

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

1.2. In an interview for the daily “Danas” published on February 7, the Public Prosecutor Zagorka Dolovac spoke, among other things, about the assassination of the journalist of the “Duga” weekly Radislava Dada Vujasinovic, as well as about the investigation of the fraud in the “Kolubara” mining basin – both cases were the topic of TVB92’s investigative program “Insider”. Zagorka Dolovac said that the death of Dada Vujasinovic, formerly qualified as a suicide, has been qualified as a murder in the renewed investigation. “All experts involved in that case have been interviewed. New and old witnesses are being interrogated and re-interrogated. All of them are expected to help shedding light on the circumstances of Vujasinovic’s assassination. It is not suitable for me to speculate whether there are clues pointing to the conclusion that she was killed by the state security service. However, in view of the manner in which the inquest was conducted in the Curuvija case, one may see that similar omissions were made in cases of Dada and Curuvija”, Zagorka Dolovac said.

According to the Public Information Law, it is forbidden to put any kind of physical or other pressure on public media and its staff so as to obstruct their work. The fact that the murder of journalist Dada Vujasinovic, as well as the assassinations of Slavko Curuvija and Milan Pantic, remain unsolved – in Vujasinovic’s case for almost 16 years – is seriously undermining the confidence of the media in the institutions and the constitutional and legal guarantees concerning freedom of speech. Although in the above-mentioned cases the judiciary is not proceeding according to the Public Information Law, but according to criminal legislation, the feet dragging in the investigations indirectly affects freedom of expression in Serbia and the enforcement of the Public Information Law, by increasing the feeling of insecurity among journalists and fueling self-censorship in the media sector.

2. Broadcasting Law

2.1. On February 18, 2011, the Council of the Republic Broadcasting Agency held an extraordinary session in the attendance of the representatives of two national televisions – Pink and Happy. The urgency of the meeting was explained by the escalation of verbal and

physical violence in reality programs aired by the said two stations. The Council went on ordering the said stations to remove from their reality programs everything that was violating the Broadcasting Law and the Broadcasters' Code of Conduct. The Council also prohibited further broadcasting of programs, the contents of which were threatening the physical, mental and moral development of minors and human dignity. An emphasis was put on programs justifying and inciting violence; the Council requested that the participants of reality programs be banned from consuming alcohol and tobacco, that entire sentences containing foul language and insults be covered by a sound signal in the rebroadcast episodes, as well as that the programs be accompanied by a warning in the form a crawl every five minutes saying that these programs might be unsuitable for children and youth. The Council also decided to initiate misdemeanor proceedings against TV Pink, but reminded that the proceedings initiated in 2009 against Pink, also over the content of a then reality program, were still not finished. In the press release issued after the meeting, the RBA Council reiterated it would ask the Ministry of Culture to send as soon as possible the Draft Amendments to the Broadcasting Law to the Parliament for approval in urgent proceedings. These amendments, as it is the case in some countries in the region, would enable the RBA Council to pronounce direct financial sanctions for violations of the Broadcasting Law, the enforcement of which is within the competence of the Council. The RBA Council would also be authorized to order a temporary or permanent ban of a particular television program.

Only one week after the extraordinary session of the RBA Council on February 18, the situation in the reality show "Dvor" (the Castle) on Pink Television escalated further. In the night between February 24 and 25, one of the participants in the program, singer Maja Nikolic, was evicted from the show over antisemitic declarations made during a live transmission. Another participant of the program, singer Milos Bojanic, who supported Maja Nikolic over her antisemitic declarations, also left the show. The RBA reacted with a request for sanctioning hate speech. Israeli Ambassador in Serbia Arthur Cole said he was appalled by the antisemitic content aired in the reality program "Dvor" on Pink, the Israeli embassy in Belgrade said in press release. "We have been able to see as of late a rise of antisemitic incidents in Serbia, the last of which is the most evident one. This is a cause for concern and requires the full attention of the relevant state authorities", Cole said. Pink Spokesperson Tanja Vojtehovski said that Maja Nikolic had been punished by disqualification for verbal violence and hate speech. "After the incident, our station publicly stated that it did not endorse the views expressed during the live transmission of the program by Maja Nikolic and Milos Bojanic, branding their declarations as an incident and hate speech and apologized to all those who might have been offended by these declarations", Vojtehovski said. The Public Prosecutor has launched pre-criminal proceedings against Maja Nikolic and Milos Bojanic over hate speech in the reality program "Dvor". The Jewish Community also announced it

