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. We have tackled the activities of the RBA in the segment of this Report concerning the implementation of the Broadcasting Law.

1.2. The RBA Council has completed the procedure for awarding one regional license for television, for the area of Zajecar, Negotin and Zagubica, two regional licenses for radio in Belgrade, as well as three local licenses for television – in Negotin, Krusevac and in Partizanske vode, as well as seven local licenses for radio: in Lazarevac, Jagodina, Razanj, Smederevska Palanka, Kostolac, Sremski Karlovci and Kula. On March 11, the RBA released a list of persons that had been issued (for the aforementioned areas) a license. Under the Broadcasting Law, the license is issued for a period of 8 years. Among those that have received the broadcasting license is TV Cajetina, whose founder (according to what is stated on the list of persons that are issued a broadcasting license posted on the RBA website) is the Cultural and Sports Center Cajetina, which has been issued the license for broadcasting TV program in the local area (Broadcasting Area L104 – Partizanske vode).

The decision of the RBA to award the license to the Cultural and Sports Center Cajetina immediately strikes as problematic. Firstly, the legal form of the founder of the station (Cultural and Sports Center Cajetina) may not be discerned by reading the list of persons that were issued a broadcasting license posted on the RBA website. On the Cajetina Municipality website, the Cultural and Sports Center Cajetina is listed among municipal public companies. In the Serbian Business Registers Agency's company register, however, there is no public company registered under that name. That register, however, does include a Public Information Company RTV Cajetina, which is claimed to be in liquidation. If we assume that the Cultural and Sports Center Cajetina is an institution, it is most probably an institution formed by the local government. We remind that, under the Public Information Law, the founder of a public media may not be, either directly or indirectly, the state and territorial autonomy, or an institution, company or other legal person predominantly owned by the state, or predominantly or completely funded from

public revenues, unless provided for by a special law governing the field of broadcasting. The mere fact that a state-owned institution has established a media is, hence, in contravention of the Law. Even under the Law on Local Self-Government (which says that the municipality takes care of information of local relevance and ensures the conditions for provision of public information in the Serbian language and ethnic minority languages used on the territory of the municipality and establishes TV and radio stations for the purpose of reporting in the language of ethnic minorities that is officially used in that municipality, as well as for the purpose of reporting in the language of ethnic minorities that is not in official use, when such reporting constitutes the attained level of minority rights), the question is which minority language in the Cajetina municipality could constitute an attained level of minority rights. Namely, according to the results of the census from 2011, the population of Cajetina is ethnically homogenous, with about 98% of Serbs. Cajetina is also the home of two Bosniaks, two Bunjevci, six Gorani, five Yugoslavs, six Hungarians, seven Macedonians, one Roma, one Russian, one Slovak, one Slovenian, 13 Croats and 36 Montenegrins. The question is relative to which of these minorities the TV broadcasting in Cajetina could constitute an attained level of minority rights. Meanwhile, both the Strategy and the Draft Law on Public Information and Media firmly stipulate that the state will withdraw from media ownership. What was then the strategic reason for the RBA to issue a broadcasting license to a state-owned TV station in Cajetina? It is also unclear how did the Cultural and Sports Center Cajetina, namely its founder – the Municipality of Cajetina – prove its potential to realize the program it presented at the open competition, since the public company of the same founder, RTV Cajetina, is under liquidation proceedings.

2. Republic Agency for Electronic Communications (RATEL)

In late March, the Republic Electronic Communications Agency (RATEL) announced that it had paid, in accordance with the provisions of Articles 19 and 20 of the Law on Cinematography, the amount of 40.484.363,72 RSD to the bank account of the Film Center of Serbia. These funds are designated for boosting the national film industry, while the amount paid constitutes 10% of the revenues RATEL generated in the period between July 3 and December 31, 2012, in the manner prescribed by the Law on Electronic Communications.

