

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

The implementation of the Law on Public Information has been elaborated on in the section on freedom of expression.

2. Broadcasting Law

The Republic Broadcasting Agency (RBA) issued a press release on November 21, stating that the contents of the reality show “The Farm” aired on TV Pink on November 19 incited ethnic and national discrimination. At its extraordinary session, the RBA Council examined the report issued by its Oversight and Analysis Department about the controversial episode of the reality show aired in the night of November 19-20, which episode contained ethnic-based insults. The press release said the broadcaster had been ordered to immediately ensure compliance of its programs “with the provisions of the Broadcasting Law and prevent further violations”.

Article 8, paragraph 2, subparagraph 3 of the Broadcasting Law says that the RBA shall perform tasks related to taking measures in the field of broadcasting, with the aim of preventing the broadcasting of programs containing information inciting discrimination, hatred or violence against persons or groups of persons for their ethnic, religious, national affiliation or gender. Furthermore, Article 21 of the Broadcasting Law stipulates that the RBA ensure that broadcasters’ programs will not contain information inciting discrimination, hatred or violence against persons or groups of persons due to political affiliation, race, religion, nation, ethnic group, gender or sexual orientation; non-compliance by broadcasters shall constitute grounds for the Agency to take the proper measures, irrespective of other legal means the damaged party might resort to. From the brief statement of the RBA referring to “ethnic-based insults”, it is not clear what would “inciting ethnic-based discrimination” constitute. Unclear is also the legal nature of the order issued to the broadcaster to ensure compliance with the provisions of the Broadcasting Law and prevent further violations. Namely, according to that Law, the RBA is authorized in certain cases to pronounce measures (caution, warning, temporary or permanent revocation of broadcasting license), namely to initiate proceedings before the competent court or other state authority against the broadcaster or responsible person of the broadcaster, if the broadcaster has committed a punishable offense. In addition to the unclear grounds, the purpose

of ordering the broadcaster to ensure compliance with the provisions of the Broadcasting Law is unclear too. The broadcasters are already obligated to ensure compliance with the applicable regulations and hence it is unclear what could the RBA achieve with such an order. Such vague statements, which didn't explain which provisions of the Law have been breached (in the RBA's opinion), by which specific conduct and which proceedings have been initiated accordingly, namely what decision has been taken, are unlikely to achieve anything. Instead of suppressing hate speech and discrimination, the RBA is attempting to create an energetic and strict image with the general public, while in reality it lacks the necessary legal grounds. Namely, issuing "orders" without the proper legal basis may also be understood as avoiding to pronounce measures that are prescribed by the Law. Irrespective of the broadcaster that's given a free pass in a specific case, the latter would constitute intolerable voluntarism.

3. Law on the Protection of the Rights and Freedoms of Ethnic Minorities

At a session held on October 3, 2013 the Constitutional Court of the Republic of Serbia found that Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities ("Official Gazette of RS", no. 72/09 – other law), in the part saying "it may also establish special radio and TV stations to broadcast programs in ethnic minority languages", is not in conformity with the Constitution (case IUz-27/2011).

According to Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities, prior to the last intervention of the Constitutional Court, the state must ensure in the radio and TV programs of the Public Service Broadcasters (PSB), the news, cultural and educational content in the language of the ethnic minority. In addition, it may establish special radio and TV stations to broadcast programs in ethnic minority languages. ANEM filed with the Constitutional Court back on January 28, 2011 (in the context of advocacy efforts to suspend regulations preventing the withdrawal of the state from media ownership) an initiative for the assessment of the constitutionality of certain provisions of the Law on the Protection of Rights and Freedoms of Ethnic Minorities. ANEM also requested the assessment of the constitutionality of other laws enabling the state to retain ownership in media, namely the Law on Ethnic Minorities' National Councils, the Law on Local Self-Government and the Law on the Capital City, each in the part providing for the rights of the Ethnic Minorities' National Councils/local self-government units/the capital city to establish state-owned media. The provisions in question were namely in direct contravention of the Law on Public Information and the Broadcasting Law and as such constituted a "bastion" for the opponents of the privatization of public media. The

