



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for November 2009

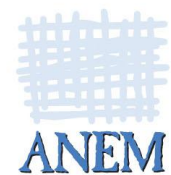


TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS	8
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LEGISLATION	12
IV	MONITORING OF ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	14
	REGULATORY BODIES	14
	STATE BODIES	14
V	THE DIGITALIZATION PROCESS.....	16
VI	THE PRIVATIZATION PROCESS	16
VII	CONCLUSION.....	17

I FREEDOM OF EXPRESSION

In the period covered by this report, there were several cases of potential violations of freedom of expression.

1. Threats and pressures

1.1 In the press release of the Gazi Isa-beg Madrasah in Novi Pazar from November 4, 2009, signed by the Director Mustafa ef. Fetic, the Editor of the Novi Pazar-based radio station Sto plus Ishak Slezovic was accused of disseminating disinformation through the said station, as well as of telling the Beta news agency that a female student of the Madrasah was infected with the AH1N1 virus. The press release also accused Slezovic of spreading lies on several occasions about the Islamic community and its institutions and of allegedly placing the information about the flu with the intention of slandering the reputation of the Gazi Isa-beg Madrasah in Novi Pazar, causing panic and turmoil among the students, their parents and other members of the Islamic community.

Namely, on November 2nd, Slezovic's station Radio Sto plus aired a statement by the Director of the Novi Pazar hospital Alan Kurpejovic that two persons in the city were believed to have been infected by the AH1N1 virus and that the material for analysis had been sent to the Torlak Institute, so as to finally establish if there were any cases of swine flu in Novi Pazar. Kurpejovic said that one of the two persons with flu symptoms was a student of the Madrasah in Novi Pazar. The following day, Kurpejovic told Radio Sto plus that the analysis had confirmed that the patients were not infected and that they were going to be released from hospital because they were feeling better.

The Beta news agency and Radio Sto plus demanded a swift reaction from Religion Minister Bogoljub Sijakovic and Culture Minister Nebojsa Bradic over the press release of the Novi Pazar Madrasah.

The Law on Public Information stipulates that public media may freely publish information about matters of reasonable interest for the public, unless provided for otherwise by the law. In the concrete case, Radio Sto plus has, in a situation of an officially declared flu pandemic, accurately quoted the Director of the hospital. Furthermore, the Law on Public Information explicitly prohibits anyone from restricting freedom of public information with the aim of curbing the free flow of information, or from putting pressure on public media and its staff and exert influence so as to obstruct their work. Since the beginning of the epidemic, the media have been reporting about many schools whose pupils or students were infected or believed to be infected by the virus. However, Radio Sto plus and the Novi Pazar Madrasah is the only case in which reporting information from official sources has been branded spreading panic and slandering an entire religious community.

1.2 On November 4, 2009, the Croatian Radio Television (HRT) crew, led by Editor of the weekly talk show “Nedeljom u dva” Aleksandar Stankovic, was ordered out of Kusturica’s Mokra Gora village while making an interview with the film director. In protest over Stankovic’s questions, Kusturica also confiscated the footage that the Croatians had filmed. According to a HRT report, Kusturica insulted and mistreated the television crew for 45 minutes until the Croatians finally handed him over the footage and left Mokra Gora. According to Stankovic, the controversial questions pertained to Slobodan Milosevic and Kusturica’s relationship with him. Explaining what had happened in Mokra Gora, Kusturica said he had cut the interview short because Stankovic had malicious intentions. Several days later, Emir Kusturica returned the footage to the Croatian Radio-Television, claiming that he had not confiscated it, but that the HRT crew had forgotten it in haste.

According to the applicable regulations in Serbia, Emir Kusturica, or any third person that would find itself in a similar situation, is entitled not only to refuse to be filmed, but also to oppose that the footage be aired. However, the law does not provide for the right to confiscate the footage. The Law on Public Information stipulates that video footage of a person and audio footage of a person's voice - except in certain cases provided for by law - may not be aired without the persons’ consent, if by airing such material that person may be identified by the viewers. The appropriation of another person’s belongings is also a criminal offence punishable under the Penal Code of the Republic of Serbia.