intended to press charges against Pink television. The RBA announced it would pass a binding order prohibiting the live transmission of reality programs. “It is a too risky television format. We had a situation we must all be ashamed of and we must react”, said Goran Karadzic, the Deputy Chairman of the RBA Council.

Article 21 of the Broadcasting Law says that the RBA shall ensure that the broadcasters’ programs do not contain information inciting to discrimination, hate or violence against persons or groups of persons over their political affiliation or race, religion, nation, ethnic group, gender or sexual orientation. Hate speech is also prohibited by Article 38 of the Public Information Law. In accordance with this provision, it is prohibited to publicly release ideas, information and opinions inciting to discrimination, hate or violence against persons or groups of persons over their political affiliation or race, religion, nation, ethnic group, gender or sexual orientation, regardless of whether such public release represents a criminal offense. Where the broadcasters fail to adhere to the ban on hate speech, the RBA may pronounce the proper measures, irrespective of other legal possibilities at the disposal of the plaintiff. These measures, under the Article 17 of the Broadcasting Law, include a reminder, warning and a temporary or permanent revoking of the broadcasting license. In addition, the RBA may launch, before the competent court or other government authority, proceedings against the broadcaster or the responsible person thereof, if their actions, or failures to act, amount to a punishable offense under the law. The fact that, in the concrete case, due to its failure to timely issue a warning, the RBA placed itself in the position to be unable to pronounce an even tougher sanction – temporary revoking of license. Namely, under the Broadcasting Law, a broadcaster’s license may be temporarily revoked only when the broadcaster continues to breach the law or its obligations in spite of the received warnings. The failure of the RBA to timely issue warnings creates the sense that the Agency does not have the adequate tools to enforce the hate speech ban in practice and protect the public from unacceptable content. Furthermore, RBA request, to be authorized to directly pronounce fines against broadcasters, fails to take into account the fact that temporary revoking of the broadcasting license ultimately results in financial losses of that broadcaster, since it would be prevented from generating income. On the other hand, the RBA has also failed in its regulatory work. Out of ten general binding orders adopted by the Agency, eight pertained to election reporting. It is particularly noteworthy to recall that back in 2007, the Council recommended the broadcasters to refrain from airing programs involving soothsayers, horoscope tellers and the like, because of possible manipulation of gullible viewers. At the same time, RBA recommendations and orders did not concern reality shows, which had caused the same amount of controversy in the public as soothsayers and horoscope tellers, if not more. As for the charges announced by the Public Prosecutor against Maja Nikolic and Milos Bojanic, these charges concern the criminal offense of inciting ethnic, racial and religious hatred and

intolerance, provided for in the Criminal code of the Republic of Serbia and which is subject to a prison sentence ranging from six months to five years.

2.2. After its meeting of January 31, the RBA Council released after a public call for nominating candidates for nine members of the Managing Board of the Public Service Broadcasting Institution of Serbia and six members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina.

