23, 2021, it was found that the Council of RTV NK at the 66th session held on November 29, 2021 announced the Competition for the election and appointment of the Director of RTV NK (competition was published in the "Pobjeda" daily newspaper on December 24, 2021 with a deadline of 15 days from the date of publication of the competition).

In the text of the announcement, it is stated that a Director of RTV NK can be a person who:

- is a citizen of Montenegro;
- has a residence in Montenegro;
- has at least a university degree;

It is further stated that the participants of the competition are obliged to submit:

- Evidence of professional qualification;
- Work biography;
- Work plan and program for the first two years of the term;
- Certificate of citizenship;
- Certificate of residence;
- Medical certificate, and
- Certificate that no criminal proceedings are being conducted against the candidate.

In the quoted competition, the requirement of at least 5 years of work experience is not stated as a necessary condition for the selection of the Director of RTV NK, as it is **explicitly stated** in Article 32 paragraph 2 of the Decision on Founding Limited Liability Company Local Public Broadcaster "Radio and Television

Nikšić” (“Official Gazette of Montenegro - municipal regulations”, no. 21/2011 and 26/2012), so it is concluded that the mentioned competition was not carried out in accordance with the founding act of RTV NK (Decision on Founding Limited Liability Company Local public broadcaster “Radio and Television Nikšić”).

RELEVANT REGULATIONS

The Constitution of Montenegro (“Official Gazette of Montenegro” No. 1/2007) prescribes:

“Direct or indirect discrimination on any grounds shall be prohibited.”- Article 8 paragraph 1

The Law on Prevention of Corruption (“Official Gazette of Montenegro”, no. 53/14, 42/2017) prescribes:

“Corruption is any abuse of official, business or social position or influence that is aimed at acquiring personal gain or for the benefit of another.” – Article 2

“For the purpose of this Law, public officials shall refer to the persons elected, appointed or assigned to a post in a state authority, state administration body, judicial authority, local self-government body, local government body, independent body, regulatory body, public institution, public enterprise or other business or legal person exercising public authority, i.e., activities of a public interest or state-owned (hereinafter: authority), as well as the person whose election, appointment or assignment to a post is subject to consent by an authority, regardless of the duration of the office and remuneration.

For the purpose of this Law, state ownership shall refer to any share in a company in which the state or municipality, Old Royal Capital, or the Capital City (hereinafter: municipality) owns at least 33% of the capital.”- Article 3

“Public interest is the material and non-material interest for the good and prosperity of all citizens on equal terms;”- Article 6 paragraph 1 item 1

“The authorized officer shall, ex officio, obtain data and information on the facts that are necessary for the conduct of the proceedings and decision-making process, the official records of which are kept by the competent state authorities, state administration bodies and municipalities, or public enterprises, companies, institutions or other legal and natural persons.”- Article 35 paragraph 2

“Authorities, natural and legal persons referred to in paragraph 2 of this Article shall, within the period and in the manner established by the Agency, submit the requested data and information, or make available the required documentation in accordance with the law.” - Article 35 paragraph 3

“For the purpose of this Law, threatening the public interest shall mean a violation of regulations, ethical rules or the possibility of such a violation, which caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or a legal or natural person, as well as an action that is aimed at preventing such a violation from being discovered.” - Article 44 paragraph 2

“On the basis of the procedure conducted based on the application referred to in Article 51 of this Law, the Agency shall prepare an opinion on the existence of threats to the public interest that indicate the existence of corruption.

When the Agency determines that there is a threat to the public interest that indicates the existence of corruption, the opinion shall contain a recommendation about what should be done to prevent these threats, as well as the deadline for acting on the recommendation and notifying the Agency thereon.”- Article 52

“An authority, company, other legal person or entrepreneur to whose work the recommendation referred to in Article 52, paragraph 2 of this Law applies, shall, within the set deadline, submit a report on the actions taken to enforce the recommendation.

If the authority, company, other legal person or entrepreneur does not act on the recommendation within the set deadline or fails to inform the Agency thereon, the Agency shall inform the body supervising their work, and shall submit a special report to the Parliament and inform the public thereon.”- Article 53

“The Agency shall initiate the procedure for determining the existence of threats to the public interest that indicates the existence of corruption ex officio, on the basis of its own information.”- Article 54

“Integrity shall mean a legitimate, independent, impartial, accountable and transparent performance of duties based on which the public officials and other employees of an authority protect their reputation and the reputation of the authority, provide confidence of citizens in the performance of public functions and the operation of the authority and eliminate doubts about the possibility of the emergence and development of corruption.”- Article 72

Decision on Founding Limited Liability Company Local public broadcaster “Radio and Television Nikšić” (“Official Gazette of Montenegro - municipal regulations”, no. 21/2011 and 26/2012) prescribes:

“The bodies of Radio and Television Nikšić shall be:

