

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

1.1 The implementation of the Law on Public Information is partially covered in the section dealing with freedom of expression.

1.2 Earlier this month, the daily Danas reported that, at a meeting held on October 21, 2009 in the Serbian Public Prosecutor's Office with the representatives of the of the said office, the Belgrade Commercial Court, High Commercial Court and the Ministry of Culture, it was agreed that the part of the Law on Public Information, which concerns the sanctions against media for commercial offences, would not be applied in practice. Danas reported that it had access to the document of the Republic Public Prosecutor's Office, affirming that the amendments to the Law on Public Information were inapplicable in practice. Because of this, and the fact that certain provisions are not conformed to the Misdemeanors Law, it is needed to rectify the Law on Public Information, says in the document.

Deputy Culture Minister in charge of the media Natasa Vuckovic Lesendric denied the veracity of this information, saying that "nobody is authorized to make decisions not to apply a law that was previously adopted in the Parliament". Vuckovic Lesendric confirmed that the meeting had been held, but stressed that no decisions were taken. The information about the alleged agreement not to apply the Law has also been denied by the Public Prosecutor's Office and the High Commercial Court in Belgrade.

The reaction of the Ministry, the Prosecutor's Office and the courts is understandable, since it was completely inappropriate, according to the principle of division of power, for the executive and judicial branch to make arrangements about the non-application of regulations adopted by the legislative branch. In the meantime, at the symposium entitled " Law on Public Information – Challenges for the Media and the Judiciary", organized on October 31, 2009 by USAID, IREX and the OSCE Mission to Serbia, it was said that, two months after the adoption of the Law on Amendments to the Law on Public Information, not a single motion for initiating the commercial offense procedure provided for by the said Law had been filed with the Commercial Court. There was also a debate about the fact that the Law on Amendments to the Law on Public Information provided for fines for commercial offences of up to 20.000.00 RSD, while according to the Law on Commercial Offences, as the main legislation in this domain, the highest fine that ought to be provided for a commercial offense is 3.000.000 RSD, which was likely to lead to different interpretations in practice.

1.3 The deadline for registering newspapers with the Public Media Register elapsed in mid-November. Until November 17, 2009, a total of 19 daily newspapers applied. By November 17, 88 print media, eight television stations, nine radio stations and nine online publications were registered, according to the data from the Business Registers Agency. No applications were filed by news agencies. The deadline for registering newspapers in the Public Media Register for all public media, excluding print daily newspapers, expires in mid-January.

Here we wish to remind that the legislators have provided for extremely high fines for media that fail to register. Where a public media is published without having been registered with the Register, "the competent Public Prosecutor shall without delay file commercial offense charges with the competent court and request a temporary suspension of the publication of such media" (Article 14a of the Law). In such a case, the founder of the media shall pay a fine for commercial offense ranging from one million to 20 million RSD, namely from 200.000 to two million RSD for the responsible person of the owner. The activity of such media will be prohibited.

2. Broadcasting Law

2.1 In its press release on the November 4, 2009 concerning media reports that TV Palma station would start broadcasting its program, the Council of the Republic Broadcasting Agency (RBA) informed the public that, on its session held on October 29, 2009, the Council proceeded in accordance with the decision of the Supreme Court of Serbia and passed a new decision prohibiting the company „Palma Ltd" d.o.o. Beograd from broadcasting its program on the territory of the city of Belgrade. At the same session, the RBA Council rejected the request of „Palma Ltd" d.o.o. Beograd for the issuance of a broadcasting permit for the area of Belgrade on the channel 34/8. The press release said that the Supreme Court had never ordered the RBA to issue TV Palma a broadcasting permit for the area of Belgrade on the channel 34/8, but merely instructed it to decide upon the request dated July 27, 2006 so as to remedy previous violations of the rules of procedure. The RBA Council did precisely that at its session on October 29, 2009.

The Broadcasting Law stipulates that the RBA is authorized to issue, at a public competition, broadcasting permits for terrestrial broadcasting. The applicant that is unsatisfied with the RBA Council decision is entitled to lodge an objection to the Council, within 15 days of receiving the decision on the rejection of his application. The Council must decide upon the objection within 30 days, and such decision may be subject to administrative procedure. Pursuant to the Law on Administrative Disputes, the Court in an administrative procedure, if it does not reject the claim for procedural reasons, shall rule to uphold the claim or to reject it as unfounded. If the Court upholds the claim, it will repeal the contested administrative act

and return the case for a new decision to be taken. In the concrete case of repealing RBA decisions, it practically means that the Supreme Court repeals the decision and returns it to the RBA Council to pass a new decision, along with certain orders concerning the remedying of deficiencies identified by the Supreme Court in the repealed decision. As an exception, where it finds that the contested administrative act must be repealed, the Court in an administrative procedure may – provided the nature of the matter allows it and if the factual situation provides sufficiently reliable grounds – rule upon the administrative matter by enacting a decision that would fully replace the repealed act (dispute of full jurisdiction). Relative to the decisions of the RBA Council concerning the issuance of broadcasting permits, the Supreme Court has never acted in the above described manner, since the procedures for the issuance of broadcasting permits are generally considered to be of such nature that they may not be ruled upon in a dispute of full jurisdiction. In that sense, the declarations made to the media by the owner of the former TV Palma that his station is going to start broadcasting should be understood as an attempt to put pressure on the RBA.

