

## II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

### 1. Public Information Law

On a session held on May 5, 2011, the Constitutional Court of Serbia declared the provisions of the Law on Amendments to the Public Information Law to be unconstitutional. These provisions authorize the competent minister to regulate, in more detail, the manner of keeping the Public Media Register, namely determine the time periods for passing such regulations and for submitting the application for registration with the said Register. The Constitutional Court found that the Public Information Law did not contain at all provisions regulating the procedure of registration with the Public Media Register and the manner of keeping such Register and that accordingly, the authorization given to the competent minister was essentially outside of the constitutional powers of the executive branch, representing an authorization for independent regulation of both the manner of keeping the Register and the procedure of registration with the Register. Therefore, the Constitutional Court has found that the contested provisions of the Law on Amendments to the Public Information Law are not in accordance with the constitutional principle of separation of power and the constitutional position of the public administration as a part of the executive branch. The Court also found the regulating the manner of keeping the Public Media Register to be directly linked to the realization of the constitutionally guaranteed freedom of media, since the manner, in which these two issues are regulated, greatly determines the realization of the constitutional guarantee that newspapers and other means of public information should be established freely, without authorization. Bearing in mind that, in keeping with the Constitution, the manner of realization of guaranteed rights and freedoms may be regulated solely by Law, the Court found the contested provision to be unconstitutional in that respect too.

We remind that on a session held on July 22, 2010, the Constitutional Court passed a decision, published in the Official Gazette no. 89/2010, declaring unconstitutional the provisions of the Law on Amendments to the Public Information Law from 2009, which have granted the right to establishment of public media to domestic legal persons only. The court also declared unconstitutional the provisions committing the Public Prosecutor to initiate proceedings for commercial offense and request the measure of temporary suspension of the publishing of a public media where such publishing, as an activity, is not registered with the Register. In the same decision, the Court also determined the draconian, multimillion fines against the media to be unconstitutional. The new decision of the Constitutional Court determined the provisions of the Law on Amendments to the Public Information Law, to be

unconstitutional, which concern the manner of keeping the Public Media Register, authorize the competent minister to regulate in more detail the manner of keeping the Public Media Register, namely to pass regulations with that purpose. All this practically means that, two years later, nothing actually remained of Law on Amendments to the Public Information Law from 2009, which had strained to the extreme the relations between the media and the government, expressing the total lack of trust between them, but which has also revealed the willingness of the government to disregard and crush the fundamental human rights and democratic principles in its crackdown on the media. This is a victory for human rights, but also for the right to free expression and elementary democratic principles. It is not, however, a reason to rejoice. Two years after the adoption of the notorious Law on Amendments to the Public Information Law, the problem of the lack of capacity of both the legislator and the competent ministries to regulate in a comprehensive and socially acceptable manner, the important social relations in the field of media, remains as grave as it was before 2009. This is precisely why today we remain concerned for media freedoms in Serbia.

## **2. Broadcasting Law**

On May 5, 2011, on its Third Session of the First Regular Siting in 2011, the Parliament of the Republic of Serbia passed a decision on the election of three members of the RBA Council, at the proposal of the Parliament's Culture and Information Committee. The Parliament elected Milos Rajkovic, Slobodan Veljkovic and Bozidar Nikolic. Nikolic was born in 1942, he is a graduated photography director and during his 30-year service in RTS, he has made about fifty television dramas, several documentary and show programs. Rajkovic was born in 1960, he is an Economist and Graduated Manager and a journalist by vocation. Veljkovic was born in 1950, he is a Graduated Lawyer and since May 2009, an Editor in Radio-Television Vojvodina.

The Broadcasting Law stipulates that the Parliament must pass the decision on the election of new members of the RBA Council prior to the expiration of the term of office of previous members. In this case, the term of office of the three previous members of the RBA Council – Nenad Cekic, Aleksandar Vasic and Vladimir Cvetkovic, who were elected at the proposal of the Culture and Information Committee – expired back on February 17. Hence, the Parliament practically left the RBA with an incomplete Council for almost three months. This has created a situation where the RBA Council has functioned almost deprived of a quorum for decision making, namely even for passing decisions which require, under the Broadcasting Law and the RBA Council Statue, a qualified majority. We remind that the Broadcasting Law stipulates that the Speaker of the Parliament shall issue a public call for the

submission of proposals for a list of candidates for the Council no later than within six months prior to the expiration of the term of office of the previous member of the Council. The authorized proposers shall, no later than within two months from the issuance of the public call, submit to the Parliament a proposed list of candidates for the vacancies. In practice, however, the said time period is often insufficient for the Parliament to pass a decision on the election of members, thus compromising the functioning of the regulatory body.

### **3. Law on Free Access to Information of Public Importance**

On the occasion of the Word Press Freedom Day on May 3, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic sent letters to the presidents of the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV), indicating that journalists and media in general were increasingly invoking the rights from the Law on Free Access to Information of Public Importance, putting the said Law in the function of informing the general public. "This is undoubtedly a good thing," Sabic said. However, he warned that "it is not good, regardless of the progress achieved, to have the many problems that still remain. Therefore, it is high time to seriously activate the mechanisms of calling to account those who breach the law." Sabic found that the principle of transparency of government operations commit the authorities to provide to the public much more information in the most adequate way, proactively, by publicly presenting the available databases and posting such information online. In Sabic's opinion, the existing level of electronic communication of our government and the citizens is not satisfactory and the situation in that respect requires much faster changes. Sabic also pointed to the existence of various mechanisms of implicit censorship in the Serbian society.