1.3 Due to a misunderstanding over the payment of monthly fees, as of the November 14, 2009, the inhabitants of Leskovac and surrounding villages in the Jablanica District may not watch local media on cable television anymore. Namely, the Serbian Cable Network SBB, the largest cable television operator in Serbia, has ceased broadcasting the program of TV Leskovac, TV 4S, MT, TV Klisura, K-1 i TV Vlasotince in Leskovac and its surroundings. SBB said at a press conference that these stations will not have their respective program aired again on that cable operator’s network if they fail to fulfil the clauses from the contract offered by SBB. Before they were removed from the cable program, these stations had lengthy negotiations with SBB, but were unable to come to a mutually acceptable solution. According to media reports from the press conference, SBB requested each TV station to pay a monthly fee of 500 euros, which the latter refused. On the other hand, SBB said there was "room" in its cable network for the program of only three local TV stations from Leskovac. The Danas daily reported that SBB controlled 90% of the cable television market in Leskovac. In late November, SBB’s network started airing the program of TV K-1 and the media reported that this private station had accepted to pay a monthly fee of 300 euros to the cable operator.

The Broadcasting Law provides for the mandatory issuance of special cable broadcasting permits, except for programs which have been issued a terrestrial broadcasting permit by the Republic Broadcasting Agency for the area covered by the broadcasting permit, provided that

the cable operator is also airing the program of the public broadcasting service. This provision was aimed at encouraging operators to distribute local television programs. However, since more than seven years after the adoption of the Broadcasting Law, the RBA is yet to start issuing cable broadcasting permits, domestic and foreign television channels are distributed by domestic operators under different conditions. Such differences also exist between domestic TV channels. Namely, while cable operators pay foreign channels distributing their content, domestic TV program producers are expected to pay a fee for their content to be aired via the cable network. This is particularly the case with local and regional stations. RATEL's Rules on the Conditions for the Distribution of Radio and Television Program and the Content of the Approval (Official Gazette of the Republic of Serbia No. 26/2009) stipulate that cable operators, depending on their technical capacities, must ensure, in the area they are covering or intending to cover, that their services are always available to all interested subscribers, without any discrimination. The Rules do not include any provision that would explicitly ban the discrimination of producers of media content that are distributed via the cable system. Such discrimination is, however, prohibited by the Consumer Protection Law (Official Gazette of the Republic of Serbia No. 79/2005), which in the concrete case also applies to producers of media content, since they are enjoying the distribution service for their own needs. Namely, the said Law provides that it is prohibited to discriminate against consumers on the grounds of conditions under which the service is provided and that such discrimination shall be considered a misdemeanor subject to fines ranging from 300.000 to 3.000.000 RSD. Furthermore, the Competition Protection Law prohibits restrictive agreements that apply uneven business conditions to the same transactions for different market participants, putting these participants – in this case local media content producers – in a less favorable position relative to their competitors. Any restrictive agreements are punishable by a competition protection fine pronounced by the Competition Protection Commission. The Law on Public Information (LPI) states that a person engaged in the distribution of public media may not refuse to distribute someone's public media without a justified commercial reason. The LPI also states that a person engaged in the distribution of public media must not impose any conditions for the said distribution that are contrary to market principles. Most probably, in this actual case, there was no justified commercial reason for cable operators, as persons engaged in the distribution of radio and TV programs, to deny distribution, since foreign TV channels, to the best knowledge of the authors of this report, were distributed free of charge. Failure to observe these prohibitions represents a commercial offense subject to fines ranging between 100.000 and 1.000.000 RSD. In the latest amendments to the LPI, the only amendment that has not been criticized, namely whose constitutionality has not been challenged, stipulates that the founder of a public media, whose distribution has been totally or partially suspended without justified commercial reason, namely due to the imposing of conditions that are

contrary to market principles, is entitled to claim damages in court. However, the wording of Article 16 providing for the minimum amount of damages is such that it is uncertain how the competent court would proceed in practice in case of a claim filed by an electronic media. Namely, the Law links the lowest fee with the value of advertising space sold for all editions of the public media that are not distributed in breach of the ban. This shows that the legislators had primarily in mind print media and that the courts are left with the task to interpret what will "editions of the public media" mean in the case of TV stations.