2.2 The Council of the Republic Broadcasting Agency issued a warning to the Nis-based TV Belami, JP Niska Televizija and TV5, which was published on November 18, 2009 in the advertisement column of the Politika daily. The warning was issued due the fact that the above stations failed to keep a “recording of their entire one-day TV program aired on May 13, 2009, for a period of 30 days after broadcasting, nor had they allowed the Agency to review it. According to the findings of the RBA, all three stations have aired “content advertising political organizations outside of the election campaign” on that day. When the RBA requested to review the copies of such content, the Nis TV produced merely the recordings of certain news bulletins and talk shows; in the case of TV5, the reason for non-compliance was a malfunction of the main computer that was recording the program. TV Belami also failed to produce a recording of its program from that day. The Director and Editor-in-Chief of TV5 Aneta Radivojevic said that the alleged “advertising of political organizations outside of the election campaign” could perhaps refer to reporting from the rally of the Serbian Progressive Party in downtown Nis, near the entrance to TV5.

Failure to comply with the obligation to keep recordings is a misdemeanor provided for by the Law on Public Information. It remains unknown if the Ministry of Culture, which is competent for overseeing the implementation of the said Law, has filed misdemeanor charges in the above case. When issuing the above mentioned warnings, the RBA invoked the obligation of broadcasters to allow the Agency to review information and other records concerning the subject of oversight, as well as the fact that the failure to produce the recording of the entire daily TV program aired on May 13, 2009 the RBA was de facto prevented from performing oversight.

2.3 On December 16, 2009, cable operators KDS, IKOM and SBB announced that they would not broadcast entertainment and musical content during the three-day mourning in Serbia, declared over the death of the Patriarch of the Serbian Orthodox Church, Pavle. All operators invoked the recommendation sent by the RBA. KDS said that all radio channels and TV channels of HRT 1 and 2, Zone Club, Vizant, Fox life, BBC Prime, VH 1, OBN, Melos, MTV Adria, DSF, TV E, Kanal 5, RT CG, Fashion TV, RAI Uno, MTV Hits, VH1 and Enter would be temporarily or completely shut off. The daily Danas quoted the recommendation of the Supervision and Analysis Department of the RBA, based on which SBB decided not to air certain TV channels, as saying "Please ensure that those broadcasters that do not comply with the rules on observing a day of mourning be technically prevented from distributing such content through your system". The Culture and Information Committee of the Serbian Parliament requested from the RBA to produce an explanation about the instructions they have sent to operators concerning the day of mourning. The Committee also wanted to know to whom were these instructions addressed. "I don't know according to which criteria the decisions were made to completely shut off certain TV channels, but the RRA does not support such a thing", said Goran Karadzic, Deputy President of the RBA Council. He also added that Serbia was observing a day of mourning and that the content of domestic TV channels ought to be adjusted, but that "foreign channels should not be tampered with".

According to the Law on Observing a Day of National Mourning on the Territory of the Republic of Serbia (Official Gazette of the Republic of Serbia no. 101/2005), on the day of national mourning, broadcasting organizations that are informing the public on the territory of Serbia shall air in their programs, including programs intended for abroad, the decision on declaring the day of national mourning and the timetable of the relevant ceremony, which shall be passed by the competent authority of the Republic of Serbia or body appointed by that authority. Broadcasters shall inform the public about memorials to be organized on the day of national mourning by the competent authority of the Republic of Serbia or bodies appointed by such authority; instead of comedies, entertainment, musical and similar content, broadcasters shall air music and programs suitable for the day of national mourning and they shall conform their television schedule on the day of mourning. The Law does not provide for any obligations pertaining directly to cable operators or foreign broadcasting organizations whose programs are distributed in Serbia. The European Convention on Cross-Border Television, which Serbia has ratified, stipulates that the contracting states shall ensure freedom of expression and information in accordance with Article 10 of the Convention on the Protection of Human Rights and Fundamental Freedoms, guarantee freedom of broadcast receiving and shall refrain, on their respective territories, from restricting the rebroadcasting of program services that are in line with the provisions of that Convention.

