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 elaborated on the activities of the Republic Broadcasting Agency (RBA) in the part hereof concerning the implementation of the Broadcasting Law.

1.2. The RBA has released its report "Protection of Children and Youth and Labeling Programming Content by National Broadcasters". The report covers the period January-April 2013 and aims at showing to what extent national television broadcasters have complied with the obligations from the Broadcasting Law pertaining to the protection of children and youth from inappropriate programming content that may threaten their physical, mental and moral development. The legislative framework for this survey consists of Article 8, Article 19 and Article 68 of the Broadcasting Law. Article 8 stipulates that the Agency shall perform tasks concerning taking measures in the field of broadcasting, with the goal of protecting minors. Article 19 details the competences of the RBA in that respect: the Law says that the Agency tends to the protection of the dignity of juvenile persons in radio and TV programs, by passing a General Binding Order (GBO), so as to make programs that may harm the physical, mental and moral development of juvenile persons inaccessible, unless when the time of broadcasting or technical procedures (restricted access) ensure that minors usually may not watch or listen such programs. For these purposes, the RBA adopted back in 2007 a GBO (Broadcasters' Code of Conduct - BCC), part of which concerns the protection of children and youth. In 2012, it adopted a special GBO about the conduct of broadcasters in relation to the broadcasting of programming content that may harm the physical, mental and moral development of minors. Article 68 of the Law prescribes the general programming standards, some of which expressly concern minors. According to that Article, the broadcasters are required to contribute to raising the general cultural and cognitive level of the citizens, as well as to refrain from airing programs the content of which may harm the physical, mental and moral development of children and youth, namely to clearly label such programs as such. If they do broadcast them, they should do so in the period between 12 PM and 6 AM. The same Article requires broadcasters to air program intended for preschool children synchronized in Serbian language or languages of national and ethnic

communities. The analysis concludes that the labeling of programming content with an age label by national broadcasters has become common practice, but such labeling is inappropriate in a certain number of cases, especially in the case of reality programs. The labeling used by broadcasters pertained to the categorization of programs suitable for ages above 12, 14, 16 and 18 years (as recommended in the Broadcasters' Code of Conduct). Other broadcasters also used labels showing that the program in question is suitable for ages above 13, 15 and 17. The report particularly emphasizes the reality programs "The Farm", "Adulterers" and "Moment of Truth" (aired on TV Pink), "Big Brother" (TV B92), "Family Secrets" (TV Prva) and "Mad House" (TV Happy). Most of the objections concerned the labeling of these programs and their broadcasting time. The analysis cited the reality program "The Farm", which was usually labeled as "For 12 years of age and above" ("12") when aired during daytime, regardless of the fact it contained foul and vulgar language and rows threatening to escalate into fights. The programs "Adulterers" and "Moment of Truth" were recognized to be wrongly labeled, while the time when they were aired was also emphasized as questionable. We remind that it was because of these programs that the RBA Council issued a warning to TV Pink, as detailed in our prior monitoring reports. Apart from reality programs, the Report also deals with unsuitable labeling of films and series aired in the period between 6 AM and 9 PM (when children and youth could have watched them) which films and series contained bloodshed and violence, brutal murders, nudity, explicit sex and rape. The conclusion of the Report itemizes the measures to be taken in order to remedy the observed shortcomings, including laying down minimum standards that would help determine why some programs have been classified as suitable for youth of 12, 14 and 16 years of age; the introduction of a "protected time slot" from 6 AM to 9 PM, when it would be prohibited to air programs forbidden to youth under 16; the rule that entertainment reality shows must be labeled by at least the "14" label and typically with "16" and "18", in order to have them banned in time slots accessible to children and youth.

Although the RBA's intent is a legitimate one and the recommendations appear logical, it seems that some of them are currently not grounded in the Law. Article 19 of the Law indeed speaks about the need to protect children and youth from inappropriate content, but imposing too many obligations may constitute the first step towards over-regulation. Firstly, the Report acknowledges that the broadcasters have mainly fulfilled the labeling obligation, which means that the majority of service providers take this obligation from the Law and the Code seriously. Creating new rules prescribing the criteria for labeling programs could inject additional confusion relative to the well-established practice by broadcasters in their 10-year implementation of the Broadcasting Law when it comes to program labeling. Furthermore, the prescription of minimum standards would perhaps also constitute overstepping of the RBA's

statutory powers. The Agency is namely authorized to pass a GBO about inappropriate content that may harm the physical, mental and moral development of children and youth. The "hyper production" of regulation without legal grounds would undermine the regulator's proclaimed objective and further bureaucratize the procedure. Such overregulation would practically devoid the broadcasters of the freedom to autonomously edit such programming content and to label it as such. The control of lawful procedure must exist, but the rules that are imposed must be necessary in the context of realizing the Law and proportionate to the goals to be achieved – the protection of children and youth. Then, there is also the issue of availability of such content in the daily press and especially on the web. Are today's children, generally speaking, protected from such content, if we bear in mind the wide availability of improper content on the Internet? It seems that regulation becomes powerless in the face of the challenges imposed by accelerated technical development and the convergence of media services. Therefore, the emphasis should be placed on the education of viewers, which must be aware of the influence of particular problems on them. The broadcasters should not be the ones to take up the entire burden, without tackling the problems at the wider level. To that purpose, media literacy should be promoted, because if the viewer is not educated, actions and interventions by the state and the independent regulator will be meaningless or even counterproductive.

