

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

2. Broadcasting Law

2.1. In early August, the owner of Pink television Zeljko Mitrovic announced that he would remove Croatian music, films and advertisements from program in all five countries where this company owns TV stations (Serbia, Macedonia, Slovenia, Bosnia and Herzegovina and Montenegro). The announcement came after the Croatian advertisement for the auction of Mitrovic's yacht on August 17 in Dubrovnik. As a reminder, Croatian customs seized the yacht in September last year as it was sailing in from Montenegrin waters, with citations of customs procedure violations; Mitrovic lodged a complaint concerning the decisions of Croatian authorities. However, the thing that caused special reactions in the public is Mitrovic's statement that he had been trying all these years to improve neighborly relations between Croatia and Serbia by "favoring Croatian music, cinematography and Croatian investments in ex-Yugoslav countries". Mitrovic announced that his company's managing board would discuss "banning Croatian music in all five countries where Pink had its television and special care measures for quality control of Croatian products in countries outside Croatia". Also, he stated that he had forbidden Croatian tourist advertisements on his channels and that he would "never again be in a position to cover up incidents and embarrassments that Serbian, Bosnian and Montenegrin citizens experienced on summer holidays in Croatia". Journalists' associations reacted to Mitrovic's statement. Nino Brajovic, UNS general secretary, said that the job of the media was not to cover up anyone's assaults or to non-critically promote anyone, and asked whether Mitrovic's statement meant that he would continue covering up if Croatia returned his yacht. The media reported that the Ministry of Foreign Affairs of Croatia had also reacted and, keeping in mind that Pink uses a Serbian national frequency, called for urgent action in accordance with all legal regulation to stop publishing negative and unfounded content on Croatia, its institutions and Croatian companies on TV Pink as soon as possible. The Ministry of Culture, Media and Information Society submitted information concerning objections from Croatia to the Republic Broadcasting Agency and the RBA Council stated that they were "keeping a close eye on the program of Pink television regarding the case that emerged after statements made by television owner Zeljko Mitrovic". This sort of monitoring did not, however, lead to imposing any specific measures.

The incident with Mitrovic's reaction to the announced auction of his seized yacht in Croatia provided an opportunity to many to point to the shortcomings of the media system in Serbia, which allegedly did not provide adequate mechanisms to prevent the abuse of frequencies as national goods in media owners' private purposes. However, is this indeed the case? Let us remind that the Broadcasting Law established principles to regulate relations in this field, among which are the principles of freedom, professionalism and independence, a ban on all forms of censorship or influence on the work of broadcasting media, all with the aim of guaranteeing their independence and the independence of their editorial boards and journalists. The law also insists on a full affirmation of civil rights and liberties, particularly the freedom of expression and pluralism of opinions. Unfortunately, even at the level of internal codes within the media, there are no rules to guarantee the independence of the editorial boards and journalists in relation to media owners and their private interests. However, on the other hand, it is undoubtedly the case that the RBA, in accordance with provisions of Article 8, paragraph 2, point 3 of the Broadcasting Law, is authorized to undertake measures with the aim of banning programs that contain information inciting discrimination, hatred or violence against persons or groups of persons due to their belonging or lack thereof to a certain nation or ethnic group. Also, in accordance with Article 13 of the said Law, RBA is authorized to monitor the work of broadcasters. In monitoring, the RBA is obligated to take special care that broadcasters fully comply with conditions under which their permit was issued, especially regarding general programming standards prescribed by law. Let us remind, one of the programming standards prescribed by the law is that broadcasters are obligated to provide free, full and timely information of citizens, whereas biased information in accordance with the owner's private interests certainly does not fall in this category. Also, the often criticized Code of Conduct for Broadcasters ("Official Gazette of the RS" No 63/2007) contains specific provisions that could be applicable to this practice. Specifically, in its manual regarding general programming standards in news broadcasting and current affairs programs, RBA stipulates that the broadcasters are obligated to provide that each standpoint be presented in a minimally objective way (without biased editing, inserted comments etc). Also, according to the Code, the right to an independent editorial policy includes the obligation of impartiality in reporting, which again implies clearly separating factual reports from positions, opinions or comments and taking care that the editor's personal beliefs and opinions do not impact the selection of topics and the manner of their presentation in a discriminatory way. Let us remind, apart from being the owner, Zeljko Mitrovic is also the Editor-in-chief of Pink television. Moreover, the Code prohibits broadcasters to intentionally conceal information of public significance. It could be concluded from Zeljko Mitrovic's statements that such intentional concealing of information of public significance did occur in the programs of the television under his editorial care.

