

## II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

### 1. *Public Information Law*

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

### 2. *Broadcasting Law*

2.1. In mid-October, the Council of the RBA and the management of the RTS have formed a working group tasked to urgently propose a new model for the financing of the public service broadcasting. Namely, the survival of the national television is threatened due to the low collection rate of the TV subscription fee, the daily "Press" reported. The Chairman of the RBA Council, Bishop Porfirije of Jegar, stopped short of confirming such body was established, saying that, when working on a set of media laws, the state ought to try to provide for a fully reliable way of financing the PSB so that it may operate smoothly. Bishop Porfirije told "Press" there were several potential solutions to the issue of financing the RTS. "One of the ways is to introduce a tax, like the one being successfully implemented in Croatia, which would be charged by door-to-door collectors. Due to the difficult economic situations, socially vulnerable groups should be charged a lesser amount in line their financial situation. The second possibility would be to continue to charge it via the electricity bills, but the TV subscription fee would have to be deducted [from the paid amount first]". According to the Chairman of the RTS managing board Predrag Markovic, the main conclusions of the meeting between RTS top managers and the members of the RBA Council concerned the necessity to respect the achieved level of operating standards and the financing of the PSB. "That means that PSB must enjoy regular and sufficient financing and their independence, in terms of editorial policy, must be preserved", Markovic said. Several days later, however, commenting on one of the RTS' proposals to collect the debt from the TV subscription fee directly from the account of those citizens that have a job, the Deputy Chairman of the RBA Council Goran Karadzic said that it was not a good idea. In an interview for the daily "Kurir", he also denied the existence of any working group or commission consisting of representatives of the RTS and the RBA.

We remind that, under the Broadcasting Law, the activities of PSB institutions concerning the realization of the general interest determined by Law shall be financed from the subscription

fee. The fee shall be paid by the owners of radio and TV sets. The Law has provided for a generally inefficient collection method, which has resulted in a collection rate of below 40%. Nonetheless, the RBA, or the RTS for that matter, are not entitled to propose legislation. Under the Broadcasting Law, the RBA may only control and oversee the consistent enforcement of the provisions of that Law. In that sense, the RBA could, in the scope of its oversight powers, perform the control of the contract the RTS has concluded with the Power Distribution Company (EPS) and ask for it to be altered, since it has stopped to serve the purpose which it was entered into for in the first place, in view of the low collection rate. The statement by Bishop Porfirije that the issue of financing the RTS and redefining the treatment of the payments for electricity, by having the TV subscription fee deducted from it first, may be interpreted in that sense. We remind that, in our previous monitoring reports, we mentioned a perhaps more realistic possibility, to have the paid amount divided proportionately to the electricity debt and the TV subscription fee debt, instead of the current situation where, until the debt for electricity is settled, it is considered that each payment is for that debt only and not for the fee. The contract between the RTS and, as the law says, “public company performing the activity of production and distribution of electrical energy” is a contract the conclusion of which is provided for as a statutory obligation for both parties. Under the Law of contract and torts, the content of such contracts may be altered only by passing the proper regulations, namely the provisions of the regulations, laying out the content of such contracts, become an integral part of the later, replacing inconsistent contractual provisions. It is true that the Broadcasting Law does not contain provisions determining the content of the contracts between the RTS and the “public company performing the activity of production and distribution of electrical energy”. However, such provisions must not necessarily be contained in the Law – they may be provided for by a bylaw.

2.2. The daily “Danas” dealt with the issue of media ownership transformation and the distinction between ownership and resale of frequencies or reselling the license, which is forbidden under the Broadcasting Law. Danas’ sources from the RBA claim that the agency, since it was established, has approved about 100 changes in ownership structure of national, regional and local broadcasters. The Deputy Chairman of the RBA Council Goran Karadzic explained that a change in ownership structure should not be considered as reselling of the frequency, since the holders of the licenses were companies and those companies should have retained that status even in the case of change of owners. By rule, the problem of the resale of frequencies appears in the media each time there is a change of owners of certain electronic media. This time, the topic emerged when it was announced that the national station *TV Avala* could be sold.

