

Geneva, 30 March 2017

UN Human Rights Council  
Universal Periodic Review  
28th session – November 2017

**Contribution by Reporters Without Borders (RSF),  
a non-governmental organization with special consultative status,  
on freedom of the media and information in Switzerland**

A Paris-based NGO that has promoted media freedom worldwide since 1985, Reporters Without Borders (RSF) has special consultative status with the United Nations. RSF's action is relayed on five continents thanks to its national sections, its bureaux in ten cities and its network of correspondents in 130 countries enabling it to closely monitor freedom of information and expression all over the world. RSF has a Swiss section since 1990.

Few recommendations were made specifically on freedom of the press in previous UPRs, and the few which were accepted dealt vaguely with the request to enact measures in conformity with Article 19 of the ICCPR.

Switzerland is ranked 7th out of 180 countries in RSF's 2016 World Press Freedom Index, a notable increase from its 20th ranking the prior year. Even with such high standards in regard to the state of freedom of the media and information in the country, there are some concerns concerning some issues such as the concentration of the media, editorial independence, restrictions to investigative journalism and insufficient access to public information.

### **1) Media concentration**

Broadcasting in Switzerland, aside from the essential support given to many private regional TV and Radios stations, is under the responsibility of the main audiovisual public group SRG SSR, which is a non-profit organisation with a public remit. The Federal Government issues licence to the public broadcaster and provides it with funding from licence fee collected for the production of radio and television programs. The strong position of SRG SSR's strong position has led the Federal Government to attempt to restrict its means and scope. In fact, a popular vote is planned for 2018 (No Billag) proposing the elimination of all fees. If accepted, it would simply bring the disappearance of SRG SSR.

However, the main concern centres on print media, particularly in French speaking Switzerland. Large publishing houses control a good part of the sector, leading to a lack of independent media all over Switzerland. Due to the different languages, there are no real national newspapers. The market for regional newspapers remains strong but is mainly owned by big publishing houses and multimedia companies like Ringier Axel Springer Tamedia, the NZZ Group, AZ Medien and Hersant.

Media concentration forces independent newspaper titles to either merge or shut down entirely. More and more small and medium-size newspapers have been forced out of the market or have been taken over by large publishing companies. The 2008 economic crisis hit the sector hard in Switzerland, leading many newspapers to dismiss a good part of their staff.

The written press must indeed face a continual dwindling of advertising revenues going increasingly to social networks. This situation could lead to the disparition or fusion of many papers.

Reduction of editorial staff due to financial pressure is already notable today, as *L'Hebdo* shut down in February of 2017 and *die Schweiz am Sonntag* in March of 2017. The economic impact was felt by the editors of *24 Heures* and the *Tribune de Genève*, 2 dailies, which suffered mass dismissals of journalists, resulting in a real disempowerment of the press and a lower of the quality of information. Print media is seen as a major element of Swiss democracy as the existence of a large variety of newspaper is a mark of political pluralism with a diversity of opinions in the country.

This evolution has led many to wonder if the written press should not be helped with public support beyond the present mechanisms. In this context, the Federal Council proposes to support the Swiss national news agency ATS/SDA. Other initiatives may be adopted in the coming years, such as the development of the transition to online media.

## **2) Independence of media**

Collaboration of political personalities with media ownership is highly problematic and endangers their editorial independence. In this regards, examples below are a serious concern:

In November 2010, it was announced that the new owners of the *Basler Zeitung* were providing a media advisory board to the Robinvest AG Company advisory and financing company, whose director is Christoph Blocher, a former member of the Swiss Federal Council for the Democratic Union of the Centre (UDC) and former CEO and majority shareholder in the EMS-Chemie Corporation.

In March 2017, it was made public that businessman Walter Frey, a Blocher supporter and active member of the UDC party, was also showing interest in buying the *Blick*, the most popular Swiss daily, published by Ringier.

## **3) Access to public information**

Access to public information is key for the work of journalists and vital to maintain democracy.

In July of 2006, a Transparency Act (LTrans) came into force in Switzerland. It was later re-evaluated by the Federal Office of Justice in 2014. The cost of access to official documents is frequently much too high, even for professionals. The slowness and length of the procedure is another barrier to the implementations of the legislation.

