

IV MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. *Republic Broadcasting Agency (RBA)*

1.1 On Election Day (May 6), the RBA ordered cable operators in Serbia to stop airing the following channels, due to the violation of electoral silence: HRT 1, OBN and “Kopernikus 3 – Svet plus”, the B92 reported, citing the Beta and Tanjug news agencies. “Those stations’ programs were suspended on cable networks for they were airing such content that had violated electoral silence”, RBA Vice-President Goran Karadzic told Tanjug. He also said that the cable operators would be able to continue to air these programs at 8 PM, after the expiration of the period of electoral silence. The internet portal of the daily “Blic” reported that the RBA had – also due to electoral silence violation – temporarily suspended the program of Studio B, around 7.15 p.m.; BN television was reportedly also added to the list of stations the cable operators were ordered to switch-off. The same happened on Sunday May 20, on the day of the Presidential runoff, when the RBA Council announced that its experts had determined “Kopernikus 3 – Svet plus” to have repeatedly violated electoral silence. The Council instructed cable operators that the channels they were airing ought to be in compliance with regulations about electoral silence.

The Law on the Election of Members of Parliament stipulates that electoral advertizing through means of public information, as well as announcing any estimates as to the results, shall be prohibited 48 hours prior to election day, as well as on election day itself, until the closing of the polling places. This applies to presidential elections too, as well as to local elections. Compliance with electoral silence rules is also provided for by the Broadcasters’ Code of Conduct, as well as the General Binding Instruction to radio and television stations (broadcasters) in the electoral campaign for local, provincial and national parliamentary elections, presidential elections and elections for the Ethnic Minorities’ National Councils. It remains unclear, however, on what grounds the RBA had ordered cable operators to suspend the distribution of specific channels. The RBA is namely authorized, under the Broadcasting Law, to temporary revoke a broadcasting license. However, this measure was not passed in the concrete case (nor could it have been passed), for two reasons. First, this would involve the proper procedure, as well as the requirements provided for by Article 63 of the Broadcasting Law: among other things, that the broadcaster in question, in spite of a warning, has continued with non-compliance with the

Broadcasting Law or regulations passed on the basis thereof; or has failed to comply with the requirements contained in the broadcasting license; or has failed to adhere to the measures for remedying the violations established by the Council in the said warning. Secondly, the RBA Council ordered the switching-off of channels that were not distributed in Serbia on the basis of licenses issued by the RBA – the terrestrial channels from neighboring countries (HRT from Croatia and OBN and BN from Bosnia-Herzegovina). The rebroadcasting of those channels in Serbia is regulated by the ratified European Convention on Cross-Border Television. The latter stipulates that signatory countries, including Serbia, must ensure freedom of expression and information under Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms; they must guarantee freedom of reception of the signal and refrain from restricting the rebroadcasting of programming services on their territory that are in compliance with the provisions of the said Convention. The latter provides for the possibility to temporarily suspend rebroadcasting, but only in cases of prolonged violation of the Convention in an extended period of time, after having sent a notice to the state that is the source of the program in question. As for cable operators, they operate under the regime of the general authorization, in accordance with the provisions of the Law on Electronic Communications and the Rules on the General Requirements for Performing the Activity of Electronic Communication Under the Regime of the General Authorization. These regulations do not foresee the possibility to issue an order to broadcasters to switch-off a specific channel. The violation of electoral silence also stops short of meeting the requirements for the prohibition of distribution provided for by Article 17 of the Broadcasting Law. The prohibition of distribution may namely be ordered only if it is necessary in a democratic society in order to prevent: calling for violent insurrection against the constitutional order; undermining the territorial integrity of the Republic; propagating war; inciting direct violence or advocating racial, ethnic or religious hatred that constitutes inciting discrimination, hostility or violence and if the released information directly threatens to cause serious, irreversible consequences that may not be averted in some other way. However, even in such a case, the decision to ban distribution may be passed only by a court of law and solely at the proposal of the public prosecutor.

3. *The Press Council*

The Press Council's Commission for Complaints rejected the complaint of Ksenija Radulovic, the Programming Director of the Sterijino pozorje theatre festival, filed over the text "Molière – a Writer of Love Vices", published on May 18 in "Vecernje novosti". The Commission found that the daily had not violated the Journalists' Code of Conduct with its text. The plaintiff, Ms. Radulovic, believed that the controversial text (an interview of theatre director Egon Savic to "Novosti" journalist Vukica Strugar) had violated the provisions of the aforementioned Code

concerning the authenticity of reporting and journalists' caution, as well as that it has "placed slander in the form of a question". In its decision rejecting the complaint, the Commission nonetheless expressed its concern over the observed tendency of "Novosti", in its texts about Sterijino pozorje, not to hear the other side, as well as the unwillingness of its editors to enable different opinions to be heard.

