

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1 Law on Public Information

1.1. The implementation of the Law on Public Information is elaborated on in the section concerning freedom of expression.

2. Broadcasting Law

2.1. Although the RTS has claimed that in the course of last year they have pressed charges against 116.000 citizens not paying their subscription fee regularly, according to a report in the daily „24 sata” from March 10, 2010, the spokesperson of the First Court of Original Jurisdiction in Belgrade Gordana Vuckovic said that the said court had received merely a hundred enforcement motions. Enforcement decisions under the said motions are yet to be passed. If the payers in default fail to lodge an objection within three days from receiving the enforcement decisions, the forced collection procedure will start. According to the typical procedure, their movable property will be inventoried or a ban on the disposal of income will be introduced. According to the RTS, the number of subscription fee payers ranges between 1.4 and 1.5 million, while only between 720.000 and 780.000 of them are actually paying the fee. Between 680.000 and 780.000 citizens fail to pay on regular basis. The General Manager of the Public Service Aleksandar Tijanic told “24 sata” he expected that the missing funds due to unpaid subscription fees would be paid from the state budget. He stressed that such a solution was necessary in order to ensure "financial stability and maintain RTS' independence".

The Broadcasting Law stipulates that the activities of the Public Broadcasting Service, which concern the realization of the general interest as provided for by the Law, shall be funded from the radio and television subscription fee. RTS has on several occasions deplored the low collection rate of the fee, short statute of limitations concerning the enforcement of court decisions, as well as slow and inefficient courts. However, what makes one wonder is the fact that, despite between 680.000 and 780.000 people who don't pay the fee regularly, RTS has, according to its own words, pressed only 116.000 charges. It is also strange to hear that the First Court of Original Jurisdiction in Belgrade has received merely a hundred enforcement motions. Therefore, one may rightfully doubt the veracity of the number of procedures initiated against payers in default stated by the RTS. On the other hand, the proposal by Aleksandar Tijanic that the missing funds for the Public Service be provided from the budget

gives rise to many other issues. One is the question whether these funds are lacking because of the failure of subscribers to pay the due fee, or because of RTS' inappropriate use of the available legal means to secure collection. One might also ask to what extent potential funding from the budget would threaten the independence of the Public Service, namely would the RTS in such case be capable of protecting itself – as the law requires – and particularly its news program, against unwarranted influence of the Government. Moreover, due to the fact that the Public Service is a competitor of commercial stations on the advertising market, direct budget funding as described above could undermine the competition on that market. In keeping with the Law on the Control of State aid passed last year, state aid provided in any form, which is undermining or threatens to undermine competition on the market, shall be disallowed. It is true that the Law envisages exceptions, but the question is whether any of these exceptions are applicable to the concrete case. The authors of this report are of the opinion that the solution to the problem of the low collection rate for the RTS subscription fee should entail the introduction of measures aimed at boosting the collectibility of the fee and avoid returning to direct budget financing.

2.2. The Council of the Republic Broadcasting Agency has passed a decision to call a public competition for the issuance of radio and/or television broadcasting licenses, namely one local television license and two regional and 50 local radio licenses.

The Broadcasting Law stipulates that a public competition shall always be called when, under the Radio Frequency Allocation Plan, there is a possibility to issue new broadcasting licenses. The latest amendments to the above Plan were published on January 15, 2010 in the Official Gazette. Broadcasters' associations and especially ANEM have protested over the calling of the competition. According to what the authors of this report have learned, the goal of the amendments to the Radio Frequency Allocation Plan that have added a number of new frequencies thereto was to provide the resources for additional coverage and not the issuance of new broadcasting licenses. Article 58 of the Broadcasting Law namely says that the broadcasters, whose desired service zone is not entirely covered, may submit a request for additional coverage. On the other hand, the said request for additional coverage is impossible to fulfill if the frequency needed for additional coverage is not provided for by the Allocation Plan. By calling the said public competition, the RBA maintains the situation in which the Article 58 of the Broadcasting Law remains a dead letter on paper and the existing broadcasters are prevented from applying for additional coverage. Furthermore, the question of the number and the type of broadcasters and their service zones is a matter that is regulated by the Broadcasting Development Strategy. However, instead of laying down the number and type of broadcasters according to the needs of the society (and hence the absorption capacity of the market), as provided for by the Law, the Broadcasting Development Strategy has tied the number of broadcasters to the technical maximum

enabled by the available band. The issuance of a large number of licenses for analogue broadcasting might also prove to be a problem from the aspect of the pending transition to digital terrestrial broadcasting.

