

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Amending Law to the Law on Public Information

On August 31st, the Parliament adopted the Amending Law to the Law on Public Information, the draft of which was sharply criticized by all media associations. Since certain parties of the ruling coalition voted against the Draft Law or remained abstained, the majority for passing the Law in the Parliament came from the opposition Liberal Democratic Party (LDP). The LDP had previously held consultations with journalist associations. After consultations with the Independent Association of Journalists of Serbia (NUNS), it was announced that the LDP and IJAS (NUNS) agreed that a media strategy should urgently be brought about in order to define the course of development of the media and create the preconditions for passing concrete legislative solutions. The LDP and IJAS statement also said that the LDP had accepted the request of IJAS to discuss with the proposers of the Law possible amendments thereto, which would make it more acceptable for the media and the public, in the situation that voting majority has already been gained. After the meeting with the Association of Journalists of Serbia (UNS), it was announced that JAS (UNS) had accepted to take part in the drafting of the media strategy together with other media associations. The JAS stood by its objections to the Amendments to the Public Information Law and voiced its opposition to their adoption.

Six Government amendments to Draft Law on Amendments to the Public Information Law were adopted on voting day, as well as one amendment of the opposition. The amendments have altered certain solutions branded unacceptable by media associations, such as the enforced high deposit for the establishment of media companies or the suspension of the publishing of media for founders whose account has been blocked for longer than 90 days over the period of one year. Other solutions deemed equally unacceptable by media associations, where nevertheless adopted by the Parliament. The Law provides for a ban on publishing a media for failure to register, the prohibition to transfer ownership rights to the media to another owner, as well as excessively high fines for violations of the presumption of innocence and minors' rights, respectively.

As early as in the afternoon hours the same day, the President of the Republic enacted a decree promulgating the Law. Until that moment, only the text of the Draft, without the seven adopted amendments, was available on the Parliament website. The final text of the Law, with the adopted amendments, was unavailable to the public at that moment.

The very moment of the promulgation of the law is important because, pursuant to Article 169, paragraph 1 of the Constitution, the time between the passing of the law and its promulgation is the period when one third of Members of Parliament (MPs) may lodge a request for prior assessment of constitutionality. The early promulgation of the Law actually restricted the MPs in exercising that right.

2. Law on National Councils of National Minorities

On the same day, August 31st, the Parliament also adopted the Law on National Councils of National Minorities. This Law stipulates that the National Councils are representative bodies representing national minorities in the area of education, culture, information on minority languages and the use of language and alphabet. Furthermore, according to the Law, National Councils may establish media companies; the Republic, Province or local self-governments may transfer their media founding rights to National Councils, where the said media entirely or predominantly provide information on minority languages. The Law also provides that the funding for the media whose founding rights have been transferred must come from the same sources as before the transfer. This decision is not in accordance with the Law on Public Information and the Broadcasting Law, which, on one hand, provides for mandatory privatization of public media and on the other, stipulates that the founder of a public media may not be an institution, company and other legal person that is entirely or predominantly funded from public sources.

Some time before the adoption of the Law, the media have reported about the row between the National Council of the Bunjevci ethnic minority and the Bunjevci Information Center, which is the founder of the “Bunjevacke novine” newspaper. The National Council attempted to dismiss the Management Board of the Information Center, with the obvious intention of influencing the editorial policy of the said newspaper. The Director and Editor of Bunjevacke novine Suzana Kujundzic-Ostojic told the Politika daily that the National Council had been politically divided between a pro-Radical and a pro-democratic fraction and that the former had tried to dismiss the management board of the Bunjevci Information Center.

This information only confirms the view that the transfer of media founding rights to the National Councils of national minorities is not a model that would guarantee and independent editorial policy of minority language media.

