

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 elaborated on in the section about freedom of information.

1.2 The Southeast Europe Media Organization (SEEMO) and the International Press Institute (IPI) have issued a joint press release after the visit of the said organizations' delegations to Serbia – organized with the cooperation of the OSCE – voicing their concern over the amendments to the Law on Public Information of Serbia and warning it could lead to increased self-censorship and the shutting down of certain media. The press release called upon the Serbian authorities to initiate a discussion as soon as possible about the effects of this "controversial law on the capability of the media to fulfill their role in a democratic society" and to adopt a strategy for the development of the media in the country. IPI Deputy Director Alison Bethel Mackenzie said the Government ought not to impose legislation preventing the media from doing their job, as well as that IPI was in favor of self-regulation of the media. She called upon the Government to draw up more acceptable amendments to the present Law on Public Information, which would take into account the voice of the media and organizations protecting media freedom.

2. Broadcasting Law

The Council of the Republic Broadcasting Agency (RBA) has approved the request of Fox Television, which has a license for broadcasting with national coverage, for a change of ownership structure. According to the Deputy President of the Council Goran Karadzic, Fox TV station will henceforth be operated by the Greek station TV Antenna, as the owner of 49% of the company, while 51% have been acquired by a Belgrade firm. Commenting certain reports that TV Antenna's owner Minos Kiriakou has acquired Fox TV for one US dollar and that he would take over the stations debt estimated at 5,6 million EUR, Karadzic stressed that the RBA had ensured that the change of the asset structure of Fox did not lead to unlawful media concentration and that the transparency of capital be verifiable. The RBA also made it sure, according to Karadzic that TV Fox was not bought by an offshore company with an unknown owner.

According to the records in the Business Registers' Agency, the owners of TV Fox are presently the company Warraner Limited from Cyprus with 49% of the share and Nova Broadcasting d.o.o. from Belgrade with a 51% share. The sole founder of Nova Broadcasting

d.o.o. is Antenna Stream T.V. Limited, also from Cyprus. The Broadcasting Law stipulates, with the purpose of controlling the structure and the original of the capital of the license holder, that the latter must have approved in advance any change of ownership structure by the Agency. Furthermore, if the Agency establishes that the planned changes of ownership structure may lead to unlawful media concentration, it will recommend the broadcaster to adjust the said changes so as to avoid such concentration. If the broadcaster fails to comply and if media concentration occurs, the concrete case will be subject to the provisions of law regulating the termination of the license. The Broadcasting Law stipulates that the broadcasting license, as well as the radio station license, may not be assigned, transferred or disposed of in any manner whatsoever. The assignment of the license by selling the ownership of the legal person that has obtained the license on a public competition is not expressly considered as disposing of the license. However, according to the Law, the license issuance procedure is public and every legal and natural person is eligible for obtaining the license under equal conditions, provided it has fulfilled conditions provided for by the Law and regulations stemming there from. With the sale of ownership of the legal person that has obtained the license on a public competition, the license is transferred in a procedure that is not public; all interested parties could not have participated in such a procedure and the state, namely the regulatory body, did not assess compliance with the requirements by the new owners of the license holder. Namely, at the public competition in 2006, which saw Fox TV obtaining the national broadcasting license, the criteria included the estimated annual revenues and expenditures (along with a precise specification thereof) and data about the financial potential of the applicant, as well as other obligations that the applicants undertook to assume (such as content or staff-related commitments). Fox TV was granted a license owing to the investments it promised to make, as well as due to the financial potential guaranteed by News Corp, as a then TV Fox shareholder. We hereby remind that TV Fox was granted the license at the expense of competitors owned by other media powerhouses, such as RTL or CME. The fact is, however, that the sale of TV Fox is not the first case where the ownership structure of a broadcaster was entirely changed, including national broadcasters in Serbia. Furthermore, RBA's interpretation of the provision of Article 41, paragraph 3 of the Broadcasting Law is questionable. Namely, according to the said provision, a foreign natural or legal person may be a shareholder in the founding capital of the broadcasting license holder with up to 49% of the overall capital. The purpose of this provision was to favor domestic media and domestic content makers, but in practice, it is often shunned, due to the lack of adequate response by the RBA. In the case of the new ownership structure of TV Fox, the foreign legal person - the Greek based television station Antena - is visibly the owner of 100% of the founding capital, by having a direct 49% share via the also foreign legal person Warraner Limited from Cyprus, while indirectly owning the remaining 51% via the Nova

Broadcasting d.o.o. company from Belgrade, entirely owned by Antenna Stream T.V. Limited, also from Cyprus.

3. Criminal Code

The application of the recently amendment provisions of the Criminal Code has again become topical as a result of the request by the lawyers of Red Star football fan Uros Mistic charged with the attempted murder of a police officer at a football match on the December 2, 2007. They requested that Prosecutor's Office press criminal charges against the TV B92 television station for violation of the provision 336a of the Serbian Criminal Code in its "Insider" series about the leaders of extreme fan organizations. Article 336a of the Criminal Code provides for up to six months in prison or a fine against anyone giving statements in the media during pending legal proceedings, prior to a final verdict, with the aim of breaching the presumption of innocence or compromising the independence of the court. At the round table organized by the Association of Journalists of Serbia with the topic "May journalists make comments about legal proceedings after the latest amendments to the Penal Code?" Ombudsman Sasa Jankovic branded the above provision as dangerous, saying that the legislators should reconsider it and amend it. "If this provision is applied, Serbia will keep quiet about everything that is topical in the judiciary", Jankovic said. "Journalists ought not to worry", said Slobodan Homen, State Secretary in the Justice Ministry. "According to Article 336a, the court must prove the journalist's intent on harming the defendant or offending the court, but I think it is not that simple", Homen explained. He added that the Justice Ministry would request an explanation from the Prosecutor's Office about how exactly the article of the Penal Code prohibiting comments on pending legal proceedings was to be implemented.

It should be reminded that, according to Article 10, paragraph 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, freedom of expression may be legally restricted to the extent necessary in a democratic society, including for the purpose of preserving the authority and objectivity of the court. Article 18 of the Serbian Constitution specifically stipulates that human and minority rights guaranteed by the Constitution, but also by the generally accepted rules of international law, ratified international treaties and laws, shall be implemented directly. It also stipulates that provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation. But in the practice, there often have been deviations. This is precisely the

reason why the manner in which the Prosecutors and the courts will interpret and apply Article 336a of the Serbian Criminal Code, is a cause of legitimate concern.