

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 on in the section concerning freedom of expression.

1.2. Milan Popovic, the President of the Municipality of Zvezdara, refused to communicate with the reporters of the daily “Pravda”, who wanted to interview him for their New Year edition, just like they interviewed other presidents of Belgrade municipalities. They wanted to ask Popovic about what he considered the most important achievement on the territory of his municipality, if the life of its inhabitants had been improved and how and what the plans were for 2012. “Pravda” claimed that Petrovic had already been arrogant towards their reporters, refusing to provide the requested information from his area of competence.

Under the Public Information Law, state bodies and organizations, territorial autonomy and local self-government bodies, public agencies and public companies, as well as members of parliament and councilors, are required to make information concerning their work available to the public, under equal conditions for all journalists and all media. Unfortunately, in reality this obligation is often shunned and journalists and media are often discriminated against. The Ombudsman Sasa Jankovic rightfully concluded, in a statement conveyed by “Pravda”, that media must not be discriminated against and that “a person is allowed not to give a statement or an interview if they do not want to”, but it does not mean it may withhold a piece of information that is relevant for citizens.

1.3. Vukasin Obradovic, the President of NUNS, told the “Politika” daily that certain print media in Serbia had violated both the Public Information Law and the Journalist Code of Ethics by reporting about the family tragedy in the municipality of Zvezdara in Belgrade, involving parents with their three-year old child jumping from the sixth floor of a military-owned hotel where they were living. The parents were killed, while the child suffered serious injuries. On their front pages, the newspapers have published the photographs of the child along with its full name and surname, coupled with sensationalist headlines. Obradovic called the family or future caretakers of the child to lodge a complaint against certain newspapers to the Complaints Commission of the Press Council, which will determine if the aforementioned Code of Ethics has been violated. Tamara Luksic-Orlandic, Deputy

Ombudsman in charge of children's rights protection, called on the media to show greater consideration for the actors of certain tragic events. The Ministry of Culture, Media and Information Society announced they would press misdemeanor charges against all media that had endangered the rights of juvenile persons with their reporting. "We are all appalled at the reporting of certain media. On one hand, the journalists complain of not having enough freedom, but at the other hand they refuse to consider how much freedom they take for themselves while compromising the future of a child," State Secretary in the Ministry of Culture, Media and Information Society Dragana Milicevic Milutinovic told the daily "Politika".

Article 41, paragraph 3 of the Public Information Law stipulates that a juvenile person must not be made recognizable in a piece of information that may hurt that person's right or interest. Furthermore, the Code of Ethics of Serbian journalists says that a journalist must ensure that a child is not endangered or put at risk due to the publishing of its name, photograph or footage with its face, house, community where it lives or recognizable surroundings. The most outrageous thing in such cases is the fact, pointed to by the NUNS President, that even the media that are considered serious resort to cheap sensationalism in order to attract readers, without considering the consequences of their actions. If, as announced by the Ministry of Culture, Media and Information Society, misdemeanor charges are filed against persons that have violated the rights of juveniles not to be made recognizable in a piece of information that may hurt their rights or interests, these persons shall be subject to fines ranging from 30 thousand to 200 thousand dinars, as provided for by the Public Information Law in the section concerning fines for responsible editors.

2. Broadcasting Law

2.1. On December 22 at 9 AM, the employees of TV Avala have interrupted regular broadcasting. The reason for going on strike are unpaid salaries, the press release of the employees said. On the eve of the strike, the employees were paid the first part of the July salary, while part-time workers received their wage for the month of June. This means they are owed four and a half and five salaries respectively, the press release added. The employees claim that they attempted several times to reach an agreement with the management as to the manner of remedying such state of affairs. However, they say, the management has until now failed to respect the deals reached. They claim the strike began on the day that was determined as the day when the outstanding salaries would be paid. The management of the station issued a press release saying that they would not air live programs anymore due to the decision of the employees to go on strike. "The irony is that this is