Constitutional Court ruled separately about the constitutionality of the provisions of the Law governing the functioning of local self-government and the capital city and the Law regulating the protection of ethnic minorities. Relative to the assessment of constitutionality of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities, the Constitutional Court considered, as an important constitutional and legal issue, the uniformity of the legal system, in the context of the relationship between the Law on Public Information and the Broadcasting Law on one side and the Law on the Protection of the Rights and Freedoms of Ethnic Minorities on the other. According to the latter, the state has authority that is more extensive in the field of information of ethnic minorities compared to the authority provided for by systemic laws in this area. Under the Law on Public Information, as the main law in this field, the state and the territorial autonomy, as well as the institution, company or other legal person predominantly owned by the state or fully/partially financed from public sources (with the exception of PSB institutions), may not establish media, neither directly nor indirectly. Under the Broadcasting Law, the institution, company or other legal person founded by the Republic of Serbia or autonomous province, excluding PSB institutions, may not hold a radio or television broadcasting license. On the other hand, the PSB must produce and broadcast programs intended for all segments of society, without discrimination, always bearing in mind language and speech standards of both the majority population and (in the adequate proportion) ethnic minorities, as well satisfy the needs of citizens for content expressing the ethnic identity of peoples/ethnic minorities and groups, through the possibility of receiving programs or programming segments on their territory, on their mother language and alphabet. Starting from such concepts in systemic media laws, the Constitutional Court concluded that the disputed provision of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities “actually constitutes an anachronous legal concept”, adopted prior to the Law on Public Information and the Broadcasting Law, as well as before the Constitution of the Republic of Serbia from 2006. That concept, the Court said, is not in conformity with the regulations on the realization of media freedoms in the legal system of the Republic of Serbia and is therefore contrary to the principle of unity of the legal system referred to in Article 4, paragraph 1 of the Constitution. As to the relation between the contested provision and the international conventions, standards and experience in the field of media legislation, the Constitutional Court points out that Article 18 of the Constitution provides for the direct application of guaranteed rights, as well as that the provision about human and minority rights shall be interpreted in the favor of enhancing the values of democratic society, in line with the applicable human and minority rights standards and practice of international institutions overseeing their implementation. In that context, the Constitutional Court quoted Resolution 1636 (2008) and Recommendation 1848 (2008) of the Parliamentary Assembly of the Council of Europe – “Indicators for Media in a Democratic Society”, establishing that it may be concluded that the state does not have the possibility of

establishing other media, save the PSB, and that acting otherwise would be in contravention of the ban on interference by the public authority with the media sphere, which is laid down, as a standard, through the implementation and interpretation of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. This decision by the Constitutional Court is extremely important, since it has confirmed the significance of the unity of the legal system. It is expected to contribute to the strengthening of minority media owned by private individuals belonging to minority communities in Serbia, which media still receive state subsidies under Article 5 of the Law on Public Information. That Article says that, for the purpose of the realization of ethnic minorities/communities' rights to receive information in their mother language and the protection of their culture and identity, the Republic, autonomous province and/or local self-government shall provide for part of the funds or other working conditions to public media in the language of ethnic minorities and communities. However, we must note here that the Constitutional Court has also previously separated the procedure about the initiative for the assessment of constitutionality of the provisions of the Law on Local Self-Government and the Law on the Capital City, which provisions too, in contravention of the principle of unity of the legal system, give the local governments and the capital city the right to establish media other than PSB's. To make things even worse, the Court found that "the assessment of mutual conformity of certain provisions of different laws, as acts of equal legal strength, is outside of the competence of the Court". The basic concept of the initiative for assessment of constitutionality was that the media laws (Law on Public Information and the Broadcasting Law) prescribe a single legal regime, stating that public entities may not be founders of public media (neither radio, nor television), while the non-media laws (Law on Ethnic Minorities' National Councils, the Law on Local Self-Government and the Law on the Capital City and the Law on the Protection of the Rights and Freedoms of Ethnic Minorities) provide for a totally different legal regime, undermining even further the principle of unity of the legal system stipulated by Article 4 of the Constitution. The Constitutional Court rejected the initiative for assessment of constitutionality of the Law on Local Self-Government and the Law on the Capital City; therefore, relative to settling the problem of divergence of these laws from systemic media regulations, we have to wait for the adoption of the new Law on Public Information and Media, Law on Electronic Media and Law on Public Service Broadcasters, which should consistently implement the Media Strategy-proclaimed goal of having the state withdraw from media ownership.