- Council and*
- Director.” - Article 20*

Council of Radio and Television Nikšić:

- 1. adopts the Statute;*
- 2. elects and dismisses the president of the Council from the members of the Council;*
- 3. appoints and dismisses the director of Radio and Television Nikšić;*
- 4. adopts general acts regulating issues of programming and professional standards in Radio and Television Nikšić;*
- 5. adopts program documents of Radio and Television Nikšić;*
- 6. adopts an act on the internal organization and systematization of jobs;*
- 7. adopts the work report of the Broadcaster for the previous year, with special reference to the implementation of program content and the fulfillment of obligations established by law;*
- 8. adopts the report on the financial operations of the Broadcaster for the previous year, which specifically contains data on the use of budget funds;*
- 9. adopts investment and financial plans;*
- 10. elects an authorized auditor of periodic and annual statements;*
- 11. reviews the auditor's reports;*
- 12. gives consent to the Agreement on co-financing of program contents in the sense of Article 17 paragraph 2 of this decision;*
- 13. adopts a general act on the minimum work process that must be met during an employee strike;*
- 14. analyzes and decides on reports related to the violation of program principles established by the law and program documents and orders appropriate measures;*
- 15. appoints and dismisses the Commission for applications and complaints of listeners and viewers from among the members of the Council;*
- 16. adopts acts prescribing the competences and working methods of the Commission for applications and complaints of listeners and viewers;*
- 17. adopts Rules on the representation of political parties, candidates and coalitions during political election campaigns;*
- 18. makes decisions on the disposal and charge of assets of Radio and Television Nikšić, in accordance with the law;*
- 19. gives consent to decisions and contracts by which Radio and Television Nikšić is obliged to make payments in an amount greater than the amount determined by the Statute;*
- 20. adopts rules of procedure on its work;*

21. *performs other tasks in accordance with the law, this decision and the Statute" - Article 22*

"Members of the Nikšić Radio and Television Council cannot be:

1. *MPs and councilors;*
2. *employees of Radio-television Nikšić;*
3. *Persons elected, appointed or assigned by the President of Montenegro, the Parliament of Montenegro or the Government;*
4. *Persons elected, appointed or assigned in local self-government bodies;*
5. *Officials of political parties (presidents of parties, members of the presidency, their deputies, members of executive and main committees, members of municipal committees and municipal executive committees, as well as other party officials);*
6. *Persons who, as share owners, stockholders, members of management bodies, members of supervisory bodies, employees, etc., have interests in legal entities engaged in the production of radio and television programs, so membership in the Council could lead to a conflict of interest;*
7. *Persons who have been legally sentenced for the criminal offense of abuse of official duty, corruption, fraud, theft or other criminal offense that makes them unworthy to perform public office, regardless of the imposed sanction, or who have been legally sentenced for some other criminal offense to a prison sentence for a duration longer than six months, during the period while the consequences of the conviction last;*
8. *Persons who are spouses of the persons mentioned in items 1 to 6 of this article or are related to them in the direct line, regardless of the degree of kinship, in the collateral line up to the second degree of kinship and the second degree of kinship by in-laws;" - Article 27*

"The Director is appointed by the Council, based on a public competition.

A person appointed for a Director, in addition to the general requirements stipulated by law, shall have:

- *citizenship of Montenegro;*
- *residence in the territory of Montenegro;*
- ***at least five years of work experience;***
- ***university degree" - Article 32***

“A person who, in accordance with the law and this decision, cannot be a member of the Council of Radio and Television Nikšić cannot be appointed Director either. A person who is employed by Radio and Television Nikšić can also be elected as a Director.” - Article 34

“The Director may be dismissed before the end of the term:

- at his/her own request;*
- by the Council if it does not act in accordance with the law and general acts.*

In case of resignation or dismissal of the Director of Radio and Television Nikšić, the duty of the Director shall be performed by a person elected by the Council from among the employees of RTV NK, until the election of the Director.” - Article 36

The Statute of the Local Public Broadcaster “Radio and Television Nikšić” No. 01-822 dated October 29, 2021 prescribes:

“The bodies of Radio and Television Nikšić shall be:

- Council and*
- Director.” - Article 38*

“1. The council of “Radio and Television Nikšić”

a) Adopts

- 1. Program documents of Radio Nikšić and Television Nikšić;*
- 2. Work report of the Broadcaster for the previous year, with special reference to the application of program content and the fulfillment of obligations established by law;*
- 3. Report on the financial operations of the Broadcaster for the previous year, which specifically contains data on the use of budget funds;*
- 4. Investment and financial plans;*

b) Adopts

- 1. Statute;*
- 2. General acts regulating issues of programming and professional standards in Radio and Television Nikšić;*
- 3. Act on the internal organization and systematization of jobs;*
- 4. General act on the minimum work process that must be met during an employee strike;*

