

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. The Law on Public Information

1.1. The implementation of the Law on Public Information has been partly elaborated on in the section about freedom of expression.

1.2. Although the Constitutional Court found as early as back on July 22 that most of the provisions of the Law on Amendments to the Law on Public Information, adopted on the August 31, 2009, to be in disaccord with the Constitution and ratified international treaties, by the end of August the Court's decision was still not published in the Official Gazette.

The publication of the decision of the Constitutional Court in the Official Gazette is important because Article 58 of the Law on the Constitutional Court stipulates that a law that is found by that Court to be in disaccord with the Constitution and a ratified international treaty shall cease to be valid only on the first day of the publication of such decision in the Official Gazette. The failure to publish the decision practically amounts to prolonging the validity of a law that has already been proclaimed unconstitutional. The authors of this report did not observe in August a single case where unconstitutional provisions of the Law on Public Information had been applied, but it might have been possible, because these provisions are still in effect. The tardiness in publishing already adopted decisions of the Constitutional Court is definitely not a good thing, because it creates legal uncertainty that could give rise to a dangerous precedent.

2. Broadcasting Law

2.1. This report will partly elaborate on the implementation of the Broadcasting Law in the section about the monitoring of the activities of competent regulatory body, the Republic Broadcasting Agency.

2.2. On August 23, 2010, in an interview for Danas the spokesperson of the Republic Broadcasting Agency (RBA) Srboľjub Bogdanovic said that misdemeanor charges pressed by the RBA had disciplined the broadcasters. According to Bogdanovic, most of the charges concern the failure to label programs that may be harmful for children. In addition, broadcasters often violate the ban on airing certain content in time slots when it may be

accessible to children and minors. Bogdanovic emphasized that the number of such misdemeanors plummeted as of June and that the number programs containing foul language and profanity had been greatly reduced. According to the data for July, Bogdanovic claimed, such violations have practically vanished. He indicated that the RBA policy was to seek for the most efficient manner to remove inappropriate content off the air and that it was often sufficient to warn the broadcasters, after which they started to adhere to the standards set forth by law. The RBA spokesperson said in the same interview that the number of violations of the Advertising Law had been significantly reduced after the RBA had pressed charges.

The Broadcasting Law requires broadcasters to clearly label airing content that may be harmful for the physical, mental or moral development of children. This provision has been set forth more precisely by the Broadcasters' Code of Conduct adopted by the RBA in 2007. The Code stipulates that the broadcasters may air certain type of content only at times when children and youth are not supposed to watch radio and television programs (sex, nudity, brutal violence, drug abuse and similar content), namely to take into account the usual daily routine of children and to particularly avoid airing problematic content at times when minors may be expected to watch radio and television program. The Code also stipulates that content that may be harmful for children and youth must be specially introduced or labeled so as to indicate the minimum age of children that may watch the program prior to airing the program, at the beginning thereof and every 15 minutes in the course of the program. Broadcasters are free to classify the programs at their discretion, but the RBA is entitled to warn or fine the broadcasters that fail to label programs inappropriate for children at all or fail to label them in the manner prescribed by the Code, namely broadcasters that consistently indicate the wrong age limit for a certain program. Concerning the claims made by the spokesperson of the RBA about the violations of the Advertising Law, we wish to remind that the Law says that the RBA, in addition to passing detailed rules on advertising on television and radio, is also entitled to oversee the application of the provisions of the Advertising Law governing television and radio advertising. In December, in the scope of such oversight, RBA filed a number of misdemeanor charges against national broadcasters, but it remains unknown if any legal proceedings have yet been launched. Expressing the RBA's dissatisfaction with the tardiness of misdemeanor courts, certain members of the RBA Council requested that the Agency be authorized by law to directly pronounce fines.

3. Law on Free Access to Information of Public Importance

3.1. The Commissioner for Information of Public Importance Rodoljub Sabic has said that, in the first seven months of 2010, a total of 1686 cases of complaints for denying access to information of public importance were registered. For comparison, in 2009 as a whole, there were 1865 such cases and 1517 the year before. This means that, by the end of the current year, the number of cases could twice exceed the figures from 2009. Sabic emphasized that, while it was positive to have the citizens striving to realize their rights in that manner, many problems persisted, since the number of complaints was rising. The bulk of these complaints are filed against the Ministry of Internal Affairs, the Privatization Agency and the Finance Ministry, the latter failing to comply with the orders of the Commissioner to enable access to information in many cases. Sabic said that his office had received 737 reports about the work of state authorities (about 100 more than last year) but noted that figure to be unsatisfactory. Furthermore, he said that the chief “culprit” for such a state of affairs were the judiciary bodies, which was, on the other hand, understandable to a certain extent in view of the reorganization of the judiciary.