2. The Complaints Commission of the Press Council

2.1. In the period covered by this Report, the Complaints Commission of the Press Council (CCPC) has reviewed very interesting cases concerning potential violations of privacy rights in reporting. Particularly interesting was the complaints Zlatibor Loncar lodged to the Press Council against the daily "Alo" over the text "Another Suspicious Baby Death". This case shows how an unprofessional article about a topic of public interest resulted in a serious breach of the privacy of the person that was the subject of the article. According to the editor-in-chief of the daily "Alo", the controversial text aimed to show how the "top brass of the medical authorities" might also fall victim of a medical neglect. So, the topic was indeed of public relevance, since it points to problems in the healthcare system. However, the text in question first revealed the identity of the woman that was to give birth (first by stating her initials and then revealing she is the wife of the Emergency Center Director Zlatibor Loncar), only to follow with the most intimate details concerning her childbirth and health condition. In keeping with the practice of the European Court of Human Rights, holders of public office are more often subject to criticism than common citizens. In that respect, the interest of the public to know how holders of public office behave overrides the right to privacy. That means that the holders of public office are required to accept a certain degree of restriction when it comes to their right to privacy.

However, information from the private lives of public persons, namely holders of public office, shall be disclosed only if it is in the public's interest, namely if such information may have direct consequences for several people, if they are in contradiction of the spirit of the office the person in question occupies or the ideas that person publicly promotes. Outside of these exceptions, journalists must respect the privacy, dignity and integrity of public persons that are being written about, just like in the case or ordinary people. This obligation is clearly provided for by subparagraph 1, Section VII of the Code of Journalists of Serbia. The Press Council unanimously decided that the daily "Alo", in the text "Another Suspicious Baby Death", violated the abovementioned provisions of the Code and thereby pointed up to the fact that "narrowing privacy" in this case wasn't justified from the standpoint of the prevailing interest of the public to know.

2.2. The second case the CCPC tackled, which we will mention here, is even more complicated from the aspect of determining the borders of privacy while reporting about public figures. It pertains to the appeals lodged by Ljuba Pantovic against the daily "Kurir" and the weeklies "Skandal" and "Star" for disclosing the details from the private life of her underage daughter A.P. Ljuba Pantovic is the former participant of the reality program "The Farm". The abovementioned newspapers published details about her private life and that of her daughter as a series of articles. It should be said that A.P. too disclosed such private details about herself. However, as a minor, it is questionable if she was conscious of the impact of her activities and if she therefore has to suffer the abovementioned "narrowing of privacy". On the other hand is the statutory right of the mother to protect the privacy of her child, which she is the legal guardian of. That was the dilemma faced by the Press Council, weighing between the principle of public figures' restricted privacy, the protection of minors in media reporting and the right of the legal guardian to protect her own privacy and that of her family. Particularly striking was the fact that the weekly "Star" even published the medical report about the pregnancy of the underage A.P, which involves not only the issue of journalist ethics, but also that of medical ethics and the confidentiality between the doctor and the patient. It should not be excluded, however, that it was A.P. herself that supplied that report to the press. The reporting of these media was qualified as a violation of the Code. The Commission found that Ljuba Pantovic's family was dysfunctional and that the parents and relatives misused the underage girl in quest of publicity; in the Commission's opinion, they were the ones to leak the whole story in the media. In the opinion of the members of the Commission, the Code is very clear when it comes to the protection of minors and the journalists have to respect it; they found that the consent of the 16-year old girl to be photographed or to give statements to the media is not a sufficient reason for the media to release such statements, since it is a person that, due to her age, is not able to

reason in a mature way. According to the Commission, the fact that the remaining members of the family accepted to participate in the media "coverage" of her private life wasn't sufficient. Interestingly enough, there was no unified stance among the members of the Commission as to whether a person taking part in a reality program has thereby accepted its right to privacy to be "narrowed" compared to the rights of ordinary people. The majority of the members of the Commission believed that details from the private lives of public persons should be disclosed in public only if they are in contradiction with the office that person occupies or the ideas it publicly promotes, while two members considered this right to be always restricted. They explained it was a case of "symbiosis between tabloids and tabloid-like people", which together participate in something mutually beneficial and hence there may be claim of media abuse or harm. The position of the two members of the Commission is also legitimate and it will be interesting to follow this case, since the media are still reporting about it.

