

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *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 “Pistaljka” web portal reposted a photograph originally posted on the Twitter account of the Vice-President of the Delta Holding Jelena Krstovic, which “Pistaljka” interpreted as proof of the association between Delta's owner Miroslav Miskovic and the Belgrade Mayor Dragan Djilas, namely as evidence that they both had a stake in the daily “Press”. On the photograph, which, judging by the comment underneath, Krstovic took on a plane, one may observe a notebook on her knees, with handwritten notes seemingly from a meeting with Dragan Djilas on the topic of the situation of the daily newspaper “Press”. Commenting the photograph, “Pistaljka” pointed to the allegations of the Anti- Corruption Council from the Report on Pressure and Control of the Media, released in September 2011. In the part dealing with opaque media ownership in Serbia, the report particularly emphasized “Press”, claiming that half of the shares thereof were held by a company registered in Cyprus (Amber Press Limited from Limasol), whose owner remains unknown. “In view of the nature of the texts in that daily newspaper, there were speculations that the said company from Cyprus was in fact controlled by Miroslav Miskovic, but also, for a certain period of time, by Milka Forcan, Miskovic's former long-term associate. There were even speculations about “Press” being controlled by Dragan Djilas, the Mayor of Belgrade, Vice-President of the Democratic Party (DS) and owner of the powerful marketing companies Multikom Group and Direct Media”, the report said. “Press” is currently formally owned by Amber Press Limited (50%), journalists Djoko Kesic and Svetomir Marjanovic (6% each), as well as by Sanja Vucicevic (claimed by “Pistaljka” to be the wife of former “Press” editor Dragan Vucicevic) and MEDIAVOX Ltd. from Belgrade, owned by a certain Sasa Petrovic. Jelena Krstovic removed the controversial photograph from her Twitter account and posted a comment claiming that “manipulators and Photoshop experts have obviously nothing better to do than to stage such naive and obvious fabrications”. In the meantime, her Twitter account almost completely died off, while the media “surprisingly” opted to ignore the findings of “Pistaljka”, with the exception of the web portal of Novi Sad-based Radio 021 and E-novine.

Since Jelena Krstovic has removed the photograph from her Twitter account, it is now impossible to compare her original picture with the one posted by “Pistaljka” and give an independent account of whether it was manipulated by “Photoshop ‘experts’ and manipulators” or if it genuinely depicts notes from a meeting between the Vice-President of Delta Holding with the Belgrade Mayor. However, what is more important for our Report is the extent to which the remaining provisions of the Law on the Amendments to the Public Information Law from 2009, which were not declared unconstitutional by the Constitutional Court (regarding the Register of public media), have contributed to more transparent media ownership in Serbia. These provisions have obviously not brought anything positive to the discourse about media ownership transparency. The Strategy on the Development of the Public Information System in Serbia until 2016 insists that the real owner of a legal person that is the founder of a media must be identified, just as origin of the capital invested in the media. The Strategy also announced that the Republic of Serbia would improve and consistently enforce regulations ensuring transparency of ownership and availability of information about natural and legal persons participating in the ownership structure of the media, including information about the nature and scope of their share, as well as about the end owners of those shares; information about the nature and scope of the shares that the same natural and legal persons have in other media and companies active in the media sector and other industries; information about other natural or legal persons that could substantially influence editorial policy; and finally information about state aid measures enjoyed by media. These requirements *per se* should not be disputed, since they were transposed from the Recommendation (2007) of the Committee of Ministers to SE member countries on media pluralism and diversity of media content dated January 31, 2007. Unfortunately, in the year after the adoption of the Media Strategy, nothing was done on this topic and we may only draw the conclusions about who are the real owners of media on the basis of carelessly posted photographs on social networks. That is, of course, if we choose to believe that these photographs are authentic and not the work of “manipulators and Photoshop ‘experts’”. Instead, we should be able to do that by examining the Register of public media, which, truth be told, still exists, but avails to nothing in reality.