1.4 On November 21, 2009, during the national league match against Smederevo the supporters of the Partizan football club from Belgrade were heard chanting offensive chants and threats against Brankica Stankovic, the author of the investigative program "Insajder" on B92 TV, as a response to this station's announcement that it would air a new series of this program as of the December 3, 2009, which would deal, amongst other things, with the leaders of extremist fan groups that have been threatened with a ban by the Serbian Public Prosecutor. Partizan's fans, more specifically several members of a supporter group called „Alkatraz“, have been arrested on suspicion of having participated in the attack on French citizen Brice Taton on September 17, prior to the match between Partizan and Toulouse. Taton died 12 days later as a result of the injuries he sustained in the attack.

According to the Law on Public Information, no one may restrict freedom of public information or exert any kind of pressure on public media and the staff thereof, so as to obstruct their work. Furthermore, the latest amendments to the Penal Code have instituted a category of occupations as affairs of public interest. Namely, these amendments state that affairs of public interest are profession or duties involving a heightened risk for the security of persons performing these professions and duties. These affairs of public interest include profession related to public information. Consequently, threats and intimidation against persons performing profession of public interest in the area of public information, which are related to the tasks they are performing, shall be prosecuted ex officio and be punishable by a prison sentence ranging from one to eight years. Before the said amendments, which came into effect in September, threats against journalists were as a rule not prosecuted ex officio; they were punishable by a prison sentence of up to one year or three years only in exceptional cases, where the threats had been made against several persons or if such threats had caused anxiety of the citizens or other severe consequences. These amendments have most definitely introduced better protection for journalists than before. It remains however to be seen how the amended Penal Code will be applied in practice.

2. Court proceedings

2.1 On November 9, 2009, the investigative judge of the District Court revoked the detention of journalist Slavoljub Kacarevic. "After having interrogated all three witnesses that were summoned, the investigative judge has, with the consent of the Prosecutor's Office, revoked the detention of Kacarevic", the spokesperson of the District Court Ivana Ramic said. Reminding that Kacarevic had been placed in custody to avoid any influence on witnesses, Ramic said that "the grounds for keeping Kacarevic in custody have ceased to exist". The petition for Kacarevic's release pending trial was previously signed by 542 journalists and editors in chief from almost all media in Serbia. Kacarevic was arrested on the October 28, 2009 and was placed in 30-day custody the following day on suspicion of abuse of office. Kacarevic, the former Editor in Chief of the Glas Javnosti daily and member of the Executive Committee of the Association of Journalists of Serbia (UNS) was arrested on suspicion of having committed the criminal offence of abuse of office together with Radisav Rodic, the founder of the dailies Kurir and Glas Javnosti. The request for investigation against Kacarevic is filed because he is believed to have assigned, as Director of the Manami Company and together with Rodic, owner and Chairman of the Managing Board of the said company, a printing machine, purchased with a bank loan from Komercijalna Banka, to the company NIP Glas. This transaction has left the Manami Company without any assets whatsoever and hence the bank was prevented from collecting the loan. Rodic is still in custody.

2.2 On November 19, 2009, the Pancevo police pressed criminal charges against two persons employed in the private newspaper "Pancevacki pres centar" on suspicion of abuse of office, forging of official documents and tax evasion. Municipal Public Prosecutor Branislava Vuckovic said that, in order to avoid the violation of the presumption of innocence, she was not allowed to disclose any details. The journalists of Pancevacki pres centar, who left the daily Pancevac two years ago to form their own newspaper, complained that they were harassed in the last couple of months by the inspectors from the Economic Crime Department of the Pancevo Police, who interrogated them, as well as their business partners, and examined their books.

Both in the case of Kacarevic and Rodic and the one of Pancevacki pres centar employees, according to official sources, legal proceedings are underway for abuse of office, namely in the case of Pancevacki pres centre for alleged forging of official documents and tax evasion - i.e. not directly in relation to the reporting of the defendants' newspapers. Since there are several legal proceedings underway lately against managers in companies that are founders of public media, there is often a conflict between, on one hand, the interest of leading an efficient criminal investigation and on the other, the need to protect the right to freedom of expression, namely to avoid restricting the free flow of ideas, information and opinions.