happening in the year when TV Avala has posted the best business results since it was founded, thereby strengthening its reputation with the viewers. The business plan tabled to the management of TV Avala by the managing board has been already exceeded in November”, the press release noted. “However, the excellent business results, stemming from the efforts of both the management and all employees, are insufficient to cover the losses created in the previous years. That is why this was the moment when the owners had to make a business decision about the functioning of the station”, the management said. The press release added that both the owners and the managing board had been informed of the situation in detail and hence it was expected that they would quickly come to a solution. A week later, however, employee representatives said that, at a meeting attended by the members of the managing board Danko Djunic, Dusan Pancic, Bojana Lekic and Zeljko Mitrovic, the owners and the managing board of the company had offered them to pay one salary no later than by January 10 and another one by the end of January. The employees decided to continue with the strike.

The strike on TV Avala is the first strike in a commercial national television station in Serbia. There are no instructions whatsoever in the Broadcasting Law or bylaws of the RBA as to how to organize and manage a strike on a TV station, what are the obligations of the employees related to maintaining minimum operation or the rights of the employer in that situation. The Law on Strike namely provides that the activity carried out by the employer in the field of information, and particularly information via radio and television, represents an activity of public interest. Hence, the Law says, the employees performing such activity may go on strike only if minimum operation of the station is secured. According to the Law on Strike, minimum operation is a category to be determined by the Manager, depending on the nature of the activity, circumstances relevant for realizing the rights of citizens, companies and other entities, with the obligation to take into consideration the opinion, objections and proposals of the trade unions. If minimum operation is not determined, the measures and manner of fulfilling the conditions for a strike on radio or television should be determined by the competent state authority, in this case the RBA. The impression is, however, that the Law on Strike – which was adopted back in 1996 and which has in the meantime undergone only changes as to the amount of the prescribed fines for misdemeanors and economic offenses – is pretty much anachronous. The first question that comes to mind is why would, for the purposes of the Law on Strike, the activity of commercial radio or TV stations represent an activity of public interest in the present situation where there are two public service broadcasters and five commercial networks at the national level. Relative to minimum operation, the RBA unofficially said that they did not see a problem in adapting the programming schedule to the needs of the strike, especially having in mind the fact that programming quotas introduced by the Broadcasting Law (e.g. the quotas of Serbian

language content or own production quotas) are already measured at the annual level and hence in the event of a not too long a strike, it would be such a problem to meet these quotas. However, the strike on TV Avala raises many other questions pertaining to the application of the Broadcasting Law, first of all to the criteria under which the RBA has issued broadcasting licenses to national broadcasters, as well as to the rationale for the issuance of the approval for changes to the ownership structure to broadcasters possessing valid licenses. Namely, according to the Rules on the Issuance of Broadcasting Licenses, adopted by the RBA back in 2006, the applicant on an open competition had to guarantee with his financial potential that he will be able to realize the proposed programming and editorial concept. Furthermore, the same rules provide that the applicant must identify the owners of the founding capital, support the ownership structure with the proper documentation and make available information about the sources of financing of the radio and/or TV station. The question arises how has the RBA weighed these criteria, not only at the moment of issuing a broadcasting license, but also if it has weighed them at all at the time of issuing of the approval for the change to the ownership structure of TV Avala. In the case of that TV station, the said structure changed dramatically compared to the moment when it was issued a broadcasting license in 2006, which is not the case only with TV Avala. We remind that the largest single share in the property of TV Avala belongs to the Austrian company “Greenberg Invest” GmbH. Save for the fact that it is owned by a certain Werner Johannes Kraus, an attorney at law from Vienna, the details about the financial, organizational or any other potentials of the said company remain unknown, at least in Serbia. Article 103 of the Broadcasting Law stipulates that a broadcaster must report any change to the ownership structure to the RBA in writing and in advance and that the RBA will determine whether such change brings about unlawful concentration of media ownership. The RBA is doing that in practice. Hence, Zeljko Mitrovic, the owner of Pink television, has been participating in the ownership of TV Avala with 4.95% of the shares, bearing in mind that the Broadcasting Law provides for 5% to be the limit up to which the owner of a national media may participate in the ownership of another national media. However, it is often forgotten, and even worse, the RBA seems to have forgotten, about Article 41 of the Broadcasting Law when it allowed the change of ownership structure by which Greenberg Invest GmbH bought a stake in TV Avala. Article 41 namely provides that, in addition to avoiding unlawful media concentration, the pre-approval of the RBA for the change to the ownership structure of a broadcaster serves the purpose of controlling the structure and origin of capital of the license holder. Had the RBA applied this provision in relation to Article 18 of the Rules on the Issuance of Broadcasting Licenses, then “Greenberg Invest” GmbH would have probably been asked to disclose information about sources of financing, real value of the capital of the company, as an entity acquiring a major stake in the ownership structure of a national commercial media in Serbia. This would probably have averted the current situation where Werner Johannes Kraus, the