By paying more than 300 thousand Euros to the Film Center of Serbia, RATEL fulfilled its statutory obligation that was imposed by the controversial Law on Cinematography in 2012. Article 19 of the Law foresees the obligation to channel part of the revenues of the RBA, RATEL and RTS to the Film Center of Serbia. These provisions are controversial, since they are contrary to the allocation of funds that are collected by independent regulatory bodies under the Law on

Electronic Communications and the Broadcasting Law. This has undermined, like many times before, the principle of the uniformity of the legal system, thus placing independent regulatory bodies in a tight spot. We remind that the European Commission Report on Serbia's progress in 2012 said that, "the adoption of the Law on Cinematography, envisaging 10% of the revenues of RATEL being transferred to designated accounts intended for the development of the film industry, has restricted the independence of the regulatory body". Moreover, almost one year after the adoption of the aforementioned Law, the connection between the development of the national film industry and the revenues charged by independent regulatory bodies to electronic communications operators and broadcasters remains unclear. The concept of shifting the burden of developing the film industry on telecommunications operators is in direct contravention of the provision of the Law on Electronic Communications, saying that the complete additional revenues of RATEL will be channeled for the development of electronic communications and information society. Hence, we now have a paradox where Serbia relies on international assistance and loans for implementing the digital switchover, while at the same time channeling to the film industry the funds that, under Serbian legislation, could and should be used for that purpose.

3. The Press Council

Amendments to the Statute of the Press Council have introduced several novelties boosting self-regulation in the field of print, but also other media that accept the competence of this body. Primarily, the said amendments foresee the possibility for online media, as well as news agencies, to join the Council. In order for online media to become members of the Press Council, in addition to general requirements, they must fulfill two additional ones: to have a masthead, and a news team of at least three members and a responsible editor. The amendments have introduced the prerogative of the Press Council's Complaints Commission to give opinion on alleged violations of the Journalists' Code committed by the media that have not accepted the authority of the Council. In such cases, the opinion issued by the Commission will not be binding for such media, but will be released publicly, nonetheless.

The purpose of self-regulation is to have the proper mechanism that will effectively promote adherence to the highest ethical and professional standards in journalism. The amendments to the Statute of the Press Council have expanded the competences of this self-regulatory body. The voluntary character of the membership to the Press Council remains the fundamental principle. However, the newly introduced competence of the Complaints Commission to release opinions about violations of the Code by media, whose publishers are not members of that body, is a

major novelty that may increase the influence of the Council. During the public debate on the Draft Law on Public Information and Media, the Coalition, consisting of media and journalists' associations, proposed that one of the criteria for the allocation of funds through project financing should be adherence to professional and ethical standards, which is particularly evident in accepting the competence of self-regulatory bodies and respecting the decisions of the independent regulator in the case of electronic media. Although the proposal is yet to be accepted, it seems that the Press Council is not waiting for the legislators to recognize the importance of this body, but is rather opening up space for exercising greater influence on improving the situation on the media scene through the aforementioned Amendments to its Statute.

STATE AUTHORITIES

4. Commissioner for Information of Public Importance and Personal Data Protection

In its regular annual report, the Commissioner for Information of Public Importance and Personal Data Protection has revealed that the right to access to information of public importance in 2012 was used predominantly by individual citizens, citizens' associations, journalists and media representatives, trade unions, political parties, government authorities, lawyers, entrepreneurs and others. Journalists and the media are ranked third on that list, which points to the fact that this is a useful tool for gathering information. On the other hand, it is interesting to look at the structure of information that was requested in 2012. At the top of the list is information related to the actions, or lack of actions of government authorities, disposal of public funds, court and prosecutor's office cases, public procurement, activities of security and services, police etc. The most sought-for information are those related to the activities of government authorities and expenditure of budget funds, which reveals that the citizens and other persons are now better informed and more aware about the right to access to information of public importance. The Commissioner also said that the number of denied requests for access to information of public importance (invoking abuse of right or confidentiality as the reason) was on the rise. Certain public authorities have even denied the applicability of the Law on Free Access to Information of Public Importance to them. Here, the Commissioner has particularly emphasized the telecommunications operator Telekom Srbija. The Report also says that certain authorities and organizations had failed to remedy identified shortcomings even after being served a binding decision. This was particularly the case in situations applicants attempted to obtain information about high-value public procurement. Particularly interesting for the media was the case of Telekom refusing to provide information about the funds spent for advertising