2.3 On November 10, 2009, the daily Danas reported that the health center of Valjevo had pressed criminal charges against Sladjana Stevanovic, the correspondent of the daily newspaper Pres from that city. Stevanovic is accused of spreading panic with her article published in early October about the death of 5-year old Teodora Jovanovic, entitled “Drama in Valjevo: Little Teodora Killed by Doctors”. The girl passed away in the morning of October. Criminal charges for inadequate treatment were pressed before the municipal court against Pediatrician Vladimir R. (35) who was on duty on the children’s ward. Back in early October, the Director of the Valjevo Health Center Ilija Tripkovic said he would press charges for “spreading panic in the public and slandering the medical profession”, which was recently reiterated in a similar tone by Health Minister Tomica Milosavljevic. According to Stevanovic, Tripkovic told her back then that he had “no objections to the text”, but that he had to react because of the editorial headline. The editors of Pres stood by everything that was reported about the “Teodora case” and invited Tripkovic to press charges against the Editor in Chief and the editorial board of the newspaper.

Causing panic by reporting or spreading false information or claims through the media is criminal offense punishable by a prison sentence ranging from six months to five years. In practice, particularly in the case of tabloids, it happens that factually accurate texts are given sensationalist headlines, which often do not correspond to the content of the text. In the specific case, it seems clear that the reporter Sladjana Stevanovic is not the author of the controversial headline and that criminal charges, if any, could only be pressed against the author of the headline, if he/she is identified, or the responsible editor, respectively. According to the Penal Code, the author of the information shall be considered as the perpetrator of the criminal offense committed by publishing information in the newspapers, on radio, television or other public media. As an exception, the responsible editor, namely the person who was replacing him/her at the moment when the information was published, will be considered as the perpetrator, if the information was published without the consent of the author or if at the time of its publication, there were tangible or legal obstacles for prosecuting the author, which are still in existence.

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.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LEGISLATION

In November, the Parliament of the Republic of Serbia did not adopt any laws of particular relevance for the media sector. However, Law on Classified Data and the Law on Amendments to the Law on Free Access to Information are in procedure.

1. The Law on Classified Data

An article was removed from the draft Law on Classified Data, which would prevent the Commissioner for Information and Ombudsman to access certain information. On November 10, 2009, the daily Blic reported that the OSCE had furnished a list of objections to the Government of Serbia and the Justice Ministry. According to Blic, OSCE complained that the said Law had defined the notion of secret too broadly and that it was necessary to boost control mechanisms and protect whistleblowers.

2. The Law on Amendments to the Law on Free Access to Information

At the session held on November 17, 2009, the Culture and Information Committee did not accept the Ombudsman's modification to the amendments to the Law on Free Access to Information, providing for the protection of persons blowing the whistle on abuse and corruption. At the same time, the Committee accepted an amendment of MPs that also pertained to whistleblower protection. However, in a column written for the daily Danas, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic described this amendment as superfluous and "cosmetic". The amendment namely stipulates that the employee in a government authority, who enables access to particular information of public importance, to which the access may not be restricted pursuant to articles 9 and 14 to the Law, as well as to information, to which the access was already enabled by the said authority, may not be held accountable or suffer any consequences. In the Commissioner's opinion, this is tantamount to protecting persons who have enabled the public to freely access information, which is already provided for by the law. The Commissioner stressed that protection only made sense where the public had been provided information which might be restricted, because only then, it seemed legitimate – for formal reasons at least - to hold a civil servant accountable for breaching his obligations. One could even interpret the above so as to conclude that the said amendment is actually narrowing the protection of whistleblowers. The amendment namely requires an additional condition to be met, namely that the information in question points to the existence of corruption, overstepping authority, unreasonable expenditure of public funds or to an unlawful act or action by the government authority, while in all other cases protection is not provided at all.

IV MONITORING OF ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

The activities of the RBA have already been elaborated on in the second part of this report dealing with the implementation of existing laws (see point 2 - the Broadcasting Law).

2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

In the observed period, RATEL has tabled for public discussion the text of the Draft Rules on the Level of the Fee for the Use of Radio Frequencies. In the formula for the calculation of annual fee for the use of radio frequencies by a broadcasting station, the base for calculating the fee was reduced from the hitherto 45 RSD to 40 RSD. Consequently, if the Rules are adopted as proposed, the fees will be somewhat reduced. Furthermore, the draft Rules also provide for a reduction of the fee for radio-relay stations, which will be paying 18.000 instead of 20.000 RSD. RATEL has not published the comments that have been sent, but taking into account what the broadcasters have publicly requested in the past, one may assume that they have insisted on an additional reduction of the fees for radio relay links. This is also considering the fact that the existing requests for switching to new frequency ranges for the delivery of the signal to the transmitter are putting broadcasters - especially those financially the most vulnerable - in a difficult financial position of having to invest in new radio relay stations.

