

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. The Public Information Law

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

1.2. The decision of the Constitutional Court from July, finding most of the provisions of the Law on the Amendments to the Public Information Law – adopted on October 31, 2009 – to be unconstitutional and in discord with ratified international treaties, remained unpublished in the Official Gazette of the Republic of Serbia until the end of October, more than three months after it was adopted.

Article 58 of the Law on the Constitutional Court stipulates that a Law found by the Constitutional Court to be unconstitutional and in discord with ratified international treaties shall cease to be effective only on the day of publication of such decision in the Official Gazette. The failure to publish the decision more than three months after it was passed has extended the validity of a Law that has already been declared unconstitutional, thus causing serious and unjustified legal insecurity.

2. The Broadcasting Law

2.1. The Independent Journalists' Association of Serbia (NUNS) has blasted the Prva TV station over the participation of Milos Radosavljevic Kimi in the program "Hospot – Who is to Blame" aired on October 13. The program dealt with the riots on the streets of Belgrade that occurred a few days earlier. NUNS press release said that the presenter of the program Zoran Baranac had committed a serious breach of the code of ethics "by not having introduced Radosavljevic as a person that has been indicted for a criminal offence and for failing to react adequately to the scandalous assertions of his guest". Radosavljevic has been sentenced in first instance to 16 months in prison for threats against the security of TVB92 investigative reporter Brankica Stankovic.

We are including this case in the Report's section dealing with the implementation of the Broadcasting Law, since we believe that it contains implications transcending mere violations of the journalists' code of ethics. Namely, Article 68 of the Broadcasting Law itemizes the general obligations of broadcasters relative to programming content, including the obligation to ensure free, complete and timely information of citizens. Accordingly, the fact that the leader of the supporters of the Partizan football club Milos Radosavljevic Kimi was invited to a talk show as a relevant collocator on the topic of violence in the streets of Belgrade and the football stadium in Genoa – where Serbian hooligans caused the football match between Italy and Serbia to be interrupted – in the company of Serbian MPs, former secret service staff and journalists, might be considered as a matter of journalist ethics. However, the fact that the presenter failed to inform the viewers during the talk show that a person taking part in the program had been freshly sentenced in first instance to 16 months in prison for threats against the security of TVB92 investigative reporter Brankica Stankovic represents, in the opinion of this Report's authors, the most blatant violation of the broadcasters' obligation to ensure comprehensive information of the citizens. At the end of the program, the viewers were finally informed of Radisavljevic's prison sentence, but it was Radisavljevic himself that had told them the facts, albeit in a way that could be interpreted as making public comments about legal proceedings, which is prohibited under the Penal Code. Namely, under Article 336a of the Penal Code, making public statements on public media, with the aim to breach the presumption of innocence or independence of the court, in the duration of legal proceedings before the court and prior to the delivery of a final court decision, shall be punishable with a penalty of imprisonment of up to six months or a fine. It has lately been reported at length about the fact that the media are, as a rule, violating the presumption of innocence. The above case is an example of opposite, but equally unacceptable extreme media conduct.

3. The Penal Code and the Law on Juvenile Offenders and Criminal Legal Protection of Minors

3.1. In its October 25 edition, the daily "Kurir" announced that it had "acquired" documents confirming that the son of Sladjanka Milosevic, the Serbian Judiciary Trade Union Secretary – which was, at the time of "Kurir's" report, on strike, after having rejected an offer of the Justice Ministry's to end the strike – has a "criminal past". The report specified punishable offenses he had committed in 2004 and 2006 while he was a minor, as well as corrective measures imposed upon him in 2006. The Journalists' Association of Serbia (UNS) said it feared that "Kurir" had been misused to political ends in order to tarnish the reputation of the trade union strike

leaders. UNS also called the Justice Ministry to explain how had the confidentiality of the juvenile proceedings been breached and under which circumstances personal data from these proceedings had been utilized for an improper purpose.

Under Article 55 of the Law on Juvenile Offenders and Criminal Legal Protection of Minors, it is prohibited, without the permission of the court, to release information about juvenile proceedings or publicly communicate the decision delivered in these proceedings. The court may, as an exception, allow the part of the decision to be released, provided that the name of the juvenile person and other data that might serve to identify that person, remain confidential. In the concrete case, “Kurir” published a decision delivered in proceedings against a juvenile person, the details of these proceedings, the full name of the person that was tried in juvenile proceedings at the time when he was a minor, as well as the full name and position of his mother in the Judiciary Trade Union of Serbia – information on the basis of which it was possible to identify the person. Under the Penal Code, data from criminal records may only be disclosed to the court, Public Prosecutor’s Office and the Police in relation to criminal proceedings against a person with a criminal record, to the authority in charge of enforcement of criminal penalties and the authority involved in the proceedings of granting amnesty, pardon, rehabilitation or deciding about the cessation of legal consequences of a verdict, as well as to guardianship authorities, when such disclosure is necessary for carrying out duties from their competence. Such data may also be disclosed to other state authorities that are in charge of investigating and preventing criminal offences, but only in cases provided for by a separate law. The Penal Code also provides for the criminal offence of breaching the confidentiality of legal proceedings: Article 337, paragraph 2 of the Penal Code makes it a criminal offence, punishable by up to two years of imprisonment, to publicly release information about criminal proceedings that have been restricted to the public or a decision delivered against a juvenile person in criminal proceedings, or to publicly release the name of a juvenile person that has been tried in juvenile proceedings, or information which may lead to the identification of the juvenile person.

The above case is to a certain extent a reminiscence of the case of “Glas javnosti”. Back in early March 2004, this daily reported that the then Interior Minister Dragan Jovic had been sentenced in 1981, before the Third Municipal Court in Belgrade, to a six-month probation term for robbing a kiosk and petty theft. “Glas Javnosti” also reported that Jovic’s sentence was annulled and deleted from the records back in December 1985, since he had not committed any other criminal offence in the meantime. However, in that case, the rights to privacy of Dragan Jovic were restricted, since he was occupying the position of Police Minister and the information

reported by “Glas Javnosti” was relevant for the public interest in view of such an important position. In that concrete case, the only persons that could have been brought to account were the ones in charge of criminal records in the Court. These persons had presumably leaked the information from these records to the press, including the information about sentences that were deleted from the records. In the case of the report by “Kurir” on October 25, it is justified to question the responsibility of reporters and the media, since the rights to privacy of the persons mentioned in the “Kurir” report were in no way whatsoever restricted.