owner of “Greenberg Invest” GmbH, is according to Zeljko Mitrovic “already resigned with the fact that his investment is lost”. It remains to be seen how will the strike on TV Avala end up and what lessons will be drawn from it.

3. The Media Strategy

In several situations, during the period covered by this Report, one could have posed the question if and to what extent the state is implementing the Strategy for Public Information System Development in the Republic of Serbia adopted on September 28, 2011. The dilemmas described below, related to various issues, are also evidence of the necessity to start implementing that pivotal document as soon as possible.

3.1. On December 12, the Liberal Democratic Party (LDP) submitted a request to the Anti-Corruption Agency and the Prosecutor’s Office for investigation of the circumstances under which the owner of the daily Kurir had bought up shares of the company VAC in Politika, Novosti and Dnevnik from Novi Sad, LDP MP Zoran Ostojic said at a press conference in the House of the Parliament. He said Kurir’s owner had bought VAC’s shares in these media companies with the money obtained from the government’s fund for helping media during the crisis, by which “the state is trying to put the media under control” on the eve of the elections. Ostojic added that, if the competent authorities failed to investigate this case, “it will become clear that we don’t have independent institutions in this country”. In response to Ostojic’s allegations, the Ministry of Culture, Media and Information Society said, as reported by Danas, that the newspaper Kurir did not receive any money from that Ministry’s media funds in the last three years, namely in 2009, 2010 and 2011. According to Ostojic, the framework agreement with VAC about the taking over of their stake in the aforementioned media companies was signed in Dusseldorf on November 10 and the multimillion deal of taking over the proprietary interest in Politika, Vecernje Novosti and Dnevnik should have been realized by December 22. Ostojic said that the intent was that the shares be purchased by a consortium of domestic companies controlled by the Democratic Party (DS). He accused the government of wanting to seize control of Politika via their man in “Kurir”, Mr. Bjelopetrovic. DS Vice-President Jelena Trivan told the daily Danas that the purchases and claims of proprietary interests between companies had nothing to do with the DS, neither in the case of Kurir nor that of any other company and hence the DS did not want to participate in the row about a topic it had nothing to do with, in which the name of that political party was being misused. The Director of Kurir Nebojsa Rosic said in the talk show “Izmedju dve vatre” (Crossfire) on TV B92 that his newspaper was indeed interested in acquiring part of the proprietary interest in Politika, Vecernje Novosti and Dnevnik, in order to “prevent a

publisher from Sarajevo, connected to drug cartels, to seize control of Politika. Rosic also said there was no agreement or deal made about the takeover, but that negotiations had indeed been conducted. The Chairwoman of the Managing Board of “Politika AD” Sonja Liht told TV B92 that her company had never been offered to purchase VAC’s stake in “Politika’s newspapers and magazines”, reminding that “Politika may not be sold before being offered to the co-proprietor first, which holds the right of first purchase”.