The Commissioner for Information of Public Importance is competent to decide on complaints against state authorities for violations of rights provided for by the Law on Free Access to Information of Public Importance. The Commissioner is however not competent for complaints against decisions delivered by the Parliament, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court, the Constitutional Court and the Republic Public Prosecutor, which may be challenged in administrative proceedings only. Consequently, the above statistics do not pertain to these bodies, namely their decisions denying requests for free access to information of public importance within their possession. Concerning the orders of the Commissioner that have not been fulfilled, we remind that the Commissioner was entitled by the amendments to the Law adopted in May 2010 to pronounce fines. On the other hand, the reports about the work of state authorities must be tabled to the Commissioner for Information of Public Importance by January 20 of the current year for the previous year and shall contain data about the number of requests filed, the number of completely or partially approved requests, as well as the number of rejected or denied requests, data about the number and content of complaints against decisions rejecting or denying a request, data about the total number of fees that were charged for granting the right to access to information of public importance, information about measures taken in relation to the obligation to publish the Information Booklet, measures taken in relation to maintaining the information carrier, as well as information about measures taken in relation to the training of employees for implementing the Law. The increasing number of ongoing

proceedings before the Commissioner points to an increase in the application of the Law, but also to a higher confidence of the public in the institution of the Commissioner.

3.2. The Deputy Public Prosecutor in Zajecar Dejan Stojanovic refused to respond to a request of a B92 reporter written in Latin alphabet because, in his own words, “he does not understand the language” and “reads only the Cyrillic alphabet”. The request concerned information about legal proceedings related to the shootout in cafe “Plus” in Zajecar. In that incident, an off-duty police officer had wounded a young man. “I have to admit I got confused and asked him in which language did I send him my first request. He replied that he didn’t know what language it was, because the request was written in Latin alphabet and reiterated that I must retype it in Cyrillic and resend it by fax if I wanted a response”, said the reporter Sonja Kamenkovic. The Republic Public Prosecutor’s Office said that the whole case was a misunderstanding, while the Commissioner for Information of Public Importance Rodoljub Sabic warned that Stojanovic’s conduct was unacceptable in a democratic society. Sabic said that the reaction of the Deputy Public Prosecutor in Zajecar was inconceivable in a democracy. “What if Mr. Prosecutor had received a notification about a multiple homicide written in Latin alphabet, would he still have ignored it? That’s nonsense”, Sabic said. The spokesperson of the Republic Public Prosecutor’s Office Tomo Zoric confirmed that his office receives all journalists’ queries, criminal charges and other petitions written both in Cyrillic and Latin alphabet, as well as in the language of ethnic minorities.

There is no law or regulation in Serbia obliging the citizens to address state authorities in the Cyrillic alphabet. On the contrary, the Law on the Official Use of Language and Alphabet says that state authorities and institutions, companies and other organizations, while exercising public powers, shall use Serbian language and the Cyrillic alphabet when communicating mutually and with the citizens. However, that Law does not oblige the citizens to use the same alphabet or even the same language when addressing the said institutions. On the contrary, the Law says that every citizen shall be entitled, in proceedings before an authority or organization that, in exercising public powers, is deciding upon the right or duty of that citizen, to use his/her own language and to be informed about the facts related to these proceedings in his/her own language. The Law on Free Access to Information of Public Importance stipulates that everyone is entitled to be informed whether the authority in question holds a particular information of public importance and if that information is accessible to him/her. It is a right that is not guaranteed only to citizens of Serbia or those who only speak the Serbian language, namely those who read or use Cyrillic alphabet. In view of the conditions for appointment to the post of public prosecutor and deputy public prosecutor – Serbian citizenship, a law degree and bar examination – Deputy Prosecutor Dejan Stojanovic must be familiar with the Latin alphabet, which in Serbia is taught in early

elementary school and used in parallel with the Cyrillic alphabet. Consequently, one may conclude that the incident was pure harassment. The incident in question amounted to violation of free access to information of public importance, as well as restricting freedom of public information and hindering free flow of information.