

## II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

### 1. Law on Public Information

1.1. Implementation of the Law on Public Information was partly discussed in the section on freedom of expression.

1.2. German company WAZ decided to withdraw from Serbia and start selling their stake in “Politika” and “Dnevnik”. As stated in the press release published on June 15, WAZ President Bodo Hombach asked Serbian President Boris Tadic in a confidential letter to help their exit be fair and in compliance with law. According to the press release, Hombach described in the letter what WAZ had been through as an investor in Serbia. WAZ holds 50% of ownership in “Politika novine i magazini”, the company publishing the “Politika” daily; it is also the majority owner of the Novi Sad “Dnevnik” daily and the sole owner of “Stampa sistem”, a press distribution company. Supposedly, the reasons for their withdrawal are the obstacles which they encountered when attempting to take over “Novosti”. Economists and experts for foreign investments in Serbia did not want to comment on the WAZ announcement, but they agreed that withdrawal of this media organization would affect future foreign investments, particularly the ones from Germany. The European Parliament rapporteur for Serbia Jelko Kacin said yesterday that the announced withdrawal of the WAZ media group from Serbia “is not good news for freedom of media in Serbia, or for attraction of foreign investments in Serbia“. Kacin recalled that freedom of media and functional market economy, which implied equal treatment of domestic and foreign investors, and rule of law, were among the most important requirements for progress of Serbia towards joining the EU. On the other hand, Nebojsa Bradic, Serbian Minister of Culture, believes that the reasons for the announced withdrawal of WAZ are exclusively of economic nature and that their withdrawal is not expected to cause any significant turbulence on the Serbian media scene.

In the recent period, information about the controversial takeover of “Novosti”, in which WAZ was one of the involved parties, was made publicly available by different sources. Controversies with regard to this takeover are now being linked with the WAZ announcement to withdraw from Serbia. Namely, Stanko Subotic Cane, Serbian businessman living in Switzerland, indicted in Serbia for abuse of office as a result of the police action “Mreza” – investigation of cigarette trafficking schemes, claims that in 2005 WAZ were already prevented in their attempts to take over “Novosti” directly. WAZ confirmed that they had used their own funds to finance the 2006 takeover of “Novosti” by Ardos Holding GmbH,

Trimex Investments GmbH, and Karamat Ltd. These companies are now being linked to the Serbian businessman Milan Beko. Stanko Subotic Cane claims that, with his own bank guarantees, he guaranteed that Ardos Holding GmbH, Trimex Investments GmbH and Karamat Ltd would eventually transfer the majority package of shares in “Novosti” to WAZ, but this has not happened yet. On June 23, WAZ stated that they had taken over Ardos Holding GmbH and that the takeover was only a mechanism which WAZ intended to use to sell their stake in Novosti within their announced withdrawal from the Serbian market. On the same day, June 23, Ivica Dacic, Serbian Minister of the Interior, said that the police, acting upon order from the prosecutors’ office, instigated an investigation with regard to the privatization of “Novosti”. Although this announced investigation is yet to discover what is really behind the takeover of “Novosti”, it is indisputable that this case has made obvious the extent to which media ownership in Serbia is non-transparent, and the business environment in which the market is being abandoned even by large European media companies with extensive experience in doing business in transitional democracies. The case of “Novosti” has also shown that the 2009 Amendments to the Law on Public Information, which introduced a media register in Serbia, have also failed to ensure any progress with regard to transparency of media ownership.

## **2. Broadcasting Law**

2.1. In this Report, implementation of the Broadcasting Law will be partly discussed in the section addressing the matters of monitoring of the work of the competent regulatory body, the Republic Broadcasting Agency.

2.2. On June 2, 2010, the RTS program “Da, mozda, ne“ (Yes, Maybe, No) of the author Olivera Kovacevic, in which the “Satellite” scandal was to be discussed, was cancelled only a few minutes before its recording was to start. The official explanation was that the RTS legal team did not allow indicted Prvoslav Davinic to appear in the program. Olivera Kovacevic claimed that it was not before around 6.30 p.m. that she learnt about the cancelation. “This program is recorded between 8.15 p.m. and 9.30 p.m., and then broadcast half an hour later. About 6.30 p.m., I was informed by the Head of the RTS Legal Department Stanislav Veljkovic that it was decided that a person an indictment was issued against should not appear as a guest of the Public Service Broadcaster. We were not aware that having him as a guest could result in any legal consequences for RTS. My team had invited the representatives of the Prosecutors’ Office to be the guests in the program too, but they rejected the invitation. I have been doing the “Da, mozda, ne” program for two years already, and this is the first time that something like this has happened,” Kovacevic said. Besides

Davinic, his lawyer Dragan Pasic, former Minister of Defense Zoran Stankovic and former Director of Military-Information Agency Branislav Anocic were also announced as the guests of the program.