In the observed period, RATEL has passed a number of decisions concerning the remedying of technical irregularities in the operation of certain broadcasters, as well as a number of decisions banning the work of radio stations for unauthorized use of radio frequencies, in accordance with RATEL's powers exercised pursuant to the Telecommunications Law.

At the same time, of concern is the fact that there is still no comprehensive organized action to stop the operation of the still many illegal broadcasters in Serbia, although this failure may not and should not solely be blamed on RATEL.

STATE BODIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

In this period, the Parliament of the Republic of Serbia continued its second regular sitting in

2009, by holding the fourth and fifth session, which were not dedicated to adopting regulations directly relevant for the media sector. The Culture and Information Committee held only one session, on November 17, on which it examined the information about the procedure of the repeated election of RBA Council members. The Committee concluded that the proposed lists of candidates, furnished by the authorized proposers, were submitted in contravention of the provisions of Article 24 of the Broadcasting Law, since they contained more candidates than provided for by the Law. The Committee has proposed the following candidates:

- The Association of European Journalists of Serbia proposed Dragomir Brajkovic,
- The Academy of Performing Artists of Serbia proposed Bozidar Zecevic and Dragomir Brajkovic,
- The Association of Drama Artists of Serbia proposed Srboljub Bozinovic and endorsed the candidacy of Bozidar Zecevic,
- The Association of Film Artists of Serbia proposed Bozidar Zecevic and Dragomir Brajkovic,
- The Association of Journalists of Serbia proposed Branko Zujovic, and
- The Independent Association of Journalists of Serbia and the Independent Association of Journalists of Vojvodina proposed Gordana Susa (who was endorsed by ANEM and APRES).

The Committee called upon the proposers to furnish the joint list with the names of two candidates within 15 days. The Committee also laid down the list of candidates for the election of three RBA Council members, on the basis of the proposal tabled by the Assembly of the Autonomous Province of Vojvodina, traditional churches and religious communities and the Conference of Serbian Universities. The Vojvodina Assembly proposed Goran Karadzic and Velimir Kostadinov for that post; traditional churches and religious communities proposed His Grace Bishop of Jegar Porfirije Peric, while the Conference of Serbian Universities' candidates are Prof. Dr Natasa Gospic and Prof. Dr. Svetozar Stojanovic. The Committee proposed to the Parliament to consider and adopt the tabled list of candidates for members of the RBA Council.

At the same session, members of the Committee requested the RBA to furnish an explanation of the instructions to broadcasters related to the Day of Mourning for Patriarch Pavle.

4. THE MINISTRY OF CULTURE

After media reports about the alleged decision not to apply the Law on Public Information in practice (see Section II hereof about the implementation of existing laws, item 1.2 - the Law on Public Information), the Ministry of Culture has published a joint press release with the Republic Public Prosecutor's Office denying the existence of such decision. The press release

said that the Republic Public Prosecutor's Office and the Public Prosecutor had requested from district and municipal public prosecutors' offices information about legal proceedings instituted under the Law on Public Information, with the goal of applying the Law in practice as efficiently as possible, so as to avoid any obstruction thereof. The press release also said that it was necessary to have a uniform legal practice so as to harmonize the application of provisions before the courts, namely to have the same sentences pronounced for each violation of the law of the same severity.

V THE DIGITALIZATION PROCESS

Late November marked the first anniversary since the RTS started, on November 26, with the experimental digital broadcasting of its whole day culture and information program. The editor of this program Tatjana Citic said that the number of viewers was increasing and that the RTS might be expected to launch more new thematic programs upon the completion of the transition to digital broadcasting by April 2012. We hereby remind that other broadcasters, in particular members of ANEM and APRES, have repeatedly addressed various institutions, including the Ministry of Telecommunications and Information Society, pointing out to the fact that RTS's digital broadcast was currently not in compliance with the provisions of the Broadcasting Law. That Law stipulates that RTS will be broadcasting its program on two networks only and stops short of mentioning the third one - the experimental digital network. The Broadcasting Law namely does not provide at all for the possibility of the public service to launch thematic channels. Furthermore, broadcasters have claimed that RTS's activities were contrary to the Digitalization Strategy adopted by the Government of the Republic of Serbia, since RTS was not broadcasting in the DVB-T2 standard that the Government opted for in its Strategy, but in the DVB-T standard.