The point of contention was the following question posed to Egon Savin: "Your play "The Well" made it in the official selection of this year's Sterijino pozorje, the once-illustrious festival, whose selection is seldom mentioned, as if everyone have given up on it?" The members of the Complaints Commission were of the opinion that in interviewing Savin, the journalist had expressed her value judgment and not a fact. We are citing this decision (by the Complaints Commission) in the Report precisely, due to the ever-topical question of value judgments vs. factual judgments. The erroneous qualification of value judgments as factual ones seems to happen too often in the decisions of Serbia courts. Hence, the decision of the Complaints Commission is at a higher level than the average court decision. One can only lament, however, at a shortcoming in the Commission's decisions we have already reported about – they are typically very scarcely explained. Well-thought out and well-explained decisions of the Commission could become a model and guidance for the courts and have a positive influence on them in media-related disputes. This is something the Commission should explore.

STATE AUTHORITIES

3. *The Ministry of culture, media and information society*

In a joint press release issued on May 4, the Journalists' Association of Serbia, the Independent Journalists' Association of Serbia, ANEM and Local Press asked the Ministry of Culture, Media and Information Society about the outcome of open competitions for the co-financing of media projects in 2012. Namely, five open competitions for the co-financing of projects – public information related programs; programs in the field of public information on ethnic minority languages; programs related to broadcast public media seated in Kosovo and Metohija; programs related to the provision of information to disabled persons and programs related to public information of Serbs in countries of the region – were called back on November 1, 2011, while the deadline for submitting applications expired on December 1, 2011. According to unofficial information, the commissions, whose members' list was not posted on the website of the Ministry, had finished their work back in March and the decisions were waiting for the signature of the Minister to be released. The Ministry of Culture, Media and Information Society

has to date failed to provide any explanation whatsoever as to why these decision are still not passed.

Only after the issuance of the joint press release by media and journalists' associations, on May 8, the Ministry passed and published the decision on the allocation of funds resulting from the competitions for the co-financing of media projects – programs related to electronic media seated on Kosovo and Metohija; programs related to the provision of information to disabled persons and programs related to public information of Serbs in countries of the region. For the remaining two competitions (public information related programs; and programs in the field of public information on ethnic minority languages), the decisions on the allocation of funds were passed on May 15 and posted on the Ministry's website on May 18, only to be withdrawn two hours later, without any explanation whatsoever. By the time this Report was completed, the decisions were not released again, which raises serious doubts as to the regularity of the competitions. Moreover, the grave delay in releasing the results and consequentially in entering into the related agreements and allocating the funds, seriously threatens the realization of the proposed projects. Amid the crisis engulfing the Serbian media landscape, funds are extremely important for the survival of some local media.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *Serbian music authors' organization – Sokoj*

On May 31, the Slovenian capital Ljubljana hosted the regional meeting of organizations for the collective protection of music authors' rights. In addition to the organizers from the Slovenian SAZAS, attending were the Croatian HDS-ZAMP, the Bosnian "Sine Qua Non", the Montenegrin PAM, Macedonian ZAMP and Sokoj. As SAZAS announced in a press release, the meeting had resulted in an agreement on joint actions in the entire region, with the aim of improving copyright protection. In its own press release, Sokoj said the participants had also discussed the current situation in the region with respect to copyright protection, as well as about the many difficulties faced by the respective organizations. The topics also included the problems related to the non-payment of copyright fees by the users, the issue of amendments to the law and sanctions for non-compliance. The participants agreed to make regional comparative presentations of tariffs, memberships and management and highlighted the need for promotional activities with authors, the media, customs administrations and interior ministries.



According to the Law on Serbian Copyright and Related Rights, tariffs will be set by factoring in the tariffs of collective organizations in states with a comparable gross domestic product (GDP) to that of Serbia. In that sense, the announced comparative presentation of tariffs is good news, even if not all the countries in the region have comparable GDPs. This first comparison should merely be the first step in comparing tariffs in a larger number of states. The existence of comparative tariffs may only help to settle potential tariff disputes in the future, by providing exact data and avoid the tariffs to be based on some vague categories (as it is currently the case) such as “mainly generally accepted standards”, invoked by the Serbian Commission for Copyright and Related Rights in the tariff dispute between Sokoje and ANEM, as the representative association of broadcasters, in December last year.