The prohibition of interviewing indicted persons during the course of criminal proceedings is not envisaged by the Criminal Code or the Law on Criminal Proceedings, or the Law on Public Information. Quite on the contrary, these regulations insist on observance of presumption of innocence. The Broadcasters' Code of Conduct ("Official Gazette of the RS", No. 63/2007) passed by the Republic Broadcasting Agency pursuant to the provision of Article 8 and Article 12 of the Broadcasting Law, also fails to provides grounds for the RTS legal team opposing the appearance of indicted persons in the program. Namely, in the part addressing reporting on investigations, the Code envisages that the broadcasters shall not in any way whatsoever impede the investigation while it is still in progress and shall not interview the perpetrators while the investigation is still in progress. The investigation against Davinic, however, was completed and an indictment was issued. Also, let's take note that back in the beginning of 2008, Belgrade Centre for Human Rights filed an initiative for assessment of constitutionality of the Broadcasters' Code of Conduct, for the reasons including the instructions for reporting on investigations. It is not known whether the Constitutional Court stated its opinion with regard to this issue. It could be that the RTS legal team is concerned about the criminal offense of prohibition to comment on court proceedings, introduced into the Criminal Code by the 2009 amendments. Namely, Article 336a of the Code envisages that anyone who gives public statements in media while court proceedings are in progress and before a final and enforceable decision is made, with the intention to infringe presumption of innocence or independence of court, will be punished a fine or a prison sentence of up to six months of imprisonment. If the concern of the RTS legal team that the violation of the above provision of the Criminal Code could occur, namely that Davinic or his lawyer could abuse their appearance in the program so as to influence the judiciary independence was the real reason for canceling of the program, this could be a signal that the RTS management harbors serious distrust in their authors' and journalists' capabilities to manage the course of the programs they host, and the evidence of increased self-censorship in the programs of the public service broadcaster.

### **3. Law on Local Self-Government**

3.1. In the beginning of this month, Velimir Stanojevic, Mayor of Cacak, signed contracts on "information of local importance" with the directors of five media outlets established in this town. The total of one million dinars is to be distributed among the editorial boards of

these media every month. “In this year’s city budget, ten million dinars is allocated for information, and it is our primary duty to allocate these funds for the purpose of providing timely information on all local developments to citizens. Besides, I believe that these contracts will have a positive effect on the financial conditions of Cacak journalists, whose professional standards were never under a question mark”, said Mayor Stanojevic for the “Politika”.

The “Politika” reports that this is a new redistribution of the “information dinar” in this town, considering that until the end of the previous year these budget funds mostly ended up with the editorial staff under the auspices of “Cacanski glas”, founded by the Town. Since December, however, all Cacak media are privately owned. The contract with regional TV Cacak provided for allocation of 350.000 dinars a month, with the obligation to produce and broadcast the planned number of items of daily programs and one-hour program entitled “TV parliament” every week. Local RTV Galaksija 32 is to be allocated 200.000 dinars a month. The “CA-video” production concluded a contract at the amount of 128.000 dinars, while Radio Cacak was allocated 80.000 dinars. “Cacanski glas” was allocated 95.000 dinars a month. Media organizations are obliged to inform the citizens “truthfully, objectively, fully and in a timely manner, in accordance with law, rules of the profession and ethics in journalism”; they are also required to attach to their invoices a stamped and signed overview of the program broadcast and texts published. Within this week, the registry office of the Cacak Town Administration received bids from Radio Ozon and “Cacanske novine” the decision on which Mayor Stanojevic will pass at a later time. Since the Law on Public Procurement was not applied with regard to these contracts, a call for submission of proposals was never published and the proposals were submitted based on an internal call made to the editorial boards established in Cacak. Live coverage of the meetings of the Town Assembly is paid from that same item of the town budget. By the decision of the Assembly, this job was entrusted to Radio Cacak, at the price of 68.000 dinars for a day of TV coverage.

The Law on Local Self-Government provides that municipalities and towns are responsible for taking care of public information of local interest and creating conditions for public information in Serbian language and languages of national minorities used in the territory of the Municipality. The Law, however, does not define the way in which these funds are to be allocated and, accordingly, relevant practices vary among different local self-governments. Local self-governments therefore decide, at their sole discretion, whether they will apply a call for proposals, procedure for public procurement of services, or direct negotiation process with a particular media; sometimes they opt for a combination of these models. In the Cacak case, as well as in similar practices observed in some other municipalities, the issue of criteria according to which local authorities will evaluate whether the media informs the citizens

“truthfully, objectively, fully and timely, in accordance with the law, rules of the profession and ethics in journalism“ is a major factor of concern. While a uniform solution is being found for this financing, as well as the mode which will provide for protection against abuse aimed at gaining unlawful influence on reporting about functioning of local authorities, the concern remains whether, particularly at the times of crisis, establishment of conditions for and taking care of public information of local interest is turning into a new media control mechanism of local authorities. And it is in this context that it is especially good to hear that the ministries for culture and for public administration and local self-government have supported the initiative of three media associations to make recommendations about the manner of and criteria for distribution of funds from local budgets to local media. Namely, it was announced that the Independent Association of the Journalists of Serbia, Association of Independent Electronic Media, and “Local press“ would as soon as possible develop recommendations with criteria for distribution of funds, which would be then forwarded to local self-governments by the two above mentioned ministries and the Standing Conference of Towns and Municipalities.

#### **4. Law on Free Access to the Information of Public Importance**

On June 29, 2010, the Commissioner for Information of Public Importance and Personal Data Protection organized an international conference “Freedom of Access to Information and Position of Whistleblowers” with over 50 participants. The motive for organizing this conference was the Resolution of the Council of Europe Parliamentary Assembly on the protection of whistleblowers that was adopted in April 2010. The Resolution established standards for protection of whistleblowers and envisaged other measures intended for protection of persons who disclosed information in the public interest.

Notably, with the Amendments to the Law on Free Access to the Information of Public Importance from December 2009, the provisions on releasing the persons who made particular information publicly available from liability were for the first time adopted in Serbia. Unfortunately, these provisions do not present adequate and essential protection of whistleblowers, considering that protection pertains to disclosure of the information which, in accordance with general principles of right to free access to information, is already publicly available. Also, these provisions do not ensure comprehensive protection of whistleblowers since they concern only the persons employed with public authorities and not the persons employed in the private sector. The conclusion of the conference was that, in order to establish a legal system for protection of right to access to information, it was necessary to

have efficient protection of whistleblowers, provided by law and that whistleblowers ought to be protected against all forms of retaliation.