Finally, the Code contains a general ban on discrimination, among others, based on ethnicity or nationality.

2.2. In late August, Telekom Srbija announced that it had become owner of 51 per cent of HD WIN Company, founder of four Arena Sport TV channels, by way of capital increase by € 7.7 million. As stated in the communication, with this acquisition, Telekom Srbija shall become the first telecommunications operator in Serbia to play a significant part in the production of multimedia content, apart from its distribution business. Somewhat simultaneously, the media announced that TV Pink might soon fall into the hands of one of the owners of SBB, “Mid Europa Partners” investment fund. As they said in Pink television, they had initiated business talks with “Mid Europa partners”. SBB is the most powerful Serbian cable and satellite DTH operator. According to the data from the Business Registers Agency, Adria Cable B.V. of Amstelveen in Holland own SBB. However, there is information at Mid Europa Partners’ website that this fund led a consortium of investors that took over 100% ownership of SBB in July 2007. Mid Europa Partners’ present share in the ownership is unknown.

The Broadcasting Law contains provisions related to media concentration and cross-media ownership, but it does not contain provisions related to vertical integration, i.e. simultaneous participation in various markets of significance for media production and distribution, including advertising, press distribution and electronic communications markets. Media ownership by the operator of the largest cable and satellite DTH network in Serbia (SBB) and the operator of the largest IPTV network (Telekom Srbija) inevitably poses questions concerning the creation of possible bottlenecks in the distribution of media content through favoring own content compared to content from other players in the media market. From the standpoint of the Broadcasting Law in its current form, the completed (in the case of Telekom Srbija) and announced (in the case of SBB) transaction does not represent illicit media concentration. Some work was done on a separate Law on Media Concentration in Serbia but, although public debate was held about its draft, it was never put on the agenda. Truth to be told, even this draft has treated vertical integration between operators of electronic communication networks and the media. Risks of vertical integration, at least according to presently available data, are being neglected by the draft of the future Serbian media strategy. The creation of new bottlenecks for the free flow of information and opinions that vertical integration may pose remains at this time the sole domain of the Republic Agency for Electronic Communications, authorized to ensure the development of competition in the field of electronic communication, and the Commission for the Protection of Competition, authorized to prevent restrictive agreements, among others those splitting the market or applying unequal business conditions to the same businesses regarding different

market participants. It remains to be seen if that will be enough to provide free flow of information and equal business conditions for all media.

3. Law on Electronic Communications

3.1. In accordance with suggestions from the Commissioner for Information of Public Importance and Personal Data Protection, the Ministry of Culture, Media and Information Society extended the period for public consultation on the Draft Rules on Technical Requirements for Equipment and Programming Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications until August 11, 2011. After the end of the public consultation period, the text of the Rulebook was not adopted until the date of closing this Report.

We have written about the risks posed by the Draft Rules on Technical Requirements for Equipment and Programming Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications in our previous report. Let us remind, it was initially planned that public consultations lasted until August 4. The Rulebook should represent the actualization of a provision in the Law on Electronic Communications stipulating that electronic communications operators must enable lawful interception of communications. During public consultations, objections to the text of the Draft Rules primarily concerned the fact that its text did not actually specify technical requirements for devices and equipment, as the case should be, but – on the contrary – transferred the right to prescribe functional specifications for the equipment, devices and programming support onto the Security Information Agency, therefore exiting the framework prescribed by the Law on Electronic Communications. The Rules are particularly interesting for the media, as its abuse would compromise the legally recognized right to protect ‘sources’. Extension of the public consultation period provided the opportunity to interested parties to state their objections to the text. However, what is troubling is that, after ending public consultations, the Ministry has not communicated which objections that were stated during consultations have been adopted, due to which it is completely unclear in what form and when this important Rulebook will be adopted.