3. Law on Free Access to Information of Public Importance

3.1. On March 16, 2010, the Commissioner for Information of Public Importance Rodoljub Sabic tabled to the Parliament the Report on the Implementation of the Law on Free Access to Information of Public Importance in 2009. The Commissioner has furnished the same report to the Serbian President, Serbian Government and the Ombudsman. Sabic said the report confirmed the continuity of positive trends and in particular the increasing interest of the public to exercise its rights. At the same time, he pointed out that the problems, highlighted in his previous reports, had unfortunately persisted. In 2009, the Commissioner's office handled about 2800 cases. The inflow of new cases had increased by about 23% and the number of decisions passed in these cases was by 29% greater than in the previous year. The Commissioner believes that these numbers must be considered in the light of the fact that by April 2009 his office had only five civil servants and that by the end of the same year, it had only 11 staff of 69 provided for by the Law. In about 90% of the cases, the actions of the Commissioner have yielded results and an applicant obtained the information previously denied to him. Sabic has also singled out the Government's non-compliance with the obligation to ensure the enforcement of the Commissioner's decisions when necessary, which has objectively encouraged those who breach the law. Mr. Sabic also pointed to the rising number of complaints filed by the government authorities against the Commissioner's decisions. These complaints are typically rejected by the Supreme Court and the Commissioner believes that they represent a waste of the time and taxpayers' money with the objective of denying them their legitimate rights. Sabic stressed that it was irrelevant if these complaints were motivated by unacceptable ignorance or if they were an attempt to delay the realization of citizens' rights, which is even more unacceptable. The fact that, due to insufficient activity of the competent ministry, only 7% of 1800 registered infringers of the law (the actual numbers are believed to be incomparably higher) are held accountable, also serves as an encouragement for the offenders.

The Law on Free Access to Information of Public Importance has not equipped the Commissioner with mechanisms to ensure the forcible enforcement of his decisions, punish the infringers or even to initiate misdemeanor proceedings against them. Regarding the enforcement of the Commissioner's decisions, the Law stipulates that, when necessary, they shall be enforced by the Government. The Law also says that the Government may pass

bylaws in order to regulate more closely the manner of enforcement. Until now, however, the Government has failed to pass such bylaws. Furthermore, according to the Law, a breach of the right to free access to information of public importance entails only misdemeanor responsibility. However, the Commissioner is not authorized to initiate misdemeanor proceedings – the latter may only be initiated by the Public Administration and Local Self-Government Ministry, namely the Administrative Inspectorate. Several days after the announcement that the report on the implementation of the Law on Free Access to Information of Public Importance in 2009 had been tabled to the Parliament, the President, the Government and the Ombudsman, the Commissioner declared on March 19, 2010 that he had held a meeting with the Prime Minister Mirko Cvetkovic and the Minister for Public Administration and Local Self-Government Milan Markovic. At that meeting, they agreed that the Government would pass, without delay a special bylaw or conclusion, as well as a proposal for amendments to the Law on Free Access to Information of Public Importance, so as to ensure better prerequisites for the enforcement of the Commissioner's decisions. In addition, the Government would take concrete steps to ensure the enforcement of the already passed but unenforced decisions and for that purpose the Administrative Inspectorate would press a considerable number of misdemeanor charges, the Commissioner's Office has announced.

4. Law on National Councils of National Minorities

4.1. On February 26, 2010, at a session held in Senta, the National Council of the Hungarian National Minority in Serbia concluded that the editorial policy of the "Magyar so" daily did not suit the interest of the Hungarian minority in Serbia and announced the establishment of a council that would monitor the said editorial policy. Such decision was condemned by the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina, while the Vojvodina Ombudsman Dejan Janca called on the National Council of the Hungarian National Minority to reconsider its decision. Janca also reminded that the Law on Public Information prohibited anyone from restricting, even indirectly, the freedom of media. On March 2, 2010, the Editorial Board of "Magyar so" published a press release saying that, by alleging that "the daily's editorial policy was bad and that it should be steered back to the right course", the National Council had revealed its true nature. "We remind that the agenda of the Editor in Chief, who was unanimously appointed by the National Council, contains one condition: any external influence on the editorial policy shall be deemed unacceptable and only the Editorial Board, which enjoys the support of all our journalists, shall be competent

for the editorial policy." Therefore we view the decision of the founders as an attempt to belittle the professional competence of our journalists."

The disputed intent of the National Council of the Hungarian National Minority in Serbia points *inter alia* to problems caused by last year's adoption of the Law on National Councils of National Minorities. This Law authorizes national councils to establish media outlets. At the same time, it enables the Republic, Autonomous Province or local self-government unit to partially or entirely transfer the control of public companies and institutions in the area of public information, which entirely or in part broadcast/publish in the language of the national minority, to the national councils. In the concrete case, under the said law, the National Council of the Hungarian National Minority in Serbia is today the founder of the "Magyar so" daily. Since the national councils are typically elected by the representatives of minority political parties, the danger is that the minority party or coalition, that has secured the majority in the National Council, will be in the position to control the media tasked with informing the entire minority community in the language of that minority. Neither the Law on National Councils of National Minorities nor the Law on Public Information contains appropriate mechanisms to protect minorities' media in such a case. The protective provisions of the Law on Public Information are merely declarative and probably ineffective in such cases.