on electronic and in print media in the period 2006-2010, as well as that of the RTS to divulge (at the request of the Anti-Corruption Council) records related to the procedure for choosing the programs the national broadcaster purchased from independent production companies. According to the Commissioner, this points to a trend where, on one hand, the state authorities are slowly starting to recognize the obligations they are subject to under the Law on Free Access to Information of Public Importance, while on the other hand, non-compliance with the same Law by public companies and other users of public funds (such as the case with RTS) is also on the rise. As for the part of the Commissioner's competence pertaining to personal data protection, the report says it is necessary to pass bylaws for the implementation of the Law in this field. Furthermore, the report says that many regulations are not conformed to the constitutional guarantees related to the protection of personal data. A special emphasis is put on the Law on Electronic Communications, the Law on Military Intelligence Agency and the Military Security Agency, but also the Law on Criminal Procedure. The objections of the Commissioner concerned special measures of access to data, particularly in relation to lawful interception of communications and withholding of data, in the context of the need to approve such measures solely by a court order. The Commissioner stressed that the aforementioned constitutional guarantees were subject to consistent violations in practice and that it was necessary to amend the regulations so as to enable access to withheld information without a court order. This issue is also very important to the media, since uncontrolled and unrestricted access to withheld data and content of communications compromises the right of journalists to protect their sources. In the scope of his competence, the Commissioner has conducted oversight of the work of the mobile telephony operators in relation to access to withheld data and concluded that the manner in which such data are accessed and processed constituted a major intrusion in the privacy of citizens. The Commissioner also pointed to the necessity to urgently adopt the Law on Protection of Whistleblowers, which would ensure the safety of persons prepared to disclose corruption-related information.

The case of Telekom Srbija, highlighted by the Commissioner in his report, is particularly important, since this shareholder company denies the applicability of the Law on Free Access to Information of Public Interest to it. Telekom claims that no regulations are entrusting it the performance of public competences. They also claim that they have never been financed from the budget and that they have not been established by the state initially, but by the public company PTT Serbia, while after the privatization in 1997, they were predominantly owned by an international group (the Italian Telecommunications company STET and the Greek OTE), as well as that the Republic of Serbia acquired a propriety interest of more than 50% only after having subsequently purchased the shares of STET and OTE. Furthermore, Telekom says that, as

a telecommunications operator and especially as an operator with major market strength under electronic communications regulations and the decision of the sector regulator RATEL, it has strictly defined obligations related to the disclosure of certain data and that any other order by the Commissioner would, in their case, undermine the principle of equality of business conditions for the operations of Telekom, in relation to their competitors – other telecommunication operators. Nobody disputes that, on a highly concentrated market with a small number of mobile and landline operators, information sought from Telekom may be commercial-sensitive. On the other hand, the Law on Free Access to Information of Public Importance stipulates that the right to access to information may be restricted, if its enforcement would significantly decrease the capacity of the state to manage the economic processes in the country, or heavily obstruct the realization of justified economic interests. The Commissioner has, however, interpreted that restriction in a very limiting manner. Furthermore, Telekom and other entities that might end up in a similar position do not possess effective and efficient means of seeking legal review of the Commissioner's decisions. Therefore, it seems that this problem in the application of the Law on Free Access to Information of Public Importance is a systemic one and not merely a curiosity. We have often tackled in our reports the issue of access to withheld data without a court order. We remind that the data telecom operators are obligated to withhold allow for the identification of the source and destination of the communication (i.e. who made the call and to whom), the start, duration and end of the communication (when he/she called, the duration of the call and the end of the call), type of communication (was it a telephone call or some other form of communication), to identify the equipment used for communication, but also to determine the location of the user during the communication, if mobile equipment was used. It is undisputed that the applicable regulations and practice in this field do not provide sufficient guarantees that the confidentiality of journalists' sources will be respected.

5. The Anti-Corruption Agency

In the annual report about its performance, the Anti-Corruption Agency has pointed to many activities involving the participation of the media. The Agency has recognizes the importance of the media for promoting anti-corruption efforts. Hence, the report, among other things, invokes the implementation of joint projects that have contributed to raising awareness about corruption to a considerable extent. In that sense, the activities of the Agency in the field of education were emphasized, especially for the representatives of local media. Among other

things, the report highlighted the partnerships with journalists and journalists' associations (such as NUNS), but also with electronic media associations (such as ANEM). Cooperation with ANEM and the Anti-Corruption Agency on the implementation of the project "Illustrated Glossary of Corruption" was mentioned. On the other hand, the report says the public debate about the problems and events we face as a society is conducted in an environment where information about the ownership structure is not available. "The media were fragmented as to the positions they advocate for, which are adapted to the interests of their real owners; this greatly determines the selection, type and quality of information the media will communicate to the citizens. At the same time, the interests of these owners are subtly reflected in the form of influencing the sale of advertising space in the media, which accounts for a great deal of the revenues necessary for funding their operations". The report claims that, for the said reasons, the Anti-Corruption Agency can hardly obtain any coverage in the media, which makes it harder to present its activities and the risks we face as a society in relation to corruption.