Article 46 of the Broadcasting Law says that the TV broadcasting license, or the radio license, may not be assigned, leased or transferred or disposed of in any way whatsoever. At the same time, the Law stipulates that broadcasters must report any and all changes to their ownership structure to the Agency, namely to apply for its prior approval. The essence is that the one that broadcasts must be the one that was issued the license, namely the broadcaster awarded with the license has not at the same time been vested in the powers of the RBA to further allocate that license to a third party. On the other hand, the change of the ownership structure occurs for two reasons. The first concerns the transparency of the ownership capital and the control of the share directly controlled by foreign companies. The other pertains to unlawful concentration of media ownership. Concerning the first reason, upon receiving a complaint, the RBA controls if the ownership structure of a media outlet has been “penetrated” by a foreign legal person, whose ownership is not transparent (namely which is registered in a country whose internal regulations do not allow or do not enable establishing the origin of the founding capital), namely if the broadcaster is directly owned by foreign legal persons with more than 49%. Regarding the second reason, upon receiving a complaint, the RBA only checks if the change of ownership structure has resulted in unlawful concentration of media ownership. Hence, for example, since under the Broadcasting Law, unlawful concentration of media ownership exists only when a person holding a national broadcasting license simultaneously participates in the capital of another broadcaster holding the same license, with more than 5%, the RBA allowed the change back when *TV Avala* had changed its ownership structure by introducing the owner of *TV Pink* Zeljko Mitrovic in its ownership structure, because Mitrovic limited his share in *TV Avala* to 4,95%. Some believe that such stance towards ownership structure actually enables concealed ownership. Whatever the case may be, at all times, especially during a crisis, media will be sold and that is not debatable. What oversight of media ownership should enable is that the media, with new owners, as with those that received the broadcasting license on an open competition, continue to meet all technical, organizational and programming criteria for the production and broadcasting of content, based on which criteria the broadcasting license has been issued in the first place.

### **3. *Law on Classified Data***

In a press release dated October 22, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic said that the effects of the enforcement of the Law on Classified Data ought to be reviewed. In view of the irrefutable significance of data classification, both for the realization of free access to information and for general legal security and the security interests of the country, the absence of the desired results must not be overlooked.

Sabic's conclusion is that all the conditions have been met for reviewing the content of the law and for amending the same or replacing it with a brand new Law.

The Law on Classified Data was adopted in December 2009 in order to regulate, in a unified manner, the matter of data classification, which was previously governed by a large number of regulations that enabled arbitrary decisions and serious malpractice. The adoption of the Law was branded a serious democratic achievement, significant for both journalists and the media, since it was expected to enable an easier overview of the risks related to the release of official documents, particularly those classified under various levels of secrecy. Unfortunately, those hopes proved to be overly optimistic. In the words of Commissioner Sabic from his press release, the main and biggest problem is the fact that the Government has failed to pass the required bylaws for the enforcement of the Law. The Government has also failed to lay down detailed criteria for determining the level of secrecy, the direct consequence of which is the absolute legal uncertainty we have today in terms of the justification (or lack thereof) for certain secrecy labels on documents. Moreover, although the Law provides for an obligation to review the secrecy labels on data and documents determined according to prior regulations, the expected effects have failed to materialize. In the Commissioner's judgment, the number of documents that unjustifiably carry the formal label of confidentiality, both old and inherited documents, as well as new documents, is not decreasing. On the contrary, it is on the rise. We are recalled the extent to which it has created legal uncertainty in the media by the unpleasant experiences of Jelena Spasic and Milorad Bojovic, the journalist and the editor, respectively, of the now defunct "Nacionalni gradjanski list". Spasic and Bojovic were indicted by the Novi Sad Prosecutor's Office for releasing the "Report on the Condition of the Defensive Preparation in Serbia in 2010", which was debated on the closed session of the Serbian Parliament and which carried the label "strictly confidential".