STATE AUTHORITIES

3. Ministry of Culture and Media

We have written about the activities of the Ministry of Culture and Media in the part of this Report concerning monitoring of the process of the adoption of new laws. Here we will mention only the fact that, after the new minister Ivan Tasovac assumed his duty in early September, succeeding the previous minister Bratislav Pekovic, the new Assistant Minister of Culture and Media (in charge of the media) was also appointed – Sasa Mirkovic. Mirkovic was born in 1967 and he has graduated law on Belgrade's Faculty of Law. He was one of the founders of Radio B92 in 1989, where he worked as a music editor, programming director and general manager of RTV B92. He was the chairman and member of the Managing Board of B92 from 2003 to 2008. Mirkovic was also one of the founders of the Association of Independent Electronic Media (ANEM) in 1993 and its chairman since 2006. After he was appointed assistant minister, Mirkovic stepped down from his positions in ANEM (Chairman and member of the Managing Board). Mirkovic's appointment represents the recognition of the current government of everything that ANEM and the entire Media Coalition (consisting, besides ANEM, of the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Serbia (NUNS), the Independent Journalists' Association of Vojvodina (NDNV) and the Association of Local Independent Media Local Press) have accomplished so far for the promotion of media reforms in Serbia, on their own or together with the Association of Media, regrouping the publishers of national print media and news agencies. Mirkovic faces the ungrateful task of

replacing (as Assistant Minister for Culture and Media in charge of the media) Dragan Kolarevic, who was previously dismissed. We remind that Dragan Kolarevic has been accused in the public of lack of transparency in passing media laws. During his term of office, draft media laws were written outside of the working groups set up by the previous minister Bratislav Petkovic. Kolarevic admitted to that in his response to NUNS' request for information of public interest, when he confirmed that the Draft Law on PSB's (posted by the Ministry on its webpage and grilled by media professionals as substantially different and far worse than the version drafted by the working group) was written by himself and Zeljko Poznanovic, advisor in the Information Sector disregarding the decision of the previous minister Petkovic. It remains unknown, however, if Kolarevic was ever reprimanded for these actions. Moreover, it also remains unclear if anyone else has been involved in the alteration of the Draft Law, or if the previous minister merely didn't approve such alterations merely formally or wasn't aware of them altogether. On one hand, Mirkovic will now have to reconstruct the doings in the Ministry during Kolarevic's term of office, put back the drafting of regulations in the lawful procedure and prove that the Ministry is capable of working in a transparent way. He will not have a lot of time at his disposal, since all deadlines prescribed by the Media Strategy already expired, while the patience of the media community has long been exhausted.

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

In early October, NUNS and UNS demanded answers related to the memo send by the Ministry of Interior by e-mail to the institutions involved in the process of explanatory screening. The memo said that all information and data about explanatory screening should be deemed an official secret the following one-year period and that they must not, as such, be disseminated to public media and third parties. Such decision was justified by alleged requests by the European Commission. The Commissioner for Information of Public Importance and Personal Data Protection reacted by saying in a press release that all important issues related to the classification of confidential data shall be regulated by the Law on Data Secrecy and the Law on Free Access to Information of Public Importance and that the existing provisions of the Law may not be circumvented by informal requests, regardless of the requestor.

Explanatory screening, which in a way announces the start of the accession negotiations between Serbia and the European Commission, concerns the preliminary assessment of compliance with European standards related to negotiation chapter 24. This chapter pertains to freedom, security and justice. We remind that some of the questions to be discussed: fighting

organized crime and corruption, internal border control, as well as justice reforms. The relevance of these issues for the citizens is clear and it is astonishing that access to such information has been denied, based on a memo by the interior ministry sent by e-mail, which has arbitrarily classified all information and data about screening as "official secret". For that purpose, it should be noted that both the Commissioner and journalist associations have warned that the said semi-formal memo has resorted to using legally inexistent terminology, since the institute of "official secret" isn't a legal category anymore according to the current Law on Data Secrecy (which doesn't contain a category called "secret data"). The problem highlighted by journalist associations is the consequence of the traditional opacity of secret services, which try to mystify their activities at any cost and deny the citizens access to information relevant for the development of society as a hole, under the guise of "official secret". We want to point hereby to the recent verdict of the ECHR in the case of the Youth Initiative for Human Rights vs. Serbia, where the Court concluded that the right of the public to know is an integral part of the right to freedom of expression, as well as that even secret services must make certain data available to the public. Concealing any information, outside of the legally prescribed procedure, undermines the confidence in security structures and brings back Serbia in the totalitarian era. Interestingly enough, that is being done by hiding behind the EC's alleged request, thereby deceiving the public about how the institution that has establish the European standards has requested that the same standards be violated. The logical question to ask is how will Serbia reach European standards after demonstrating ignorance of the basic principles of civil society in the first formal step (more specifically, the principle of civilian control of security services by the public)? The Commissioner for Information of Public Importance and Personal Data Protection announced that he will have a meeting with the EU Ambassador in Serbia Michael Davenport, in order to remedy any misunderstanding related to this case.