We remind that VAC is the co-proprietor of Politika and Dnevnik together with the state. Due to the impossibility to acquire a stake in Vecernje Novosti, after having financed the purchase of the proprietary interest in that newspaper, VAC announced it was going to withdraw from Serbia a year and a half ago. By passing the Media Strategy, the state committed to ensure transparency of ownership in public media and prevent excessive concentration of media ownership, which may be instrumental in gaining a predominant influence on the public opinion. In the Media Strategy, the state also committed not to be the owner of public media anymore. At the present time, however, it holds a major stake both in Politika and Vecernje Novosti, as well as in Dnevnik. Furthermore, if it is established that the state indeed has, with budget money from funds for assisting media during the financial downturn, helped a private newspaper to acquire the shares of other media, it may be rightfully asked whether such measure is sustainable from the aspect of state aid control regulations. The dilemmas that emerged after the allegations, voiced by the LDP, have demonstrated the need for the state to promptly start implementing the Media Strategy and to translate the commitments contained therein into concrete regulations. It is clear that Serbia cannot afford to wait for 18 months for its government to harmonize regulations on unlawful concentration of media ownership and transparency of such ownership with the rules of the EU – the 1.5 year deadline is provided for by the Action Plan accompanying the Media Strategy. Serbia also cannot afford to spend the next 24 months determining the legal grounds for the withdrawal of the state from the ownership in all public media, since these legal grounds already exist both in the Public Information Law and in the regulations governing privatization. An additional concern is the fact that the Ministry of Culture, Media and Information Society is yet to announce the start of any activities pertaining to the realization of the commitments assumed in the Media Strategy.

3.2. On the conference “The year behind us – used or missed opportunity for the media sector?” held on December 21, the representatives of journalists’ and media associations said it was possible that the state was not planning at all on suspending direct budget financing of the media in 2012 and that the Serbian taxpayers would be allotting a million Euros daily for the media, the main recipient being the state news agency Tanjug. Nonetheless, the state committed in the Media Strategy it would start enforcing state aid regulations as of January

1, 2012, in accordance with the Stabilization and Association Agreement (SAA) with the EU and the Interim Trade Agreement (ITA). Journalists' and media associations believe that the 2012 budget has earmarked 368 million Euros for the Tanjug news agency, Panorama, Jugoslovenski pregled (Yugoslav Review) and Medjunarodni radio Srbija (International Radio Serbia), in contravention of the Media Strategy and the aforementioned Interim Trade Agreement with the EU.

We remind that, in Article 73 of the SAA and Article 38 of ITA, Serbia committed to harmonize its regulations pertaining to state aid control with that of the EU, namely to apply the rules enforced in the EU. Article 39 of ITA also stipulates that, after the expiry of the 3-year period after ITA comes into force, Serbia will apply these rules to public companies and companies that have been awarded special rights set forth in the EU Founding Treaty, with a special reference to Article 86 (Now Article 106 of the Treaty about the functioning of the EU). The aforementioned Article 106 stipulates that, relative to public companies and companies that have been awarded special rights, no new measures will be introduced and old measures will not be maintained, which would be contrary to the principles of non-discrimination, protection of competition and state aid control set forth by that Treaty. Since Serbia has been enforcing the ITA since January 1, 2009, it means that the three-year period for starting to enforce the Law on State Aid Control with respect to public companies will expire on January 1, 2012. This is extremely important due to the fact that there are still many public media companies in Serbia financed from public revenues, which gives them the edge on the market over privately-owned competitors, thus undermining competition. This is particularly notable in respect of the state ownership of the Tanjug news agency, which is directly financed from the budget and thus holds a more favorable position on the market than its competitors, the private news agencies Beta and Fonet. A test of the readiness of the state to implement the Media Strategy will be its adherence or non-adherence to the deadlines from the Action Plan, which pertain to the enforcement of the regulations on state aid control, since these deadlines are the shortest. The adopted budget for 2012 unfortunately points to the incapacity/unwillingness of the state to pass that test.