VI THE PRIVATIZATION PROCESS

On November 5, 2009, at a meeting with the representatives of the Ministry of Culture in Nis, the representatives of several regional and city television stations from Serbia called for their quick transformation into regional public services. The representatives of the so-called Kragujevac Initiative, which is calling for a change of the status of regional public media and their transformation into regional public services, pointed to the failed privatization and the uncertain future of not-yet-privatized electronic media. "We are angry at the legislators,

because the will of the citizens is being persistently ignored and 35.000 people signed a petition for the establishment of a regional public service in Nis alone,” said Slavisa Popovic, the Director of the Niska Television. He stressed that the Kragujevac Initiative resulted in Belgrade obtaining, under the Law on the Capital City, the right to establish television and radio stations and that local self-governments were granted the same right in order to provide for reporting in the language of national minorities and maintain the achieved level of minority rights. At the same time, Popovic said that the said right was not granted to regional centers, which the Kragujevac Initiative had launched in the first place. The Director of RTV Kragujevac Jovana Marovic reminded that regional public services operated in several EU countries, such as Slovenia or the Netherlands. Deputy Culture Minister in charge of the media Natasa Lesendric said that the working group for amending the Broadcasting Law was aware of the negative examples of privatization and that it would undertake polls so as to hear the citizens’ opinion about the setting up of regional public services. In her words, the state will take due account of the majority opinion. However, one must observe that not a single report from the meeting between the representatives of the Kragujevac Initiative and the Ministry of Culture contains any concrete proposal that would answer the question how to ensure a stable source of funding of regional services, which would not be directly controlled by local authorities (which is currently the case since the said media are financed directly from the city budgets), as well as the question how to create systemic conditions for the independence of managing structures and staff of regional public media. At this time, namely, the media that are participating in the Kragujevac Initiative are organized as public state-owned companies, whose management is directly appointed by the councils of their founders - municipalities and cities.

The purpose of the provisions of the Broadcasting Law providing for mandatory privatization is precisely to prevent the misuses of public media by local power players. If privatization is to be avoided, one must first create systemic conditions for the editorial independence of regional public services, but also the need to maintain, or better to say create equal conditions for the survival of commercial broadcasting media at the local and regional level, since such conditions were not provided for in the existing model.

VII CONCLUSION

In the observed period, we have witnessed the absence of progress in dealing with systemic problems faced by the media in Serbia. The state has continued to send contradictory messages about all issues of relevance for the functioning of the media sector. This was particularly visible in the debate that ensued after the media reports from the joint meeting

of the representatives of the Republic Public Prosecutor's Office, the Belgrade Commercial Court, High Commercial Court and the Ministry of Culture. According to media reports, the participants in the meeting concluded that the amendments to the Public Information Law were inapplicable in practice and that accordingly - but also because of the fact that certain provisions were not in accordance with the Misdemeanors Law - these provisions needed to be adjusted. This information was not only immediately denied, but a press release also said that the Republic Public Prosecutor asked district and municipal prosecutor's offices for information about proceedings initiated under the Law on Public Information, aiming at a more efficient application in practice.

It remains unknown how the district and municipal public prosecutors' offices have reacted to said request, since there are no information about any proceedings launched under the amended provisions of the Law on Public Information. Therefore it is unclear how the joint press release of the Republic Public Prosecutors' Office and the Ministry of Culture could be interpreted other than putting pressure on district and municipal public prosecutors' offices to institute such proceedings.

On the other hand, the impression is that all activities aimed at strategically formulating a new regulatory framework for the operation of the media in Serbia have come to a standstill. This may particularly be observed in the light of the lack of information relevant for the continuation of the implementation of the Digitalization Strategy, as well as for the adoption of the Media Sector Development Strategy. The Digitalization Strategy was otherwise said to be too ambitious, i.e. the deadlines it has laid down for switching to digital broadcasting are unrealistic. Each delay in the implementation of the Strategy will hence be critical. On the other hand, the promises made by the Ministry of Culture immediately after the adoption of the controversial Amendments to the Law on Public Information are yet to materialize.