Departments and Offices have different interpretations as to how to define a request for access to official documents. In the end, the vagueness surrounding the notion of access to official documents leaves a relatively large margin of manoeuvre for agencies to decide what is the Transparency Act, reflecting a more or less restrictive vision depending on the Offices.

As recently as February of this year, the Federal Council surreptitiously slipped a clause into the draft of a revision on the legislation of public markets to ensure the maintenance of secrecy in the context of their attributions, an area where LTans had been particularly effective.

#### **4) Investigative journalism and whistle blowers**

Swiss authorities are more likely to protect secrecy and avoid any potential embarrassment to public or private entities rather than respect the public's and journalists' right to "*seek, receive and impart information and ideas through any media...*" (Article 19 of the Universal Declaration of Human Rights – UDHR - and the International Covenant on Civil and Political Rights –ICCPR to which Switzerland is a party since 1992).

Swiss legislation doesn't deal explicitly with the issue of whistle blowers. However, according to the labour code, and in the context of professional secret, employees are forbidden to communicate to a third party any information that may be detrimental to their employer.

Moreover, publishing leaks concerning "confidential official discussions" - including banking regulation - is regarded as an offense punishable by a fine in Switzerland: Article 293 of the Swiss Criminal Code states that "publishing information from the files, proceedings or official investigations of a public authority which have been declared secret by that authority in accordance with its powers" is penalized by a fine.

Although the Federal Council has modified Article 293 by allowing a judge to rule for acquittal if there is no "imperative" reason to maintain secrecy, RSF-CH, while thankful for this change, is still demanding the simple abrogation of Article 293 as proposed by the Federal Council itself in ... 1996.

#### **5) Harassment of journalists**

In August 2013, the Neuchâtel police raided at dawn the home of Ludovic Rocchi, journalist for *Le Matin*. Rocchi had revealed an affair of plagiarism by a professor of the University of Neuchâtel, who later sued the journalist for defamation, offense against his honour and breach of official secrecy. The office of the attorney ordered the journalist home to be searched. Computer equipment and written notes, belonging to the journalist as well as his wife, were seized. Although a Swiss court, after very long proceedings, finally declared this search as illegal because disproportionate, this case shows the little respect Swiss authorities have for press freedom and the protection of journalists' sources.

In 2015, The European Court of Human Rights in Strasbourg delivered its judgment in the *Kassensturz* case, involving four journalists from German-speaking Swiss television who used hidden cameras in a journalistic investigation. According to the Strasbourg court, the Swiss courts wrongly condemned the journalists. For the Swiss Federal Court, the documentary violated article 179 of the Penal Code which sanctions the recording of a non-public conversation by one of the participants, without the consent of his interlocutor. However, the European Court held that "the public interest in information" should take precedence over the right to the image, remembering article 10 of the European Convention on Human Rights.

in November 2016, the RTS journalist Joël Boissard was convicted after having exposed a fraud in the electronic vote. Joël Boissard, who works for Switzerland's RTS broadcaster, was able to

vote twice by Internet in the March 2015 federal and cantonal elections because he was sent two sets of voting documents, firstly as a Swiss resident in France and then as a resident of Geneva, to which he returned at the start of 2015. After managing to vote twice, Boissard immediately contacted the authorities and asked them to explain this anomaly. Three weeks later he learned that the authorities had reported him to the prosecutor's office in Geneva. A court finally convicted him on

1 November of this year on a criminal charge of electoral fraud and gave him a suspended sentence – a fine. This court decision seriously undermines media freedom and public information.

### **RSF's recommendations to Swiss officials:**

- Amend the LTrans to suppress any fees increase the speed of the procedure, and wide the need scope
- Abrogate article 293 of the Swiss Penal Code, in conformity with article 10 of the European Convention on Human Rights and with article 19 of the International Covenant for Civil and Political Rights.
- Consider and adopt measures to strengthen the independence and pluralism of such media.
- Establish measures to ensure the protection of whistle blowers and journalists' sources.

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