3. Law on Illegal Media Concentration and Transparency of Media Ownership

The Law on Illegal Media Concentration and Transparency of Media Ownership, the draft of which was completed back in April by the working group established by the Ministry of Culture, has been, as it was announced by the Ministry, submitted for opinion to the competent authorities in accordance with the Government's Rules of Procedure and the Broadcasting Law. Namely, the Rules of Procedure of the Government stipulate that the proposer (in this case the Ministry of Culture) is required to obtain the opinion of the Republic Secretariat for Legislation, the Ministry of Finance and the Office for EU Accession for each draft law. In line with the same regulation, in the concrete case the Ministry of Culture must also obtain the opinion of the Ministry of Justice – since the draft lays down certain offences – but also from other state administration authorities, whose scope of activities is related to the matter governed by the draft. In the concrete case, this could be the Ministry of Economy and Regional Development. The Broadcasting Law stipulates that the competent authorities, in preparing regulations concerning the area of broadcasting, must also obtain the opinion of the Republic Broadcasting Agency. The Government's Rules of Procedure stipulate that everyone who has been furnished the draft or proposal of an act by the proposer for opinion must deliver the opinion in writing within 10, that is, 20 days where the act is a draft of systemic law. If the opinion is not delivered on time, it shall be considered that there were no objections. The Broadcasting Law does not provide for a specific time limit for the RBA to deliver its opinion.

However, a special problem lies in the fact that, in the meantime, the Law on Amendments to the Public Information Law, adopted on August 31st, has already introduced a Media Register, which is perhaps an indication that the government is not happy with the concept of the Media Register as provided for by the Draft Law on Illegal Media Concentration and Transparency of Media Ownership. The differences between the two laws concerning the concept of the Media Register are substantial. The Law on Amendments to the Public Information Law has been criticized, among other things, for providing for the suspension of publishing activity of a public media that has not been registered with the Register. In other words, registration with the Register has become a condition for the publication of media. This concept is problematic both from the aspect of constitutionally guaranteed freedom to establish newspapers and other public information means without approval, and the constitutionally guaranteed right to

freedom of expression. Contrary to the Law on Amendments to the Public Information Law, the Law on Illegal Media Concentration and Transparency of Media Ownership does not require registration with the Register as a precondition for publication of media. Moreover, it regulates in far more detail the purpose of keeping the Register, as well as the information kept therein and the legal remedies available to the founder of the media in case he is unsatisfied with the decision of the registrar.

4. Law on Data Secrecy

The Commissioner for Information of Public Importance and Personal Data Protection has criticized the Draft Law on Data Secrecy – laid down by the Government of Serbia and forwarded to Parliament for adoption – as unsatisfactory, both from a conceptual and from a legal and technical standpoint. Namely, according to the Law on Free Access to Information of Public Importance, the Commissioner for Information of Public Importance is entitled to access any document and information carrier without limitations, which right has never been disputed in his longstanding practice. In his letter to the Prime Minister, the Commissioner pointed to the fact that, according to the Draft Law on Data Secrecy, he would not be entitled anymore *ex lege* to access any document designated as confidential. His position will thus qualitatively change and his ability to perform certain duties in keeping with the Law on Free Access to Information of Public Importance will be severely hampered.

At the end of the month, the Ministry of Justice said it was ready to accept objections by the professional circles to the Draft Data Secrecy Law. Moreover, it expressed the willingness to propose to the Government even to withdraw the same from procedure in the case of Draft's shortcomings to such an extent that it couldn't be remedied by amendments. The Commissioner for Information of Public Importance and Personal Data Protection has assessed the Ministry's standpoint as responsible and constructive.

The Provision of the Draft Law on Data Secrecy that has suffered the most criticism by the public stipulates that the authority in possession of secret information, classified as a strictly confidential or state secret, may limit to Ombudsman and Commissioner for Information of Public Importance the access to that information.

The adoption of the Law on Data Secrecy, but whose provisions will not restrict the authority of the Commissioner and the Ombudsman, is important for the media. The reason is that journalists, particularly those engaging in investigative journalism, often find themselves in the situation to weigh, on their own, whether they are allowed to

publish the information they come across. Until now, when they were unsure if they were allowed to publish a piece of information, journalists had to look for answers in a sea of typically obsolete regulations, often inherited from the period of the undemocratic regime. The journalists' task should be facilitated with the adoption of the law providing for a uniform system of designating and protecting secret data relevant for national and public security, defense, internal and foreign affairs, as well as access to such data, the manner in which they cease to be secret, secrecy periods and the powers of authorities in the application and supervision of the implementation of the law.