

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

1.1. The implementation of the Public Information Law has been partly elaborated in the section about freedom of expression.

1.2. On January 25, the Independent Journalists' Association of Serbia (NUNS), in collaboration with the Ministry of Labor and Social Policy, held a seminar about the role of the media and enforcement of ethical standards in reporting about the reform of the social security system and the beneficiaries of social services. NUNS Vice-President Jelka Jovanovic said that the media in Serbia often misused and violated the rights of the said beneficiaries. She stressed that journalists needed to be cautious when reporting about vulnerable groups such as children, the elderly, disabled persons and the poor.

According to the Public Information Law, journalist and responsible editor of a public media must check with reasonable care the origin, accuracy and completeness of such information, prior to releasing information containing data about a particular event, occurrence or person. The Law especially protects minors, which must not be made recognizable in the information that might violate their right or interests. According to the Law, information related to the private lives of all citizens may not be released without the consent of the person concerned, if such information point to the identity of the person in question. The issue of protecting the privacy of the beneficiaries of social security services, especially in the times of economic hardship, when the number of such persons is on the rise and who are typically unable to protect their rights in lengthy and expensive trials, has become increasingly important. This is particularly true of children as beneficiaries of social security services: there have been many cases in prLawice were the rights to special protection of minors are violated. It is therefore important to work on continuously educating all profiles of journalists, including by having them attend seminars such as the one organized by NUNS. It would be useful, however, to include the Ministry of Culture in these programs, as the institution competent for proposing amendments to media regulations, so as to adequately protect all vulnerable categories, while preserving the balance between the right to free expression and the

right to have one's privacy protected. It would be also reasonable to somehow involve the judiciary, which often creates more problems that it solves, due to inadequate enforcement of existing regulations.

1.2. Dilemmas about the implementation of Article 82 of the Public Information Law in the case law of Serbian courts are all but dispelled. The said article namely stipulates that a journalist, responsible editor and the legal person – founder of the public media – shall not be held accountable for the damage, if an untrue or incomplete information was faithfully conveyed from a public parliamentary debate, public debate in a parliamentary body, court proceedings or from a document of the competent state authority. Dilemmas are particularly associated with quoting documents of state authorities, most notably related to conveying police press releases.

The case we wrote about in February concerns the local weekly "Zrenjanin" from Zrenjanin. This weekly was taken to court over the information posted on its website, which was merely the police press release about the arrest of a group of persons from Zrenjanin and Novi Sad, suspected of setting up car accidents in order to scam insurance companies. In the first instance trial, the publisher of the weekly was released of responsibility precisely on the basis of Article 82 of the Public Information Law. However, in second instance, the Appellate Court found that the Higher Court in Zrenjanin too had mistakenly enforced material law, since the title of the controversial text – which violated the presumption of innocence – "Faked Accidents in Insurance Scam", was not conveyed from the police press release. In prLawice, however, there are far more drastic cases, where in identical sentences, the courts conclude that a particular piece of information has been faithfully conveyed from a document of a competent authority, only to approve the plaintiff's claim, saying that the media failed to Law with due journalist care by not double-checking the information from the police press release or document of other competent authority. This is also in breach of the case law of the European Court of Human Rights, which was made binding for Serbian courts by Article 18, paragraph 3 of the Serbian Constitution. The Court has, in a series of verdicts (e.g. Bladet Tromsø and Stensaas against Norway dated May 20, 1999. Colombani against France dated June 25, 2002), taken a very clear position that the media and the journalists, when quoting a document issued by a competent authority, are not obligated to double-check the veracity of slanderous and libelous claims quoted and shall not be held accountable for publishing such claims. Specifically, in paragraph 68 of the sentence in the case Bladet Tromsø and Stensaas against Norway and

paragraph 65 of the sentence in the case Colombani against France, the court said the media must be entitled – when they are contributing to a debate about issues the public has the right to know about – to trust the veracity of official reports and press releases, without needing and being obligated to independently check the content of such reports and press releases. In every other case, the European Court of Human Right says, the vital role of the media as the public’s watchdog would be compromised. It seems that the Serbian courts are well-behind the case law of the European Court of Human Right in this respect. We remind that earlier sentences of the European Court of Human Right in cases against Serbia, concerning the enforcement of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing freedom of expression, pertained mainly to how the Serbian courts had handled the obligation of state and political officials to demonstrate a higher degree of tolerance for critical texts in the media. This issue has seen some progress in the last few years, unlike the matter of the exclusion of responsibility for faithfully conveying information from parliamentary debate, legal proceedings or state documents. It is therefore to be expected that the next burning issue related to respect of right to freedom of expression in Serbia will be the issue of the right of Serbian media and journalists, in a debate about matters of public interest, to confide in the veracity of the content of official reports and press releases, while being free of any fear from retribution and without the need to independently check the content of such reports press releases.

