

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

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

1.2. The daily newspaper “Kurir” published a sensationalist text about a home porn video allegedly circulating around Jagodina, whose „lead character“ was, according to “Kurir”, a Serbian Orthodox priest from Jagodina of the name of Ivan J. The newspaper reported that the said priest claimed to have reported to the police that he was blackmailed by anonymous persons for money in order not to post the video on the Internet. He also said that he was not the person in the video. The “Kurir” text claims that the Ivan J. was suspended by the church until the facts were sorted out. “Kurir” posted the video on its website and published the pictures in its print edition. One of the photos depicts a priest who is not Ivan J, claimed by “Kurir” to be actor in the porn home video. The said photo depicts Ivan Cvetkovic, the vicar of the Church of the St Jacob the Apostle in the village of Dublje, near Jagodina, who is not mentioned in the text at all. “Kurir” later published an apology to Ivan Cvetkovic.

The releasing of a personal video without the consent of the person that made the video or the person filmed, namely without the consent of the person depicted in the video or the consent of some other person whose consent is required by Law – and intruding in the personal life of that person – has serious legal and criminal implications. Namely, such action may amount to the criminal offense of unauthorized release and showing of another person’s document, portrait or recording referred to in Article 145 of the Criminal Code, which is subject to a two-year prison sentence.

On the other hand, subject to the Law on Public Information, intruding in someone’s private life represents grounds for the plaintiff to press charges against the editor-in-chief of the public media requesting the intruding video not to be released or to be removed or destroyed, as well as for requesting damages and publishing of the verdict in the public media in question. The Law expressly stipulates that the plaintiff may also request from the founder of the public media to be paid part of the profit generated by the release of the video, in proportion to the extent to which the use of information or footage from that person’s private life has contributed to the generated profit. The rules that were definitely not obeyed in this case, pertaining to releasing information from someone’s private life or footage of one’s face

or voice that may identify that person, which are contained in the Law on Public Information, are very precise and generally applicable, with one exception. The Law namely stipulates that the rights of holders of government and political functions to privacy shall be restricted if information is relevant to the public, in view of the fact that the person the information relates to is occupying a certain function. This restriction is proportionate to the justified interest of the public in each particular case. The general rule is that releasing information shall be subject to consent, both of the person whose private life is affected by the information and the person's words, face and/or voice is contained in the video, as well as of the person whom the information or recording is intended to, namely the person it pertains to, if releasing such information or footage would infringe on someone's privacy or other right. Consent given for one broadcast or for a particular kind of broadcast, namely for broadcasting for a particular purpose, shall not be considered as consent for re-broadcasting, broadcasting in a different manner or broadcasting for different purposes. If the person that has given the consent has died, consent must be given by the spouse of the deceased, his/her children over 16 years of age, parents or siblings, the legal person in which the deceased was involved (as an organ, member, employee), when the information or recording pertains to his/her activity in that legal person, namely a person designated by the deceased to give consent. As an exception, the information or recording from one's private life may be released without the consent of the person it pertains to in the following cases:

- If the person has intended the information or recording to the public,
- If the information or recording pertains to a person, occurrence or event of interest for the public, especially if it concerns of holder of governmental or political office and the release thereof is important due to that fact (holding such office).
- If the person has behaved so as to cause the release of the information or recording,
- If the information has been released or recording has been made during a public parliamentary debate or public debate in a parliamentary body,
- If release is in the interest of the justice, national security or public safety,
- If the person did not oppose the obtaining of the information or taping of the recording, although it was aware that the purpose was to release it publicly,
- If the release is in the interest of science or education,
- If the release is necessary as a warning of a hazard (in order to prevent an epidemic, find a missing person, fraud and the like),
- If the recording pertains to a multitude of persons or voices (sport fans, concert audience, protesters, passerbies, etc.)
- If it is a recording from a public gathering,

- If the person is shown as part of the scenery, nature, panoramic view, settlement, square, street or similar sight.