2. Broadcasting Law

In its edition dated August 20, the daily “Blic” writes about the increasingly frequent complaints by the citizens to the Republic Broadcasting Agency (RBA) over too loud commercials on television. Milan Jankovic, the Director of the Republic Agency for Electronic Communications (RATEL) told “Blic” that RATEL had received from the RBA a request for performing certain

measurements in order to determine if the citizens' complaints were justified. "Blic" reports that, according to the measurements performed so far, certain commercials are up to three times louder than the regular programming. According to similar measurements performed by RATEL in July 2011, the least divergence in the loudness of the commercials were recorded on RTS, while the loudest commercials were aired on Pink, Prva and Hepi TV. "Blic"'s reporter was told off-the-record by these stations that the commercials were obtained as a finished product from marketing agencies, which might not have been adjusted in any way whatsoever, not even in terms of loudness. They also claimed that it was almost impossible to adjust the volume of the commercials directly on the air, since that would require an additional technician just for that task. "Blic" reports that, in a similar situation in Bulgaria where, after many complaints by the viewers over too loud commercials, the Broadcast Media Council proposed to the parliament to adopt a law that would prohibit too loud or screeching commercials.

It is not completely clear from the "Blic" article on what grounds the RBA or even less RATEL could penalize the diverging volume of the sound in commercials, even if RATEL established that the aforementioned complaints were justified. The Broadcasting Law stipulates that the broadcasters must ensure the production and broadcasting of quality programming, both in terms of content and technical quality. There is, however, no bylaw that would define any difference in the volume of sound between various parts of the programming as a technical deficiency. Similarly, the Advertising Law stops short of foreseeing the higher volume of the sound in commercials than that of the regular programming as a violation of the principle of advertising, unless if the same would fall under advertising contrary to good business customs and professional ethics. Under the Advertising Law, the latter is subject to a misdemeanor fine ranging from 100.000 and 1.000.000 dinars. However, such a fine has never been ruled by the misdemeanor courts. Moreover, if the RBA, as the competent agency, would file a request for proceedings on such grounds, it remains unclear what would the Court use as a basis for establishing to what extent the sound is louder, as well as who would and how determine what is the required standard in this field in terms of good business customs and professional ethics. Otherwise, the different volume of the sound in commercials, relative to the sound levels in the other programming, is the issue topical not only in Serbia and the region. In the US, for example, the Commercial Advertisement Loudness Mitigation Law was adopted, insisting on technological concepts that would ensure an even level of loudness in the commercials and general programming. The UK solved the same problem by introducing a mechanism of co-regulation and Code on Broadcast Advertising, providing that the sound of the commercial should not be excessively loud or unpleasant and that the maximum subjective loudness of the commercials should correspond to the maximum subjective loudness of the programming, so that the viewers

would not have to adjust the sound level during the commercial break. The Code, however, takes into consideration the fact that the commercial breaks are sometimes aired after particularly quiet programming segments, which makes the commercials with acceptable loudness sound louder than they actually are. The Code provides for various models of evening the sound levels, referring to the recommendations of the International Telecommunications Union, that the maximum sound in the commercials must be at least 6 dB less than the maximum level of sound in the general programming, taking into consideration the limited dynamic range in most commercials.

3. *Law on Personal Data Protection*

On August 7, The Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic, the Journalists' Association of Serbia (UNS) and the Independent Journalists' Association of Serbia (NUNS) have issued a joint press release condemning information enabling the recognition of juvenile victims of crimes, which brings additional pain to their families. The press release referred to the texts about young girl (minor) victim of a rape, containing pictures of her family home, reference to the name of the street and town she lives in, as well as her own initials, which practically amounts to disclosing the identity of the victim, making her situation even more difficult. The press release insisted that such texts were not journalism and did not constitute public information. On the contrary, they bring additional suffering to the victims and their families and tarnishing the reputation of journalism as a profession. The editors and journalists of the newspapers, using such texts to boost their sales, were called to reclaim their professional integrity and cease such practice, as well as the competent regulatory agencies to proactively discharge their powers.

The Law on Personal Data Protection contains vague provisions on the issue of utilization of personal data by journalists and the media. However, the utilization of personal data by journalists and the media for the purpose of publishing/broadcasting (and the collection of information about victims of crime and the release of such information undoubtedly amounts to utilization) is also subject to certain rules from the Law on Personal Data Protection, especially the rule that the utilization of such information shall be prohibited if the purpose thereof is prohibited. In the concrete case, the Public Information Law stipulates that a juvenile person must not be made recognizable in a piece of information that may harm his/her right or interest. Accordingly, the utilization of such information for the purpose of making a juvenile person recognizable in a piece of information that may harm his/her right or interest shall be



prohibited. We remind that the Criminal Code prescribes that the collection of personal data is against the Law and that the use of personal data collected in contravention of the Law shall be a criminal offense subject to a fine or prison term of up to one year.