5. *Acts prescribing the competences and working methods of the Commission for applications and complaints of listeners and viewers;*
6. *Rules on the representation of political parties, candidates and coalitions during political election campaigns;*
7. *Decisions on the disposal and charge of assets of Radio and Television Nikšić, in accordance with the law;*
8. *Rules of procedure on its work;*
- c) *Elects and dismisses*
 1. *The President of the Council from among the members of the Council; and*
 2. *An independent auditor as needed and at its discretion;*
- d) *Appoints and dismisses*
 1. *the Director of Radio and Television Nikšić;*
 2. *Commission for applications and complaints of listeners and viewers from among the members of the Council;*
- e) *Gives consent to*
 1. *the Agreement on co-financing of program contents in the sense of Article 17 paragraph 2 of the Decision on Founding Limited Liability Company - Local public broadcaster RTV NK;*
 2. *Decisions and contracts by which Radio and Television Nikšić is obliged to make payments in an amount greater than the amount determined by the Statute;*
 3. *Decisions of “Radio and Television Nikšić” by which RTV NK undertakes to pay or alienate movable property or conclude any legal transaction in the total amount of more than 10,000.00 euros;*
 4. *Changing budget allocations;*
- f) *Analyzes and decides on*
 1. *Reports related to the violation of program principles established by the law and program documents and orders appropriate measures;*
 2. *The need to engage an independent auditor. If it considers that it is necessary to engage an independent auditor, then it analyzes the auditor’s reports;*
- g) *Decides on*
 1. *Violations of programming principles established by the Law on Electronic Media, the Decision on Founding Limited Liability Company Local Public Broadcaster “Radio and Television Nikšić”,*

2. *Violations of program documents of Radio and Television Nikšić and suggests to the editor of Radio Nikšić, i.e., the editor of Television Nikšić, to take appropriate measures, after getting familiar with their opinion;*
- h) *Concludes*
1. *Work contract with the Director of “Radio-television Nikšić”,*
 2. *Collective agreement with the trade union.*

The council performs other tasks in accordance with the law, the decision on founding of “Radio - Television Nikšić” and the Statute.” - Article 40

“A person who is a citizen of Montenegro, has a residence in Montenegro, and has at least a university degree shall be elected the Director of “Radio-television Nikšić”.

The term of the Director of “Radio-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 Limited Liability Company Local public broadcaster “Radio and Television Nikšić” cannot be a member of the Council of “Radio - Television Nikšić” cannot be appointed as the Director of “Radio - Television Nikšić” either.

*Article 27 paragraph 1 item 2 of the Decision on Founding Limited Liability Company Local public broadcaster “Radio and Television Nikšić” shall not apply to the candidates for the election of the Director of “Radio and Television Nikšić”.
- Article 51*

“The public competition for the election of the Director of "Radio and Television Nikšić" is announced and conducted by the “Radio and Television Nikšić” Council.”

“Candidates for the election, in addition to the documents stipulated by the law, when applying for the public competition for the election of a Director, are required to submit the Work Plan and Program for the first two years of the envisaged term of office.” - Article 52

“The Director of Radio and Television Nikšić may be dismissed before the end of the term of office in accordance with Article 36 of the Decision on the Establishment of the Local Public Broadcaster Radio and Television Nikšić LLC.

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. The Director of Radio and Television Nikšić can initiate an administrative dispute against the decision on dismissal, in accordance with a special law.

The Director of Radio - Television Nikšić shall be dismissed by the Council by a majority of the total number of members of the Council of Radio and Television Nikšić.” - Article 58

The Decision on the National Council for the Fight against High-Level Corruption (“Official Gazette of the Republic of Montenegro” No. 125/2020, 11/2021 and 34/2021) stipulates:

“By special decision, the Government appoints the president, deputy president, members, secretary and deputy secretary of the Council.

As a rule, the Deputy Prime Minister is the President of the Council.

As a rule, a member of the Council cannot be a public official assigned or appointed by the Government, as well as a civil servant.

The Secretary and Deputy Secretary of the Council are appointed from among the employees of the General Secretariat of the Government, that is, the Office of the President or Deputy President of the Government.

The term of office of the President, Deputy President and members of the Council lasts four years.” - Article 5

“The Council can, in order to efficiently and effectively accomplish tasks, form permanent or temporary working groups.