2. Broadcasting Law

2.1. The implementation of the Broadcasting Law shall be elaborated in this Report through the section concerning the monitoring of the activities of the competent body – the Republic Broadcasting Agency (RBA).

2.2. On September 1, 2010, the Republic Broadcasting Agency released a list of individuals and companies that were issued a television and radio broadcasting license on a public competition for regions and local areas. The said list includes 34 broadcasters.

We hereby remind that the RBA Council passed a decision in March on calling a public competition for the issuance of television and radio broadcasting licenses, namely one local television license and two regional, and 50 local radio licenses. The obligation to publicly release such list lies with the Republic Broadcasting Agency, as provided for by Article 53, paragraph 1, subparagraph 7) of the Broadcasting Law.

3. Law on Electronic Communications

On September 30, 2010, the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection initiated before the Constitutional Court a constitutionality procedure with regard to Article 128, paragraphs 1 and 5 of the Law on Electronic Communications, as well as of Article 13, paragraph 1 in relation to Article 12, paragraph 1, subparagraph 6) and Article 16, paragraph 2 of the Law on the Military Security Agency (MSA) and the Military Intelligence Agency. The proposal states that the contested provisions of the Law on Electronic Communications are in disaccord with the Constitution of the Republic of Serbia, because they allow the enforcement of special measures overriding the secrecy of letters and other means of communication not only on the basis of a court order, but also absent of such order, when such possibility is prescribed by Law, namely at the request of the competent state body. The disputed provisions of the Law on the Military Security Agency and the Military Intelligence Agency provide that the MSA shall, “on the basis of an order by the MSA Director or person authorized by him”, employ special procedures and measures, including “secret electronic surveillance of telecommunications and information systems in order to gather data on telecommunication traffic and the

whereabouts of the user, without examining the content of such traffic”. Furthermore, the MSA “shall be entitled to obtain information from telecommunications operators about the users of their services, realized traffic, location from which the communications are taking place and other information relevant for the outcome of special procedures and measures”. In the opinion of the Ombudsman and the Commissioner, the said information is intruding in the privacy of letters and other means of communications and the MSA may not be “entitled” to it without a court decision.

We hereby remind that the Law on Electronic Communications, in its Article 128, paragraph 1, says that every telecommunications operator shall be obliged to retain information concerning the type of communication, its source and destination, the start, duration and end thereof, the identification of the user’s equipment, including the mobile user group, with the aim of carrying out an investigation, uncovering of crimes and carrying out criminal proceedings, in accordance with the law regulating criminal proceedings, as well as for the needs for protecting national and public security of the Republic of Serbia, in keeping with the laws governing the activities of the services of the Republic of Serbia and the work of internal affairs agencies. Paragraph 5 of the same Article stipulates that the operator shall retain information so that it may be promptly accessed, namely so that such information may be promptly served at the request of the state authority. The constitutionality request states that the said regulations are not conformed to the provision of Article 41 of the Constitution of the Republic of Serbia, which guarantees the secrecy of letters and other means of communication, with exceptions that are permitted only for a specific period of time and on the basis of a court order. A particular concern is the fact that on May 28, 2009, the Constitutional Court of the Republic of Serbia passed the decision pronouncing that the provision of Article 55, paragraph 1 of the previous Law on Telecommunications is not in accordance with the Constitution. The Law on Telecommunications ceased to be effective with the adoption of the Law on Electronic Communications. With Article 128, paragraph 1 thereof, the legislator practically attempted to evade the Constitutional Court’s decision from 2009, by adopting a new provision, which essentially corresponds to the provision that was formerly found to be unconstitutional, namely by restoring the level of human rights protection to the one that existed prior to the said decision of the Constitutional Court from May 28, 2009. The consequences of the contested provisions of the Law on Electronic Communications for the media, as we have already outlined in our previous reports, primarily involve the possibility to identify reporters’ sources by tracking the listings of their outgoing and incoming calls, thus evading the provision of the Law on Public Information providing for the reporters’ right to keep their sources secret.