Intensifying the cooperation of the media, journalists' and media associations with the Anti-Corruption Agency is something to be commended. It seems, however, that the Agency still does not understand the nature of the problem faced by the media scene. It seems as if it is still fascinated with the opacity of media ownership, while the influence exerted on the media through the purchase of advertising space is portrayed as "subtle". Unfortunately, not even more transparent ownership would prevent *per se* the positions of the owners to be reflected in the selection, type and quality of information communicated to the citizens by the media. At the same time, the influence exerted on the media through the purchase of advertising space is everything but subtle. Furthermore, it seems that the Agency has recognized the significance of the revenues from the sale of advertising space for the financing of the media, although these revenues have shrunk, due to the economic downturn. However, the Agency fails to take into proper account the increasing influence of the state on the selection, type and quality of information that is realized through budget financing, which is also completely non-transparent.

6. Ombudsman

In the general overview of the state of civil freedoms, in its annual report, the Ombudsman warned of the harmful trend of decreasing genuine freedom of press through the influence of opaque owners and political party interests. The main characteristics of this trend is: tabloidization, "leaking" of sensitive information from state authorities to certain media, violation of the presumption of innocence, waging personal campaigns against certain officials, manipulative headlines, selective conveyance of statements and facts, all with a hidden, but well-

known goal of political discrediting or promotion. All this has resulted in a lower quality of citizens' rights to true, complete and timely information, while undermining the integrity, dignity and financial substance of the journalistic profession. The Ombudsman said it was necessary to pass a law that would regulate the position of persons prepared to disclose information about corruption, the so-called whistleblowers. In the part of his report about the activities of state authorities, regulatory bodies and organizations in the field of information and electronic communications, the Ombudsman said that a large number of citizens' complaints concerned the work of cable operators, the behavior of broadcasters, but also to that of the regulatory bodies RBA and RATEL. The latter was highlighted as that the body whose work was the most criticized in citizens' complaints. The Ombudsman, however, stressed that RATEL typically responded to citizens' requests in a timely manner and furnishes the information they required from it. The recommendations have emphasized that RATEL should pass a general act, in accordance with the Law on Electronic Communications, which will determine which type of radio stations are used under the general competence regime, namely which specific types of radio stations are not subject to the license regime.

The statistics of the complaints submitted to the Ombudsman are quite interesting: out of a total of 963 violations of civil and political rights the complaints pertained to, merely 4, or 0.42% of the violations concerned the right to freedom of opinion and expression. This indicates the existence of a large "grey" number of violations that are not reported to the Ombudsman. Furthermore, the Ombudsman's report insists on the opacity of media ownership as well. We have written about such conclusion about the segment of this Report, concerning the activities of the Anti-Corruption Agency. Here we will add the following: if we disregard Article 41, paragraph 3 of the Broadcasting Law, there are no specific media-related regulations that would regulate the transparency of ownership in the field of the media differently than in some other industry or activity. On the contrary, the media regulations even envisage that the legal entity, the founders of which are foreign legal entities registered in countries where, under national regulations, it is prohibited or impossible to establish the origin of founding capital, may not participate in an open competition for a broadcasting license. Moreover, electronic media must report even the slightest change of ownership structure for pre-approval to their sector regulator. Such provisions do not exist in other industries or activities. The potentially questionable Article 49, paragraph 3 of the Broadcasting Law says that a foreign natural or legal person may take part in the share capital of the broadcasting license holder up to 49% of the total capital. Due to such provision, foreign media owners are forced to create complicated corporate structures, involving the establishment of domestic companies, whose sole purpose is to hold at least 51% of the capital of the broadcasting license holder. This probably partially

hampers the monitoring of media ownership, however without preventing it. Therefore, the key problem in Serbia seems to be the fact that there is no consensus as to what should media ownership be and what level of transparency Serbia should strive for. In the absence of a consensus about these two issues, insisting on the lack of transparency of media ownership threatens to devalue the issue.