According to the Broadcasting Law, the Managing Board is a managing body of the Public Service Broadcasting Institution of Serbia. It enacts the Statute of the Agency with the RBA's consent and adopts plans and reports about the activities and commercial transactions of the Public Service Broadcasting Institution of Serbia, as well as periodic and annual statements of accounts, about which it must inform the public, the RBA and the Parliament. The Managing Board also appoints and removes the General Manager of the Public Service Broadcasting Institution of Serbia, the managers of radio and television and the editors-in-chief, at the proposal of the General Manager; approves the general act of the General Manager about job systematization and tasks in the Public Service Broadcasting Institution of Serbia, adopts investment plans, reviews the recommendations of the Programming Committee and performs other tasks laid down by law and the Statute. The Managing Board has nine members appointed and removed by the RBA, from the ranks of journalists and reknown media, management, law and finance experts, as well as other reputable persons. The following persons may not be members of the Managing Board: members of parliament, members of the provincial parliament, members of the RBA Councils, members of the Government, namely employees of the executive branch of the Autonomous Province, or appointed or designated persons in the Government, employees of the executive branch of the Autonomous Province or republic or provincial bodies, as well as the officials of political parties. The term of office of the members of the Managing Board shall be five years and a person may be appointed to the membership of the Managing Board not more than two consecutive times. The current Managing Board was constituted on April 19, 2006 and hence its term of office is about to expire. The same rules apply to members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina, the difference being that members of that body may only be persons living and working in the Authonomous Province of Vojvodina. The reason for the public call for proposing candidates being called only for six members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina is the fact that the remaining three members of the Managing Board were appointed in early 2009 after the resignation of three out of nine members of that body in December 2009.

3. Law on Local Self-Government

In its edition on January 9, 2011, "Vecernji Novosti" reported that media associations had recommended that the resources earmarked for information be allocated in a transparent manner, on the basis of a public competition and under equal conditions for all. ANEM, IJAS (NUNS) and Local Press requested from the Ministry of Culture and Ministry for Public Administration and Local Self-Government to use their competences laid down in the Law on Ministries and send a recommendation to local self-government units as to the manner of realizing their competences laid down in Article 20, paragraph 1, subparagraph 34 of the Law on Local Self-Government. The said provision stipulates that the municipalities shall take care about public information of local relevance and ensure the conditions for public information in the Serbian language and the languages of ethnic minorities used on the territory of the municipality.

ANEM, NUNS and Local Press have insisted on equalizing the position of public and private media in applying for these funds, as well as on keeping the same level of funds allocated to municipalities for public information, namely keeping these funds at the level that existed prior to the privatization of public local news companies, if the privatization has already been carried out in the given municipality. NUNS, ANEM and Local Press have also insisted that the funds be allocated transparently, on public competitions for the co-financing of media projects, under equal and non-discriminatory conditions, as well as that the said public competitions be called in regular and predetermined time intervals. One of the requests of the above-mentioned associations also was that the right to participate in public competitions is restricted exclusively to the founders of media that possess broadcasting licenses for the territory of the local self-government in question, namely licenses for distribution on the territory of the local self-government for print media. Independent production companies, according to this request, would be eligible to apply, provided that they present a valid contract guaranteeing the broadcasting/release of the content in question. These media associations also requested that the main criteria for selecting projects on public competitions should be: the relevance of the project for realizing the right to public information about matters of local and regional importance; the project's contribution to the diversity of media content and pluralism of ideas and values at the local and regional level; a valid explanation of the project, adequate budget specification adjusted and explained relative to the planned project activities, as well as the sustainability of the project. According to the same request, any additional criteria for selection shall be agreed upon through consultations with journalist and media associations. Furthermore, the above mentioned media associations insisted on the formation of independent commissions that would select the projects, whose work would have to be transparent and which would consist of the

competent representatives of the public, professional associations and the non-governmental sector. Membership to these commissions would be barred for members of parliament, councilors, appointed and designated persons in the Government, executive branch of provinces and local self-government units, but also for persons appointed to managing positions in public companies and institutions, as well as for political party officials. By the time when this Report was finalized, the Ministries did not send such recommendation to local self-government units. According to what the authors of this Report have learned, the main stumbling block is the insisting of ANEM, NUNS and Local Press on the independence of the commissions, whereas the ministries believe that the commissions should include representatives of municipal authorities. In the meantime, according to media reports, in municipalities throughout Serbia, the funds for the above mentioned purpose are still being allocated in a non-transparent manner: state-owned media and those close to local authorities are being treated more favorably than, respectively, private media and those that criticize the aforementioned authorities.