2. Broadcasting Law

2.1. The strike on TV Avala, that had started back on December 22 last year, was put to an end by a decision of the employees two months later. The strike was held in protest against unpaid salaries to employees and outsourcers, who were owed four and a half and five salaries, respectively. After making several payments in the course of the strike itself, the employers still owe another two salaries. During the strike, all dues to the regulatory agencies (RBA and RATEL) were also paid. The strike on TV Avala was the first one in a commercial national television station in Serbia. There are no instructions or guidelines whatsoever in Broadcasting Law or the bylaws of the RBA as to how to organize and conduct a strike on a television station, what are the obligations of the employees as to maintaining minimum operations or the rights of the employer in that respect. The Strike Law stipulates the Lawivity of employers in the field of public information, particularly radio and television, to be Lawivities of public interest and that the employees carrying

out such Lawivities may start a strike only if they secure minimum operation. The strike on TV Avala ended, but it has remained unclear what constitutes “minimum operation” on a commercial national television station, what is the role of the regulatory agency in the case of a strike and how should the provisions of the Broadcasting Law about obligatory programming quotas be interpreted. The same is true of the requirements contained in the license on the programming concept of the TV station, which was definitely not respected for two full months.

Furthermore, it seems that the strike on TV Avala was a good opportunity to discuss many other issues concerning the enforcement of the Broadcasting Law. A topical issue in that respect is the criteria according to which the RBA issued broadcasting licenses to national broadcasters, as well as the meaningfulness of the issuance of the approval for the changes of ownership structure to broadcasters holding valid licenses. Unfortunately, the debate never took place. Namely, one of the requirements for the issuance of the licenses back at the time when TV Avala obtained its license – which requirement remains valid today – are the guarantees the applicants had to provide with their financial potential, namely that they will be able to realize the proposed programming and editorial concept. It remains unclear how the RBA assessed this requirement in the case of TV Avala and if it assessed it at all when the ownership structure of the station had subsequently changed. We remind that the largest single interest in Avala’s stock is held by the Austrian company Greenberg Invest GmbH. However, details concerning the financial, organizational or other potentials of the company remain unknown. The only available information in Serbia is that the owner is a certain Werner Johannes Kraus, attorney from Vienna. During the course of the strike, the Balkan Investigative Reporting Network BIRN released data from Greenberg Invest financial reports, which have shown the Austrian company to have had, in late 2009, less than 200 Euros of capital and almost 200 thousand Euros of debt. At the time when BIRN’s article was posted on the Internet, the company was yet to release its financial reports for 2011. Hence, it remains unclear what the RBA had assessed when it had allowed the Austrian company to buy 48.41% of the capital stock of TV Avala.

It remains to be seen if any lessons have been drawn from the strike. The first opportunity for that will be the tenders for national broadcasting licenses, scheduled in two years, or the next change of ownership structure of a national broadcaster.

2. On February 3, 2012, the RBA issued a broadcasting license to the cable television station Kopernikus 3 (Svet plus). The agency's decision caused a controversy due to media reports that certain members of the Main Board of the Serbian Progressive Party (SNS) and Zoran Basanovic in particular, had participated in the purchase of eight hours of air time on the said station a couple of months ago. Tanja Vidojevic, a member of the SNS Main Board, is an editor on TV Kopernikus 3. RBA's Supervision and Analytical Department has controlled the Lawivities of that station several times. According to the daily "Blic", the January report concluded that Kopernikus 3 was showing bias in favor of the SNS and waged a campaign against representatives of other political parties. Furthermore, the station was found to air content that takes advantage of the credulity of the viewers. One of the reports also said that the "news program is dominated by bias in favor of one political party and SNS coalition and discrediting of a leader of the other party and ruling coalition".

Cable broadcasting in Serbia remained unregulated for a long time. Until recently, the regulator issued no licenses for that type of broadcasting and failed to penalize unlicensed broadcasting, although it is obligated to do so under the Broadcasting Law. The latter prescribes that the broadcasting license may not be issued to a media established by a political party, organization or coalition, or a legal person established by a political party, organization or coalition. Kopernikus 3 (Svet plus), although not formally being owned by the SNS, was suspected of having leased up to a third of its air time to that party. It seems, however, that the problem with the said station lies in the expected violation of Article 68 of the Broadcasting Law, which provides for the obligation of all broadcast media to secure free, complete and timely information of citizens. The General Binding Instruction on the Conduct of Broadcasters – Broadcasters Code of Conduct adopted by the RBA back in 2007, expressly bans the property and programming affiliation of broadcasters to political parties, organizations or coalitions, or to legal person established by a political party, organization or coalition. That provision, however, came under fire as soon as the Code was adopted – it was perceived as unclear as to the meaning of the concept of "programming affiliation of a broadcaster to a political party" and the interpretation thereof. In the concrete case, the RBA said it would closely monitor the program of TV Kopernikus 3 and that the station would be penalized in the event of any violations of the Broadcasting Law or the Code. The RBA also said it was never in the position to deny the issuance of the license. Namely, as one of the requirements, the Rules on the Issuance of Licenses provides, the "conduct of the broadcaster in the previous period". However, it contains an additional criterion, according to which the above applies solely to applicants that are already broadcasting at the time when the public call is announced. Since in the concrete case the



license was issued at request and not on an open competition, it stems that, due to poorly written Rules (which have not been even published in the Official Gazette and they should have been), the Agency did not have the grounds to deny the issuance of licenses, even after it was established that the Broadcasting Law and the Code of Conduct had been repeatedly violated.