The President of the Council may hire experts and representatives of domestic or international organizations or institutions from areas related to the scope of work of the Council.” - Article 7

2003 United Nations Convention against Corruption (UNCAC)

“The objectives of this Convention are:

c. To promote integrity, accountability and proper management of public affairs and public property.” – Article 1

“Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the

rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” – Article 5

Anti-Corruption Authority (ACA) standards

Standard 4 – Integrity and Impartiality

“Integrity may be defined as acting or being in accordance with the moral values, norms and rules, valid within the context in which one operates. In public administration, integrity refers to honesty and trustworthiness in the discharge of official duties, serving as an antithesis to corruption or the abuse of office for private gain. “

CONCLUSION

After the examination procedure is carried out, and the assessment of facts and circumstances, the Agency for Prevention of Corruption states that the procedure of appointing Nikola Marković, first as acting Director, and then as Director of Radio and Television Nikšić, represents a threat to the public interest in the sense of Article 44, paragraph 2 and Article 72 of the Law on Prevention of Corruption and may affect the integrity of RTV NK.

According to the legal definition, integrity represents a legal, independent, impartial, accountable and transparent performance of duties based on which public officials and other employees of the authority protect their own reputation and the reputation of the authority, provide confidence of citizens in the exercising of public functions and the work of the authority and eliminate doubts about the possibility of the emergence and development of corruption while threatening to the public interest implies a violation of regulations, ethical rules or the possibility of such a violation that caused, causes or threatens to cause danger to life, health and safety of people and the environment, violation of human rights or material and non-material damage to the state or legal and natural person, as well as an action aimed at not knowing about such a violation.

By looking at the entire documentation, especially the documentation on the basis of which the fulfillment of the conditions for the appointment of the Director of RTV NK can be assessed, it is indisputable that the Council of RTV NK adopted the Decision on the appointment of Nikola Marković as the acting Director of RTV NK, contrary to Article 32 paragraph 2 of the Decision on the establishment of the Local public broadcaster RTV NK LLC, which, among other things, states that a person with at least five years of work experience can be appointed as a Director, contrary to the then valid Rulebook on Internal Organization and Systematization of Jobs, which states that the Director of RTV NK must meet the following requirements in terms of professional qualifications : VSS/VII, 5 years of work experience, knowledge of 1 world language.

The Agency concludes that the members of the Council of RTV NK must have known that Nikola Marković does not meet the requirements for appointment as acting Director of RTV NK, especially bearing in mind the fact that on the day of

his appointment as acting Director, at the 63rd session, they adopted the Rulebook on amending the Rulebook on internal organization and systematization of job positions no. 01-863/1 of October 28, 2020 (which entered into force a day later, on October 29, 2021), in such a way that they changed the conditions for the appointment of the Director of RTV NK in terms of professional qualifications, deleting the required years of work experience and knowledge of a foreign language, which is contrary to the founding act of RTV NK. At the same time, the Statute on Amendments to Statute No. 01-64/1 of January 26, 2018 was adopted in the Local Public Broadcaster RTV NK, in which Article 51 paragraph 1 states that a person who is a citizen of Montenegro, has a residence in Montenegro and has at least a university degree can be elected as a Director, which also contradicts Article 32 paragraph 2 of the founding act of RTV NK, which expressly states that a person with Montenegrin citizenship, Montenegrin residence, a university degree and at least five years of work experience can be appointed as a Director.

The Agency also concludes that the Competition for the selection and appointment of the Director of RTV NK No. 01-1094 of December 23, 2021 (*published in the daily newspaper "Pobjeda" on December 24, 2021*) was not conducted in accordance with the founding act of RTV NK, since in the cited competition, the condition of at least 5 years of work experience is not stated as a necessary for the selection of the Director of RTV NK, as explicitly stated in Article 32 paragraph 2 of the founding act of RTV NK.

The Agency for Prevention of Corruption acts preventively in the fight against corruption in all areas, and the purpose of giving an opinion on threatening to the public interest that indicates the existence of corruption is to create a positive influence on the consistent application of laws and respect for ethical standards and principles, safeguarding the reputation of public officials and the reputation of authorities in order to ensure citizens' trust in the performance of public functions and the work of government bodies and remove doubts about the possibility of the emergence and development of corruption.

The amendment of the Statute and Rulebook on Internal Organization and Systematization of RTV NK jobs contrary to the founding act in order to adapt the conditions for the election of the Director to the specific candidate represents a high corruption risk, so in this regard, and in accordance with Article 52 paragraph

2 of the Law on Prevention of Corruption, the Agency gives the following recommendation to the RTV NK Council:

To harmonize the Statute of RTV NK and the Rulebook on Internal Organization and Systematization of RTV NK workplaces with the Decision on Founding Limited Liability Company Local public broadcaster RTV NK, in terms of the necessary conditions for the election, i.e. the appointment of the Director of RTV NK in a way that does not raise doubts about the existence of corruption risks and does not call into question the integrity of the institution.

The RTV NK Council undertakes to submit a Report on the actions taken in relation to the aforementioned recommendation, in accordance with Article 53 of the Law on Prevention of Corruption, within 30 days from the date of receipt of this Opinion.

Acting DEPUTY DIRECTOR
Boris Vukašinić